

The Composition, Roles and Functioning of an EMB

138. An EMB's activities generally require both the determination of policy and the implementation of major administrative and logistics operations. Where the Governmental Model of electoral management is used, both these functions are undertaken by civil servants, employed within one or more bodies of the executive. While members of the executive branch of government, such as ministers, may also take an active role in the policy making of an EMB under the Governmental Model, it is more common for the head of its secretariat, who may be termed director of elections or have some similar title, to be responsible for policy. It is not usual for governmental EMBs to have members: rather, they are composed entirely of secretariat (public service) staff. Two exceptions are Austria and the Czech Republic, where members of the EMB are appointed within the executive branch.

139. In EMBs under the Independent Model, the policy function is undertaken by a person or persons from outside the executive branch of government, specially appointed for this task. This person or persons are the EMB's 'members'. Their role is similar to that of the board of a corporation – to guide the direction of the EMB – although in many cases EMB members have a full-time and more 'hands on' role than would be usual for a corporate board. Similarly, under the Mixed Model, the component independent EMB is guided by a 'board' of members.

EMB Membership

140. EMB members need a very high level of management skills and commitment to maintaining integrity under pressure. It would seem useful for an EMB to include members with a wide range of the skills needed to ensure that it can function effectively, such as legal, communications, education, logistics and corporate management skills. Public confidence in EMBs is enhanced where the electoral legislation contains qualifications for appointment to EMBs that are clearly defined and appropriate for the complex task of managing electoral processes impartially, and mechanisms for selection and appointment that are transparent and based on the candidates' merits. The mode of selection and appointment, and provisions for tenure, of members of an EMB vary from one country to another. Details of the composition, appointment and tenure of members of EMBs are included in the data on EMBs in 214 countries and territories at annex A.

141. There are various titles for the members of EMBs, with similar meaning, but each with its own nuances, related to the basis, role and powers of the policy-making members of the EMB. In Canada, the chief electoral officer is both the chief and sole policy maker and the head of the administration (secretariat), and is the sole EMB member. The frequently used term ‘commissioner’ is not applied consistently. In many countries which use the Independent or Mixed Model, EMB members are referred to as commissioners. In Australia, the electoral commissioner is both the head of the secretariat and a full voting member of the EMB (although not the head of the EMB), while the deputy and assistant commissioners are staff of the secretariat. In India, the EMB has three members, the chief election commissioner and two election commissioners, and the most senior members of the secretariat are known as deputy election commissioners. In Francophone countries and Latin America an EMB head may be termed ‘president’, and in Latin America the term ‘councillor’ is sometimes used to describe EMB members.

142. The chair of EMBs such as those of Bangladesh, Nigeria and Pakistan, who by law is known as the chief electoral commissioner, serves as the EMB’s chief executive. The role of such a chair should be understood in the same way as that of an executive chair or executive director in the corporate world. Unlike chairs in some other EMBs, this type of chief electoral commissioner has executive powers and is more ‘hands-on’ in directing the electoral process. Although he or she may be assisted by other commissioners and the secretariat, the chief electoral commissioner in these countries will have the final say in matters of finance and administration and also on key aspects of the electoral process.

Status of EMB Members

143. For an EMB to operate effectively, its members need to have a status that entitles them to respect from and a relationship of equality with the government, the legislature and society. In India, the three EMB members – the chief election commissioner and the two Election Commissioners – have the status of judges of the Supreme Court. The head of an EMB especially needs a status that affords her or him access to the highest levels of government and ensures adherence to the EMB’s decisions. The chair of the EMB in Pakistan (also known by law as the Chief Electoral Commissioner) has the same conditions of service as the chief justice, as do his counterparts in numerous other countries. In the Democratic Republic of the Congo (DRC) and in Romania, the chair of the EMB has the rank of minister, guaranteeing access to the legislature and the government, and in Yemen the EMB chair has the rank of a deputy prime minister and EMB members have the rank of minister.

144. While it is important that EMB members have a high status, it is also important that members do not then behave as though they are bigger than the EMB institution that they are serving, or come to be regarded by society as ‘the EMB’. Personality-based institutions can be highly polarizing. A good-practice model for EMB members to follow is to personalize the institution they serve, rather than institutionalize the person or persons leading the EMB.

The EMB Chair: A Special Role?

145. In some countries, the legal framework provides for a two-stream procedure for the appointment of EMB members, one for the chair and another for all other members. In Ghana, Lithuania, Pakistan, Thailand and Uruguay, the EMB chair (sometimes called the EMB president) serves as a ‘first among equals’ appointed by the head of state/government at a level higher than the other members. In Romania, the legislature appoints the EMB chair, while the other members are appointed by the head of state and the prime minister. The chair of the South African EMB is appointed at the level of a senior judge, while other members are at the level of judges of a lower court. In the Solomon Islands the speaker of the Parliament becomes the chair of the EMB by virtue of holding the speakership.

146. Where the EMB chair is appointed on different terms from the other members and at a higher level, he or she tends to play a more prominent role, over and above the role of presiding over the EMB’s meetings. He or she may have additional powers in relation to matters such as chairing various EMB internal subcommittees, actively supporting the secretariat in policy implementation and monitoring, and liaising with stakeholders. In Lithuania, for example, the EMB chair has specified powers to hire and fire staff, to keep and direct the use of the EMB seal, and to represent the EMB in state institutions, in court and in international organizations. In Liberia, the chair of the National Elections Commission is also by law the official spokesperson for the commission, although secretariat staff carry out the day-to-day work of maintaining contacts with the media.

147. In countries such as Burkina Faso, Costa Rica, Macedonia, Namibia, Russia and Ukraine, all EMB members are appointed on the same terms, and the chair (and in some cases the vice-chair and secretary) is elected by his/her peers after the first meeting. In this context, the main responsibility of the chair is to preside over the meetings of the commission and/or its subcommittees if necessary.

There are no specific advantages or disadvantages associated with specifically appointing the EMB chair as a first among equals or having members of the EMB select their chair from among themselves. The appropriate practice depends on the context in which the EMB structure was originally designed and continues to function.

148. The case for a ‘first among equals’ EMB chair is stronger where an EMB is still nascent and requires some nurturing, and the position is full-time. This may also apply where the chair is a full-time position and other members are part-time, as in Guyana and Pakistan. Where the EMB is a part-time body it may be more appropriate for the chair to be elected by his or her peers and for him or her to have the same conditions of service as all other EMB members.

EMB Members: Respected Experts or Watchdogs on Each Other?

149. In countries where either the Independent or the Mixed Model is used, electoral legislation specifies the framework for EMB membership. There is a myriad of different legal provisions that govern this critical issue, some of which are more conducive to EMB independence than others. A basic difference is that between a multiparty-based EMB and an expert-based EMB.

Multiparty-based EMBs

150. Many countries, especially those that have experienced difficult transitions from authoritarian rule to multiparty democracy, have chosen multiparty-based EMBs. In such societies, public servants are likely to have been largely discredited as electoral policy makers because of a history of being agents of the authoritarian former ruling party or military regime. Additionally, the fight against authoritarianism may have polarized society to the extent that it is difficult to find public figures who are widely accepted as 'independent' to serve on an EMB for a transitional election. Many of the countries of Central and Eastern Europe adopted multiparty-based EMBs during their transitions. Mozambique is another example.

151. Multiparty EMBs comprise a mixture of political party nominees. The legal framework may entitle all political parties contesting an election to be represented on the EMB, or a threshold may restrict representation – for example, to those parties represented in the legislature or with more than a specified proportion of members in the legislature. In Venezuela in the mid-1990s, the larger parties each had their own representative, while smaller parties of the left and right were represented collectively.

152. Political party-based appointment often implies that EMB members are serving on the EMB as political party representatives or agents and, as well as impartially managing electoral processes, serve to ensure that their nominating political parties' interests are protected. However, while each individual member is seen from outside as partisan, each is also ensuring that the others do not take partisan advantage – so the EMB can nonetheless credibly be perceived as an impartial body. Political party-based members often hold office for a fixed term and cannot be dismissed except for cause, such as a breach of their duties, or upon their withdrawal by their nominating authority. Frequent replacement by parties of their representatives, however, has the potential to disrupt the work of the EMB.

153. In some countries, political party nominees to an EMB are eminent persons who are required to maintain high standards of impartiality and professionalism, and thus they do not serve as political party representatives on the EMB. Countries with this type of EMB include Colombia, Mozambique and Spain, although in Mozambique it has not been easy for political party nominees to be completely impartial.

154. Many electoral analysts believe that having political party representatives on an EMB engenders consensus among actors in the electoral contest and contributes to enhanced

transparency, both of which lead to improved confidence in the electoral process. Voters may feel more encouraged to participate in elections if their political party leaders are playing an active role in the electoral process, specifically through representation on the EMB.

155. On the other hand, a political party-based EMB can imperil or cripple decision making, especially in situations where political parties' critical interests are at stake. The presence of politicians on the EMB may undermine confidentiality in matters such as the security of ballot materials. Multiparty-based EMBs also tend to generate dissatisfaction, especially among minority parties which might be excluded from the EMB either because they are not represented in the legislature or because they did not participate in the negotiation that led to the initial appointments of EMB members.

Multiparty EMBs may assist in promoting trust and confidence in electoral processes in the initial stages of democratic transitions. Depoliticization of EMBs may be more appropriate as confidence in the electoral process grows.

Expert-based EMBs

156. Expert-based or non-party-based EMBs are those which the legal framework requires to be made up of individuals appointed on the basis of their professional standing. In some cases, members of an expert-based EMB may be nominated by political parties or civil society, but this does not imply that such nominees will be directed by their nominating political parties or act in a partisan manner. In Mexico, although the EMB is a permanent body with nine expert voting members, each political group in the legislature and each national political party also provides one non-voting representative.

157. Qualifications to be a member of an expert-based EMB may include impartiality, a minimum age, professional qualifications and electoral knowledge. Expert-based EMB members are often eminent public figures renowned for political neutrality with expertise in fields such as law, public administration, political science, or the media. Expert-based EMBs are found in countries such as Australia, Bangladesh, Canada, Costa Rica, India, Indonesia, Poland, Thailand and Ukraine. The law in many of these countries provides that EMB members must not have been active in party politics in the recent past, and must not be a political party member while serving as a member of the EMB.

158. Brazil is an example of a judicial EMB: elections there are the responsibility of national and state electoral tribunals, which are considered a specialized segment of the judicial branch, comprising judges of various categories, along with a small number of expert lawyers; below the tribunals, regular judges are detailed for a short time to oversee electoral preparations and operations in each electoral 'zone' (district) in the country.

EMBs with Both Expert and Multiparty Membership

159. Some electoral legal frameworks specify that EMBs have a mixed membership of party representatives and politically non-aligned members, such as judges, academics, civil society representatives and career public servants. For example, in Côte d'Ivoire, EMB members are appointed by political parties, civil society and government ministries. This may combine advantages from both models, producing even-handed bodies that have both political party buy-in and transparency in their operations.

160. This 'combined' model can be implemented in various ways. In Croatia, a standing EMB formed from five members of the legal profession is augmented for electoral periods by three members of each of the majority and opposition blocs in the legislature, all with equal voting rights. Thus, only if opposing political tendencies agree can the independent members be outvoted. In Hungary, the chair and four members of the national EMB are elected by the legislature, and the political parties participating in the elections delegate one member each. The elected and delegated members have equal rights. Decisions of the EMB are made by simple majority and may be appealed to a court.

161. Like multiparty EMBs, 'combined' EMBs can find decision making difficult. For example, in the 1999 Indonesian elections the 'combined' EMB was unable to validate the election results because members representing some very minor political parties refused to sign the validation unless their parties were allocated seats to which they were not entitled by their votes.

162. Table 7 shows some key advantages and disadvantages of multiparty, expert and 'combined' EMBs.

Full-time or Part-time EMB Members?

163. Whether it is more appropriate for EMB membership to be a full-time or part-time position will depend on the electoral and administrative circumstances. In a permanent EMB, workloads may be high throughout the electoral cycle and demand that EMB members be full-time and thus readily available for speedy consultation and decisions. Full-time EMB members may be a good option in a situation of recurring activities, such as regular partial or by-elections, ongoing voter education and information, continuous voter registration, or continuing electoral law reforms. In a temporary EMB, the electoral period workload may be such that full-time members are preferable. Full-time EMB membership may also be appropriate where there are doubts about the impartiality and skill levels of the EMB's secretariat.

164. Some electoral legal frameworks, like Indonesia's, require that EMB appointments be full-time. Countries such as Albania, the Dominican Republic, El Salvador, Gambia, Germany, Mauritius, Mongolia and Taiwan appoint full-time EMB members even though it is not a legal requirement. All members of the South African EMB but one (a sitting judge) hold full-time office, although this is not a legal requirement.

Table 7: Advantages and Disadvantages of Multiparty, Expert and Combined EMBs

	Advantages	Disadvantages
Multiparty EMBs	<ul style="list-style-type: none"> • May promote electoral participation by opposing political forces • May encourage voter participation • Enhances electoral transparency • Ensures political party input to the EMB's policy development • Ensures links with critical electoral stakeholders • Brings political experience to the management of electoral processes 	<ul style="list-style-type: none"> • Members' actions may be motivated by political interest • May not have appropriate professional experience or qualifications • May be unwieldy if all parties are represented • May lack credibility if some parties are excluded or if political parties are not respected • May find consensus decision making difficult • EMB unity may suffer due to public disputes between parties
Expert EMBs	<ul style="list-style-type: none"> • Impartial and neutral membership promotes the credibility of the EMB • Likely to reject political pressure • Professionalism of members • Makes a range of expert knowledge available on the EMB • Eminent public figure members raise the profile of the EMB • May have a broad range of professional networks on which the EMB can draw 	<ul style="list-style-type: none"> • May not always be aware of relevant political factors • Political actors may have limited access to EMB activities • May not have good links with critical electoral stakeholders • Members may need to address conflict of loyalties between the work of the EMB and the views of the organizations they come from • The best 'experts' may not be willing to serve • It may be difficult to find 'non-partisan' members in transitional environments
Combined EMBs	<ul style="list-style-type: none"> • May achieve balance between political and technical considerations • May encourage participation, and expert members may counterbalance any attempt at partisan actions • The EMB is transparent to political participants and has some professional credibility • Both expert knowledge and political input available to the EMB • Links with both critical electoral stakeholders and public figures • Has both political experience and professional networking capacities 	<ul style="list-style-type: none"> • Political and expert elements may have different agendas • EMB may experience competitive leaking of information between its components • May be unwieldy if all political and expert elements are represented • May lack credibility if some parties are excluded • May find consensus decision making difficult • High-calibre experts may not be willing to work with political elements

165. On the other hand, in countries where election dates are fixed and EMBs have limited responsibility between elections, it may be advisable to have part-time EMB members. This arrangement applies in countries such as Armenia, Cambodia, Jamaica, Japan, Malta and Senegal. In Ghana and Mongolia, members of the EMB are part-time while the chair and deputy are full-time, and in Guyana all members but the chair are part-time. It is also possible for members to serve part-time in non-electoral periods and full-time during electoral periods.

166. The benefit of having full-time EMB members must always be weighed against the cost of their services, when it may be years before the next election. There is also the risk of a potential conflict between senior members of the secretariat and full-time EMB members, especially when the former begin to interpret the full-time presence of the EMB members as interfering in the implementation of policy.

How Many EMB Members?

167. The electoral legal framework will generally specify the number of EMB members. However, when the membership of a multiparty EMB is determined by a criterion such as party representation in the legislature, it is not possible to specify an exact number of members, as this number may vary over time.

168. The number of members of an EMB varies considerably worldwide, and need not be related to the size of the country. For example, in the small country of Lesotho, the EMB has three members, while Nigeria, a much bigger country, has a 13-member EMB. However, Canada, despite its sizeable land mass, and India, with about 600 million voters, have one-member and three-member EMBs, respectively. Having a larger number of members of the EMB may provide for broader representation, whereas a smaller number can facilitate discussion and decision making.

169. EMBs which include political party nominees tend to have higher numbers of members so as to accommodate a credible range of political interests, while expert-based EMBs tend to have fewer members.

170. In Croatia, a standing national EMB comprising judges of the Supreme Court or other distinguished lawyers is expanded for the electoral period by representatives of the majority and opposition blocs of political parties in the national legislature. There are also similarly constituted EMBs for each electoral district.

171. Having an uneven number of members of an EMB ensures that simple majority vote decisions can be made without having to resort to measures such as giving the EMB chair a casting vote.

172. Electoral law in countries such as Croatia, Jamaica and Mexico allows for the appointment of alternate or deputy members to EMBs. Under certain circumstances, a deputy member can then automatically take the place and exercise the powers of a member.

Table 8: Number of Members in a Selection of Party-based and Expert-based EMBs as of 2005

Number of Members in Party-based EMBs	
21	Congo (DRC)
19	Mozambique
15	Mali and Tajikistan
11	Liechtenstein
9	Colombia, Malta and Latvia
7	Guyana, Somalia and Rwanda
3	Honduras and Saint Lucia
Number of Members in Expert-based EMBs	
15	Ukraine
9	Iraq and Palestine
8	Guinea-Bissau
7	The Philippines, Turkey and Uganda
6	Andorra
5	Cambodia, Fiji, Sierra Leone and Venezuela
1	Canada, Papua New Guinea and the Seychelles

Term of Office of Members of Permanent EMBs

173. In many permanent EMBs, members have a specified term of office: for example, as at end-2005, terms of office were three years in Pakistan; four years in the Dominican Republic, Honduras, Jamaica, Latvia and Palau; five years in Bosnia and Herzegovina, Fiji, and Trinidad and Tobago; six years in Georgia and Turkey; seven years in Mexico, South Africa, Uganda and Ukraine; eight years in Romania; and ten years in Botswana (see annex A). Some EMBs' terms of office are defined in relation to the legislature's term of office. In Botswana, the EMB has a permanent secretariat, but EMB members are operative only during elections and hold office for two successive terms of the legislature (equivalent to ten years).

174. The EMBs in Canada, Ghana, Malaysia and Poland have an unspecified term of office, meaning that, once appointed, members remain in office until they reach retirement age, unless they resign or are removed. In Ghana, the chair remains in office until he or she reaches the age of 70, while in Canada and Malaysia the retirement age is 65. Members of the Indian EMB have a tenure of six years, or up to the age of 65 years, whichever is earlier.

175. The advantage of limiting the term of office is that it promotes the constant generation of new ideas through new appointments. However, on the other hand, such a practice may undermine institutional experience, especially if EMB members' terms coincide with a single electoral cycle. Many electoral laws which specify limited terms of office for EMB members allow for extension of the term by mutual consent between the appointee and the appointing authority. South Africa limits EMB members to two terms of office, while Pakistan and Russia do not put a limit to EMB members' terms of office.

176. In South Africa, the terms of EMB members are staggered. Every new appointment is made for a period of seven years and not for the remainder of the term of other members. In Costa Rica, one of the three members and two of the six deputy members are appointed every two years. In Namibia, however, members of the EMB are appointed on a fixed five-year term, and when a vacancy arises a replacement is appointed only for the remainder of that current term of office.

177. Staggering EMB members' terms of office greatly assists retention of institutional experience and provides for smooth leadership succession. If appointments to the membership of an EMB are not staggered, the new EMB members should be appointed at a time long enough after the last election to allow the former EMB members to have completed and reported on their election evaluation, and long enough before the next election for the new EMB members to master their responsibilities before the electoral period commences. This may often be around mid-way between elections.

Recruitment and Appointment of EMB Members

178. The process for appointing members of any EMB is generally defined in electoral law, and the recruitment and selection methods may also be defined in the electoral legal framework. Formal appointment may be by the head of state, a judicial body, the executive, or a political party, and may be consultative or unilateral. Recruitment and selection may be from closed nominations or from open advertising, may include some form of public or private test of merit and integrity, and may be from a pool of nominees or only the exact number of nominees required. Recruitment processes may be able to be more open for expert-based EMBs than for EMBs whose membership is wholly or partially nominated by political parties.

Recruitment through Open Advertisement

179. In countries such as Iraq, Namibia and South Africa, members of the expert-based EMB are recruited through open advertisement and interested candidates may apply directly to be considered for appointment; in Iraq and South Africa they may also be nominated by members of the public. Applications are received and screened (through public interviews) by an independent body (for example, a judicial selection committee in Namibia and a committee of the legislature in the case of South Africa). The names of shortlisted candidates are submitted to the head of state for final appointment. In Botswana, all applications are received by the EMB secretariat and are forwarded to an all-party conference which nominates 15 candidates to the

Judicial Service Commission. The latter appoints five members from the all-party conference nominees in addition to the EMB chair (who must be a judge of the Supreme Court) and his or her deputy (who must be a legal professional).

180. While open advertising and screening mechanisms can provide a broad range of applicants for EMB member positions and promote competence in the selection of members, they do not necessarily guarantee that the most appropriate candidates are chosen. Where the mechanism for screening and appointing EMB members is dominated by one political grouping, competent candidates not in favour with this grouping may have lesser chances of selection.

Table 9: Some Advantages and Disadvantages of Open Advertising for Members of EMBs

Advantages	Disadvantages
<ul style="list-style-type: none"> • Fosters transparency in appointment • Provides a wide pool of prospective members • Allows for open selection on merit • Promotes inclusiveness by allowing all stakeholders to nominate candidates • Contains checks and balances in the appointment process as the responsibilities for nomination, screening and appointment can lie with different bodies • Opens opportunities for candidates outside the favoured elites 	<ul style="list-style-type: none"> • Eminent professionals may be unwilling to submit themselves to public screening • People may be discouraged from applying as failure to be appointed will be publicly known • Cost of advertising and screening processes • Time taken to complete appointment process • Oversight of membership and operations of screening committees may be required • Open advertising and selection processes may disguise the fact that a dominant political group still fully determines EMB membership

Nomination of Candidates for EMB Membership by the Head of State and Confirmation by or in Consultation with the Legislature

181. In other countries, the process of appointing expert-based EMB members is initiated by the head of state, who nominates candidates to the legislature for confirmation. Examples include Kenya and Sierra Leone. Involving the legislature, including opposition parties, in the confirmation process can help to provide some degree of multiparty support for the appointments. For example, in Indonesia, the president determines a pool of nominees equal to twice the number of vacancies and notifies the legislature, which then conducts a written and public oral examination (a ‘fit and proper test’) of each nominee before voting to rank the nominees and sending the names of the appropriate number of highest-ranked nominees to the president to be appointed. In Ukraine, the legislature draws up a shortlist of candidates for the president: the names of the candidates chosen by the president are then submitted back to the legislature for approval.

182. In some Commonwealth countries, including Fiji, Saint Lucia, and Trinidad and Tobago, the head of state appoints EMB members on the advice of the prime minister and following consultation with the leader of the opposition. In Papua New Guinea, there is an Electoral Commission Appointments Committee made up of the prime minister, the leader of the opposition, the chair of the Parliamentary Committee on Appointments, and the chair of the Public Service Commission.

183. The division of EMB appointment powers between the executive and legislature provides for checks and balances in appointment procedures and enhances the appointment process. If one branch of the government (especially the executive) has the sole right to appoint EMB members, the danger is that such appointees, even if they are men and women of integrity, may be perceived by the public, and especially the opposition parties, as pawns of the appointing authority.

184. Even if the power to appoint the EMB members is divided between the executive and the legislature, this arrangement will be fettered if the same party dominates the two branches, or if the executive effectively controls the legislature. In this case the requirement of a two-thirds majority in the legislature to approve EMB appointments could be a useful remedy, because it may give minority parties a veto power: this is the case in Mexico, Nigeria, Uruguay and Yemen.

Unilateral Appointments of EMB Members by One Branch of Government

185. Where EMB members are appointed unilaterally, for example by the head of state, no other consent is required, and there may be no consultation with or advice received from any other institutions, such as the legislature, political parties or civil society, before appointments to the EMB are made. If the head of state does have such consultations or take advice – and in many occasions this does take place – it is informal and not binding. In countries such as India, Malaysia, Senegal and Zambia, the head of state unilaterally appoints members of the EMB. The unilateral appointment of EMB members, especially by the executive branch, has been criticized by many analysts who argue that it could encourage the appointment of EMB members who are government and ruling party sympathizers rather than impartial arbiters in the electoral process.

186. In other countries, such as Costa Rica, the Supreme Court of Justice unilaterally appoints members of the EMB. These appointments are made by two-thirds of the members of the court.

Involvement of Other Actors in EMB Appointment

187. An alternative that is used to rein in executive branch influence over EMB appointments is to involve judicial and non-state actors in either the nomination or the vetting of candidates. In Botswana, the Judicial Service Commission is responsible for EMB appointments, while in

Burkina Faso and Guatemala, civil society organizations, academia or the legal profession play a key role in EMB appointments.

Qualifications for Appointment

188. Whether the personal qualifications required for appointment to an EMB are detailed in the electoral law generally depends on whether the EMB is expert-based or multiparty-based. For multiparty EMBs, it is more usual for political parties to use their own criteria for appointing their representatives to the EMB, such as seniority in the party hierarchy, party membership or professional qualification.

189. There are some multiparty EMBs for which the law defines criteria for members' qualifications, such as not being a party activist or not having held political office recently. In Mozambique, for example, members of the multiparty EMB are by law expected to be professionally qualified and to carry out their work with integrity, independence and impartiality. This means that political parties are obliged to nominate candidates who meet the qualifications of non-partisanship and independence. Such nominees are in many cases eminent members of the community rather than members of the political parties which nominated them.

190. In the case of expert-based EMBs, the electoral law may define an extensive set of personal qualifications for EMB members – as it does in Indonesia and Mexico. Alternatively, the law may rely on its definition of the EMB's expected behaviour and functions to define the qualities of EMB members to be appointed.

191. It is usual to expect EMB members to meet the criteria of professional competence and political neutrality. In some countries, professional qualifications include legal training and experience, especially for the chair, who in many cases must be a judge (as in Slovenia) or a judge or former judge (as in Australia) or someone qualified for senior judicial appointment. In Russia, EMB members must have a law degree or university-level law education. In Lithuania and Thailand, members of the EMB must have at least a university degree.

192. Other formal requirements for EMB membership would generally include citizenship and often include age. In Sierra Leone and Thailand, non-citizens are not eligible for EMB appointment. In Nigeria, EMB members must be at least 25 years old.

193. The manner in which EMB members are nominated for appointment may influence the type of person chosen, which may discriminate in favour of or against certain sectors of society. For example, in Indonesia in 2001, it appears that the initial nominations for potential members of the new EMB were sought solely from distinguished academics: thus the bulk of the persons nominated for consideration as members of the EMB were also academics. Apparently open processes may hide a more controlled environment of appointment to EMBs. For example, in 1999, the law on the EMB in Azerbaijan required that half the EMB members be appointed by the legislature and half by the president. With the president's party totally controlling the legislature, this resulted in a nominally non-partisan but in reality government-influenced EMB.

Table 10: Qualifications Stated in the Electoral Law for Appointment to Three Recently Reformed Expert-based EMBs

	Indonesia	Mexico	Yemen
Impartiality	Yes	None	Yes
Personal integrity and fairness	Yes	None	Yes
Citizenship essential	Yes	Yes – by birth	Yes – by birth
Minimum age	None	30	35
Professional qualifications	None	Degree	College degree or equivalent
Knowledge of electoral issues	Yes	Yes	Relevant professional competence and experience
Physically and mentally healthy	Yes	Yes	None
Not politically active	Not a party administrator	Never having been a party national executive chair, or national or state director; not a candidate for elected office in the past 5 years	Must suspend political and/or party affiliation during term of office
Registered as a voter	Yes	Yes	None
Requirement to hold another office	None	None	None
Bans on holding other office	Cannot be a public servant or hold state position	Within the last year must not have been a federal secretary of state or attorney general. Must not have been a sub-secretary or chief of staff in the federal public service, a state governor or secretary of state	None
Character requirement	Good character and never convicted of serious crime	Good character and never convicted of serious crime	Must be of good character and conduct. Not convicted of any crime related to elections, or breach of ethics or professional conduct
Residence in country	Current	For last 2 years	None

194. While some electoral laws specify that EMB members must follow a certain occupation (e.g. all must be judges in Costa Rica, and all judges or eminent legal practitioners in Croatia), few specify any appropriate mix of experience or skills. Where qualifications are required, these are generally legal. In the corporate world, a company with activities as large and broad as an EMB's would be unlikely to have a narrowly focused board.

195. In some countries, the electoral law identifies persons who may not be appointed as members of the EMB. For many EMBs under the Independent Model and component independent EMBs under the Mixed Model, this includes incompatibilities of position – for example members may not be a member/recent member/officer of a political party, or an elected representative of the people, or concurrently hold a government position. Other barriers to EMB membership, such as health qualifications, may allow hidden discrimination.

Conditions of Service and Security of Tenure for EMB Members

196. In those countries where EMB members hold full-time office, their conditions of service, especially salaries and benefits, are determined either by law or by decisions taken by the head of state/government in consultation with other offices, such as the legislature, a public service ministry (or commission or similar body), or the Treasury. Members of the EMB may be appointed under the same conditions of service as senior judicial officers, or other senior public officials.

197. In those countries where members of the EMB serve in a part-time capacity, it is usual for them to receive a sitting allowance when they attend EMB meetings, as happens in Botswana. Some countries (e.g. Namibia) augment this with a monthly retainer allowance. Such allowances are determined by the government in line with its own policies and regulations.

198. In Lesotho, Nigeria, the UK and some Caribbean countries, EMB members' remuneration is charged directly to the Consolidated Fund. This arrangement assures members' benefits and salaries during their term of office and assists them to maintain full independence in their work.

199. EMB members' security of tenure and immunity from any unwarranted harassment – such as salary cuts, reductions in conditions of service or malicious prosecution – and from the danger of removal from office by either the executive or any other authority, enables members of the EMB to carry out their work impartially, professionally, without fear and favour, and resisting political pressures. EMB members may be less confident to take decisions which are unpopular with the executive or the legislature if they know that they may be removed from office, or their salaries and conditions reduced, without due process of law.

200. In many countries, the tenure protection for EMB members in the electoral law is the same as that for senior judicial officers: they can only be removed from office for a cause, such as misconduct, or mental and physical incapacity. This is the case in India, where, even when misconduct is proven, a two-thirds majority of the legislature is required to remove an EMB

member. Protection from arbitrary reductions in salary and conditions of service may also be guaranteed by law, as in Canada. In some other countries, such as Tanzania and Zambia, the president may remove a member for a cause, which in the case of Zambia includes bankruptcy. However, in both these countries there is no requirement for a due process of law, such as a hearing and/or approval by the legislature.

201. Protecting the tenure of party representatives on multiparty-based EMBs can be a complex issue. If parties are responsible for the appointment and removal of their representatives, they may also be free to replace their EMB representatives when they wish, as they are in Mexico. In Georgia, the law provides that EMB members, whether nominated and appointed by political parties or otherwise, are independent from their appointing authority, do not represent them on the EMB and are not accountable to them. Any interference by the appointing authority in their work is prohibited and punishable by law.

Oath/pledge-taking or Affirmation

202. In some countries, such as Indonesia and Lithuania, EMB members take a formal oath or a pledge of allegiance, loyalty and integrity before taking office. The oath or pledge may be administered by a senior official or judicial officer, for example, the chair or deputy of the Seimas (the legislature) in the case of Lithuania. The oath/pledge-taking binds the EMB members to uphold the constitution and the electoral laws of the country. The text of the oath or pledge may be simple, as in Slovakia, or more detailed, as in Indonesia. It may also include or refer to the code of conduct or any law governing conflict of interest for EMB members.

Internal Regulations

203. An EMB will generally need to issue and maintain a series of regulations governing the internal functioning of its operations. These may cover administrative, financial and technical issues, such as staff safety and security, authorizations to speak to the media, meeting procedures and standing orders, the membership of internal committees, logistics controls, purchasing, asset controls, financial disbursements and records management. These regulations may have more impact if the members of the EMB (or the head of the secretariat in a governmental EMB) are required to agree and formally issue them.

204. EMBs can delegate powers to make less critical internal rules to specified members of the secretariat. Distribution of these rules to all EMB members and staff (in regional/local as well as central offices) will promote adherence. Clear and enforceable sanctions for breaches of these regulations are necessary. Enforcement procedures need also to be fully and openly defined, and to follow accepted principles of justice. For governmental EMBs, and other EMBs using public service staff, the appropriate public service regulations may apply automatically; modification for EMB use may also be possible and desirable.

EMB Decision-making Processes

205. Methods of making EMB decisions vary according to the model of electoral management, a country's decision-making culture, and the requirements of the electoral law. Where the Governmental Model is used, EMBs rarely have 'members' and administration may be directed by the executive branch of government: the role of a governmental EMB may be as much one of proposing as determining action. Powers to determine policy and administrative issues may be delegated to the chief of the EMB secretariat by the government institution within which it is located.

206. For EMBs under the Independent Model and component independent EMBs under the Mixed Model, electoral law may specify some decision-making issues, such as the election of the chair, the decision-making powers of the EMB chair and/or EMB members meeting in plenary, the requirements for majority or super-majority votes, the role of the chair in voting and the use of casting votes.

207. While some key aspects of decision making may be covered by the electoral law, it is usual for the detail of the EMB's decision-making processes to be defined in standing orders or administrative procedures determined by the members of the EMB. Such documents may define a range of issues, including EMB members' authorities, such as:

- the role of the chair;
- responsibilities for decision making and abilities to delegate these;
- methods of calling EMB meetings;
- the frequency of meetings;
- responsibility for meeting agendas;
- the processes of decision making – proposals, rules of discussion, and types of voting and/or requirements for consensus;
- attendance at meetings and quorums;
- the rights and roles of secretariat staff at meetings; invitations to outsiders to attend EMB meetings;
- taking, authenticating and issuing meeting minutes;
- the method of issuing EMB policies and directions;
- methods of suspending or altering the standing orders; and
- responsibilities for media conferences.

208. In many instances, a quorum is formed by 50 per cent of the members and decisions are taken by simple majority of the EMB members present. However, in Lithuania, EMB decisions must be taken by consensus. In Bulgaria, members present during a meeting are not allowed to abstain from voting. In Georgia, a member with a dissenting opinion on a matter has the right to put his or her views in writing and to attach them to the minutes; however, he or she cannot prevent the majority decision being executed.

Meetings of EMB Members

209. The electoral law, or internal EMB regulations, may require decisions on particular matters – such as the issuing of subsidiary regulations, the validation of election results, staff appointments, or decisions affecting stakeholders’ electoral rights – to be agreed in a plenary session of EMB members. Regular EMB member meetings also assist in developing agreed policy directions, reviewing EMB performance and providing guidance on policies to EMB secretariat staff.

210. While full-time EMB members may be available daily to provide direction to EMB secretariat staff, part-time members of EMBs are more likely only to meet occasionally to deliberate on policies and activities which shape the EMB’s operations. Outside electoral periods, full-time membership EMBs may meet every week. Part-time membership EMBs usually meet less frequently, often monthly. During peak electoral event periods, more frequent meetings are usual: full-time EMBs may meet as often as daily. It is common for the minutes of EMB member meeting to be signed by both the chair and the secretary, and in some cases (especially in multiparty EMBs) by all members of the EMB, as a way of authenticating them.

Closed or Open EMB Meetings

211. EMB meetings that are open to the public may promote greater trust in the EMB. Where meetings are open to the public by law, it is important that the EMB publicizes the dates of its meetings. Decisions taken during each meeting still need to be publicized. It is also important that the EMB cooperates with the police to ensure the maintenance of security and protocol during EMB sessions. In Hungary and Lithuania, the law provides for EMB meetings to be open to members of the public, and in Lithuania, members of the public may record or film EMB sessions provided such activities do not disrupt the proceedings.

212. On the other hand, in South Africa and Zambia, EMB meetings are closed to any person who is not a member, unless he or she attends by special invitation. Closed EMB meetings may allow more open discussion, especially on sensitive matters, and members do not have to fear public reprisals for personal views on any matter brought before the EMB. However, closed meetings reduce the transparency of EMB decision making and can lead to public suspicions about the influences on the EMB. Any closed EMB meetings need to be followed closely by a public announcement or media conference on their deliberations and results – as is the practice in Jamaica. Posting minutes and summaries of EMB meetings on public notice boards and EMB web sites can keep the public informed about the EMB’s decisions and activities.

EMB Member Committees

213. For EMBs with a relatively large number of members, it can be advantageous for the EMB to form committees to oversee or manage some of its activities. In countries such as Indonesia, Kenya and Namibia, the formation of such committees, responsible to the full membership of the EMB, has allowed greater specialization and concentration by EMB members on key policy

tasks. They may be an advantageous means of rationalizing oversight workloads during periods of peak electoral activity. In some cases, such committees have powers to co-opt non-EMB members, such as professionals from outside the EMB, or EMB secretariat staff. In Kenya, the EMB has formed the following committees: finance, administration, foreign donor funds, establishment, general purposes, logistics, legal and electoral reform, and computer.

214. Some EMBs establish a smaller group entirely or mainly from their membership, usually called a bureau, which interacts with the secretariat of the EMB on behalf of the members as a whole. Where EMB members are involved in the day-to-day leadership and management of the EMB's activities, as was the case in Indonesia in 2004, allocating specific direction and oversight tasks in this manner clarifies responsibilities and provides greater clarity to the secretariat staff. Individual members of the EMB in Thailand take on a similar management-oriented role.

EMB Members' Relationships with the EMB Secretariat

215. Where the Independent or the Mixed Model of electoral management is used, the relationship between EMB members and EMB secretariats is critical. Appropriate roles for EMB members can vary widely. EMBs made up of part-time members are more likely to adopt a more hands-off approach of providing broad policy review and oversight, while those with full-time membership may be more directly involved. Members of component independent EMBs under the Mixed Model may be less likely to be involved in detailed administration issues, and more involved in overall integrity and quality control. Especially in elections marking transitions to multiparty democracy, members of EMBs under the Independent Model which use a public service secretariat, and members of component independent EMBs under the Mixed Model, may find it prudent to assume a publicly visible operational management role to enhance the public credibility of the electoral process. In some countries, such as Yemen, EMB members may assume the responsibility of head of a department of the secretariat.

216. Elements that can promote an effective working relationship between EMB members and secretariat include a clear delineation of powers and tasks between the members and the secretariat, clear hierarchical authority between the members and the secretariat, and competent appointments which generate mutual respect between the members and the secretariat. For a trusting relationship between EMB members and the secretariat it is important, where public servants make up the secretariat of an EMB under the Independent Model, that they report directly and only to the EMB, not also to an outside department of government. Where the Mixed Model or the Governmental Model is used, a single departmental reporting responsibility for electoral issues handled by secretariat staff of a governmental EMB is highly preferable for the same reasons.

217. Attendance by the head of the secretariat or his/her nominee at all EMB plenary meetings, as an invited speaker or guest (as in Indonesia), as a non-voting EMB member (as in Jamaica), or as an EMB member with full rights (as in Australia) reinforces the links between EMB members and the secretariat staff, and ensures that all meetings have the benefit of advice on the practical operations of the EMB.

CHAPTER SUMMARY

- Independent EMBs are found under both the Independent and the Mixed Models and are guided by a ‘board’ of EMB members. With very few exceptions, EMBs under the Governmental Model, and governmental EMBs under the Mixed Model, do not have EMB members, only secretariat staff.
- There is no optimal number of members of an EMB, and no general principle to indicate that full-time or part-time EMB membership is preferable. The size of the country and its population, economic and geopolitical issues, the EMB’s powers and functions, the strength of the EMB’s secretariat, and whether electoral management follows the Independent or the Mixed Model may determine the size and work schedule of the EMB membership.
- EMB members need to have sufficient status to entitle them to respect from their counterparts in other sectors of society, and constitutional or legal guarantees of their conditions of service and security of tenure sufficient to enable them to act without fear or favour.
- Independent EMBs under the Independent and Mixed Models may have a membership that is multiparty – nominated by political parties qualified to do so, or expert – politically non-aligned members appointed on the basis of their professional skills, or combined – a mixture of political and professional appointees. The type of membership that is suitable for a particular country will depend on its political environment and stage of democratic development.
- Fixed and secure terms of office for EMB members allow for institutional confidence and renewal. Staggering EMB members’ terms of office minimizes disruption and assists in retaining an EMB’s institutional memory.
- A quality EMB membership selection process can be achieved by open advertising for candidates and ranking all applicants according to a transparently applied ‘fit and proper’ test. The most widely accepted procedure for EMB appointment is for one branch of government to nominate and another to confirm. This process could start with the executive or judiciary and end with the legislature or vice versa.
- Electoral law usually specifies the qualifications to be an EMB member, which generally include citizenship, good repute, ability to act impartially, and professional qualifications or knowledge. They may include other factors such as age, health, holding or not holding specified positions, and residence.

- EMB members need to develop decision-making and management mechanisms that are suitable for the type of EMB and the country's management culture. They need to adopt standing orders that ensure transparent EMB meeting and decision-making processes, and internal regulations for the good administration of the EMB. It may be useful for the EMB membership to form subcommittees dealing with different aspects of electoral administration.
- EMB meetings can be either closed or open to the public. Open meetings may promote greater trust in the EMB and its activities, while closed meetings may better allow open discussion on sensitive matters.
- A good working relationship between EMB members and its secretariat is critical for the effective functioning of the EMB.

Iraq: International Institutional Design

Jarrett Blanc

Historical Background

The Independent Electoral Commission of Iraq (IECI) was created by Coalition Provisional Authority (CPA) Order no. 92 of 31 May 2004 and empowered to be ‘the exclusive electoral authority throughout Iraq during the Transitional Period’. The IECI was set up as an ‘independent and autonomous, non-partisan, neutral and professional government office’ mandated to ‘organize, oversee, conduct, and implement all elections set forth in’ the Law of Administration for the State of Iraq for the Transitional Period (Transitional Administrative Law, TAL). These included:

- elections to a Transitional National Assembly (TNA), the Kurdistan National Assembly (KNA), and governorate councils, held on 30 January 2005;
- a referendum on a draft constitution (to be drafted by the TNA), held on 15 October 2005; and
- general elections under the new constitution on 15 December 2005.

The Legal Framework

CPA orders formed the basis of the electoral legal framework, including the system of representation, the rules governing political parties, and the creation of an independent electoral authority. These orders were the result of inclusive discussions between the major Iraqi political factions, moderated by the United Nations and approved by the Interim Governing Council and the CPA. The major components of the legal framework were:

- the TAL, which described the elections required in the transition process and established fundamental rights, including the definition of the citizenship and political rights (e.g. freedom of speech and peaceful assembly) that are essential to the electoral process;
- CPA Order no. 92, which established the IECI and a panel of judges to hear appeals against IECI decisions;
- CPA Order no. 96 of 15 June 2004, including a transitional electoral law specifying the system of representation and voter eligibility for the TNA elections;

- an act of the interim government specifying the system of representation for the governorate council elections and an amendment to the KNA electoral law adopted by the former KNA, bringing that law into substantive agreement with the rest of the legal framework, especially on issues of system of representation, candidate eligibility and voter eligibility;
- CPA Order no. 97 of 15 June 2004, including a transitional political party law; and
- 17 regulations adopted by the IECI covering issues ranging from electoral offences to election observation to polling and counting.

Bearing in mind that CPA Order no. 96 applied only to the 30 January 2005 TNA election, this legal framework was expanded by the TNA in order to provide guidance for the referendum and general election. The TNA adopted a law on the 'referendum process', which included the form of the referendum question, eligibility criteria, and an interpretation of the TAL's requirements for the passage of the constitution. This interpretation proved to be controversial as it would have made defeat of the constitution very difficult, and it was outside the bounds of a normal legal reading of the TAL, and it was eventually changed by a TNA decision. An electoral law was adopted on 12 September 2005 for the 15 December 2005 general elections. The law established a system of representation, voter eligibility criteria, eligibility requirements for candidates, and restrictions on the election campaign for the new legislative body, the Council of Representatives.

Although CPA Order no. 92 was still in effect, leaving the IECI with all necessary authorities to conduct the general election, the new electoral law did specifically reaffirm the IECI's role. This gave the IECI the 'right to issue regulations and instructions necessary for the implementation of this law'.

The Structure of the IECI

The IECI has two major components. The Board of Commissioners heads the IECI, and the Electoral Administration implements the election operation under the board's authority. In addition, a Transitional Electoral Panel of three judges has been set up to hear appeals against IECI decisions.

The Board of Commissioners has seven voting members and a non-voting chief electoral officer (CEO). All current members were selected after a process of public nomination followed by vetting and interviews conducted by the United Nations. Almost 1,900 Iraqis were nominated for positions on the board in April and May 2004 despite severe domestic unrest at the time. Nominations were received from residents of all of Iraq's 18 governorates, and 111 women were nominated. In addition, an international electoral expert appointed by the United Nations serves as a non-voting member of the board. A secretariat and an audit unit report directly to the Board of Commissioners.

The Electoral Administration is managed by the CEO and has a national headquarters and several levels of electoral offices. The national headquarters has divisions for administration, finance, public outreach, capacity building and operations. There are electoral offices in the Kurdistan region, in each of the 18 governorates (with two in Baghdad), and in 542 districts. Each district electoral office is responsible for an average of ten polling centres with up to 3,000 voters each. Due to the security situation prevailing in Iraq, not all governorate and district offices have been open or staffed at all times, requiring the IECI to direct staff and resources flexibly to ensure that the voter is served as well as possible.

Staff of the Electoral Administration were appointed through a competitive application process, with members of the Board of Commissioners participating in the appointment of

senior officers such as division directors and governorate electoral officers. IECI staff are to be professional and non-partisan, but in the transitional period their precise status as professional civil servants is unclear.

Given the demanding electoral calendar, formal professional development opportunities for IECI staff have been limited. 'On-the-job' learning has been augmented by training and study trips as appropriate.

The Transitional Electoral Panel was set up by CPA Order no. 92. It is made up of three judges appointed by the Higher Juridical Council to hear appeals against the IECI's decisions. Its jurisdiction is limited to final decisions of the Board of Commissioners, which can only be overturned if the panel finds them to be 'arbitrary, capricious, in excess of jurisdiction, or rendered in bad faith'. In addition, the panel must act according to strict timelines in order to allow the electoral process to continue on schedule. There is no appeal against its decisions to any other body.

Powers and Functions

The electoral legal framework gives the IECI very broad authorities – something that is unusual for settled or even transitional democracies, but less unusual for countries in conflict or emerging from conflict. According to CPA Order no. 92, 'the Commission is empowered to take all necessary measures consistent with [the fundamental rights guaranteed by] the TAL to oversee and administer genuine and credible elections throughout Iraq'. This order lists the following specific functions:

- to determine, establish, develop, certify, subdivide and maintain the electoral register;
- to help build social support for and confidence in the electoral process throughout Iraq;
- to regulate and conduct the registration and certification of political parties;
- to regulate and conduct the registration and certification of candidates for office;
- to accredit election observers and other officers engaged in monitoring and/or observing elections in Iraq;
- to manage the work of polling and vote tabulation;
- to adjudicate in electoral grievances and disputes; and
- to certify election results.

IECI regulations issued in each of these areas address questions which, under other circumstances, might be settled by legislation rather than regulation. While the IECI is not accountable to any other organ of state, it has usually interpreted its authorities as narrowly as possible, seeking legislative guidance from the various interim and transitional authorities as appropriate.

Because the systems of representation used for the 30 January 2005 elections did not require the delimitation of electoral districts (or constituencies) or the apportionment of seats, these responsibilities were not assigned to the IECI or any other body. All the 30 January 2005 elections used a system of proportional representation (PR) in a single national electoral district, so that for the TNA all of Iraq was the electoral district; for the KNA all of Kurdistan was the electoral district; and for each governorate council the whole area of the governorate was the electoral district. The 15 December 2005 elections to the Council of Representatives used a system of PR within electoral districts. The electoral law defined the electoral districts as the existing governorates, so that no delimitation was required. The IECI was, however, empowered to apportion seats between the electoral districts using a (legally specified) population database and the Quota and Least Remainder system of proportional division.

The IECI did not have regulatory authority over the media but did coordinate with the Iraqi National Communications and Media Commission on campaign-related media regulation. Similarly, although the IECI was empowered to issue financial disclosure regulations, it did not do so for the 2005 elections.

Financing

Given its broad authorities, and in order to ensure the IECI's effective independence, CPA Order no. 92 assigned the IECI extensive control of its finances, establishing that:

The Iraqi government shall ensure that the Commission receives all of the resources necessary for administering elections throughout the Transitional Period. Notwithstanding the foregoing, the Commission may seek to enlist the international community for appropriate assistance in this regard, including the direct provision of additional funds or resources. All Commission resources shall be solely managed and obligated by the Commission. The CEO shall be responsible for the accounting of these resources.

Although technical issues related to Iraqi government finances and payments were occasionally problematic, the IECI received all the support it requested from the interim government, as well as generous support from international donors, prior to the 30 January 2005 elections; it anticipated the same support for the remainder of the transitional electoral cycle. The IECI established an internal audit unit reporting directly to the Board of Commissioners in order to discharge its financial duties in the most transparent possible manner.

In addition to funds, the IECI received important material assistance from the Iraqi government and the international community. This included data from the Ministry of Trade used in creating a provisional electoral register; warehouse and other facilities from the ministries of trade and education, and others; security support from the Iraqi security forces and the UN-mandated Multi-National Force; and international technical assistance.

The Future of the IECI

The administration of future elections in Iraq is now the responsibility of the National Assembly elected in December 2005. The IECI, does, however, seem to have built support for the concept of independent electoral administration. A public opinion survey conducted by the International Republican Institute (IRI) in February and March 2005 found that 72 per cent of Iraqis believed the 30 January 2005 elections to be fair or very fair, and the responses to specific questions about aspects of the IECI's performance were similarly favourable.

Discussions within the TNA on constitutional and legislative matters included the possibility of establishing a permanent and independent electoral management body to succeed the IECI. Any new institution would require a more extensive legislative framework, along with more professional and institutional development for the EMB and its staff.

Senegal: Independence Strengthened in a Mixed Model of Electoral Management

Claude Kabemba and Andrew Ellis

Senegal has held regular elections since its independence in 1960. From 1960 to 1998 all elections were organized and supervised by the Ministry of the Interior. Although a multiparty system has existed since 1974, there was no change of power at an election until the year 2000. Most elections were disputed, and contestation reached a dangerous point in 1988. Amid pressure, the government, together with the opposition, drafted a new Electoral Act, which was adopted by Parliament in 1992. However, this act was more of a political than a legal and technical instrument. It did not clearly define the decision-making mechanisms and provided for consensual decision making in terms of election disputes. It was therefore difficult to apply its provisions, as they were open to different interpretations by different groups. Ultimately, despite the view of most political actors that the act was good for the country, it failed to resolve election-related tension and disputes. In 1996, opposition parties started asking for an independent electoral commission to be established.

In 1998, under pressure from the opposition, President Abdou Diouf introduced changes to the election management structure by creating two separate bodies, the General Directorate of Elections (Direction Générale des Elections, DGE) and the National Elections Observatory (Observatoire National des Elections, ONEL). ONEL was an independent temporary body only put in place at the beginning of each election year. It had nine members who are chosen for their high moral integrity, nominated by the president after consultation with different professional associations such as human rights groups, lawyers' associations, the media associations and the universities. This was, according to one of the opposition leaders, the first time in 40 years when the entire political class was able to participate in elections with equal chances.

The Socialist Party of Senegal (Parti socialiste du Sénégal, PSS), which ruled Senegal for over 40 years, lost the 2000 elections when President Abdou Diouf lost to Abdoulaye Wade of the Senegalese Democratic Party (Parti démocratique Sénégalais, PDS). For these elections, President Diouf appointed a former army chief to head ONEL. This choice was motivated by the fact that the military and the police do not vote, and as a measure to limit opposition criticism. Notwithstanding ONEL's independence, citizens raised concerns about the closeness of these institutions to government and the political parties, and civil society groups called for the establishment of a single independent body to run elections.

Discussion and negotiation between the various stakeholders resulted in a report to the president from a commission headed by a university professor proposing the replacement of ONEL by a new body, the Autonomous National Election Commission (Commission Electorale

Nationale Autonome, CENA), made up of civil servants, academics and people from civil society organizations. The National Assembly in May 2005 unanimously enacted a law creating the CENA. Its powers were considerably wider than those of ONEL, as the new body assumed direct responsibility for control and supervision of the registration and electoral processes. However, the choice of its 12 members, required to be independent and of high morals, and sworn in by the Constitutional Council in July 2005, was contentious. In particular, the newly appointed chair of the CENA, a retired judge, was challenged on the grounds of the political activism of a family member. The opposition parties submitted a challenge in the Constitutional Council, which was subsequently rejected.

By December 2005, the CENA was able to establish bodies at departmental level, the autonomous departmental electoral commissions (Commissions électorales départementales autonomes, CEDA). In 2006, it launched a new process of registration for both population and electoral purposes which involved the issuing of biometric cards to some 3 million Senegalese citizens. However, arguments about the resourcing of the CENA had already surfaced.

Legislative Framework and Institutional Structure

The constitution and the 1992 Electoral Act provide the legislative framework for elections in Senegal. They lay down how elections should be organized and who should organize them, from the delimitation of electoral district boundaries and the registration of voters to the actual running and supervision of elections. The Electoral Code of 2005 defines the powers and functions of the CENA.

The DGE is a permanent structure. It is a department within the Ministry of the Interior and is answerable to the minister. It operates as an ordinary government department.

The DGE is charged with the organization of national and local elections and of referendums. This includes among other functions:

- management of the process of voter registration;
- the organization and distribution of electors' cards;
- the printing of ballot papers;
- the tabulation of votes;
- support to the security services on electoral matters;
- the design, maintenance, use and archiving of electoral documents;
- training of electoral officials, judicial personnel and elected members;
- support to judicial institutions in carrying out electoral functions;
- civic education;
- use of IT to meet electoral needs; and
- the drafting and implementation of budgets for voter registration and the conduct of elections.

The DGE has two major directorates, one dealing with the management of operations for voter registration and for electoral events, the other with training and civic education.

Power, Functions, Funding and Accountability

The Ministry of the Interior through the DGE is responsible for the organization and administration of all elections, and remains answerable to the minister of the interior. The role

of the CENA is to control and supervise all electoral operations. It ensures that all stakeholders, including the government and the political parties, abide by the rules and regulations governing elections.

Both the CENA and the DGE are state-funded. The DGE's budget comes from the Ministry of the Interior, while that of the CENA is voted for by the Parliament.

Afghanistan: An Electoral Management Body Evolves

Reginald Austin

Although elections were held in the Kingdom of Afghanistan in the 1960s, in 1977 after the 1973 *coup d'état*, and during the Soviet occupation after 1979, they were never of an internationally recognized standard. Traditional means of choosing tribal or clan Shura leaders persisted. One scholar noted that Afghans regarded the idea of a choice by secret ballot as somewhat 'sneaky', and preferred the 'honest' expression of choice by a show of hands. During the Soviet period the universal franchise, to include women, was adopted, but was culturally controversial. During the 25-year period of fierce war, victory through the bullet rather than the ballot decided who would govern.

Following the defeat of the Taliban in late 2001, the anti-Taliban Afghan factions assembled in Bonn to agree on future stability and democratic government. The Bonn Agreement of December 2001 recognized Afghanistan's sovereignty, despite the serious 'failed state' condition of the country and the unfinished war against the Taliban and Al Qaeda, as well as the fact that powerful armed factions (warlords) were in control of many areas outside Kabul.

The Bonn Agreement mandated the UN to take the first formal step towards democracy – the registration of voters for elections in mid-2004. The UN commenced this task in February 2003. It was a structurally 'messy' arrangement. Formally the sovereign Afghan authorities were responsible for the election. In fact there was no existing Afghan institution that could manage the elections, and in particular no EMB. Nor was there a legal framework to make a credible election possible.

The Evolution of the EMB

The evolution of an Afghan EMB is a complex process which has gone through five phases over the past three years.

- The first body charged with the functions of an EMB was a purely UN body created in early 2003 – the Electoral Component of the UN Assistance Mission in Afghanistan (UNAMA) (the UN Component).

- In mid-2003 an Interim Joint Electoral Management Body (the JEMB) was created, with both Afghan and international members. It had no operational capacity and depended upon the support of various UN and other international organizations. Its responsibility was to supervise the UN Component.
- In early 2004 the UN Component was transformed into an advisory service to an Afghan-led Secretariat responsible to the JEMB. That organization completed the preparations for and conducted the 2004 presidential election.
- In early 2005 the JEMB's Afghan commissioners were entirely replaced by a new set of Afghan nationals, and some of its international members were also replaced. The JEMB remained an interim body. Its Afghan Secretariat was replaced by an Electoral Component appointed by UNAMA and internationally managed. This organization managed the 2005 parliamentary elections.
- Finally, in late 2005 the JEMB was replaced by the Independent Election Commission (IEC), which retained some of the JEMB's Afghan members. It has an Afghan Secretariat. Provision is made for international advisers to serve both the IEC and the Secretariat.

The Legal Framework

The evolving EMB in Afghanistan is still a work in progress. The Bonn Agreement prescribed a UN role, endorsed by the UN Security Council, but the agreement is domestic and political. It is not an international or legally binding agreement. Neither the 2004 presidential election nor the 2005 parliamentary election was a UN peacekeeping election conducted under UN rules and regulations. The sole legal authority is the Transitional Islamic State of Afghanistan (TISA) – first the interim, and now the elected president and his Cabinet.

A decree of 26 July 2003 created the Interim Afghan Electoral Commission (IAEC) and the JEMB. Until then, the absence of any Afghan body to work with the UN had implied that the initial Voter Registration Work Plan and Budget could only be designed as an entirely UN operation, based on UN standards and pay scales. The resulting 130 million US dollar (USD) draft budget (June 2003) disturbed the TISA, donors (who would bear most of this cost) and the UN, and stirred them to action. The IAEC was urgently created, notionally to employ and support the Afghan registration staff at Afghan rates of pay. This would save the donors over 30 million USD. Despite the resulting economies, a second budget/work plan, launched in August for an October 2003 start, failed for lack of funding, and a scaled-down start was only possible in December 2003. This was based on the November 2003 Decree on Registration of Voters for the 2004 Elections.

At the end of December 2003 the new constitution of Afghanistan was promulgated, with various electorally significant provisions.

To bring the fiction of Afghan election management closer to reality, and to emphasize national capacity building as an integral part of the process, the decree of 18 February 2004 on The Elements of Convening Elections during the Transitional Period introduced a new institutional and management structure. The Electoral Component and officers of UNAMA became the 'technical advisers' to the newly appointed Afghan director of the JEMB Secretariat and his national managers at central and provincial levels.

On 27 May 2004 the Afghan Cabinet finally issued a decree establishing the Election Law. The presidential election was held on 9 October 2004.

On 21 January 2005, the entire IAEC was replaced by a presidential decree appointing new commissioners. An amended Election Law was adopted in May 2005. Together with the decree on The Basics of Holding Elections during the Transitional Period, it made significant

changes. Notably, it restored greater UN control for the 2005 parliamentary elections, with the restoration of a UNAMA chief electoral officer (CEO), reporting directly to the JEMB. It abolished the post of the Afghan director of the JEMB Secretariat.

Under the May 2005 Election Law, the transitional period ended 30 days after the parliamentary elections, which took place on 9 October 2005. With these elections the JEMB completed its work and handed over to the eight-member IEC and its Secretariat. Members of the new IEC have security of tenure and a fixed term of office of three years.

Institutional and Operational Issues

The JEMB headed the management system for both the 2004 presidential and the 2005 parliamentary elections, supervising the Secretariat. For the presidential election, the Secretariat was headed by its Afghan director. For the parliamentary election, the Secretariat was run by the CEO, appointed by the Special Representative of the (UN) Secretary-General (SRSG).

The operational structure established for the 2004 presidential election remained as complex during the 2005 parliamentary elections. The JEMB's practical tasks, relating to Afghan staff recruitment and pay, the development of electoral infrastructure and the procurement and support of transport, relied for both elections on the United Nations Office for Project Services (UNOPS). Neither the JEMB nor its Secretariat had either the independent capacity or ministerial support for such tasks. Until December 2004, a United Nations Development Programme (UNDP) Project Office provided financial mobilization/accounting and personnel management for the JEMB, the Secretariat, and the UNAMA Electoral Component.

Although the JEMB asserted its independence, it also paid considerable attention to the views of both the government and the SRSG's office. The international members, appointed by the SRSG, were on occasions given explicit instructions by the SRSG's office. The principle of independence was thus not entrenched or uniformly respected during the presidential election.

Before the 2004 presidential election, the JEMB Secretariat and the UN Component responded to the security situation by taking the initiative and setting up a Security Unit. This was an unusual initiative for an election administration, but provided essential close liaison with the Coalition, the Afghan security forces and the International Security Assistance Force (ISAF) units.

For the presidential election, a separate structure was established to undertake the out-of-country registration and voting for Afghan refugees in Pakistan and Iran. Once the JEMB decided (very late) to provide this service, it was delegated to the International Organization for Migration (IOM), the only body with experience relevant to conducting this massive task.

Powers and Functions

The JEMB had a standard range of EMB powers and functions: to prepare and conduct the voter registration, the nomination and screening of candidates (a politically delicate task), the polling and the counting, and the announcement of the results. The Ministry of Interior (MOI), not the JEMB, was responsible for the delimitation of electoral districts, but the JEMB allocated parliamentary seats to provinces on the basis of the MOI's information and managed the awarding of seats to candidates, including the reserved seats for women.

A separate Media Commission, reporting to the JEMB, was established in both election laws to ensure fair access to the public mass media, and this has worked reasonably effectively.

In response to comments on the 2004 presidential election, the 2005 Election Law provided for a separate, election-related Complaints Commission.

Financing

As indicated, both the presidential and the parliamentary elections were almost entirely funded by the voluntary contributions of international donors. Since UNAMA was not a peacekeeping mission, there was virtually no UN funding provided, despite the official role of the UN in the operation and its considerable UN content. A UN, UNDP and JEMB Post Election Strategy Group has recommended that the IEC should be state-funded but should manage its budget independently. The legislation which established the new (post-Bonn) IEC has not provided for the mechanism by which future elections will be financed. However, policy statements have been made suggesting that it will be state-funded. Given that some well-paid staff are still in place from the internationally-funded Bonn process, they are likely to demand better than normal government pay, and sustainability may become a problem. In 2006, international NGOs such as the International Foundation for Election Systems (IFES), the National Democratic Institute (NDI) and the Asia Foundation appeared to be ready to continue their support for international advisers to the IEC, but such commitments could clearly not be indefinite.

Professionalism

Special efforts were made during 2003/2004 to provide training for the IAEC members and enable them to observe their peers in operation. Following the appointment after February 2004 of the Afghan director of the JEMB Secretariat, Afghan managers at national and provincial level were appointed as counterparts to the UN Electoral Component's international staff already in place. This sought to introduce them to specific electoral tasks, and expose them to a range of international standards of professional practice. The return to an essentially UN management system for the parliamentary election in 2005 ended this practice. Consequently, a fresh capacity-building programme would be required to create a professional Afghan electoral body. Afghan officers given electoral responsibilities generally displayed sound understanding and a commitment to professionalism.

Relations with Other Institutions

The transitional process was marked by the electoral administration's massive interaction with and dependence on other organizations, international and national. Many of the former, including the European Union, the Organization for Security and Co-operation in Europe (OSCE), the IFES, the NDI and the International Republican Institute (IRI) of the USA, as well as the US-funded Asia Foundation, played significant roles in supporting the process. Donors' diplomatic representatives, aware of their 'investment' (real or promised) were, unusually, regular visitors and enquirers at the JEMB Secretariat.

Sustainability

Afghans involved in the process, including the government, showed a serious commitment to the ideal of the independence of the EMB. The interim nature of the IAEC may be viewed either as having somewhat undermined this or as having provided a serious training and testing ground and a base of demand for the new Independent Electoral Commission. The regional example of the Indian Election Commission provides an important and admired model. Funding is likely to be the key issue for sustainability, especially as the current election system implies considerable electoral costs.

Electoral Reform

The JEMB, with its Secretariat of national and international staff, played an important role in preparing and drafting the Election Law and related decrees. This role has been formally given to the new IEC by the 2005 Election Law. If the IEC is to play a structured role in this field with the legislature in the future, these provisions may need to be further institutionalized.