



REMOVAL OF PRESIDENTS

International IDEA's Constitution-Building Primer 23



REMOVAL OF PRESIDENTS

International IDEA's Constitution-Building Primer 23

Adem Kassie Abebe



International IDEA
Strömsborg
SE-103 34 Stockholm
SWEDEN
+46 8 698 37 00
info@idea.int
www.idea.int

© 2022 International Institute for Democracy and Electoral Assistance

International IDEA publications are independent of specific national or political interests. Views expressed in this publication do not necessarily represent the views of International IDEA, its Board or its Council members.



With the exception of any third-party images and photos, the electronic version of this publication is available under a Creative Commons Attribution-NonCommercial-ShareAlike 3.0 (CC BY-NC-SA 3.0) licence. You are free to copy, distribute and transmit the publication as well as to remix and adapt it, provided it is only for non-commercial purposes, that you appropriately attribute the publication, and that you distribute it under an identical licence. For more information visit the Creative Commons website: <<http://creativecommons.org/licenses/by-nc-sa/3.0/>>.

International IDEA
Strömsborg
SE-103 34 Stockholm
SWEDEN
Tel: +46 8 698 37 00
Email: info@idea.int
Website: <<https://www.idea.int>>

Cover illustration: © 123RF, <<http://www.123rf.com>>
Design and layout: International IDEA
Copyeditor: Curtis Budden

DOI: <<https://doi.org/10.31752/idea.2022.32>>

ISBN: 978-91-7671-550-5 (PDF)

Contents

Chapter 1

Introduction	5
---------------------------	----------

Chapter 2

What is the issue?	8
---------------------------------	----------

Chapter 3

Presidential removal	11
3.1. Removal through impeachment	12
3.2. Removal on grounds of physical or mental incapacity	26
3.3. Removal on political grounds (recall).....	31
3.4. Concluding remarks.....	32

Chapter 4

Decision-making questions	34
--	-----------

Chapter 5

Examples	36
-----------------------	-----------

References	50
-------------------------	-----------

Constitutions	51
---------------------	----

About the author	53
-------------------------------	-----------

About this series	54
-------------------------	----

About International IDEA	55
---------------------------------------	-----------

Chapter 1

INTRODUCTION

Constitutions establishing presidential and semi-presidential systems of government (i.e. systems where the president is directly elected by the people) are characterized by the parallel popular legitimacy of the legislature and the president. Presidents in such systems ordinarily serve a guaranteed fixed term of office (tenure) and are generally not dependent on the political support (or 'confidence') of the legislature (which, in presidential systems, also normally enjoys a fixed term). Only the people can confer a mandate on presidents, and, owing to this, only they can change incumbent presidents by voting for another candidate in the next elections. This contrasts with prime ministers in parliamentary systems who are appointed by parliaments and where parliament can remove them during their term on purely political grounds and through regular procedures (i.e. without the need for a supermajority).

However, many constitutions establishing presidential and semi-presidential systems of government provide exceptional grounds and procedures through which a president may be removed before the end of their term, usually connected with (a) accusations of serious misbehaviour, corruption or legal/constitutional violations (impeachment); or (b) physical or mental incapacity. In some cases, a president is removed to provide political accountability, during the period between presidential elections, through (c) a recall mechanism. The grounds for and process of presidential removal are complex and can be contentious, often involving both legal and political procedures.

Constitutional designers in all systems with directly elected presidents should determine whether, on what grounds and through what procedures presidents can be removed.

Constitutional designers in all systems with directly elected presidents should determine whether, on what grounds and through what procedures presidents can be removed. Procedures for the removal of a president may be primarily political or primarily judicial, depending in part on the grounds for removal. These procedures can involve various actors at various stages of the process, including, for example, members of the president's cabinet, the legislature, the supreme or constitutional court, medical boards and the people. The choice of grounds for and processes of removal affect the degree of difficulty in removing a sitting president before the end of their term. The ease or difficulty of removal processes could in turn affect the relative independence of the executive vis-à-vis the legislative power—as the legislature is usually involved in initiating and approving removal motions—and therefore ensures checks and balances.

The design of presidential removal rules affects 'both the rate of removal-worthy actions and events, and also the tendency of legislatures (and other actors) to engage in impeachment [removal]' (Ginsburg, Huq and Landau 2021: 143). This Primer seeks to inform and aid this constitutional design process through a comparative discussion of the diverse set of rules for presidential removal.

The Primer discusses the grounds and procedures for presidential removal, the consequences of removal and other related issues. It deals with presidents in presidential or semi-presidential systems who are popularly elected (see *Electing Presidents in Presidential and Semi-presidential Systems* [Abebe and Bulmer 2019], which considers the presidential electoral system in the United States as establishing a direct popular mandate, although technically the president is elected by an electoral college). Because removal procedures often involve legislatures, they constitute an exception to the mutual independence of the legislature and the presidency in presidential systems (but not always in semi-presidential systems, where the president sometimes enjoys the power to dissolve parliament).

For a discussion of the mandate and the process of appointment and removal of non-executive presidents in parliamentary systems, see *Non-executive Presidents in Parliamentary Democracies* (Bulmer 2017).

It is important to note that this Primer is based on the rules regarding presidential removal in the constitutional text, which may not always be comprehensive. While the most important aspects of presidential removal rules are commonly regulated at the constitutional level—with a view to avoiding abuse by transient legislative majorities—some aspects of removal may also be complemented through legislation and parliamentary rules of procedure. It is therefore important to consider all relevant regulations and conventions when evaluating removal procedures in specific countries.

Chapter 2

WHAT IS THE ISSUE?

The presidency is usually the most powerful centre of political power, enjoys prominent symbolic status and attracts constant media and popular attention. Rules governing access to and the exercise and termination of presidential power are therefore critical to the constitutional framework in presidential and semi-presidential systems.

The tremendous powers of the presidency come with limited corresponding accountability mechanisms beyond the potential for reward with re-election or punishment through electoral loss. Of these mechanisms, the most notable is the possibility of presidential removal before the incumbent finishes their term. Presidents generally enjoy immunity from criminal (and in some cases civil) proceedings during their tenure. Immunity provisions are ostensibly designed to insulate presidents from distraction from their crucial public functions through judicial and other proceedings, and also, symbolically, to maintain the aura and dignity of the office of the presidency.

In the absence of appropriate presidential removal procedures, presidents could enjoy absolute immunity, which could put them beyond the reach of the law and accountability. Presidential removal procedures should therefore be seen as part of the broader objective of ensuring the rule of law and responsible government, including against the top office holder.

The absence of clear and effective presidential removal rules may not only undermine presidential accountability but also engender

political paralysis. Beyond addressing misbehaviour (or dealing with bad actors), removal procedures provide mechanisms for a much-needed hard political reset to revitalize and recalibrate the political system whenever a country faces systemic challenges in the political environment and severe inter-branch or other political deadlock (Ginsburg, Huq and Landau 2021: 143 ff.). Moreover, removal procedures are critical to dealing with situations where an incumbent becomes incapacitated and, in the case of recall, when a president becomes deeply unpopular. In all cases, the clarity and appropriateness of the rules of presidential removal are critical to making it possible to return to a semblance of relative stability in politically uncertain and volatile times.

If a misbehaving president does not face consequences, or if there are no procedures to remove a president who becomes physically or mentally incapacitated, trust in democracy and democratic institutions could suffer. At the same time, the abuse and frequent invocation of removal procedures, which are often pursued along partisan lines, could undermine political stability (Pérez-Liñán 2007), democratic legitimacy and presidential effectiveness, as such processes would sap the focus and energy of sitting presidents.

The challenge for constitutional designers is to balance the value of presidential removal between elections with the virtues of political stability and the potential abuse of removal procedures. In seeking this balance, a number of questions arise, and this Primer aims to explore the various options to achieve this balance, and, in doing so, to aid informed decision-making based on comparative design, scholarship and experience.

The following chapters discuss the questions summarized in Box 2.1 and related aspects of presidential removal with examples from across the world.

The clarity and appropriateness of the rules of presidential removal are critical to making it possible to return to a semblance of relative stability in politically uncertain and volatile times.

Box 2.1. Key issues to address in the constitutional regulation of presidential removal

- What degree of incapacity, level of wrongdoing or other reason justifies the interruption of a president's popular mandate?
- What processes should be followed to remove a president?
 - Should this process involve only political organs (executive and/or legislature) or also other actors, notably the judiciary (or other independent organ) and the people? If the latter, how and at what stage should they be involved?
 - Are different removal mechanisms necessary to deal with different types of problems (e.g. judicial or quasi-judicial processes for the determination of wrongdoing, medical boards of inquiry for removal on grounds of incapacity and popular recall mechanisms for loss of public confidence)?
- What should the consequences be of removal, both in terms of replacing the president and for the future of the removed president? For instance, should the president still receive a state pension or be allowed to run in future elections or hold other (prominent) public positions?

Chapter 3

PRESIDENTIAL REMOVAL

In principle, presidents are elected for a fixed term. Based on comparative practice, aside from resignation or death, a president's tenure may be terminated only under three broad circumstances:

- impeachment—normally for a crime, serious misbehaviour or other constitutional/legal violations;
- removal on grounds of physical or mental incapacity; and
- in a few countries, removal on the basis of a recall vote without specific grounds.

The constitutional regulation of the grounds for and procedure of presidential removal seeks to provide a predictable legal and institutional structure for such procedures and therefore to depoliticize the rules for and process of removal. This is what formally distinguishes presidential removal procedures covered in this Primer from no-confidence votes in parliamentary systems, which are purely political. In practice, however, even presidential removal procedures tend to be highly political. Removal is likely to be initiated (and to succeed) in countries where the president does not enjoy significant support in the legislature, or where divisions within the president's party enable a strong cross-party coalition for removal. Presidents who lack strong popular support, or who have lost such support, are also more vulnerable to removal initiatives. Politicization is more likely particularly in cases where courts or other relatively independent bodies are not involved in the removal procedure.

3.1. REMOVAL THROUGH IMPEACHMENT

Impeachment procedures are designed to disincentivize presidential misconduct or misbehaviour out of consideration for the consequences of removal, including potentially opening the way for further legal proceedings against the removed president. Considering that, in practice, presidents have significant powers and distribute resources, and keeping in mind the difficulty of impeachment procedures in view of partisan politics, calls for impeachment are common but rarely successful (Samuels and Shugart 2010: 111).

An assessment of the formal difficulty of or the permissiveness of constitutions regarding impeachment must consider both the grounds for and the procedure of removal, notably the number of institutions that must approve the removal (veto players), and the strength of the majority required at each stage. Recent comparative scholarship finds that most constitutions include serious violations of the constitution or other laws as the grounds for removal, and they often involve two actors that must decide with a supermajority (Ginsburg, Huq and Landau 2021: 141–42). Beyond the formal rules, the context of each country affects the extent to which the formal degree of difficulty corresponds with practice.

3.1.1. Grounds for impeachment

The two most common grounds for presidential impeachment broadly relate to serious violations of laws or the constitution and the commission of serious misconduct or crimes, broadly constituting abuse of presidential power.

Some constitutions specify the nature of the crime, usually related to treason or atrocity crimes (crimes against humanity, genocide and war crimes). For instance, in Nigeria, impeachment is possible only on grounds of ‘gross misconduct’, which the constitution defines as ‘a grave violation or breach of the provisions of this Constitution or a misconduct of such nature as amounts in the opinion of the National Assembly to gross misconduct’ (article 143, sections 2[b] and 11, Constitution 1999, rev. 2011). In the United States, impeachment is allowed on grounds of ‘treason, bribery, or other high crimes and misdemeanors’ (article II, section 4, Constitution 1789, rev. 1992). The Algerian Constitution speaks only of high treason (article 191,

Constitution 2020), while the Mexican Constitution refers to ‘treason or serious common crimes’ (article 108, Constitution 1917, rev. 2015).

Some constitutions establish grounds that are vague and may lead to subjective assessments, potentially lowering the overall threshold for impeachment. In the Philippines, a president can be impeached on grounds of ‘betrayal of public trust’ (article XI, section 2, Constitution 1987). The Argentinian Constitution lists ‘poor performance’ as one basis for impeachment (article 53, Constitution 1853, reinstated in 1983, rev. 1994). Ecuadorian presidents may be removed on grounds of ‘severe political crisis or internal unrest’ (article 130[2], Constitution 2008, rev. 2021). In the Democratic Republic of the Congo, the president can be impeached on grounds of ‘contempt of Parliament’ and ‘infringements of honor or of probity’ (article 164, Constitution 2005, rev. 2011).

In many anglophone African countries, such as Ghana (article 69[b], Constitution 1992, rev. 1996) and The Gambia, the president can be impeached on grounds of conduct ‘which brings or is likely to bring the office of the President into contempt or disrepute’ (article 67[b], Constitution of The Gambia 1996, rev. 2018). The Chilean Constitution similarly includes as grounds for impeachment acts of the administration, and not just acts of the president, ‘which have seriously affected the honor or security of the Nation’ (article 52[2], Constitution 1980, rev. 2021). In Brazil, attempts against the federal Constitution, as well as tampering with the budget law and failure to comply with laws and court decisions, are impeachable transgressions (article 85, Constitution 1988, rev. 2017).

While legal specificity has the advantage of clarity, potentially discouraging political manoeuvres, there is no evidence that these vague grounds have led to more frequent impeachment proceedings. Instead, such loose or vague standards may have an advantage in allowing a political reset through the removal of presidents who have lost popularity or political support to govern (Ginsburg, Huq and Landau 2021: 144), although they are not guilty of specific infractions. Nevertheless, this could depend on the procedures for impeachment, the political party landscape and the relative support for and patrimonial network of the president. For instance, in Ecuador,

the procedure for removal on the grounds of ‘severe political crisis or internal unrest’ is relatively easy, requiring a two-thirds majority in the National Assembly (article 130[2], Constitution 2008, rev. 2021). But a president may be subjected to an impeachment process on these grounds only once in a legislative term and only before their third year in office. This combination of vague grounds and relatively easy removal procedures could generate undesirable levels of political instability. Indeed, in Ecuador, as a counterweight to this potential instability, a successful removal through impeachment requires new elections for both the members of the legislature and the president, therefore reducing incentives for frivolous impeachment proceedings.

3.1.2. Removal procedure

Stages of the procedure

A comparative overview reveals three distinct stages in removal procedures: initiation, approval and in some cases confirmation, usually by a non-political body. Initiation is generally the purview of the legislature. Similarly, the legislature is generally responsible for approval, often with a majority higher than in ordinary legislative decisions (qualified majority). Confirmation could involve either courts, quasi-judicial tribunals or hybrid bodies composed of both politicians and judges, which is often common in francophone countries (sometimes called ‘high courts’) that determine whether grounds for impeachment exist. The confirmation of the courts or similar tribunals may still be subject to legislative approval (i.e. the judicial process may not settle the matter).

In cases where courts or similar quasi-judicial tribunals or hybrid bodies are not involved, the removal procedure may be seen as overtly political, even if the existence of the grounds for impeachment often requires some level of legal determination.

In cases where courts or similar quasi-judicial tribunals or hybrid bodies are not involved, the removal procedure may be seen as overtly political, even if the existence of the grounds for impeachment often requires some level of legal determination. The involvement of courts, quasi-judicial tribunals or hybrid bodies in such processes adds a legal element to the process but does not eliminate the political nature of such proceedings, as political action is often necessary to trigger the impeachment procedure.

Legislative majority required

The legislative majority required to initiate impeachment proceedings varies. In Romania, impeachment for serious offences that violate

constitutional provisions requires approval by one-third of the members of parliament, while impeachment on grounds of high treason requires a majority of deputies and senators (articles 95[2] and 96[2], Constitution 1991, rev. 2003). In Albania, the initiation requirement is one quarter of the members of the legislature (article 90[2], Constitution 1998, rev. 2016). The initiation rules are often designed to allow a legislative minority to bring public attention to the president's failings, which could encourage accountability and responsiveness even if the chances of a successful removal are low. Nevertheless, in some countries, such as the Republic of Korea (South Korea) (article 65[2], Constitution 1948, rev. 1987), an absolute majority of members of the unicameral parliament is required to initiate impeachment proceedings.

In bicameral systems, the power to initiate impeachment tends to belong to the first chamber (in rare cases also the second chamber—for example, Romania, articles 95[2] and 96[2], Constitution 1991, rev. 2003). For instance, in Argentina, a motion to remove the president requires a two-thirds majority of members present in the first chamber, subject to approval in the second chamber by the same majority in a public meeting where each of the members takes an oath for the same purpose and that is presided over by the chair of the Supreme Court (articles 53 and 59, Constitution 1853, reinstated in 1983, rev. 1994). Comparable arrangements exist in Brazil (which requires the support of a 'two-thirds vote of the Federal Senate' [article 52, Constitution 1988, rev. 2017]) and the United States (which requires the support of 'two-thirds of the Members present' in the Senate [article 1, section 3, Constitution 1789, rev. 1992]).

Overall, all other things being equal, a higher legislative threshold makes removal more difficult. Beyond the applicable supermajority, the chance of success of removal likely depends on the number of veto points (distinct entities whose consent is required to pass a decision) involved in the decision and, crucially, whether the president has sufficient allies in parliament to block removal.

It is also important for constitutional designers to clearly define whether the majority required should be based on all the seats in a body or only on those present and voting. In Tanzania, for instance, impeachment requires support from two-thirds of all members of

parliament (article 46A[3][a], Constitution 1977, rev. 2005). Similarly, in the Philippines, the Senate needs a two-thirds majority of all the members to impeach a president (article XI, section 3[6], Constitution 1987). In contrast, in the United States, the Senate requires a two-thirds majority of those present (article 1, section 3, Constitution 1789, rev. 1992).

Courts in removal proceedings

A legislative decision to remove a president may be subject to further judicial confirmation. The involvement of the courts, especially those with a reputation for independence, enhances the credibility and legitimacy of the legal and factual determinations necessary for the acceptability of the process. Because judicial procedure creates an additional hurdle (veto point) in the removal process, it could diminish incentives for starting impeachment proceedings, although judicial intervention may not in itself prevent initiatives intended by the political opposition to bring attention to particular presidential infractions even when the chances of successful removal are slim.

In South Korea, the impeachment of a president with a two-thirds majority in the unicameral National Assembly must be approved by a two-thirds majority (six of the nine justices) in the Constitutional Court before the president is removed (articles 65, 113[1], Constitution 1948, rev. 1987). Similarly, in Angola, a decision supported by two-thirds of the members of the unicameral parliament to impeach a president must be forwarded for approval to the Supreme Court (for serious crimes) or the Constitutional Court (for violations of the Constitution) (article 129[3]–[5], Constitution 2010). In Tunisia as well, a motion of impeachment approved by two-thirds of the members of the National Assembly requires confirmation by a two-thirds majority of the Constitutional Court (article 88, Constitution 2014). In all cases, if the courts find the accusations to be unsubstantiated, the president will remain in office.

It is also important for constitutional designers to clearly define whether the majority required should be based on all the seats in a body or only on those present and voting.

In some francophone African countries, a special court made up of judges and politicians has the power to decide on impeachment. For instance, in Benin, the High Court of Justice (composed of all members of the Constitutional Court except its president, six members elected by the unicameral National Assembly and the president of the Supreme Court) decides, based on an accusation by

a two-thirds majority of the Assembly, on whether the president has committed treason or other impeachable offences (articles 135–37, Constitution 1990).

In some countries, the order is reversed: the accusation must first be approved by the courts before parliament decides, where a supermajority is required for the motion to pass. For instance, in Azerbaijan, the president may be impeached on the grounds of a conviction for serious crimes by the Supreme Court. In such cases, the Constitutional Court initiates impeachment proceedings before the unicameral legislature, which, for the motion to pass, must approve by a three quarters majority within a maximum of two months. The resolution of the parliament must be signed by the Constitutional Court within one week; if it is not signed within this period, it lapses (article 107, Constitution 1995, rev. 2016). In The Gambia, when a majority of all the members of the unicameral National Assembly accuse the president of impeachable misconduct, the speaker requests that the chief justice convene a tribunal including a justice of the Supreme Court and four other persons. If the tribunal finds the president guilty, the National Assembly may approve the decision with a two-thirds majority (article 67, Constitution 1996, rev. 2018). In these cases, the judicial decision needs to be confirmed by political organs, creating the possibility that a president found guilty could stay in power, which could occur, considering the political nature of removal proceedings, but would undermine trust in the rule of law. At the same time, it may make political decisions to remove the president easier, as the members of parliament have a judicial ruling to rely upon.

Indonesia has a unique system involving back and forth between the parliament and the Constitutional Court. Impeachment is initiated in the first chamber with a two-thirds majority of all its members. The decision is then transferred to the Court to determine whether the president violated the law through an act of treason, corruption, bribery, or other act of a grave criminal nature or through moral turpitude, or whether the president no longer meets the qualifications to serve as president. If the Court finds that the accusations are proven, the first chamber holds a plenary session to decide on whether to refer the decision to the second chamber, which can approve the impeachment with a two-thirds majority (in the presence

of at least three quarters of the members) (articles 7A and 7B, Constitution 1945, reinstated 1959, rev. 2002).

While courts are not involved in presidential removal in Zimbabwe, the Constitution does not leave it to the legislative plenary, which may be dominated by a single party, thus undermining the voices of other parties. Instead, it provides for a nine-member parliamentary committee composed proportionately of all parties represented in both chambers of the legislature to investigate the existence of impeachment grounds (as well as for reasons of mental or physical incapacity). Such a committee is established upon the decision of half of the members of the two legislative houses in a joint session. If the committee recommends impeachment of the president, and if two-thirds of the total membership approve it in a joint session of the two chambers, the president is removed (article 97, Constitution 2013, rev. 2017). The Zimbabwean approach emphasizes the political nature of impeachment but could generate less confidence and credibility compared with countries where the courts or ad hoc tribunals make determinations regarding impeachment.

The people in removal proceedings

Presidential removal through impeachment may also involve a referendum. For instance, in Romania, at the initiation of one-third of deputies and senators, a joint sitting of the two legislative chambers can suspend a president with a majority vote on grounds of serious offences in violation of the Constitution, after consultation with the Constitutional Court. If the suspension is approved, the impeachment is referred to a referendum within 30 days (article 95, Constitution 1991, rev. 2003). The involvement of the people of Romania in cases of serious offences is different from recall procedures, which do not require specific grounds, as discussed below.

Disincentivizing impeachment

Impeachment proceedings are rare partly because of the powers that come with the presidency and partly due to procedural difficulties. Beyond these practical and procedural hurdles, however, there are no direct costs for initiating impeachment processes. But there are exceptions where a constitution may impose disincentives against impeachment. Although such disincentives preclude abusive processes, they could also reduce presidential accountability, as

Think point: At what stage should the courts be involved?

Once a decision to involve the courts or other quasi-judicial bodies in the presidential removal process is taken, constitutional designers must make a second-order policy choice regarding the particular stage at which such entities should be involved.

Option 1: These entities come at the end of the removal process once a final decision (often with a qualified majority) has been taken by the political bodies, and the judicial or quasi-judicial entities then decide whether the decision should stand or not based on constitutional grounds (e.g. in South Korea). This option has the advantage of precluding the potential politicization of professional decisions in a manner undermining expectations of and trust in the rule of law.

Option 2: The courts or quasi-judicial entities come in the middle once an initial political decision has been taken (e.g. in The Gambia). In this case, a judicial decision confirming the accusation could be expected to encourage the building of political bridges necessary to enhance the legitimacy and acceptability of the removal. A decision rejecting the accusation not only would end the stage but could also reduce the political instability that removal processes often generate or worsen.

opposition groups cannot use the procedure to draw needed public attention to serious presidential infractions.

The Constitution of Kazakhstan provides that, where an accusation of high treason against the president fails at any stage, it results in premature termination of the powers of the deputies of the first chamber who initiated the consideration of this issue (article 47[2], Constitution 1995, rev. 2017). In Ecuador, successful removal on the grounds of a 'severe political crisis or internal unrest' leads to not only new presidential, but also legislative, elections (article 130[2], Constitution 2008, rev. 2021).

Impeachment votes

Constitutions differ in their requirements on whether impeachment votes should be by open or secret ballot. Open ballots encourage political transparency and accountability. At the same time, open ballots could put legislators under undue pressure because of fear of reprisal, particularly if the impeachment motion fails. The possibility of undue pressure is particularly high for deputies who are from the same party as the president. Open ballots could also enable

Constitutions differ in their requirements on whether impeachment votes should be by open or secret ballot.

corruption, with presidents or their opponents offering benefits in return for verifiable support.

The French Constitution requires that the two legislative chambers, jointly sitting as a high court, vote on an impeachment procedure through a secret ballot. A decision must be given within one month of the tabling of the motion (article 68, Constitution 1958, rev. 2008). Similarly, the Constitution of Côte d'Ivoire requires that the indictment of the president in parliament, as part of the impeachment process, be conducted by secret ballot (article 161, Constitution 2016). The Ghanaian Constitution also requires that legislative votes on impeachment (as well as for presidential incapacity) be by secret ballot (article 69[11], Constitution 1992, rev. 1996).

In contrast, the Gabonese Constitution requires that the impeachment vote in parliament be through a public vote (article 78, Constitution 1991, rev. 2011). The Constitution of Madagascar similarly requires that impeachment votes, which require the approval of a two-thirds majority in the National Assembly, be public (article 131, Constitution 2010).

Many constitutions are silent on the issue. In such cases, rules governing legislative process may be applicable. Whenever there are disputes, they may be resolved through the courts. For instance, in South Africa, the Constitution is silent on the impeachment voting process. During the impeachment process of former President Jacob Zuma, opposition parties called for a secret ballot to encourage members of the ruling party to vote freely. Nevertheless, the speaker argued that she had no mandate to order a secret ballot. The Constitutional Court ruled that the speaker did have such a mandate (Constitutional Court of South Africa 2017). Nevertheless, the Court fell short of requiring a secret ballot, instead leaving it to the discretion of the speaker, subject to a requirement that the decision be 'appropriately seasoned with considerations of rationality'. It should be noted that, in some countries, this may be regarded as a matter of non-justiciable parliamentary privilege, in which case it would be for the legislature to determine.

3.1.3. Suspension during removal proceedings

Another key issue relates to whether a president is suspended during the removal process pending final decisions. In some countries, the president may be suspended pending final removal proceedings, while, in others, there is no such requirement. Suspension is intended to prevent a president who has been impeached, based on prima facie establishment of the grounds for impeachment, from tampering with the process or otherwise taking decisions affecting the nation. Nevertheless, suspension could create a legal and political vacuum, and could constitute an abuse of process to ensure the suspension of a president even if the case for impeachment is weak. Accordingly, suspension should be considered only at an advanced stage of the process and subject to procedural protections, such as a supermajority vote, as is the case in many countries.

Beyond suspension, a president may face restrictions to their power while removal proceedings are ongoing. For example, in Zambia, the president may not dissolve the National Assembly while facing removal through impeachment (article 108[3][b], Constitution 1991, rev. 2016). In Turkey, a president facing an impeachment investigation may not organize elections (article 105, Constitution 1982, rev. 2017). Other significant powers that could be restricted include the right to make appointments to key positions, to invoke states of emergency and to grant presidential clemency/pardon.

In Brazil, a president is suspended when removal proceedings reach the Senate or when criminal cases are submitted to the Supreme Federal Tribunal based on a decision of the first chamber with a two-thirds majority (article 86, Constitution 1988, rev. 2017). Similar rules exist in Colombia (article 175.1, Constitution 1991, rev. 2015).

In Cabo Verde, the president is suspended upon being accused of committing a crime in the exercise of their duties by a two-thirds majority in parliament, which leads to an investigation by the attorney general (article 144[2]–[3], Constitution 1980, rev. 1992). Under the Egyptian Constitution, impeachment by a two-thirds majority in the first chamber leads to suspension and referral of the matter to the prosecutor general (article 159, Constitution 2014, rev. 2019).

In South Korea, a president is suspended upon the passing of a motion of impeachment by the National Assembly (article 65, Constitution 1948, rev. 1987). The president is removed upon the affirmation of the Constitutional Court (article 111[1.2]). Zambia has similar rules, where a president is suspended as soon as they are impeached by a two-thirds majority of the National Assembly (article 108, Constitution 1991, rev. 2016). The suspension becomes permanent if a tribunal established by the chief justice in consultation with the Judicial Service Commission finds the president guilty of the grounds for impeachment, and if the National Assembly subsequently affirms the decision by a two-thirds majority in a secret ballot. In Tanzania, a president is suspended if the National Assembly decides, by a two-thirds majority, to establish a special committee of inquiry to investigate the alleged grounds for impeachment (article 46A[5], Constitution 1977, rev. 2005).

3.1.4. Length of removal proceedings/restrictions on repeated impeachment motions

Considering the disruptive potential of removal proceedings on politics and governance, and the potential for partisan harassment, some constitutions impose specific timelines within which the process should be completed, starting from the moment the impeachment procedure is initiated. While a time limit may be desirable, the appropriate length would depend on the exact nature of the process itself. Processes involving judicial proceedings could be expected to require a relatively longer time span. Nevertheless, the value of a time limit lies in the desire to avoid prolonged political instability.

Constitutions may also impose restrictions on the number of impeachment proceedings in a given period of time.

For instance, in Angola, an impeachment motion immediately becomes a priority, and the process, including the decision of the Constitutional Court, must be finalized within 120 days (article 129[6], Constitution 2010). In Bulgaria, an impeachment proposed by one-quarter of the members of parliament and approved by a two-thirds majority is submitted to the Constitutional Court, which must then decide within a month (article 103[2]–[3], Constitution 1991, rev. 2015).

Constitutions may also impose restrictions on the number of impeachment proceedings in a given period of time. In Tanzania,

impeachment motions with regard to lowering the esteem of the office of the president cannot be tabled until 20 months have passed following a similar motion (article 46A[2], Constitution 1977, rev. 2005). In the Philippines, the Constitution prohibits more than one impeachment proceeding against the same official within a period of one year (article XI, section 3[5], Constitution 1987). It is important to note that the restriction in the Philippines coincides with a relatively easy procedure for initiating impeachment proceedings. Any member of the first chamber can request impeachment. The request is tabled before the whole chamber within 10 days, and the matter is referred to the relevant committee within 3 days. The committee reports within 60 days, and if it approves the request within 10 days by a majority vote, and if the vote is supported by at least one-third of the members of the first chamber, the matter is referred to the Senate for trial, which, for the motion to pass, must decide by a two-thirds majority vote (article XI, section 3). In view of the ease with which impeachment can be initiated, the restriction on repeat proceedings is understandable.

3.1.5. Replacements in case of removal

The issue of removing a president raises the question of how the president is to be replaced. Practice in terms of replacement rules follows two common approaches.

Vice president takes over for remaining term

In countries with a vice president, as is common in presidential systems, the vice president generally replaces the president upon removal from office, particularly where the vice president is elected on a joint ticket with the president. The vice president also tends to serve until the end of the remaining term (e.g. Liberia, article 63[b], Constitution 1986). Constitutions tend to mention only one or two persons in the line of succession. For example, in Bulgaria, the vice president takes over for the remaining term. Nevertheless, if the vice president is not able to take over for any reason, the chairperson of the National Assembly succeeds, but elections must then be held within two months (article 97[4], Constitution 1991, rev. 2015).

In Liberia, the term that a vice president serves after replacing a removed president would not count for the purposes of presidential term limits (article 63[b], Constitution 1986). The absence of a clear

rule in relation to the counting of replacement terms can create legal controversies and even political instability. In 2014, Zambian President Michael Sata died in office. Edgar Lungu won in January 2015 the election to finish Sata's remaining term until September 2016. Lungu then won a second election in August 2016. When he announced his intentions to run for election in 2021, a case was filed on the grounds that he has served the maximum of two terms allowed under the Constitution. Lungu argued that the 2015–2016 replacement term did not count. In a 2018 case, the Constitutional Court ruled that the term he served following the president's death did not count for the purposes of constitutional limits (Constitutional Court of Zambia 2018). A specific rule as in Liberia avoids judicial controversies as happened in Zambia.

Elections held quickly

In countries without vice presidents, as is common in semi-presidential systems, the mantle generally passes to the chairperson of the first or second chamber of parliament, or in some cases to the prime minister or top judge. In this case, new presidential elections are generally held quickly. In South Korea, elections must be held within 60 days (article 68[2], Constitution 1948, rev. 1987).

In many of these jurisdictions, in view of the absence of a direct popular mandate, the interim president is proscribed from exercising certain key presidential powers. For instance, in the Central African Republic, elections must be held between 45 and 90 days after the presidency is vacated (article 47, Constitution 2016). The interim president—who is the chairperson of the first chamber or, in their absence, the chairperson of the Senate—is prohibited from reconstituting the government, leading constitutional reform or having recourse to a referendum (as well as from running for president in the next elections).

The absence of a clear rule in relation to the counting of replacement terms can create legal controversies and even political instability.

Ecuador has a unique system where removal leads to not only presidential elections but also legislative elections (article 130, Constitution 2008, rev. 2021). In addition to discouraging abuse of removal processes, this rule ensures that both presidential and parliamentary elections continue to be held at the same time.

It has been noted that removal processes are more likely to serve as solutions to political paralysis when elections follow the removal of a president rather than when someone completes their remaining term (Ginsburg, Huq and Landau 2021: 163). Ginsburg, Huq and Landau also find that 74 per cent of constitutions around the world with presidential and semi-presidential systems provide for immediate elections in case of presidential removal.

Conditional on length of remaining term

In some countries, whether a replacement election is held or not depends on the timing of the vacancy. For instance, in Chile, if there is less than two years left of the removed president's four-year term, a replacement president is elected by the plenary of Congress by an absolute majority of senators and deputies; if there is more than two years left, general elections are held within 120 days. The elected president completes the remaining term and is not allowed to run as a candidate in the next election, in line with the general prohibition on presidential re-election in Chile (article 29, Constitution 1980, rev. 2021). In Venezuela, where the president serves a six-year term, if a president is removed or otherwise unavailable within the first four years, the vice president takes over, and elections must be held within 30 days; if a vacancy occurs in the last two years of the presidential term, the vice president takes over for the remainder of the term (article 233, Constitution 1999, rev. 2009). Similarly, in Comoros, where a president serves for five years, if a presidential vacancy occurs within 900 days of elections, the prime minister takes over, and elections must be held within 60 days; if a vacancy occurs less than 900 days from elections, the governor of the island from which the president originates finishes the term (article 58, Constitution 2018—note that, under the Constitution, the presidency must rotate between the Islands).

3.1.6. Consequences of removal

Considering the potential seriousness of the grounds for impeachment, removal could have consequences on a president beyond losing power. While presidents ordinarily enjoy immunity during their tenure, they could be prosecuted after the end of their tenure for crimes committed while in office. This possibility of prosecution after leaving office also applies to removed presidents.

74 per cent of constitutions around the world with presidential and semi-presidential systems provide for immediate elections in case of presidential removal.

Removed presidents could be denied benefits ordinarily granted to former presidents.

In addition, removed presidents could be denied benefits ordinarily granted to former presidents. For instance, in Tanzania, a removed president is denied pension payments and any benefits or other privileges that they would be entitled to under the Constitution or any other law (article 46A[11], Constitution 1977, rev. 2005). The severity of these consequences could incentivize incumbents to resign before removal proceedings are completed. Peruvian President Pedro Pablo Kuczynski resigned in 2018 under a real threat of removal. Such early resignation may allow incumbents to avoid the consequences of removal. Constitutions may, however, allow impeachment of presidents, even after they have left office at the end of their tenure or after resignation, as is the case in Chile where a president may be impeached up to six months after leaving office (article 52.2[a], Constitution 1980, rev. 2021).

Another common consequence of presidential removal is the ban that some removed presidents face on assuming public office or other public function. In some countries, such as Liberia (article 43, Constitution 1986), the ban is permanent. In others, the ban may be limited in time—for example, for eight years in Brazil (article 52) or for five years in Chile (article 53[1]). In Colombia, the impeaching body decides whether a ban is temporary or absolute (article 175).

3.2. REMOVAL ON GROUNDS OF PHYSICAL OR MENTAL INCAPACITY

The second common basis for the removal of presidents relates to their permanent physical or mental incapacity to discharge the functions of the office. Where the incapacity is temporary due to being physical in nature, the president is ordinarily replaced for the duration of the incapacity in line with the relevant replacement rules (commonly by the vice president or a person designated by the president). For instance, in November 2021 US Vice President Kamala Harris served as president for a short while when President Joe Biden was undergoing surgery (Pengelly 2021).

3.2.1. Procedure for removal for incapacity

The procedure for removal on account of incapacity generally involves a decision of the legislature and/or the cabinet, and

Box 3.1. Importance of distinguishing temporary and permanent incapacity

The choice of terminology and absence of specific rules in cases of temporary incapacity could be controversial. For instance, the original version of the Gabonese Constitution (article 13, Constitution 1991, rev. 2011) referred only to a power vacuum or ‘permanent’ impairment, and provided that, in such cases, the president of the second chamber takes over, and elections are organized to replace the president. The Constitution also provided that only the president or someone authorized by the president can convene the cabinet. When President Ali Bongo suffered a stroke and fell into a coma in 2018, his incapacity was not considered permanent, and the succession rules could not be activated. At the same time, under the Constitution the cabinet could neither meet nor formally take decisions without the president’s authorization. To address this paralysis, the prime minister requested that the Constitutional Court interpret the Constitution and allow the vice president to convene the cabinet. The Court effectively, and controversially, introduced a new provision in relation to temporary vacancy and accepted the prime minister’s request for the vice president to convene the cabinet (Institute for Security Studies 2018). Bongo first reappeared in public 10 months later. A subsequent constitutional amendment expressly recognized temporary vacancies and provided that, in such cases, a joint body composed of the presidents of the two legislative chambers and the defence minister would take charge (Ondo and Moundounga Mouity 2021).

examination of the alleged incapacity by a body composed fully or partially of medical professionals. For this purpose, the president is generally required to submit himself or herself to a medical examination—for instance, the Ghanaian Constitution provides that the president ‘shall be invited to submit himself’ to a medical examination within 14 days of the establishment of a medical tribunal for this purpose (article 69[6], Constitution 1992, rev. 1996).

The 2010 Constitution of Kenya (article 144) perhaps has an elaborate procedure for removal on grounds of incapacity. The first chamber of the legislature (National Assembly) has the power to initiate proceedings on account of incapacity. One quarter of the members of the first legislative chamber can initiate proceedings on account of physical or mental incapacity. If the motion is approved by a majority of all members of the Assembly, the speaker asks the chief justice to set up a tribunal composed of three medical professionals, one lawyer and one member nominated by the president or a close relative. If the tribunal, which must decide within 14 days, finds the president to be incapacitated, the speaker must table the tribunal’s report before the Assembly within 7 days. If a majority of the first

chamber ratifies the tribunal's decision, the president is removed, and the vice president takes over. If the tribunal finds that the president is capable, the president continues. The tribunal's decisions are final and may not be appealed. Although Kenya has a Senate, it is not involved in procedures for removal on grounds of incapacity.

The Constitution of Sierra Leone grants the power of initiating proceedings on grounds of incapacity to the cabinet (article 50, Constitution 1991, reinstated 1996, rev. 2013). Accordingly, where the cabinet resolves that the question of the president's mental or physical capacity to discharge the functions of the office ought to be investigated, it informs the speaker of the National Assembly. The speaker, in consultation with the head of the Medical Service of Sierra Leone, appoints a medical board consisting of no fewer than five medical practitioners registered under the laws of Sierra Leone (interestingly, implying the exclusion of foreign medical doctors). If the board finds the president incapable of discharging their functions, the speaker is required to certify the decision and inform the Assembly. The president is removed, and the vice president takes over (articles 49[4] and 50[4]).

In the Seychelles, both the cabinet and parliament have the power to initiate removal proceedings on grounds of incapacity (article 53, Constitution 1993, rev. 2017). If a majority of the members of the cabinet or half of the unicameral National Assembly (which must vote without debate) initiate a proceeding on account of incapacity, the chief justice establishes a medical board to determine whether the president is, by reason of an infirmity of body or mind, incapable of discharging the functions of the office. If the president is found to be incapacitated, the matter is referred to the Assembly, which requires the approval of two-thirds of its members to pass the motion.

In a few countries, such as the United States, there is no requirement for an independent medical determination of incapacity. In many others, formal medical approval of incapacity is often a requirement, usually subject to subsequent political approval (e.g. article 47[1], Kazakhstan Constitution 1995, rev. 2017, as well as in Kenya and Seychelles). The subjection of a medical tribunal's findings to legislative approval means that a president found medically incapacitated could potentially continue if the legislature rejects

the tribunal's decision. While this is rare in practice, as is removal on grounds of incapacity, if it does occur, it could undermine the legitimacy of the political system. Overall, the absence of the involvement of a medical tribunal could potentially create risks of politicization of an alleged medical condition.

In some countries, courts are involved, which may depoliticize contestations over incapacity. For instance, in Chile (article 53[7]), the Senate declares, after hearing the Constitutional Court, the incapacity of the president when a physical or mental impediment disqualifies them from performing their functions. In Bulgaria, a president is removed on account of incapacity upon a decision of the Constitutional Court (article 97, Constitution 1991, rev. 2015). Under the Constitution of Burkina Faso, presidential removal on grounds of absolute or definitive incapacity is proposed by a majority of the cabinet and decided by the Constitutional Council (article 43, Constitution 1991, rev. 2015).

Zimbabwe has a unique process that, while political, also seeks to reduce partisanship. A motion for removal commences with a vote of at least half of the members in a joint sitting of the two legislative houses. A cross-house committee composed of nine members reflecting the party composition of parliament is then established. If the committee recommends removal, the motion is referred to a joint sitting of the two houses of parliament. If two-thirds of the members of parliament approve the motion, the president is removed (article 97, Constitution 2013, rev. 2017).

Suspension, timelines, replacement, consequences

In some countries, a president may be suspended once incapacity proceedings commence. Such a suspension, after prima facie evidence of incapacity is provided, may be justified considering the seriousness of presidential responsibilities, perhaps even more so than in cases of impeachment proceedings. Nevertheless, this opens up possibilities for abuse if the procedure for commencing removal proceedings is relatively easy, and where there is no timeline within which a final decision should be taken. In Sierra Leone (discussed above), if the cabinet resolves that the president's capacity in connection with any infirmity of mind or body be investigated, the president is suspended from office (article 50[3], Constitution 1991,

The absence of the involvement of a medical tribunal could potentially create risks of politicization of an alleged medical condition.

Box 3.2. Clarity of rules and legal determination

The absence of a medical determination and vague standards and procedures could be problematic. For instance, in Peru, the Constitution allows the removal of a president by Congress on grounds of permanent ‘physical or *moral* incapacity’ (article 113.2, Constitution 1993, rev. 2021, emphasis added). However, the Constitution does not provide a procedure for removal. Under the parliamentary regulations, presidential removal on this basis can be initiated by 20 per cent of the members of Congress, and must first be approved by 40 per cent of the members and subsequently by a two-thirds vote in the unicameral Congress. Because the Constitution does not provide for an objective way of determining physical or moral incapacity, the provision has been frequently invoked to remove presidents and generate political instability. Between 2018 and 2021 alone, one president was removed and another forced to resign, and the country saw several presidents depart before completing their terms, immersing it in a constant state of political instability.

rev. 2013). If the board finds the president to be incapacitated, the speaker certifies the decision, and the president is removed. The speaker’s certification is final and may not be challenged in court.

As in the case of impeachment proceedings, constitutions may provide specific timelines for removal on grounds of incapacity, considering the political inertia and instability that accompanies such procedures.

The serious consequences of removal through impeachment, such as denial of benefits or limits on holding public office, are generally absent in the case of removal on grounds of incapacity.

Once a president has been removed on grounds of incapacity, the replacement rules are generally similar to those applicable for removal on impeachment grounds. In Tanzania, in case of removal on grounds of incapacity (or death or resignation) of the president, the vice president takes over (article 37[5], Constitution 1977, rev. 2005). If more than three years remains of the five-year presidential term, the replacement term counts for the purposes of presidential term limits; if less than three years remains, it does not count (article 40[4]).

The rules on the secrecy or openness of votes on removal on grounds of incapacity are also similar to those for impeachment cases.

The serious consequences of removal through impeachment, such as denial of benefits or limits on holding public office, are generally absent in the case of removal on grounds of incapacity. This distinction is appropriate considering the absence of guilt on the part

Think point: Should replacement rules vary depending on the grounds for removal?

Allegations of bad behaviour that lead to removal tend to also implicate vice presidents (and broadly the governing elite or party). Moreover, removal through impeachment is partly seen as a means to end political paralysis, a situation that does not obtain in case of incapacity. Accordingly, immediate elections may be more appropriate in the cases of removal through impeachment (Ginsburg, Huq and Landau [2021: 161] have argued generally in favour of immediate elections partly also to reduce vice presidential calculations to push for removal for capricious reasons), while allowing whoever is next in the line of succession to finish the remaining term may be preferred in the case of incapacity.

of the incapacitated president. Nevertheless, in cases where moral incapacity is the basis for removal, as in Peru, the consequences could arguably be as severe as in the case of removal through impeachment.

3.3. REMOVAL ON POLITICAL GROUNDS (RECALL)

In addition to cases of removal through impeachment and for incapacity, some constitutions provide for procedures through which presidents could be removed without any specific grounds, much like prime ministers in parliamentary systems. This is effectively a recall process for presidents. The availability of this option could provide a valve to resolve political deadlock and instability where a president has lost political and popular confidence and support.

Removal for lack of confidence is rare in presidential and semi-presidential systems but is particularly popular in Latin America, where it is established in the form of recall. Removals on political grounds almost always involve a referendum, providing a level of protection to make up for the absence of reasons for recall. In Latin America, a recall can be initiated only by citizens. For instance, in Ecuador, 15 per cent of voters can commence a recall procedure but only after one year has lapsed since the most recent elections and before the last year of a presidential term. The National Electoral Council then organizes a referendum (or a motion to dismiss) within 60 days, and if the motion is approved by an absolute majority of voters, the president is removed (articles 105 and 106, Constitution

2008, rev. 2021). In Bolivia, a recall can be initiated by at least 15 per cent of voters but only after half of the presidential term has lapsed and before the last year of the president's tenure (article 240[2] and [3], Constitution 2009). The motion is then submitted to a referendum (article 204[5]). Bolivia's Constitution allows only one recall procedure during a presidential term (article 204[6]). Venezuela has similar rules but in addition requires that a recall referendum register at least 25 per cent turnout, and more voters than those who voted for the president must support the recall (article 72, Constitution 1999, rev. 2009).

The Constitution of Iceland, which establishes a semi-presidential system, allows parliament, by a three quarters majority, to refer the removal of a president to a referendum (article 11, Constitution 1944, rev. 2013). The president is suspended upon the decision of parliament, and a referendum must be held within two months of the decision. With a view to discouraging abuse of the process, if the vote fails, parliament is dissolved and new elections held. In Egypt (article 161, Constitution 2014, rev. 2019) and The Gambia (article 63, Constitution 1996, rev. 2018), a vote of no confidence is approved by the legislature by a two-thirds majority, subject to approval in a referendum. In Egypt, as in Iceland, with a view to discouraging frivolous referendums, if a referendum fails, the legislature is dissolved and fresh elections held.

In all cases of recall or loss of confidence, if a president is removed, new elections are organized within a prescribed period (e.g. within 60 days in Egypt, and 30 days in The Gambia). Considering the political nature of presidential removal, there are generally no disadvantageous consequences for the removed president beyond the removal, such as denial of pension or other benefits.

3.4. CONCLUDING REMARKS

Contestations over the removal of a president have serious implications for short- and long-term political stability. Constitutional regulation of and clarity regarding the grounds for removal, as well as the process and procedures for removal, are therefore paramount. This Primer has identified a variety of approaches to the regulation

of presidential removal and discussed the policy reasons behind diversities in design on key issues. In all cases, however, the objective is to provide ways of creating genuine possibilities for removing presidents before the end of their term (a) through impeachment; (b) on grounds of incapacity; or (c) through recall, while precluding frivolous and abusive removal proceedings.

Procedurally, the key issue is perhaps whether the courts and/or other independent bodies should be involved in the three types of presidential removal processes identified above, and at what particular stage. In a large majority of countries, judicial and expert involvement is the norm, but some older constitutions, notably of the United States and some Latin American countries, do not anticipate any direct role for the courts. The involvement of the courts and other formally independent entities could enhance confidence in the removal procedure and reduce excessive politicization. At the same time, their involvement adds another veto point, which could undermine the effectiveness of the threat of impeachment as an accountability mechanism.

In practice, the successful removal of a president, on any grounds, is rare, particularly in countries where there are well-established, disciplined parties. Accordingly, while potential removal on grounds of impeachment could help deter presidential misbehaviour, the promotion of presidential accountability requires the establishment of conditions for free, fair and competitive elections. In this regard, in addition to the complementary role of impeachment procedures, effective democratic accountability through elections and guaranteed regular and democratic alternation of power through term limits are important and could encourage presidents to remain vigilant out of consideration for the fact that they will face consequences once they no longer have the protection that incumbency may provide. Crucially, constitutional designers could enhance the chances for presidential accountability by avoiding the concentration of power in the office of the president.

Chapter 4

DECISION-MAKING QUESTIONS

1. What grounds are important enough to justify the removal of a popularly elected president? Impeachment? Incapacity? And/or recall?
2. What are the potential risks of vague and subjective grounds?
3. What should the purpose of presidential removal through impeachment be? As punishment for (serious) illegal/bad behaviour or also to find a political way out of political paralysis or ungovernability (political hard reset)?
4. Should the constitution recognize the possibility of presidential recall on purely political grounds? Through what process?
5. What should the minimum threshold be to initiate a procedure for removal on grounds of legal violations/misconduct (impeachment), incapacity or recall?
6. What is the history of presidential abuse, political instability and presidential removal in the country? What is the political party system? What has been the trend in terms of parties' shares of seats in parliament? How should these factors influence the design of the removal process?
7. What rules should be required for decision-making in all these cases?
8. Does the constitutional framework establish a powerful presidency, or are there sufficient checks and balances that can reduce the possibilities of presidential misconduct?
9. Should the courts or other independent bodies be involved in the removal procedure? At what stage of the process?
10. Should there be specific timelines for each stage of the removal process? What should these timelines be?

11. Should votes in the legislature during removal procedures be by open or secret ballot?
12. Should an incumbent president facing removal through impeachment, recall or on the grounds of incapacity be suspended? If so, at what stage?
13. What should happen when a president has been removed?
 - If a president is to be replaced by an another official, who?
 - If a president is to be replaced by the vice president, how should the vice president be selected (i.e. should the vice president be appointed by the president or be required to be voted in on the same ticket as the president to enhance their democratic pedigree)?
 - In case of replacement by an another official, would the term count for the purposes of presidential term limits?
 - If elections should be held to replace a removed president, what time frame should they be held within?
 - Would it make sense to decide on the mode of replacement depending on the period of time left until the next ordinary elections—that is, elections where the remaining term is long but replacement by an another official where the remaining term is short (as is the case in Venezuela and Comoros)?
14. What should the consequences of removal be, particularly in the case of removal through impeachment?

Chapter 5

EXAMPLES**Table 5.1. Impeachment: Argentina, articles 53, 88**

Impeachment grounds	Poor performance; commission of an offence in carrying out duties or commission of a common crime
Procedure (incl. timeline if any)	Two-thirds majority of those present in the Chamber of Deputies (first chamber) declares the cause for action Senate approves with a two-thirds majority of those present in a public session where members swear an oath
Replacement	The vice president finishes the remaining term
Consequences	The Senate could declare the president ineligible to hold any employment of honour, trust or receiving payment of the state
Suspension	No suspension

Table 5.2. Impeachment: Ecuador, articles 129, 130, 131

Impeachment grounds	Crimes against the security of the state; crimes of extortion, bribery, embezzlement or illicit enrichment; crimes of genocide, torture, forced disappearance of persons, kidnapping or homicide on political or moral grounds; taking up duties that do not come under their competence, after a favourable ruling by the Constitutional Court; severe political crisis or internal unrest
Procedure (incl. timeline if any)	<p>Initiated at the request of one-third of the members of the National Assembly</p> <p>Ruling of admissibility by the Constitutional Court (except for a political crisis or internal unrest), but prior criminal proceedings are not required</p> <p>After the procedures provided by law conclude, the president is removed upon a decision approved by two-thirds of the members of the National Assembly</p> <p>A motion to remove the president for taking up duties beyond their competence or for a severe political crisis or internal unrest can be exercised only once during the legislative period in the president's first three years in office</p>
Replacement	The vice president finishes the remaining term
Consequences	The Assembly could refer the matter for criminal investigation by a competent judge
Suspension	No suspension

Table 5.3. Impeachment: Kenya, articles 145, 146

Impeachment grounds	Gross violation of a provision of the Constitution or of any other law; serious reasons for believing that the president has committed a crime under national or international law; or gross misconduct
Procedure (incl. timeline if any)	<p>One-third of all members of the National Assembly propose a motion for impeachment, and a two-thirds majority endorse it</p> <p>The speaker informs the Senate of the vote within two days</p> <p>The Senate, by resolution, may appoint an investigative committee that must report within 10 days</p> <p>If the committee finds the allegations valid, the president is given the right to be heard; then, if two-thirds of all members of the Senate vote to approve, the president is removed</p>
Replacement	The vice president finishes the remaining term
Consequences	No other consequences are provided for in the Constitution, but the president could face subsequent legal proceedings
Suspension	No suspension

Table 5.4. Impeachment: South Korea, articles 65, 111(1)(2), 113(1)

Impeachment grounds	Violation of the Constitution or other laws in the performance of official duties
Procedure (incl. timeline if any)	Proposed by a majority vote of all members of the National Assembly Approved by two-thirds of all members of the National Assembly Approval of at least six of the nine judges on the Constitutional Court
Replacement	The prime minister takes over as interim president, and elections are held within 60 days
Consequences	A decision on impeachment does not extend further than removal from public office, but the president could be tried in court for any offence related to the impeachment
Suspension	The president is suspended after the Assembly impeaches until the Constitutional Court makes a determination

Table 5.5. Impeachment: Romania, articles 95–98

Impeachment grounds	Serious offences that violate provisions of the Constitution
Procedure (incl. timeline if any)	<p>Proposal for suspension is supported by at least one-third of the deputies and senators</p> <p>President is immediately informed of the proposal and is given an opportunity to address parliament</p> <p>Approval by a majority of parliament in a joint session after consultations with the Constitutional Court</p> <p>Referendum within 30 days of suspension</p> <p>For treason: a proposal may be initiated by a majority of deputies and senators, and the president is notified without delay; impeachment by at least two-thirds of deputies and senators</p> <p>Final decision by High Court of Cassation and Justice</p>
Replacement	The president of the Senate takes over in the interim, and elections are organized within three months
Consequences	No other consequences are provided for in the Constitution, but the president could face subsequent legal proceedings
Suspension	The president is suspended after majority approval in a joint session of the legislature until the outcome in a referendum or the courts

Table 5.6. Impeachment: Turkey, articles 105, 106

Impeachment grounds	Commission of a crime
Procedure (incl. timeline if any)	<p>Proposal for an investigation by a majority of all members of the National Assembly; Assembly must debate within one month</p> <p>If supported by a three-fifths majority in a secret ballot, an investigation is conducted by a committee of 15 members, chosen by lot, for each political party in the Assembly, in proportion to their number of seats</p> <p>The committee submits a report within two months, with the possibility of a one-month extension</p> <p>The report is submitted to the speaker, who distributes it to the members of the Assembly within 10 days</p> <p>Within 10 days of a decision, the Assembly, through secret ballot, decides by a two-thirds majority of all members to refer the matter to the Supreme Court</p> <p>The Supreme Court decides within three months (with the possibility of an extension for another three months)</p>
Replacement	<p>The vice president takes over in the interim, and elections are held in 45 days</p> <p>If a general election is to be held within a year, an election for the National Assembly takes place at the same time as the presidential election. If a general election is to be held in over one year, the newly elected president continues to serve until the date of the Assembly election. For the president who is completing that remaining period, this time frame is not counted as a term of office for the purposes of term limits. Both elections must be held together on the date of the general election for the National Assembly</p>
Consequences	No other consequences are provided for in the Constitution, but the president could face subsequent legal proceedings
Suspension	No suspension

Table 5.7. Impeachment: Indonesia, articles 7A, 7B, 8

Impeachment grounds	Violation of the law through an act of treason, corruption, bribery, or other act of a grave criminal nature, or through moral turpitude, or because the president no longer meets the qualifications to serve as president
Procedure (incl. timeline if any)	<p>The House of Representatives (Dewan Perwakilan Rakyat or DPR), with support from two-thirds of all members, in a session attended by two-thirds of all members, submits a request for investigation to the Constitutional Court</p> <p>The Court decides within 90 days</p> <p>If the Court finds that the grounds for removal have been met, the House of Representatives meets to decide to refer the matter to the second chamber</p> <p>Within 30 days, the second chamber decides in a session attended by three quarters of all members and with the approval of two-thirds of those present, after giving the president an opportunity to plead their case</p>
Replacement	The vice president finishes the remaining term
Consequences	No other consequences are provided for in the Constitution, but the president could face subsequent legal proceedings
Suspension	No suspension

Table 5.8. Incapacity: Chile, articles 53(7) and 29

Removal grounds	Physical or mental impediment prevents president from performing their functions
Procedure (incl. timeline if any)	Initiated and approved by the Senate following its own procedures, after hearing in the Constitutional Court
Replacement	<p>The designated minister in line with legal precedence takes over with the title of vice president</p> <p>If less than two years of the term remains, Congress, in a joint session, elects a president by absolute majority within 10 days</p> <p>If more than two years of the term remains, the vice president, within 10 days, calls elections to be held within 120 days</p>
Suspension	No suspension

Table 5.9. Incapacity: Kenya, articles 140, 146

Removal grounds	Physical or mental incapacity to perform the functions of office
Procedure (incl. timeline if any)	<p>Any member with support from one-quarter of all members of the National Assembly makes a motion, and a majority of all members of the Assembly approve</p> <p>The speaker informs the chief justice within two days, and the chief justice establishes, within seven days, a tribunal consisting of (a) three persons qualified to practise medicine under the laws of Kenya, nominated by the body legally responsible for regulating the professional practice of medicine; (b) one advocate of the High Court nominated by the body legally responsible for regulating the professional practice of advocates; and (c) one person nominated by the president</p> <p>The tribunal reports within 14 days to the chief justice and the speaker; the speaker tables a report before the Assembly within 7 days</p> <p>If the tribunal finds the president to be incapacitated, and if a majority of all members of the Assembly ratify the finding, the president is removed</p>
Replacement	The vice president finishes the remaining term
Suspension	No suspension

Table 5.10. Incapacity: Seychelles, articles 53, 55

Removal grounds	Mental or physical incapacity
Procedure (incl. timeline if any)	<p>(a) If a majority of all cabinet members vote to investigate the president's capacity, the cabinet informs the chief justice; or</p> <p>(b) If half of the members of the National Assembly propose a motion to investigate, and two-thirds of all members approve the motion without debate, the Assembly informs the president and the chief justice</p> <p>Once informed, the chief justice establishes a medical board composed of at least three qualified medical practitioners</p> <p>If the medical board finds the president to be incapacitated, the chief justice certifies the decision and informs the speaker of the Assembly</p> <p>If a two-thirds majority of the members of the Assembly adopt the finding, the president is removed</p>
Replacement	The vice president finishes the remaining term
Suspension	No suspension

Table 5.11. Incapacity: Sierra Leone, articles 49, 50

Removal grounds	Mental or physical incapacity of the president to discharge constitutional functions
Procedure (incl. timeline if any)	<p>The cabinet resolves to investigate the condition and informs the speaker of the National Assembly</p> <p>The speaker, in consultation with the head of the Medical Service of Sierra Leone, appoints a board consisting of at least five medical practitioners registered under the laws of Sierra Leone</p> <p>The board determines whether the president is, by reason of any infirmity of mind or body, incapable of discharging the functions of the office</p> <p>If the board finds the president to be incapacitated, the speaker certifies the finding, informs the Assembly, and the president is removed. The speaker's certificate is conclusive and may not be appealed in any court</p>
Replacement	The vice president finishes the remaining term
Suspension	Following the cabinet's decision, the president is suspended and replaced by the vice president until the final decision

Table 5.12. Incapacity: Belarus, articles 88, 89

Removal grounds	Where the president is persistently incapable of discharging their duties on account of their health
Procedure (incl. timeline if any)	<p>A two-thirds majority of all members of the House of Representatives passes the resolution</p> <p>Parliament forms an ad hoc commission to investigate</p> <p>The president is removed if, after reviewing the commission's findings, two-thirds of the Council of the Republic finds the president incapacitated within one month of when the motion was presented</p>
Replacement	The prime minister takes over in the interim, and elections are held between 30 and 70 days after removal
Suspension	No suspension

Table 5.13. Recall (loss of confidence): Egypt, article 161

Removal grounds	Withdrawal of confidence on any grounds
Procedure (incl. timeline if any)	<p>A proposal from a majority of the members of the House of Representatives with approval by two-thirds of its members withdraws confidence</p> <p>The prime minister ensures the organization of a referendum on removal of the president</p> <p>If a majority of voters approve the motion, the president is removed</p> <p><i>Note:</i> A motion of no confidence may be submitted only once for the same cause during a presidential term</p>
Replacement	The speaker of the House serves in the interim, and new elections are organized within 60 days
Suspension	<p>If the proposal is defeated in the referendum, the House of Representatives is dissolved, and legislative elections are organized within 30 days</p> <p>If the president is removed, the interim president may not request any amendment to the Constitution, dissolve the House of Representatives, dismiss the government or run for the presidency</p>

Table 5.14. Recall (loss of confidence): The Gambia, articles 63(3) and (4), 65

Removal grounds	No-confidence vote
Procedure (incl. timeline if any)	<p>A no-confidence motion passes if it is supported by two-thirds of the members of the National Assembly</p> <p>The speaker requests that the Independent Electoral Commission organize a referendum within 30 days</p> <p>If voters approve the motion, the president is removed</p>
Replacement	The vice president finishes the remaining term
Suspension	No consequences other than removal

Table 5.15. Recall (loss of confidence): Venezuela, articles 72, 233

Removal grounds	Recall
Procedure (incl. timeline if any)	<p>20 per cent of registered voters can seek recall of the president via a petition, in which case a referendum is organized</p> <p>If 25 per cent of registered voters turn out to vote and a number equal to or more than the number who voted for the president at the time of their election support the recall, the president is removed</p>
Replacement	<p>If the recall occurs within the first four years of the six-year term, the vice president takes over in the interim, and elections are held within 30 days</p> <p>If recall occurs after the fourth year, the vice president finishes the term</p>
Suspension	No consequences other than removal

References

- Abebe, A. and Bulmer, E., *Electing Presidents in Presidential and Semi-Presidential Democracies*, Constitution-Building Primer No. 21 (Stockholm: International IDEA, 2019), <<https://doi.org/10.31752/idea.2019.30>>
- Bulmer, E., *Non-executive Presidents in Parliamentary Democracies*, International IDEA Constitution-Building Primer No. 6 (Stockholm: International IDEA, 2017), <<https://www.idea.int/publications/catalogue/non-executive-presidents-parliamentary-democracies>>, accessed 27 April 2022
- Constitutional Court of South Africa, *United Democratic Movement v Speaker of the National Assembly and Others* (CCT89/17) [2017] ZACC 21; 2017 (8) BCLR 1061 (CC); 2017 (5) SA 300 (CC), 22 June 2017, <<http://www.saflii.org/za/cases/ZACC/2017/21.html>>, accessed 28 April 2022
- Constitutional Court of Zambia, *Pule and Others v Attorney General and Others* (4 of 2017) [2018]
- Ginsburg, T., Huq, A. and Landau, D., 'The comparative constitutional law of presidential impeachment', *The University of Chicago Law Review*, 88/1 (2021), pp. 81–164, <<https://chicagounbound.uchicago.edu/uclrev/vol88/iss1/2>>, accessed 27 April 2022
- Institute for Security Studies, 'Gabon's Constitutional Court again protects the ruling party', 4 December 2018, <<https://issafrica.org/iss-today/gabons-constitutional-court-again-protects-the-ruling-party>>, accessed 29 April 2022
- Ondo, T. and Moundounga Mouity, P., 'The revision of the Gabonese Constitution: Between contestation, modernization and inconsistencies', ConstitutionNet, 28 May 2021, <<https://constitutionnet.org/news/revision-gabonese-constitution-between-contestation-modernization-and-inconsistencies>>, accessed 29 April 2022
- Pengelly, M., 'Kamala Harris takes on presidential role – briefly – as Biden has colonoscopy', *The Guardian*, 19 November 2021, <<https://www.theguardian.com/us-news/2021/nov/19/kamala-harris-presidential-powers-biden-colonoscopy>>, accessed 29 April 2022
- Pérez-Liñán, A., *Presidential Impeachment and the New Political Instability in Latin America* (Cambridge: Cambridge University Press, 2007), <<https://doi.org/10.1017/CBO9780511510335>>
- Samuels, D. J. and Shugart, M. S., *Presidents, Parties, and Prime Ministers: How the Separation of Powers Affects Party Organization and Behavior* (Cambridge: Cambridge University Press, 2010), <<https://doi.org/10.1017/CBO9780511780882>>

CONSTITUTIONS

Where to find constitutions referred to in this Primer

The constitutional texts referred to in this Primer, unless otherwise stated, are drawn from the website of the Constitute Project, <<https://www.constituteproject.org>>.

- Albania, Republic of, Constitution of the Republic of Albania, 1998, rev. 2016
- Algeria, People's Democratic Republic of, Constitution of the People's Democratic Republic of Algeria, 2020
- Angola, Republic of, Constitution of the Republic of Angola, 2010
- Argentine Republic, Constitution of the Argentine Nation, 1853, reinstated 1983, rev. 1994
- Azerbaijan, Republic of, Constitution of the Republic of Azerbaijan, 1995, rev. 2016
- Belarus, Republic of, Constitution of the Republic of Belarus, 1994, rev. 2004
- Benin, Republic of, Constitution of the Republic of Benin, 1990
- Bolivia, Plurinational State of, Political Constitution of the Plurinational State of Bolivia, 2009
- Brazil, Federative Republic of, Constitution of the Federative Republic of Brazil, 1988, rev. 2017
- Bulgaria, Republic of, Constitution of the Republic of Bulgaria, 1991, rev. 2015
- Burkina Faso, Constitution of Burkina Faso, 1991, rev. 2015
- Cabo Verde, Republic of, Constitution of the Republic of Cabo Verde, 1980, rev. 1992
- Central African Republic, Constitution of the Central African Republic, 2016
- Chile, Republic of, Political Constitution of the Republic of Chile, 1980, rev. 2021
- Colombia, Republic of, Political Constitution of Colombia, 1991, rev. 2015
- Comoros, Union of the, Constitution of the Union of the Comoros, 2018
- Côte d'Ivoire, République de, Constitution de la Côte d'Ivoire, 2016
- Democratic Republic of the Congo, Constitution of the Democratic Republic of the Congo, 2005, rev. 2011
- Ecuador, Republic of, Constitution of the Republic of Ecuador, 2008, rev. 2021
- Egypt, Arab Republic of, Constitution of the Arab Republic of Egypt, 2014, rev. 2019
- French Republic, Constitution of France, 1958, rev. 2008
- Gabonese Republic, Constitution of the Gabonese Republic, 1991, rev. 2011
- Gambia, Republic of The, Constitution of the Second Republic of The Gambia, 1996, rev. 2018
- Ghana, Republic of, Constitution of Ghana, 1992, rev. 1996
- Iceland, Constitution of Iceland, 1944, rev. 2013

- Indonesia, Republic of, Constitution of the Republic of Indonesia, 1945, reinstated 1959, rev. 2002
- Kazakhstan, Republic of, Constitution of the Republic of Kazakhstan, 1995, rev. 2017
- Kenya, Republic of, Constitution of Kenya, 2010
- Korea, Republic of, Constitution of the Republic of Korea, 1948, rev. 1987
- Liberia, Republic of, Constitution of the Republic of Liberia, 1986
- Madagascar, Republic of, Constitution of the Republic of Madagascar, 2010
- Nigeria, Federal Republic of, Constitution of the Federal Republic of Nigeria, 1999, rev. 2011
- Peru, Republic of, Political Constitution of Peru, 1993, rev. 2021
- Philippines, Republic of the, Constitution of the Republic of the Philippines, 1987
- Romania, Constitution of Romania, 1991, rev. 2003
- Seychelles, Republic of, Constitution of the Republic of Seychelles, 1993, rev. 2017
- Sierra Leone, Republic of, Constitution of Sierra Leone, 1991, reinstated 1996, rev. 2013
- Tanzania, United Republic of, Constitution of the United Republic of Tanzania, 1977, rev. 2005
- Tunisia, Republic of, Constitution of Tunisia, 2014
- Turkey, Republic of, Constitution of the Republic of Turkey, 1982, rev. 2017
- United Mexican States, Political Constitution of the United Mexican States, 1917, rev. 2005
- United States of America, Constitution of the United States, 1789, rev. 1992
- Venezuela, Bolivarian Republic of, Constitution of the Bolivarian Republic of Venezuela, 1999, rev. 2009
- Zambia, Republic of, Constitution of Zambia, 1991, rev. 2016
- Zimbabwe, Republic of, Constitution of the Republic of Zimbabwe, 2013, rev. 2017

About the author

Adem Kassie Abebe is a Programme Officer at International IDEA's Constitution-Building Processes Programme, where he supports constitution-building and dialogue processes, particularly in politically complex and fragile contexts. He is Vice President (for East Africa) and a member of the Executive Committee of the African Network of Constitutional Lawyers, a member of the advisory board of *the International Journal of Constitutional Law* and an Extraordinary Lecturer at the Centre for Human Rights, University of Pretoria, South Africa. He has been invited as a neutral expert (*amicus curiae*) in prominent court cases, including by the Kenyan Supreme Court and the Ethiopian Council of Constitutional Inquiry.

ABOUT THIS SERIES

An ongoing series, International IDEA's Constitution-Building Primers aim to explain complex constitutional issues in a quick and easy way.

1. What is a Constitution? Principles and Concepts * = ∞
2. Bicameralism ^ * ∞
3. Direct Democracy * ∞
4. Judicial Appointments * ∞
5. Judicial Tenure, Removal, Immunity and Accountability * ∞
6. Non-Executive Presidents in Parliamentary Democracies * ^
7. Constitutional Monarchs in Parliamentary Democracies ^
8. Religion–State Relations ^
9. Social and Economic Rights ^ * ∞
10. Constitutional Amendment Procedures ∞
11. Limitation Clauses ^ *
12. Federalism ^ *
13. Local Democracy ^ = * ∞
14. Presidential Veto Powers ^ = ∞
15. Presidential Legislative Powers ∞
16. Dissolution of Parliament
17. Government Formation and Removal Mechanisms *
18. Emergency Powers = * ∞ #
19. Independent Regulatory and Oversight (Fourth-Branch) Institutions * ∞
20. Official Language Designation *
21. Electing Presidents in Presidential and Semi-Presidential Democracies ∞
22. Opposition and Legislative Minorities: Constitutional Roles, Rights and Recognition

^ Also available in Arabic

* Also available in Myanmar language

= Also available in French

∞ Also available in Spanish

Also available in Vietnamese

Download the Primers: <<http://www.idea.int/publications/categories/primers>>

About International IDEA

The International Institute for Democracy and Electoral Assistance (International IDEA) is an intergovernmental organization with the mission to advance democracy worldwide, as a universal human aspiration and enabler of sustainable development. We do this by supporting the building, strengthening and safeguarding of democratic political institutions and processes at all levels. Our vision is a world in which democratic processes, actors and institutions are inclusive and accountable and deliver sustainable development to all.

WHAT WE DO

In our work we focus on three main impact areas: electoral processes; constitution-building processes; and political participation and representation. The themes of gender and inclusion, conflict sensitivity and sustainable development are mainstreamed across all our areas of work.

International IDEA provides analyses of global and regional democratic trends; produces comparative knowledge on democratic practices; offers technical assistance and capacity-building on reform to actors engaged in democratic processes; and convenes dialogue on issues relevant to the public debate on democracy and democracy building.

WHERE WE WORK

Our headquarters are located in Stockholm, and we have regional and country offices in Africa, Asia and the Pacific, Europe, and Latin America and the Caribbean. International IDEA is a Permanent Observer to the United Nations and is accredited to European Union institutions.

<https://www.idea.int/>

International IDEA
Strömsborg
SE-103 34 Stockholm
SWEDEN
+46 8 698 37 00
info@idea.int
www.idea.int



Constitutions establishing presidential and semi-presidential systems of government are characterized by the parallel popular legitimacy of the legislature and the president. Presidents in such systems ordinarily serve a guaranteed fixed term of office. Nevertheless, many constitutions in presidential and semi-presidential systems of government provide exceptional grounds and procedures through which a president may be removed before the end of their term. The grounds for and process of presidential removal are complex and can be contentious, often involving both legal and political considerations. This Primer seeks to inform and aid decisions on the constitutional design of presidential removal processes through a comparative discussion of the diverse set of rules for presidential removal.

ISBN: 978-91-7671-550-5 (PDF)