

The Powers, Functions and Responsibilities of an EMB

86. There is often no clear distinction in electoral law or practice between the powers and the functions of an EMB. In some electoral laws, all EMB activities sanctioned by law are referred to as powers. In many electoral laws, such as those of Australia, Indonesia and South Africa, ‘powers and functions’ are referred to jointly and in others, as in Bosnia and Herzegovina, the law merely lists activities that the EMB ‘shall’ perform. It could be argued that an EMB’s powers refer to those activities for which an EMB can make, of its own accord, rules, directions or determinations that affect the rights and activities of others, such as making regulations and determining electoral disputes. These may be reviewable by other bodies. An EMB’s functions could then be described as those activities in which it merely implements decisions – for example, in training staff or informing voters. These may also be subject to external review.

87. EMB powers and functions are influenced by many factors. The result of the negotiation processes among political forces, within the country or beyond, which paved the way for the EMB’s establishment is generally a strong influence, particularly in countries recently emerging into democracy. Other specific political, administrative and geographical influences can include the structure of the state (e.g. unitary or federal, presidential or parliamentary), demographics, the electoral system (e.g. single- or multi-member electoral districts) and the existence of other electoral service providers. The historical interaction of these factors within each country has created a wide variety of models for EMB powers and functions.

Powers and Functions

88. The majority of EMBs have powers to make rules, regulations and determinations which are binding on all players in the electoral process – voters, political parties and candidates, the media and observers – provided such rules, regulations and determinations are consistent with both the constitution and the electoral laws.

89. There are some EMBs whose powers are executive, legislative and judicial. For example, the establishment of powerful EMBs was necessary to curtail the dominance of the executive over the other branches of government under the oligarchic governments of Latin America. In

countries such as Costa Rica (see the case study) and Uruguay (see the case study), EMBs became known as the fourth branch of government. These EMBs can make regulations, directions and reviews of regulations that are binding on the electoral processes and their decisions cannot be reviewed by any other branch of government. They also have executive powers to call and conduct elections, to certify or nullify election results, and to resolve electoral disputes.

90. In other parts of the world, regulations issued by EMBs are subject to review by the courts; they must also be consistent with the electoral laws. Some EMBs have powers which combine executive powers with a greater or lesser degree of adjudicative power. For example, the EMBs in Cameroon, Canada, Lithuania, Papua New Guinea, the Philippines and Romania have powers to investigate and, where appropriate, prosecute violations of electoral laws. In Cambodia and South Africa, the EMB has powers to investigate and resolve disputes of an administrative nature or disputes which do not necessarily fall within the jurisdiction of the courts.

91. The majority of EMBs have powers which are primarily of an executive nature, related to implementing electoral activities. The Yemeni EMB can initiate secondary legislation, while in many countries – Gambia, Ghana, Mozambique and Thailand, for example – EMBs can make regulations or issue proclamations.

92. In some countries, these powers extend to determining the election date, within parameters set by law that are often fixed to a time period defined by the end of an elected body's term of office. In India and Pakistan, the EMB has the power to draw up an election schedule and issue the election writ. In Russia, the EMB can call an election if the legislature has failed to do so, and in Yemen (see the case study) the EMB has the power to call a by-election but not a general election. In some cases, such as those of Thailand and Uruguay, the EMB has the power to order re-polling if an election did not proceed in an honest and fair manner as defined in the law. Sub-district level committees of the Indonesian EMB can do likewise for individual polling stations, and the Namibian EMB can order a re-poll in the event of violence or an emergency.

93. However, many EMBs have no influence on when an election is called. For example, in countries such as Mexico and the United States, with presidential constitutions which incorporate the separation of the legislative and executive powers, elections are held on a fixed date. However, in countries with parliamentary systems which follow the Westminster model, the tenure of the government is dependent on its ability to retain the support of a majority of members of the legislature. The power to call elections may belong either formally or in practice to the leader of the government, who can use it for political advantage.

Extent of Powers and Functions

94. Particularly in emerging democracies, electoral legal frameworks are being designed to cover all electoral process matters relevant to the delivery of free and fair elections. This can have the advantage of promoting electoral integrity by ensuring that EMBs exercise controls that reflect their responsibility for the entire process. In many countries, EMBs are responsible

for a wide range of activities throughout the electoral cycle. Apart from the essential (or core) powers and functions of:

- determining who is eligible to vote;
- receiving and validating the nominations of electoral participants (for elections, political parties and/or candidates);
- conducting polling;
- counting the votes; and
- totalling the votes,

other EMB activities may include:

- making national or regional electoral policies;
- planning electoral services;
- training electoral staff;
- conducting voter information/education and civic education;
- the delimitation of electoral district boundaries;
- the planning and implementation of electoral logistics;
- the identification and registration of voters;
- the development and maintenance of a national electoral register;
- the registration of political parties;
- the regulation of financing of political parties;
- political party pre-selections or primaries;
- regulating the conduct of political parties and candidates;
- regulating the conduct of the media during elections;
- regulating opinion polls;
- training political parties' and candidates' poll watchers;
- the accreditation and regulation of the conduct of election observers;
- the announcement and certification of election results;
- the adjudication of electoral disputes;
- the review and evaluation of the adequacy of the electoral framework and the EMB's own performance;
- advising the government and legislature on electoral reform issues; and
- participating in international electoral assistance services.

Direct Democracy Instruments

95. The conduct of electoral direct democracy instruments – referendums, citizens' initiatives and recall votes – raises issues which are for the most part similar to those raised by the conduct of elections. Additional issues may include the verification that the processes for calling direct democracy votes have been correctly used – a contentious issue, for example, in Venezuela's presidential recall vote in 2004 – and the regulation of campaigning and voter education and information. In the US state of Oregon, the EMB is required to distribute to every household a collection of the position statements submitted by citizens on each issue submitted to referendum.

96. It is usual for EMBs to be responsible for the organization both of elections and of direct democracy instruments. However, the UK Electoral Commission, which does not perform the role of EMB for elections (for which a Governmental Model electoral management structure is used), is tasked with the role of EMB for referendums.

Functional Divisions between Electoral Institutions

97. It is common for some of the potential non-core functions of an EMB to be assigned in the electoral legal framework to another institution. It is becoming more common for some non-core functions to be contracted out by an EMB – but this is a management rather than a legal framework issue. Functions that are often assigned in the legal framework to an institution separate from the EMB(s) include boundary delimitation, voter registration, the registration and funding of political parties, electoral dispute resolution, the certification and announcement of election results, and voter education and information. If electoral functions are assigned to more than one institution, the legal and policy framework needs to be very clear on each institution’s functional responsibilities.

Table 6: Advantages and Disadvantages of Assigning Some Electoral Functions to Institutions Other than the EMB

Advantages	Disadvantages
<ul style="list-style-type: none"> • May insulate EMBs from some politically sensitive decisions (e.g. political party registration, electoral boundary delimitation) • Allows EMBs to concentrate on core functions • May locate electoral activities in institutions with more relevant technical skills than the EMB possesses • May result in successful bids for funding for functions that EMBs may find difficult to fund • May provide a check and balance on functions implemented by EMBs 	<ul style="list-style-type: none"> • Other institutions may not have as much credibility as an EMB to undertake electoral functions in an impartial manner • There may be lack of coordination and shared goals between institutions with different agendas • May locate electoral functions in institutions for which these are not a high priority, and with little or infrequent electoral experience • May not be cost-effective. It may also be difficult to identify funding expended on electoral functions, to prevent funds allocated for electoral functions from being diverted to other activities • May be used as a tool to thwart the independent actions of an EMB that refuses to take instructions from a government

Boundary Delimitation

98. It is common in many countries, especially those which follow the Commonwealth tradition, for the electoral legal framework to create a separate body or commission to assume responsibility for boundary delimitation. Such countries include Australia, Botswana, Canada and India. Countries where the EMB takes responsibility for boundary delimitation include Barbados, Belize, Costa Rica, Georgia, Indonesia, Nigeria, Uganda and Yemen. There are countries such as the United States in which the electoral law assigns boundary delimitation to the legislature. However, this practice can easily lead to the imposition of electoral district boundaries that are favourable to the current majority party in the legislature, thus institutionalizing a hold on power.

99. There are operational and cost-effectiveness advantages in an EMB taking responsibility for electoral district boundary delimitation. Boundary delimitation is, however, a politically divisive issue, and leaves an EMB open to attack by those who perceive the results as not serving their interests. Some electoral analysts therefore argue that boundary delimitation is best handled by a body other than an EMB, to shield it from potential politically motivated attacks that may damage the EMB's credibility.

Voter Registration

100. In some countries the electoral legal framework requires that voter registration be linked to a national identification or civil registration system, which is controlled by an authority other than the EMB. Countries that have used this method include Brazil, Bulgaria, Chad, Colombia, Hungary, the Netherlands, Romania, Senegal and Sweden. In these cases, the voter registration is a purely administrative action. If there is any dispute (for example, if someone is alleged to be registered who is not qualified to vote, or has allegedly been wrongly omitted from the electoral register) it is the EMB that has to determine voter eligibility, not the civil registration authority. In other countries, a body other than the EMB is responsible in electoral law for developing and compiling the electoral register. In Spain, the Electoral Census Office of the National Institute of Statistics is the responsible body, and in countries such as Moldova and the Republic of Korea local authorities prepare the electoral register for the independent EMB.

101. However the electoral register is compiled, the basic concern is that the data contained in it must be accurate and credible. Implementation of voter registration by an EMB under the Independent Model may result in electoral registers enjoying greater credibility with the public than they would have if they were derived from or compiled by a government department, even though using existing civil registration or ID system data may be more cost-effective. Whatever institution prepares the electoral register data, an EMB must verify that the electoral registers for use at polling stations are accurate.

102. In Ghana and Peru, the electoral framework gives the EMB responsibility for issuing national identification documents and voter registration cards. This has worked well in these two countries and has made the task of compiling and maintaining the electoral register a lot

easier for the EMB. Quality control measures on voter registration, such as opportunities for public inspection by voters, are commonly embedded in electoral laws. In South Africa, as in many developed countries where (electronic) population registers exist, the EMB regularly compares its voter registration records against the population register to identify unqualified or 'phantom' voters for removal.

Registration and Funding of Political Parties

103. The registration of political parties, the supervision of the contributions they receive and/or their expenditure, and the disbursement of any public funding for parties and candidates also sometimes fall outside the functions given to EMBs by the electoral legal framework. This is the case in Zambia, where political party registration is done by the Registrar of Societies, in Indonesia, where it is done by the Ministry of Justice and Human Rights, and in Hungary, where political parties are registered by the county courts. Party funding and expenditure are controlled by a body other than an EMB in countries such as France, Spain and the USA. In countries such as Fiji, Russia, South Africa and Thailand, the EMB administers political party registration, funding and disclosure provisions, and also serves as the guardian of political party symbols and independent candidates' logos. In Canada, Liberia and Mexico, the EMB is responsible for auditing the accounts of political parties, although in the case of Liberia there is no public funding of political parties.

Election Campaigns

104. Political party and candidate campaign codes of conduct may be included in the legal framework, as in South Africa, or be an EMB-brokered voluntary arrangement between parties, as in Indonesia. These codes are more effective if they are agreed voluntarily by the parties, but benefit from the EMB or electoral dispute resolution bodies being legally empowered to impose sanctions for breaches.

105. Several EMBs, such as those of Indonesia and Russia, have a mandate in the electoral legal framework to regulate political parties' campaign methods and conduct in general. Other EMBs have a role in regulating media allocations for party campaigns. The EMBs in Canada, Georgia, India, the Philippines and Russia regulate the allocation of public media air time to parties and candidates. In Canada, the EMB appoints a broadcasting arbitrator to allocate paid and free time to registered political parties on the electronic broadcasting networks.

106. Elements of election campaigns that are not directly related to political party activities are also under the jurisdiction of some EMBs. For example, electoral law in countries such as Bosnia and Herzegovina and Russia regulates the publication of political opinion polling. Jurisdiction over this and other issues relevant to the media's treatment of election 'news' is more commonly left either to self-regulation or to a media council. This is the case in Namibia and Zambia.

Voter Education and Information

107. Voter education and information is a responsibility which is increasingly being added to EMB functions. Some EMB legal frameworks have clearly provided for EMB conduct of voter education and information, as is the case in Antigua and Barbuda, Latvia, Lithuania, Thailand and Togo, while others, including those of Indonesia and Sweden, have not. It is preferable for an EMB's legal framework to include a voter education and information function, as this is indispensable for democratic consolidation, especially in emerging democracies where both the art and the essence of voting are yet to be mastered and internalized. However, it would be harmful for the EMB or any other body to be given exclusive voter education and information rights or powers to restrict who may conduct voter education and information.

One strong reason why the legal framework should empower an EMB to conduct voter education and information as a way of consolidating democracy is that otherwise the government will be reluctant to fund it, citing as the reason that this function is not part of an EMB's official mandate.

108. Voter education and information is too important, and its implementation too complex, to be left to an EMB alone. Political parties, civil society, corporations and government agencies such as education systems may all have an important complementary role to play to help ensure that voters have all the information they need to make informed choices. An EMB's voter education and information responsibilities could be partially or wholly delegated to other institutions, including civil society organizations. In Ghana, for example, there is a sister commission to the EMB which is responsible for civic and voter education and information. In Thailand, the EMB is empowered to outsource voter education and information to private organizations.

Validation of Election Results

109. It is common for electoral legal frameworks to give the function of certifying and announcing election results to an EMB, and to prescribe a time period within which the results must be announced: this is the case, for example, in Armenia, Cambodia, Honduras, Poland and South Africa. In a few cases these functions are given to the Constitutional Court, as in Niger, or the Constitutional Council, as in Cameroon and France. In Denmark, the legislature is responsible for validating the results of national elections.

110. The chief justice of Zambia is the returning officer for the presidential election and is thus responsible for announcing its results. The National Technical Committee on Elections which was set up following the 2001 general elections recommended that the EMB take over the function of returning officer for the presidential election.

Supervision of Political Party Candidate Selection

111. It is not a common practice for an EMB to assume responsibility for parties' procedures for selecting candidates, but the increasing pressure for internal party democratization has caused some election analysts to support this role for EMBs. Many EMBs in the USA are involved in running primary elections for party candidates for elected office. The EMB in the Australian state of Queensland has powers to conduct inquiries and audits of pre-selection or primaries of candidates for state and local elections. In Indonesia, Kenya and Nigeria, candidates are required by law to submit to the EMB the minutes of the meetings where they were selected as candidates for a particular election.

Electoral Observation

112. While independent election observation, by its nature, is conducted outside EMB control, electoral legal frameworks often give EMBs functions related to observation. It is good practice for an EMB to accredit observers, guarantee their rights of observation, provide them with comprehensive background briefing materials, and define observers' responsibilities, often in a legally enforceable code of conduct. Independent observation, especially in emerging democracies, can be a critical component of building public confidence in electoral processes.

113. Independent observation, by both domestic and international observers, by its nature must be free of control and interference by EMBs or any other authority, except those controls necessary to ensure observers' authenticity, impartiality and safety, and to prevent disruption of electoral processes. Just as electoral laws take note of a country's international treaty obligations, so too an EMB's powers and functions in relation to observers need to recognize international standards – such as the UN-endorsed Global Declaration of Principles and Code of Conduct for International Electoral Observation. Attempts to place impediments in the way of observation – such as charging a high fee for the registration of each observer (for example, the 100 US dollar (USD) per observer accreditation fee that has been levied in Zambia) – or to over-regulate observation – such as the requirement in Indonesian electoral law that observers report all observation results to the EMB before publicly announcing them – may be seen as contrary to international standards.

International Activities

114. Although many EMB legal frameworks do not provide for participation in international electoral assistance missions, many EMBs do undertake these tasks on both a small and a large scale. EMBs which regularly participate in international technical cooperation include those of Australia, Canada, France, Ghana, India, Mexico and South Africa, and such cooperation is both bilateral and multilateral. Many other EMBs regularly participate in international observation missions, or in professional contact and exchange activities facilitated by regional networks of election officials. The mandate of the Bangladeshi EMB provides for EMB 'support to the United Nations and its member states in organising elections by fielding of election

monitors and observers and organising training for electoral personnel'. It is important that the legal framework for elections provide a mandate for the EMB to participate in international electoral activities. No EMB or country is an island unto itself and many EMBs are called on from time to time to render assistance to other EMBs, either as observers or as technical advisers, or to host study missions from other EMBs.

Community Responsibilities of EMBs

115. Electoral legislation in some countries defines not only EMB powers and functions but also EMB responsibilities or obligations. These often include accountability measures, such as the requirement for audit (e.g. in Armenia and South Africa) or reporting on activities to an external body such as the legislature (e.g. in Australia, Canada and Moldova).

116. EMB responsibilities may also include more normative elements of how it is expected to behave, which may be further elaborated in an EMB's code of conduct. Electoral legislation in Indonesia includes obligations on the EMB to provide a good service to all election participants and treat them fairly, determine and implement quality standards for election materials, maintain comprehensive electoral archives, inform the public fully of its activities, be accountable for its funding, and report to the president on the conduct of each election.

117. EMBs as upholders of democratic values have behavioural and access responsibilities to the community which they serve, even where these are not defined in the electoral legal framework. Some of these responsibilities relate to the probity and integrity of electoral management, others to issues such as transparency, gender balance, sensitivity to customs and traditions, the treatment of ethnicity, providing electoral access to marginalized groups, and creating conditions that are conducive to fair electoral competition. Important responsibilities, such as accountability for performance and finances, relationships with stakeholders and developing sustainable electoral processes, are dealt with at length in later chapters of this Handbook.

118. EMBs have overarching obligations to adopt good practice so that their levels of integrity promote free and fair elections, their efficiency ensures that public funds are not wasted, and their service standards meet with public approval. If the best practice in election organization could be easily identified, it would be the goal that EMBs would strive to achieve. It is perhaps more realistic to aim to achieve targeted elements of good practice: this approach can be applied regardless of the differences between electoral systems while still achieving the delivery of free and fair elections.

Avoidance of Conflicts of Interest

119. EMBs make decisions involving the fast and effective spending of large budgets. High-value individual supply agreements – for items such as ballot boxes, ballot papers and computer equipment – can be of huge benefit to the winning supplier. Connections between EMB members or staff and suppliers, other election participants or stakeholders who can gain benefit

from EMB decisions can lead to perceptions of conflict of interest, which are damaging to an EMB's public credibility, or to real conflicts of interest which are damaging to its integrity. General public service legislation may cover these issues in relation to public servants serving in EMBs. In Hungary, the law on public procurement, which deals with conflicts of interest, applies to the electoral process as well.

120. Conflict of interest provisions could be included in legislation or EMB regulations and can be part of an enforceable code of conduct for EMB members and staff (as in Indonesia). They would usually specify that EMB members and staff who have an interest or potential interest in a matter that comes before the EMB for consideration and decision should notify the EMB of their interest in a timely manner and refrain from participation in the consideration of that matter. To be effective, realistic enforceable sanctions for breaches of conflict of interest provisions are necessary, such as dismissal from the EMB or other disciplinary action. Examples of such provisions (in relation to an EMB member) are contained in the Australian and Malaysian electoral legal frameworks.

121. The same is true of EMB members' and staff contacts with or links to political parties and candidates. Such contacts or links should be disclosed in a timely manner, and affected EMB members and staff should refrain from participation in making any decision that might benefit the relevant parties or candidates.

Gender Balance

122. EMBs have a responsibility to ensure that in their internal and external activities they reflect the gender composition of society. Elements of this responsibility may be defined in electoral law, such as ensuring that political parties nominate at least the specified levels of women candidates required by law (as in Argentina, Belgium, Iraq and Palestine). Some may be taken on by an EMB as a social campaign: for example, the EMB in Indonesia in 2004 returned party candidate lists for reconsideration where they did not meet the recommended (but not enforceable) 30 per cent women candidate quota. It is good practice for EMBs to promote equity by advocating that gender balance measures be included in electoral legislation and by including such measures in their own regulations or codes of conduct.

123. Ensuring that there is gender balance in its own personnel and activities, whether or not this is required by electoral legislation or government policy, will promote an EMB's credibility and allow it to fully tap the available resources for its membership, professional and support staff, permanent and temporary or ad hoc staff, consultants and advisers. For example, in 2004, two of the five EMB members in Cambodia were women, as were two of the five members in Jamaica, five of the nine members in Latvia, two of the five members in South Africa and two of the nine members in Palestine. It is equally important to ensure that women are represented fully at all levels of the EMB secretariat and in its temporary election staff – as polling station managers, as well as polling station staff. The EMB needs to provide a good example on gender balance issues in all its activities. Some essential considerations are ensuring gender balance among the invitees and participants at workshops and seminars organized by the EMB, and the

inclusion of gender-based issues in the content of training and voter education and information programmes. This not only promotes the participation of women in political life but enables the EMB to communicate more effectively with and respond to the needs of all of society.

Ethnicity

124. Ethnicity and diversity have become important factors in the organization of multiparty democratic elections, especially in many emerging democratic societies, such as Bosnia and Herzegovina. In some countries, this has had an effect on public expectations of the EMB. Many stakeholders in elections in Nigeria have expressed strong views that the electoral system in that country should be reviewed to take full account of the ethnicity (diversity) issues that give rise to frequent regional and local conflicts. Through a selection and appointment of its members and senior staff that considers ethnic, regional and linguistic balance, an EMB can convey a positive signal about the inclusiveness of the EMB's management. This approach is more likely to gain the confidence and support of all ethnic groups for the EMB's credibility and even-handedness, with positive effects on the eventual acceptance of election results.

Equality and Equity

125. The quality of non-partisanship and the ability to create a 'level playing field' for all political participants are pillars on which an EMB can build good-practice electoral management. A lack of electoral equity – for example, an electoral environment which is tilted in favour of the governing party – can undermine free and fair elections and the credibility of an EMB. While some of the factors and practices which contribute to electoral equity may lie outside the strict ambit of an EMB's powers and functions, EMBs can work to ensure that the legal framework is fully utilized to promote equality and equity.

126. Some emerging democracies find the concept of a level playing field unfamiliar. Countries influenced by Westminster models of government, or where the public service and state media have been required to have strict political loyalty to the ruling party, have traditions of electoral advantages lying with the government. Such advantages could lie in the power to determine an election date without consultation, in the use of public resources for campaign activities, and in favourable access for the ruling party to the media.

127. In countries such as Indonesia, the electoral law for transitional elections has attempted to even out the playing field by strictly controlling and limiting media advertising by the political contestants, requiring the EMB to allocate all campaign activities equally to each contestant, and forbidding the use of public resources for election campaigns.

128. The use of public resources for election campaigns is a challenge to EMBs in all countries. This is an area that is rarely covered in electoral legislation itself, although Indonesia and Peru are exceptions. Some EMBs, such as those of Bangladesh and India (see box 2), have issued a code of conduct to govern the electoral use of public resources by ministers of government.

Box 2: The Indian Code of Conduct for Use of Official Resources for Electoral Purposes

Applies to parties in power at national and state levels.

Requires:

- equal access to public facilities for opposition party campaigns.

Prohibits:

- ministerial use of government machinery or personnel for campaigns;
- combining official ministerial visits with campaigning;
- the use of government transport for campaigning;
- the use of public funds for campaign-related media advertising;
- the misuse of government media for partisan coverage of political news;
- the awarding of grants and payments from discretionary funds, after the election has been announced; and
- announcing or commencing public works or making appointments or undertakings that may influence voters after the election is announced.

Source: Extracted from the ‘Model Code of Conduct for the Guidance of the Political Parties and Candidates’ of the Election Commission of India (http://www.eci.gov.in/Model_Code_Conduct.pdf).

Broadly-based Access

129. Electoral law and public pressure are increasingly requiring EMBs to provide services to ensure that all eligible electors have genuine access to the electoral process. For example, the 2002 international Bill of Electoral Rights for People With Disabilities promotes equal rights of access to all electoral processes for people with disabilities. All access-extending services are costly and need to be considered by the EMB (and legislators) in relation to its budgetary constraints.

130. Voters’ special access needs may include mobile registration and voting facilities for those in hospital, confined to the home or in prison; external voting; the provision of voter registration and voting facilities for internally displaced persons, and in locations outside the country for significant refugee populations (as has been implemented for elections in countries such as Afghanistan, Iraq and Sierra Leone); providing facilities for voting by post or before election day; ensuring that registration, polling stations and equipment are accessible to voters with disabilities; providing electoral information materials suitable for those with visual or aural disabilities and providing registration or voting assistance to them where needed; and providing voting equipment such as ballot paper templates for the visually impaired (as in Canada and Ghana). EMB processes may also adopt preferential treatment for pregnant women, nursing

mothers, the elderly and people living with disability, especially during voter registration and polling.

Partnerships with civil society organizations or relevant government instrumentalities will assist the EMB in identifying the precise needs of, and may even help defray the costs of providing access to, marginalized groups.

131. The legal framework or EMB policies on electoral access may be informed or constrained by customary rules or traditions. These may relate to issues such as who may nominate candidates for particular offices, or the need to establish separate voting queues or locations for men and women. Other issues where custom or tradition may impinge on access (and electoral integrity) include the photographing of women for electoral ID cards, voting methods, and the use of visible indelible ink to mark voters. Where customary laws are deeply entrenched, an EMB can enhance its acceptance throughout society if its structures, policies and procedures can demonstrate respect for such customary practices, especially if this will not contradict the electoral laws and EMB policies or hinder its activities.

Codes of Conduct

132. It is beneficial for EMBs to establish rules governing the behaviour and conduct of EMB members and all staff. These need to be consistent with, and could be complementary to, any behavioural requirements in the constitution or any law. Such rules are commonly issued as a code of conduct.

133. It is good practice to require all EMB members, staff and contracted personnel to sign a document indicating their acceptance of and adherence to the EMB's code of conduct as a condition of their appointment. To be effective, the code needs to be backed by appropriate and enforceable sanctions for breaches of the code, and a fair process for determining allegations of breaches. In some countries, allegations of breaches of the code are dealt with internally under the EMB's own provisions, or, as in Portugal, under the general public service or employee disciplinary provisions. In others, as in Nigeria, Tanzania and Zambia, an independent tribunal may be set up to deal with allegations of breaches of the code against EMB members.

134. One code may be applicable to all members and staff of an EMB, or there may be codes of differing lengths and differing amounts of detail for different levels of staff, according to responsibilities. Basic issues to be included in a code of conduct are:

- a. commitment to maintaining the integrity of all electoral processes;
- b. support for the principle of political non-partisanship;
- c. avoidance of conflicts of interest;
- d. provision of quality service to voters and other stakeholders; and
- e. adherence to regulations and management directions.

135. Detailed codes of conduct for EMB members and more senior staff may also include transparent and accountable actions based on law; professional behaviour in all actions; and accuracy in all work.

136. It may be more appropriate to have a simpler code for lower-level or temporary staff with limited responsibilities. For example, for polling station officials a simple statement committing them to obey all relevant laws, regulations and directions, and maintain impartiality and ballot secrecy, may be sufficient.

137. A code of conduct embodying the above principles is essential for all EMBs, no matter what the model or their composition. Members and staff of all EMBs are expected to uphold the integrity of electoral processes and to refrain from acting in any manner which conflicts with their role as impartial electoral referees.

CHAPTER SUMMARY

- An EMB's powers and functions may not be separately identified in its legal framework and, apart from the essential elements of an EMB, can cover a greater or lesser variety of tasks, depending on factors such as the structure of the state, the electoral system, and the number and type of the organizations that provide electoral services.
- Essential or core powers and functions of an EMB are:
 - a. determining who is eligible to vote;
 - b. receiving and validating the nominations of electoral participants (for elections, political parties and/or candidates);
 - c. conducting polling;
 - d. counting the votes; and
 - e. totalling the votes.
- Non-core functions that may be undertaken by an EMB include activities such as voter registration, boundary delimitation, political party regulation and the adjudication of electoral disputes.
- Most EMBs have powers and functions which are 'executive' – relating to the implementation of elections; some have adjudicative and a very few have legislative powers. Most EMBs' activities are reviewable by judicial or other bodies.

- There may be advantages and disadvantages, which need to be carefully assessed, to assigning some electoral activities, such as boundary delimitation, the compiling of data for the electoral registers, the registration and funding of political parties, the monitoring of political campaigns, voter education and information, and validation of election results, to be implemented by specialist bodies other than an EMB.
- EMBs have behavioural and access responsibilities to the communities they serve, which may extend beyond the minimum requirements of the electoral legal framework. These include promoting gender balance within an EMB itself and in political life, dealing fairly with issues of ethnicity, promoting equality and equity in electoral contests, providing equality of access to electoral services for all, and especially marginalized, members of society, and recognizing customary practices where these are in harmony with electoral management principles.
- The electoral legal framework and EMB policies can assist in guarding against inappropriate behaviour by EMBs by including provisions requiring that members and staff of EMBs avoid situations of conflict of interest.
- An enforceable code of conduct, which all members and staff of an EMB are required to sign, assists the EMB to maintain electoral integrity, ethics, impartiality, service and professional standards.

Costa Rica: A Powerful Constitutional Body

Rubén Hernández Valle

The Supreme Electoral Tribunal (Tribunal Supremo de Elecciones, TSE) of Costa Rica was established as an independent agency in 1946. Before then, election administration was the responsibility of the internal affairs secretary, who was part of the executive branch of government, and the elections were called by the Congress.

The TSE was incorporated into the new constitution of 1949 as a constitutional agency with full powers to administer elections. Since then it has become the most prestigious institution in the country.

The TSE is regulated by articles 99–104 of the constitution, the Organic Law of the TSE (Law no. 3504) and the Electoral Act (Law no. 1536).

Institutional Structure

The TSE consists of three regular judges and six substitute judges, all of whom must be at least 35 years old and have at least ten years of professional legal practice as judges or otherwise. These judges are known as electoral judges. Their appointment is made by two-thirds of the members of the Supreme Court of Justice. They are subject to the same immunities and responsibilities as the judges of the Supreme Court.

The appointment of an electoral judge is for a period of six years but can be renewed. In practice, most of the judges remain in office until they retire. A member of the TSE may only be removed from office by two-thirds of the members of the Supreme Court of Justice on the grounds of misconduct.

Powers and Functions

The TSE has power to organize, implement and supervise all elections, including presidential, legislative and local elections. Its main powers and functions are to:

- organize, implement and supervise all elections at both national and local level;
- register political parties in accordance with the provisions of the constitution and the Electoral Act;

- monitor the organization and operation of the political parties, including their finances;
- arrange and conduct the registration of persons qualified to vote and prepare, maintain and revise the electoral registers;
- monitor political campaigns and establish rules and regulations which govern the political parties and the political elections; and
- determine the electoral district boundaries.

The constitution provides that the TSE is responsible for the authentic interpretation of both the constitutional and legislative norms regarding electoral matters. This means that the constitution gives the TSE constitutional powers as well as legislative powers.

No appeal exists against the decisions and resolutions of the TSE. This is a remarkable and important attribute, because no one can contest the results of an election in court.

During the election campaign period, which lasts three months, the TSE assumes direct control of the Civil Guard (part of the domestic security forces). In this way elections are fully guaranteed to be free and without interference from the political authorities.

The Congress cannot enact any law regarding electoral matters later than six months before polling day or earlier than six months after polling day. The TSE must be consulted in advance on every proposal for legislation regarding electoral matters; if this is not complied with, the resulting law is null and void. For the Legislative Assembly to enact legislation which is contrary to the opinion of the TSE, a majority of two-thirds of its members is required.

Financing

Constitutional provisions ensure the permanent financing of the work of the TSE, as well as of the cost of elections. According to article 177 of the constitution, and in order to make the universal suffrage effective, the Legislative Assembly cannot reject or change the funds included in the TSE's annually proposed budgets. This constitutional provision guarantees the TSE sufficient funds to carry out its functions without any financial burdens.

Costa Rica sustains its electoral process through local resources. It is, however, seeking assistance from international agencies, both governmental and non-governmental, in order to introduce electronic voting in future elections.

Accountability

The legislative scheme for elections in Costa Rica does not expressly place accountability requirements on the TSE. Oversight mechanisms do exist in the Legislative Assembly in the form of committees on electoral matters, but these mechanisms are not adequate to ensure effective reporting and accountability to the Legislative Assembly. There have therefore been proposals that the TSE should be required to submit to the Legislative Assembly a report both annually and after each election, and a management and financial audit report after each election.

The TSE does not have to go through public tender for the acquisition of goods and services. The level of transparency of its financial and budgetary processes, procurement procedures and procedures for awarding contracts has come under critical scrutiny. Many scholars have proposed that the operations of the tender process should be reviewed to assure transparency.

The Professionalism of Electoral Officers

The TSE, having been established in 1946, has an important record of democratic experience of organizing multiparty elections. It has recruited and trained its electoral staff to the level required to manage elections in accordance with modern practices. There is therefore a continuous monitoring of tasks, scheduling and quality control, all of which receive attention during the conduct of electoral processes.

Along with the regular personnel, the TSE engages temporary election staff who are chosen from among civil society groups to carry out some of the tasks of election administration. They supervise the conduct of the electoral campaign, and on election day they provide assistance to the members of the polling station committees.

However, all members of polling station committees are appointed directly by the political parties. The role of the TSE is limited to officially endorsing such appointments.

The method used for the training of temporary staff ensures a consistently high standard. Great emphasis is placed on dry runs of election procedures, highlighting aspects such as the determination of valid votes, the counting and tabulating of the votes, and the filling out of the relevant forms. Experience has shown that protection of the secrecy of the vote should be further emphasized in future training of presiding officers.

Career development and training for the core staff of the TSE exist both at headquarters and in the regional offices. Many years ago the TSE established a process of staff assessment which is linked to a programme of professional upgrading and career development, with a view to developing a cadre of election administration professionals. This comprehensive and coordinated training strategy has been designed to raise standards and to ensure that all staff have a clear understanding of their responsibilities.

Relations with the Media

The TSE has a framework within which to monitor the media during an election campaign. According to the Electoral Act, the TSE ensures that all the electronic and print mass media fully observe the relevant regulations during the campaign. Where offences appear to have been committed, the TSE has the obligation to file actions before the criminal courts.

In general, the media comply with the law and operate in a non-discriminatory way, although some have made allegations of bias in favour of the incumbent party. When a petition alleging such bias is filed, the TSE must initiate a full investigation to determine if it has legal grounds.

The existence of a modern Media Centre at the headquarters of the TSE has improved reporting of election results, which has increased the confidence in the electoral process both of the political parties and of citizens.

Relations with Other Institutions and Agencies

The relationship between the TSE and the executive branch has always been one of mutual respect. According to the constitution, the TSE may issue the necessary orders to police officers to ensure the neutrality of the electoral process. In practice, authority over the police is passed over to the TSE during election campaigns.

The TSE's relationship with the legislature, although normally good, was not able to generate sufficient influence to lead to a number of reforms that the TSE proposed to the 2002 Electoral Bill being enacted.

Political parties generally have full confidence in the independence and impartiality of the TSE, mainly due to the TSE's ability to deliver elections on schedule and to remain neutral and transparent throughout the electoral process.

Civil society groups' views about the quality of the working relationships they enjoy with the TSE are positive. Their contacts with the TSE have always been open and based on mutual trust.

The TSE has been receptive to accommodating international observers as well as observers' support personnel during the last four or five elections.

Electoral Reform Management

Following widespread criticisms of the electoral legislation after the last two elections, the TSE initiated a series of workshops and seminars to discuss necessary electoral reforms with stakeholders. It then prepared some of the recommended reforms and drafted a bill which was submitted to the Congress for its approval. The reforms are wide-ranging and include some fundamental constitutional changes regarding the electoral system; legislative reforms to the organization and operation of political parties; and other reforms to amend the Electoral Act, which was approved back in 1952.

The electoral history of Costa Rica has shown the huge impact that the independent EMB has had on the democratic well-being of the state. Since 1949 the country has held 13 consecutive elections in which the two major political parties have alternated in power. This fact has strengthened the country's democracy and reinforced a popular feeling that the electoral institutions work to guarantee free elections.

The major constraint is the lack of new electoral legislation to make elections less expensive and to encourage the formation of modern political parties. During the last three elections almost every single actor in the electoral process has emphasized the need to make elections more cost-effective. Proposals for the introduction of e-voting are seen as an effective response to the transport costs associated with the use of traditional voting materials.

The United Kingdom: Electoral Modernization

Ellie Greenwood

Elections in the United Kingdom (UK) have historically been managed through the Governmental Model, by returning officers appointed by local authorities. Although a UK-wide Electoral Commission was established in 2000, it has not taken on responsibility for the management of elections. Although this commission therefore does not fall within the definition of an EMB (at least for elections), its role as an electoral ‘watchdog’ has provided much-needed impetus to reform and modernization of the electoral legislation and arrangements within the UK.

The commission’s responsibilities include:

- registering political parties;
- monitoring and publishing significant donations to parties;
- regulating spending by parties on election campaigns;
- writing reports on the conduct of elections and referendums;
- reviewing electoral law and procedures;
- advising the government on changes;
- advising those involved on the conduct of elections and referendums;
- promoting public awareness of electoral systems; and
- reviewing electoral boundaries.

In addition, the commission appoints the chief counting officer for UK-wide and regional referendums – which means that, for referendums, it acts as an EMB under the Independent Model.

To a great extent, elections in the UK are run with little modification to legislation introduced during the 19th century, including the creation of an electoral register, the introduction of the secret ballot and the introduction of limits on election expenditure. Indeed, the Electoral Commission itself has commented that a voter at the beginning of the 21st century would not have a significantly different experience from that of a voter at the beginning of the 20th century. However, there are indications that things are beginning to change. Recent pilots of new voting methods are indicative of attempts to ensure that the voting system is accessible to the needs of modern voters.

The Legislative Framework

The Electoral Commission was established under the Political Parties, Elections and Referendums Act 2000 (PPERA). The act outlines the structure of the commission and empowers it to undertake its key statutory functions. It also empowers the commission to prescribe regulations (secondary legislation) in relation to areas in which it has direct responsibilities, such as the information which political parties and other organizations are required to submit to it when applying for registration or reporting.

Institutional Structure

The Electoral Commission has five commissioners and four deputy commissioners. The commission chair serves full-time, other commissioners part-time. The commissioners are responsible for taking strategic decisions about the direction of the commission. In operational terms, the commission is managed by a chief executive, supported by a team of senior managers and over 100 staff. The vast majority of staff are based in the commission's London office, with smaller offices also located in Belfast, Cardiff and Edinburgh.

Powers and Functions

The commission has a number of key functions. These are:

- to regulate the financing of political parties;
- to promote awareness of democratic and electoral systems;
- to report on UK elections and electoral pilot schemes;
- to review electoral laws;
- to provide advice and assistance to electoral administrators; and
- to appoint a chief counting officer to manage regional and UK-wide referendums (this role automatically falls to the commission's chairman unless he appoints another individual).

In addition, the commission is progressively taking over the responsibility for the delimitation of electoral boundaries, a process which started in 2002 when it assumed responsibility for the review of local government boundaries in England.

The commission undertakes its responsibility to promote awareness of democratic and electoral systems in a number of ways. It carries out general research into people's views of and level of knowledge about democratic and electoral systems, and conducts specific research into levels of engagement among specific sections of society. This research is used to inform a series of campaigns encouraging people to register to vote and to vote at elections and referendums. The commission has an outreach programme that aims to promote awareness of and interest in democratic and electoral systems among young people aged 16–24, targeting principally young people outside formal education. In addition, the commission has established a partnership grant fund to support organizations with innovative schemes to raise awareness.

Financing

The commission is funded directly by Parliament and planned an annual budget of about 35 million euros (EUR) for the year 2005/2006. It is required to submit to the Speaker's Committee (a committee of nine MPs chaired by the speaker of the House of Commons) an annual budget which the committee may modify, before the final request for funding is put to the House of Commons for approval. Funds are released to the commission from the Treasury on a monthly basis in accordance with the commission's monthly cash forecasting. The commission is subject to the same accounting controls as other public departments and bodies and is audited by the National Audit Office.

Accountability

The commission is directly accountable to Parliament and not to the government. It submits a draft corporate plan each year to the Speaker's Committee. The commission's annual report must also be approved for publication by the Speaker's Committee. Most of the commission's work is intended for a general public audience, but in relation to some specific statutory functions the commission is responsible for submitting reports to the relevant secretary of state; for example, reviews of electoral law are submitted to the secretary of state at the Department for Constitutional Affairs.

Professionalization

Many commission staff are former election practitioners and members of the Association of Election Administrators (AEA), the professional body for electoral staff. In addition, staff have relevant professional expertise; for example, many of the staff regulating party financing have accounting or auditing backgrounds. The commission has a generous training budget for the professional development of its staff.

Relations with the Media and Other Institutions and Agencies

Although the commission's Communications Directorate deals with press enquiries and works with the media, the commission has no power to regulate the media during the campaign or in any other period. Requirements on access to the broadcast media by political parties are laid down in the broadcasting legislation. However, broadcasters are required to seek and have regard to the commission's views when framing rules for party broadcasts.

The PPERA establishes a Parliamentary Parties Panel consisting of representatives of those parties with two or more members of Parliament, and the commission is required to consider any representations made by this panel; there is therefore ongoing contact between the commission and political parties. Since the commission must be consulted on changes to electoral law, commission staff also work closely with officials in relevant government departments.

The commission has worked on a number of joint projects with NGOs with an interest in electoral and democratic systems and participation. Finally, although it is a relatively young organization, the commission has started to building up links with other EMBs and related international organizations.

Electoral Reform Management

The commission has no power to draft electoral law, but the government is under a statutory obligation to consult it on proposed changes to certain aspects of electoral law. Typically, commission officials work closely with government officials in the early stages of drafting legislation, and the commission submits a formal response once the draft legislation is completed.

The commission is required by law to keep a number of issues under review, including matters relating to elections, referendums, the registration and financing of political parties, and political advertising. Legislative recommendations arising from the commission's reviews will only be enacted if they are adopted by Parliament, a process which will rarely happen without the support of the government. A number of recommendations made by the commission have led to government draft legislation for electoral change. However, there is no requirement for the government to support or progress the commission's proposals, and a major recommendation to change the system of voter registration, from a household to an individual basis, was rejected by the government.

Although relatively new, the Electoral Commission is increasingly well established within the democratic system in the UK. However, its work is subject to the constraint that its annual budget must be approved by the Speaker's Committee. It is possible that the committee may in future refuse to authorize part of a budget proposal, in which case the work plan of the commission would be limited by the level of funding that it actually receives.

There are clear constraints that limit the commission's ability to effect change, notably the fact that it is unable to enact its own recommendations. However, the creation of the commission has undoubtedly provided a catalyst for driving forward an agenda of electoral modernization within the UK. In addition, the commission has also provided a much-needed source of advice and assistance to electoral administrators, parties and members of the public. This highlights the capacity of the commission to strengthen the democratic process in the UK, as the commission's web site (<<http://www.electoralcommission.org.uk>>) shows.