

6. Electoral management bodies

The legal framework should require that EMBs be established and operate in a manner that ensures the independent and impartial administration of elections.

General overview

In some established democracies, national and local government officials, whose neutrality and fairness are generally accepted by the electorate, handle electoral administration. Ordinary courts settle disputes, as they have a tradition of fairness and neutrality and generally enjoy the confidence of the electorate.

In emerging democracies, there has been an increasing trend to establish independent EMBs. This is seen as an important step in building a tradition of independence and impartiality, as well as building the confidence of the electorate and political parties in the electoral process. However, since there is yet no internationally-recognized standard in this respect, the term "independent EMB" in this section means an autonomous and impartial EMB.

For any EMB to be credible and effective, sufficient and timely funds must be made available to it as well as human resources (election officials) who are impartial and independent.

Administering democratic elections requires that EMBs be, and be seen to be, impartial and independent of government or other influence. This is a critical area, as the election administration machinery makes and implements important decisions that can influence the outcome of the elections. The political circumstances of the particular country under consideration need to be taken into account when assessing the legal framework regulating electoral management bodies.

Formation of electoral management bodies

The legal framework for elections must provide for the size, composition and membership tenure of the EMB, as well as for the appointment and removal of members. All these factors directly affect the independence and impartiality of the EMB. Considerations to be taken into account concerning the formation of EMBs include the following.

Structure

The administrative structure established by the legal framework should include a central or national EMB with exclusive authority and responsibility over any subordinate electoral bodies. There should be a subordinate electoral body for the lower levels, for a province or a state in a federation, or for other electoral units (i.e., for a voting district in which a member of the legislature is elected), depending on the size of the electoral unit and the level of communications available. Whether any additional intermediate electoral bodies are needed will depend on the electoral system, and on the geographic and demographic factors of the country. However, the creation of unnecessary or superfluous electoral bodies should be avoided. The lowest level of the election structure is the polling station where actual voting takes place. It is critical that the legal framework for elections defines the relationship between the central EMB and the lower-level election bodies as well as the relationship between all election bodies and the executive government authorities.

Authority and responsibility

The authority and responsibility of EMBs at each level should be clearly defined in the legal framework for elections. The legal framework needs to address the following questions:

- How is each EMB constituted?
- How does each EMB conduct its business?
- What are the quorum requirements for each EMB?
- What are the voting rules for EMB decisions?
- How are the EMB's decisions to be made public?
- What are the clear-cut, transparent procedures for the conduct of business so that the work of the EMB can be transacted smoothly?

Composition and qualifications

Where possible, professionals familiar with the electoral framework of a country should be appointed to administer a country's elections. A common provision requires that at least some members of EMBs, at every level, have a background or training in law. Such a provision is reasonable but may present a problem for lower-level bodies and polling stations. EMBs comprising political party representatives also have advantages and disadvantages. Provisions such as those requiring that EMB membership must include party representatives or judges, who are ultimately appointed by the incumbent party, obviously will impact on an EMB's independence and impartiality. Generally, people having political credibility, such as members of civil society or those from the judiciary, might be more suitable for appointment to the EMB. Any conflict of interest, especially where the EMB is party-based, should be disclosed by the appointed members in advance. The age of retirement for the members of the EMB should at least be same as for a judge of the highest court of that country, although retired judges could also be considered for these positions.

Tenure

An EMB should be a body that functions continuously and not only for a limited time period just before elections. This means that the EMB, if empowered to maintain voter registers, should be required by law to work either

continuously or periodically to improve and update them, prepare for an election and strengthen the system. However, it is normal for lower-level election bodies, such as polling station committees, to be temporary bodies established for a certain period before an election and to cease to function once the results are published or the appeals process is complete. The legal framework should ensure that the selection and appointment of EMB members are impartial. Additionally, it is suggested that members' terms of office be staggered to provide continuity in the work of successive EMBs. The legal framework should specify the grounds and process for removal of a member to protect members from arbitrary removal and to provide immunity in connection with the performance of legal duties and salary provisions that cannot be manipulated by the government. The legal framework should lay down the general principle that the terms of appointment should not be varied to a member's disadvantage during the term of his/her appointment. The law should also specify the rights of each member of the EMB, including the right to receive timely and adequate notice of meetings, the right of access to all EMB documents, and the right to participate in all EMB meetings. Some jurisdictions also provide for functional immunity of members of EMBs to enable them to carry out their duties and responsibilities efficiently and fearlessly.

Financing

The legal framework should require that all levels of electoral bodies be established in a timely manner before an election and be adequately funded. It is crucial that the legal framework contains provisions as to how funding for the ongoing operations of the EMB will be made available. Some of the major methods of funding election operations are:

- The budget is allocated to an EMB through a department of the government (though in many emerging democracies this arrangement has not worked very satisfactorily).
- The budget is directly voted by parliament without the intervention of a department, sometimes through the medium of a standing all-party parliamentary committee.

- A lump sum advance allocation, with some guiding principles, is provided for. Once the EMB has conducted the electoral operation and exhausted that amount, the necessary audited sums are approved by the legislature.
- The EMB has direct and uncontrolled access to the State treasury for funding elections and reports to parliament only after an election.

Duties and functions

The legal framework should clearly define the duties and functions of the EMB. These must particularly include the following:

- Ensuring that election officials and staff responsible for the administration of the election are well trained and act impartially and independently of any political interest;
- Ensuring that clear voting procedures are established and made known to the voting public;
- Ensuring that voters are informed and educated concerning the election processes, contesting political parties and candidates;
- Ensuring the registration of voters and updating voter registers;
- Ensuring the secrecy of the vote;
- Ensuring the integrity of the ballot through appropriate measures to prevent unlawful and fraudulent voting; and
- Ensuring the integrity of the process for the transparent counting, tabulating and aggregating of votes.

In some cases the duties and functions of an EMB may also include the following:

- Certification of the final election results;
- Delimitation of electoral boundaries;
- Monitoring and overseeing electoral campaign finance and expenditure; and
- Research, advice to government and/or parliament, and international liaison.

Operation of electoral management bodies

EMBs should operate independently, transparently and impartially. Once formed, an EMB must impartially serve the interests of all citizens and electoral participants. The primary objective of a legal framework is to guide the EMB and enable it to achieve the delivery of a free and fair election to the electorate. In doing this, the EMB must undertake its functions at each step in the election process in an impartial and efficient manner.

The critical attributes of a free and fair election, and of the electoral management body, include the following:

Independence and impartiality

The functioning of the EMB should not be subject to the direction of any other person, authority or political party. It must function without political favouritism or bias. The EMB must be able to operate free of interference, simply because any allegation of manipulation, perception of bias or alleged interference will have a direct impact not only on the credibility of the body in charge but on the entire election process.

Efficiency and effectiveness

Efficiency and effectiveness are integral components of the overall credibility of an election. Efficiency is critical to an electoral process insofar as technical breakdowns and problems can, and do, lead to chaos and a breakdown of law and order. Efficiency and effectiveness depend upon several factors, including staff professionalism, resources and, most importantly, sufficient time to organize the election and train those responsible for its execution.

Professionalism

Elections should be managed by a specialized group of highly trained and committed experts who manage and facilitate the electoral process and who are permanent employees of the EMB.

Impartial and speedy adjudication

The legal framework should make provision for a mechanism to process, adjudicate and dispose of electoral complaints in a timely manner.

Transparency

The overall credibility of an electoral process is substantially dependent on all relevant groups (including political parties, government, civil society and the media) being aware of and participating in the debate surrounding the formation of the electoral structure and processes. An informed debate in these groups should also take place regarding the functioning of the EMBs. In this respect the value of constant consultation, communication and cooperation among EMBs, the political parties and the institutions of society cannot be over-emphasized.

Checklist

- Does the legal framework for elections provide for the EMB to be constituted as an independent and impartial body?
- Does the legal framework protect EMB members from arbitrary removal?
- Does the legal framework require the EMB to operate in an independent, impartial and transparent manner? Are there any provisions in the legal framework that could prevent the EMB from working in such a manner?
- Does the legal framework clearly define the authority and responsibility of each level of EMB and their relationships to each other as well as to other relevant governmental bodies and executive authorities?
- Does the legal framework provide for adequate opportunity to seek review or reversal of an EMB decision?
- Does the legal framework provide for continuity of electoral administration by staggering the terms of office of its EMB members?
- Does the EMB have sufficient lead time to organize elections, especially at the lower levels?
- Does the legal framework provide for making available sufficient and timely funds to the EMB to manage its operations?