



Independence in Electoral Management

Electoral Processes Primer 1





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Oliver Joseph

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1. Introduction

Elections are the cornerstone of democratic political processes, serving as a mechanism for political parties or candidates to compete for public office under equal conditions before the electorate. For an election to be credible, the competition must be fair, requiring impartial management of the process. As described in International IDEA's Handbook on *Electoral Management Design* (Catt et al. 2014), electoral management bodies (EMBs) are the state institution or institutions established and mandated to organize or, in some instances, supervise the essential (or core) elements of this process. Some EMBs assume a supervisory function, possessing significant power to develop standards for the management of elections within the parameter of electoral legislation, monitor compliance of those standards, and impose sanctions for any breach. Their remit is often limited to a narrow and specific function of electoral management, and in exercising this remit they perform a quasi-judicial function. All EMBs must perform their functions in an apolitical manner, exercising fearless independence from the government to uphold the principle of impartiality.

In some countries, an EMB is part of the government administration, managing electoral processes as part of its statutory obligation to deliver public services, which a government must undertake without any evident or perceived conflict of interest. In many other countries, such an institutional arrangement would expose EMBs to the possibility of undue influence and/or manipulation by political or other groups with a vested interest in the election outcome. One approach adopted to mitigate political encroachment and uphold electoral integrity is establishing an EMB as a legally independent institution, structurally separate—legally and normatively—from government, designed to set its own strategic priorities and manage all or specific electoral management activities. However, simply establishing an EMB as an independent entity is not a sufficient

measure to prevent or limit political or other attempts to undermine its impartial and autonomous function, and its fulfilment of mandated responsibilities.

Globally, electoral management design differs significantly between countries. No two approaches to electoral management are alike: EMBs across different countries possess varying degrees of autonomy from government, expanse of remit, and powers (James et al. 2019). The system of government (federal or unitary, parliamentary or presidential), the political party system—which dictates how inter-party relationships are formed and regulated—and political party relations in the legislature (consensus or adversarial), as well as the strength of other state institutions, can influence the potential of an EMB to, and the extent to which it will, function with independence and impartiality. Without a conducive and comprehensive legal and institutional framework, or adequate transparent accountability mechanisms, a government, if inclined, may influence the independence and autonomy of an EMB.

This Primer focuses on the establishment of EMBs as institutions normatively, structurally and functionally independent from government. It examines the benefits and limitations of the legal and institutional framework, governance structure, remit, autonomy over their resources, and contextual approaches that facilitate their functional independence, applicable to different legal and political contexts. The Primer discusses EMB independence and EMB relations with all stakeholders engaged in an electoral process at the national level.

2. What is the issue?

The countries that first held democratic elections gave little or no consideration to the political neutrality and functional independence of the state institutions that organized them. Their governments mandated a national ministry to manage electoral operations. During the 20th century, this approach showed its limitations and began to change. The number of countries holding democratic elections grew with the onset of decolonization in Africa and Asia, followed by successive waves of democratization in Latin America and Eastern Europe.

In many newer democracies, political pluralism, a robust civil society and an independent judiciary were in their infancy. In this context, independent institutions were purposely created with a mandate to manage electoral processes in clear separation from the executive and legislative branches of government.

2.1. Structural independence

Structural independence reflects how the leadership and internal units of an EMB are composed, and how the EMB relates to the executive and other government entities. International IDEA categorizes EMB design into three models—Independent, Governmental and Mixed (Catt et al. 2014). Within each model, further distinct legal and institutional arrangements exist. Independent model EMBs can be established and enacted through the constitution or through statute law. The Mixed model is a mixture of models—usually two or more institutions managing electoral administration—under different arrangements in different countries. Furthermore, some EMBs assume judicial powers and are part of the judicial branch of government (e.g. Brazil, Costa Rica). At the same time, election management is becoming increasingly complex as politics is becoming polarized in many countries, and there is an enhanced emphasis on efficiency in delivering public services, including election management.

Since the late 20th century, an emerging trend has been that of establishing independent supervisory EMBs with regulatory power—often over a specific activity in an electoral process, such as political and campaign finance regulation, or performing an electoral dispute resolution function. Supervisory EMBs are vested with the legal independence and regulatory powers necessary to perform a role in addition to, and in some contexts with the same status as, the existing three branches of government—the executive, legislature and judiciary. There is no standard definition for institutions like this. However, when established appropriately and resourced adequately, this kind of EMB may be referred to as a ‘fourth-branch institution’ indicating its role to conduct a public service function outside of government (Bulmer 2019). Often, although not always, their existence is codified in a country’s constitution, elevating their prominence as a public body and limiting—although not excluding—the possibility of their dissolution.

This Primer focuses on the Independent model of EMB. A fundamental premise for creating legally independent EMBs, and public institutions more broadly, is to protect what many democracies view as a public good. Independent model EMBs serve to protect established norms and uphold core values and ideals deemed integral to an equal and fair society.

2.2. Functional independence

Functional independence instead captures EMB behavioural independence and how independently mandated functions are fulfilled. Independent model EMBs serve to achieve fair and credible electoral processes; however, structural—*de jure*—independence in isolation does not necessarily manifest or automatically translate into functional—*de facto*—independence. An EMB reliant upon an executive to decide its strategic and operational priorities, its functions and budget (institutional, operational and activities), or its staff recruitment, may lack functional independence (Garnett and Van Ham 2019; Birch and van Ham 2017; van Aaken 2009). Administrative and financial independence is inseparable from legal independence. Crucially, a structurally independent EMB may not be functionally independent if its commission—the executive organ that performs the EMB’s steering committee, policymaking and strategic decision-making functions—lacks autonomy or is susceptible to political ‘capture’ or monopolization by the executive or any political party.

Independence is often regarded as interchangeable with impartiality, which is not always the case. An EMB that functions for the benefit of the government or a particular political party undermines the principle of impartiality. Contextual considerations are essential to understand how a government may limit or impede EMB independence. The independence and resilience of other state institutions, such as the judiciary, or societal cleavages may also impact how political parties or

the electorate accept an EMB as an autonomous and independent institution, and how they perceive its ability, or inability, to achieve its mandate. In politically fragile countries, EMBs' remit or strength of regulatory powers may increase the appeal of and the inclination towards political interference. Electoral management operations perceived as contentious or as an opportunity to influence an electoral outcome—such as boundary delimitation, voter registration or political party finance regulation—could elevate the susceptibility of an EMB to manipulation or political interference.

3. Basic design options

3.1. Legal framework

The legislative framework establishes the foundation for an independent EMB to formulate its strategic priorities and implement its mandate with impartiality and autonomy from government. If a country sets the parameters within its constitution and/or in statute law for an EMB to be structured and to function as an independent institution, then it empowers it with a legal ‘personality’. Making an EMB a legal entity underpins its independent status as a key institution of governance, indicating its value to society and defining the basis upon which, and the ease with which, an executive can formally amend its remit and powers (International IDEA 2002; Pal 2016). The strength and flexibility of EMB independence lie in the detail of the legislative text. However, making an EMB a structurally and functionally independent legal entity is no panacea for guaranteeing that the EMB will commit to and uphold that normatively prescribed independence in practice.

The constitution may state that an independent EMB should be established, or that an independent EMB has the exclusive authority to manage an electoral process, but fail to provide further reference to the detail of how the EMB can embrace and enact this power in practice. Statutory law, case law, regulations and procedures must enact and consolidate an EMB’s structural and functional independence. The optimal balance between placing remit, regulatory power and governance structure in the constitution or in statutory law is guided by the specific political context. Some countries establish an independent EMB through statute law alone, either derived from the constitution or established without any reference to their existence in the constitution. In principle, a critical legal safeguard protecting an EMB’s existence is lost. However, in reality, in countries

with democratic and robust institutions, the abolition of an independent EMB is unlikely. Irrespective of the legal foundation establishing an independent EMB, subsidiary legislation must not contradict or undermine its independence enshrined in the superior law establishing its existence, for example, over EMB budget approval or staff recruitment and management.

International norms and standards

An internationally recognized standard defining an independent EMB does not exist; however, a body of international and regional norms relating to the independent management of electoral processes has developed over the last 50 years. One of the most significant is defined under the International Covenant on Civil and Political Rights (ICCPR), in General Comment No. 25, which establishes a legally binding obligation for signatory member states to adhere to: ‘An independent electoral authority should be established to supervise the electoral process and to ensure that it is conducted fairly, impartially and in accordance with established laws which are compatible with the Covenant’ (United Nations 1996: paragraph 20). An independent electoral authority is not a requirement to establish a structurally independent EMB, rather a necessity that electoral processes must be organized independently of government.

Standards developed by regional organizations for their member states include the Council of Europe’s Venice Commission *Code of Good Practice in Electoral Matters* (2002), and the African Union’s *African Charter on Democracy, Elections and Governance* (2007) (see Box 1). The Venice Commission recommends that member states establish EMBs as independent institutions separate from government. Many international norms and standards derive from international treaties based on experience of good practice. The Venice Commission provides guidance recommending that the composition of an EMB commission is based on principles of impartiality and independence from politically motivated manipulation (Council of Europe, Venice Commission 2006).

International norms and standards are limited to setting a baseline recommendation that an EMB should be independent of government. International standards are not legally binding and, in most contexts, not practically enforceable. They are voluntary commitments made by countries to improve the independent function of an EMB and enhance a country’s reputation.

Box 1. International norms and standards

Council of Europe, Venice Commission, *Code of Good Practice in Electoral Matters* (2002), Guidelines, section II.3.1:

- a. An impartial body must be in charge of applying electoral law.
- b. Where there is no longstanding tradition of administrative authorities' independence from those holding political power, independent, impartial electoral commissions must be set up at all levels, from the national level to polling station level.

African Union, *African Charter on Democracy, Elections and Governance* (2007), chapter 7, article 17:

State Parties re-affirm their commitment to regularly holding transparent, free and fair elections in accordance with the Union's Declaration on the Principles Governing Democratic Elections in Africa. To this end, State Parties shall:

1. Establish and strengthen independent and impartial national electoral bodies responsible for the management of elections.

3.2. Institutional framework

Globally, the majority of EMBs are established as independent institutions (International IDEA n.d.),¹ established through constitutional law or statutory law, and held accountable by reporting to a permanent legislative committee (except EMBs in several Latin American countries that possess executive, legislative and judicial powers—an institutional framework based on their specific political history). Changing the institutional framework is rare; between 2006 and 2021, a total of just 17 such changes took place worldwide—slightly more than one change of EMB model per year, on average.² All recent changes have moved to the Independent model from the Governmental or Mixed model. The most recent transition from Independent to Governmental model was in the Czech Republic in 1995.

Statutory EMBs

Independent EMBs are often established through statutory law—in several pieces of legislation or a specific electoral code. Amendment to their governance structure or remit, or even their abolition, can be made through formal legal proceedings in the legislature. Statutory EMBs are legally independent of government, although this principle is open to challenge if solely accountable to

the executive, head of state or legislature prone to political polarization. This is particularly salient in countries with plurality or majoritarian electoral systems, such as the United Kingdom Parliament or United States Congress.

Many countries that are considered to conduct their electoral processes with integrity have an independent EMB not established in the constitution. For example, the Australian Electoral Commission was created by an existing executive agency in 1984 (Commonwealth Electoral Act 1984). Elections Canada was created in 1920 (Dominion Elections Act 1920), and the position of the independent chief electoral officer was established in 2000 (Canada Elections Act 2000). An independent EMB is not referred to in either countries' Constitution (Constitution of Australia 1900, and Constitution Act 1982 in Canada). The Canada Elections Act 2000 was modified in 2014 (Fair Elections Act 2014) to limit the remit of the EMB to investigate alleged electoral campaign irregularities and the autonomy of the chief electoral officer to speak publicly on matters other than voting procedures—voter education was prohibited.

The legal framework establishing statutory independent EMBs is more robust if proposed and drafted through political consultation and consensus and codified in fewer pieces of legislation, reducing the potential for legal ambiguity. For example, the New Zealand Electoral Commission, an EMB in a unitary country with a remit covering all electoral management except electoral dispute resolution, was established in 2010 (Electoral Act 1993, Electoral (Administration) Amendment Act 2010) as a Crown entity—an independent arm's length institution. The 2010 Act requires the Electoral Commission to function independently. It specifies 'reserved provisions', which are six fundamental features of the electoral law that may be perceived as politically contentious, including boundary delimitation, the adopted electoral system and the minimum voting age. The legislation cannot be repealed or amended unless the proposed reform is passed by a majority vote of 75 per cent of all members of the Parliament. The 1993 Act replaced an entirely Governmental model.

Constitutionalized EMBs

EMBs established in constitutional law are similar in form to those established in statute law. The principal difference is that their legal personality is derived from the supreme law in a country. In some contexts, an EMB's remit and governance structure are also established in the constitution, elevating an EMB's standing beyond statute law. However, most countries empower a constitutionalized EMB to set operational priorities and implement its remit through statute law. Politically motivated interference from an executive requires a higher threshold for success, with an amendment requiring broader political consensus that entails consultation and deliberation. The act of amending a constitution has greater political and societal significance. While it is possible to amend it, a country's constitution is the basic law, often the 'founding' document of a country's

existence. Therefore, even an indication that a government is seeking to alter the autonomous status of an EMB in a constitution is likely to be perceived with greater scrutiny than seeking to amend statutory legislation. This threat serves as an obstacle to governing political parties that may seek to interfere with the status of an EMB to their advantage.

EMBs established in a constitution predominantly exist in newer democracies where the strength of state institutions may be less well established than in older democracies, or in countries where multiparty politics is not settled or was only nascent when the constitution was drafted. The Election Commission of India is the earliest example of an EMB's inclusion in a post-colonial independence constitution (Constitution of India 1949, article 324). The Electoral Commission in Fiji (Constitution of Fiji 2013, article 75), the Independent National Electoral Commission in Nigeria (Constitution of Nigeria 1999, article 153), and the National Electoral Council and the Electoral Dispute Settlement Court in Ecuador (Constitution of Ecuador 2008, articles 218–21) are examples of EMBs established in their countries' constitutions. Insulated from the executive and legislature, constitutionalized EMBs are often created in response to a particular problem, either genuine or perceived, such as a highly polarized political environment or a country with fragile institutions.

The remit, governance structure and broader operational aspects of an EMB may explicitly be referred to in a constitution or further defined through statutory legislation. The Constitution of Bangladesh 1972 (article 199) specifies the basic functions of the Election Commission—holding elections, setting constituency boundaries and conducting voter registration. These powers, however, are granted 'in accordance with this Constitution and any other law'. Parliament may place additional responsibilities on the Election Commission through statutory law (article 199(2)). In these contexts, judicial independence is of increased importance as courts interpret and enforce the constitution, and therefore the mandate of the EMB.

Robust constitutional protection allows an independent EMB to function with effectiveness and resilience against attempts to erode its autonomy. A constitution may include provisions protecting its remit, regulating how members will be appointed and removed, and protecting its autonomy in staff recruitment and funding provisions.

Advantages and disadvantages of constitutional and statutory established EMBs

Establishing an EMB through statutory law does not provide it with the same legal protection as constitutional law does. However, genuine or perceived threats to the independence of an EMB depend, to a large extent, on the context. Comprehensive electoral legislation with consultative and consensus-based legislative approval processes provide a reliable mechanism to prevent partisan or corrupt attempts to erode the independence of an EMB.

An advantage of establishing an EMB in statutory law is agility and flexibility, which becomes more salient if the remit of an EMB is comprehensive and electoral processes become more complex. Amending a constitution is a time-consuming and challenging process; furthermore, including the necessary level of detail to make it valuable but not redundant in the future is a challenge. EMBs will be required to adapt to societal change and adopt new approaches to managing electoral processes to ensure efficiency as public bodies. Examples include implementing out-of-country voting or regulating new technologies and social media in electoral campaigning.

Judicial EMBs

In some countries, independent EMBs possess an executive, legislative or judicial role, with powers to make and review regulations with legally binding effect on an electoral process. Any other branch of government cannot review their decisions. These EMBs may have executive powers to call and conduct elections, certify or nullify election results, and resolve electoral disputes. Powerful EMBs were necessary for some contexts to curtail the dominance of the executive over the other branches of government. For example, in Costa Rica (Constitution of Costa Rica 1949, articles 9–10) and Brazil (Constitution of Brazil 1988, article 121), the EMBs may be considered part of the judiciary. The commission membership comprises judges, and the EMB fulfils the electoral dispute resolution function with full judicial power. Judicial EMBs are considered the earliest model of a ‘fourth-branch institution’ EMB.

Supervisory EMBs

An alternative approach to electoral management is establishing EMBs with a degree of regulatory and oversight powers or specialized EMBs with a remit covering specific aspects of electoral management. Emerging in the late 20th and early 21st century, supervisory EMBs are established as independent institutions, legally and functionally isolated from government, but in addition to the executive, legislative and judicial branches of government. They possess regulatory and oversight powers with considerable fortitude in some instances, while not forming part of the judiciary. Supervisory EMBs set standards and develop and review regulations with powers to enforce compliance. They resemble independent supervisory institutions established to regulate other aspects of public life, separate from executive influence, such as financial market regulatory agencies or central banks. An essential aspect of their design, which elevates their status and power beyond that of an EMB responsible simply for organizing elections, is their capacity to issue decisions that the executive and legislative branches of government cannot overrule. They guarantee the constitutional commitment to stable electoral democracy over time. Supervisory EMBs may assume the role of a fourth branch of government, serving as a guarantor over a

given mandate, such as organizing and managing electoral processes. Constitutionalizing a supervisory EMB vests it with a particular degree of legal certainty, regarding its independence and existence, that a supervisory EMB established through statutory law does not possess. However, the key principle is, in fact, whether the EMB is regarded within a society and by all political actors as a constitutional norm—irrespective of whether it is enshrined in a written constitution or through constitutional convention (Australia, Canada, New Zealand, the UK). This approach is still emerging, since there is no standard, universally accepted collective term for these institutions.

The powers enshrined in supervisory EMBs are their distinguishing feature. They possess the authority to regulate, investigate and sanction offences within the parameter of national legislation but autonomous from the executive, legislative and judicial branches of government. In some countries, supervisory EMBs are one of several EMBs that perform a single or limited number of more complex electoral management activities requiring specialized personnel. These activities may also be perceived as politically contentious, such as political party finance regulation or boundary delimitation. Their strength and remit over a single aspect of the electoral process in some countries illustrates how electoral management is becoming more diverse. For example, in Indonesia, the General Election Supervisory Body (Badan Pengawas Pemilihan Umum (BAWASLU)) was established in 2008 to regulate electoral administration and organize electoral activities. It is a separate EMB to the General Elections Commission (Komisi Pemilihan Umum (KPU)), which is mandated to receive and register political parties, organize election day voting and announce election results (Law 22/2007 Election Management, and Law 7/2017 Governing Elections). In 2017, BAWASLU gained considerable judicial and oversight powers, including supervising the KPU and adjudicating electoral disputes against the KPU, subnational EMBs or other public bodies involved in the management of elections. In the UK, the Electoral Commission was established with a specific mandate to regulate political party and electoral campaign finance (Political Parties, Elections and Referendums Act 2000, and Political Parties and Elections Act 2009). The National Election Commission (NEC) of the Republic of Korea possesses extensive powers to investigate alleged financial irregularities committed by political parties (Political Fund Act 1965). The NEC can request financial documents belonging to public and private institutions, access privately held communication data, formally summon political party representatives to be questioned before it, and issue fines for violations.

Mixed EMBs

Mixed model EMBs are an established approach to electoral management, conventionally comprising two separate EMBs—an Independent model EMB and a Governmental model EMB. The design and arrangements vary

significantly, both within and between different countries, as does the relationship between the two or more EMBs, but the independent EMB assumes the policymaking function with oversight over the implementation of election legislation. The governmental EMB is situated in a government ministry or local authority with responsibilities often limited to managing and implementing election day activities and related activities such as voter registration. The governmental EMB performs its duties under the supervision of the independent EMB. The power of the independent EMB may be established in law—the constitution or statute law—in the same manner as a single ‘unitary’ independent EMB. However, the independent EMB often exists without status as a legal entity and is under the direct authority of a government ministry. In this context, while the independent EMB may be considered functionally independent of the executive, it may not necessarily be established with legal structural independence. The Netherlands, for example, has two EMBs—the superior independent EMB that is the Electoral Council (Elections Act 1989) and the subordinate Ministry of Interior and Kingdom Relations. The Electoral Council has a remit to conduct political party and candidate registration, determine the final election results, and serve as an advisory body to the government and the parliament on election-related matters, including policy and legislative reform. The Electoral Council has seven commission members empowered to discharge their mandate autonomously of government but appointed by the Ministry of the Interior through an open recruitment procedure. Other electoral activities, including producing voting materials and organizing voting procedures, are managed by the Ministry of Interior and Kingdom Relations and local municipalities.

The Mixed model EMB is increasingly characterized by diverse and ever-evolving arrangements, driven by a motivation to better ensure political neutrality, but also for public policy efficiency in electoral management. Emerging arrangements include several EMBs performing separate functions entirely under the authority of a governmental or several independent EMBs, with each assuming a separate responsibility. The Mixed model can be regarded as a mixture of models. For example, Indonesia has two independent EMBs—the General Election Supervisory Body and the General Elections Commission. The UK has an independent EMB—the Electoral Commission—and two governmental EMBs: specifically, the Cabinet Office (a national ministry) and 393 local authorities. (This excludes Northern Ireland, which has an EMB—the Electoral Office for Northern Ireland—responsible for administering voter registration and election day activities.) Peru has three independent EMBs: the National Office of Electoral Processes (Oficina Nacional de Procesos Electorales (ONPE)), which organizes electoral processes and referendums; the National Jury of Elections (Jurado Nacional de Elecciones (JNE)), which administers electoral justice; and the National Registry of Identification and Civil Status (Registro Nacional de Identificación y Estado Civil (RENIEC)), which is responsible for

the civil registry and electoral roll. Each of these are established as independent EMBs in the Constitution (Constitution of Peru 1993, article 177).

3.3. Governance mechanisms—the commission

No political party or candidate should benefit from an unfair advantage regarding how an electoral process is administered. An independent EMB requires a governance structure with an independent executive organ to uphold this principle through oversight of the implementation of its remit. The executive organ comprises one or more individuals—commissioners—who collectively form the commission, which is the steering committee of an EMB, making strategic and operational decisions on electoral management. The commission is an integral component to ensure an EMB's effective, non-partisan and independent function. In some countries, a common mechanism to promote impartiality and protect an EMB's functional independence is for commission members to be nominated by political parties represented in the legislature, or even by political parties without legislative representation; in other countries, impartiality is encouraged by having a commission composed entirely of non-party-affiliated members, with a focus on their professional expertise. These two approaches are regarded as different options for achieving impartiality—either by excluding any political interests, or by including them all, to balance and neutralize diverging political interests. Both have advantages and disadvantages, which contribute to well-functioning, but also to dysfunctional, electoral management. Often, however, any disadvantages or dysfunctional outcomes of a commission's adopted composition are the result of political bargaining and an attempt to promote political stability and inclusion in an electoral and political process.

In contrast, some EMB commissions are composed entirely of members of the judiciary, while others are composed of a combination of profiles. The candidate requirements and recruitment process will often determine the impartiality and independence of an EMB.

The number of commission members and their remit and tenure differ significantly between countries. For example, the Election Commission in India currently has 3 members, while the Superior Electoral Court in Brazil has 12. The Central Election Commission in Ukraine has 17 and the National Independent Electoral Commission in Chad has 30 members. In contrast, Canada has a sole commissioner—the chief electoral officer.

Commissions with political party participation

Support of all electoral stakeholders—political parties and the electorate—contributes to broader acceptance and support for an EMB's mandate. Political parties are a link between citizens and the political system. A commission formed

of political party nominees is one mechanism to achieve this. However, a commission composed of political party representatives from across a political spectrum does not in itself guarantee that a commission is non-partisan. The role that political parties play, and its extent, in the selection of commissioners varies considerably, as does the mandate and behaviour of individual commissioners once appointed.

Commissions formed by political party nomination may be more amenable to political parties' concerns, providing an avenue for the expression of their interests and needs in an electoral process. This can foster transparency and consensus over electoral procedures and prevent manipulation by the executive or legislature. In this way, partisan commissions can facilitate the acceptance of decisions made by an EMB, even if they do not benefit them directly. This model came into widespread use from 1989 onwards in the democratic transitions in Central and Eastern Europe. The pervasiveness of the secret police and informer networks of the previous regimes meant that there was little possibility of finding respected independent citizens to act as commissioners. The concept of 'mutual policing' was developed out of an environment of limited trust. The concept was designed to facilitate monitoring and balancing of any ill-intent between individuals on an EMB commission. When a commission is composed of members appointed through a fair mechanism and political interests are balanced, the commission remains impartial. Political parties control each other and ensure that no party unduly benefits from a decision over another.

However, there is a risk that the commission becomes overly politicized. An important consideration is the composition of a commission—how different political parties are represented fairly. In adversarial political systems or highly polarized political environments, a commission with an even number of members from the ruling and opposition parties may lead to deadlock, diminishing a commission's operational function and effectiveness (Lara Otaola 2018). Good practice to avoid this is to design a commission composed of an odd number of members. In practice, the extent to which a political-party-nominated commission is impartial depends on the acceptance of consensus-based politics, the behaviour of political parties and the independence of other state institutions required to uphold the principle of EMB autonomy and the apolitical management of electoral processes.

Even if the law formally provides equitable opportunities for political parties in the legislature to be represented, independence from political influence by a government cannot be taken for granted. For example, a commission may comprise members from each political party in a legislature in equal number, irrespective of the number of seats it has in the legislature. If minority parties are pro-government (indicated by legislative voting patterns, particularly in a consensus-based system), the formula for nominating commissioners in practice does not guarantee impartiality or independence from government. If the

electoral system is favourable to doing so, there may even be an incentive to create bogus political parties in order to gain supportive commission members. Furthermore, if the political environment is polarized, even a genuine balance between pro-government and opposition parties in a commission may risk politicizing a commission's work. In this context, it may be helpful if some of the commission members are appointed by non-political institutions perceived as neutral.

Commissions without political party participation

Another alternative approach is a commission consisting of members without political party affiliation. Criteria for selection is often required and specified in electoral law, such as possessing specific qualifications, having attained a higher education degree, or being a member of a particular profession, such as the judiciary. Some legal frameworks explicitly prohibit the appointment of political party members to an EMB commission. The Constitution of Nigeria 1999 (article 156) states that a person who is a member of a political party is deemed unqualified for appointment to the Independent National Electoral Commission. This principle is further supported in the Third Schedule (part 1, item F), which relates to federal institutions and specifies that commissioners shall be non-partisan and a person of unquestionable integrity.

It may also be that commissioners are nominated by a political party but are expected to be entirely politically independent upon appointment and behave with impartiality when discharging their duties. Non-partisan commissioners may also be desirable for operational reasons, as politically active commissioners may have a conflict of tasks during elections. The purpose of their appointment is to provide technical expertise and experience. A political party may nominate an academic or career civil servant with a particular political inclination but not a prior political career—the qualification being experience in administering public services across society.

In highly politicized contexts, commissions with non-political party affiliation may still be perceived as partisan. Individual commissioners may be sympathetic, or perceived as such, to a particular political party or faction based on previous political activity, personal linguistic or ethnic background, or any other point of societal division represented in party politics. Under these circumstances, to avoid the perception of politically independent commissioners being affiliated with a particular political party or candidate, many countries choose to adopt a commission comprising members appointed by or representing political parties.

Commissions with participation of the judiciary

An alternative approach is for a commission consisting of members of the judiciary. In Egypt, the 10-member commission comprises judges appointed from various judicial bodies. In several Latin American countries, where EMBs possess

judicial, executive and legislative powers, commission members are serving or retired judges. Indeed, in Brazil, electoral management is the responsibility of national and state electoral courts, which are considered a specialized segment of the judicial branch, comprising judges of various categories with a small number of expert lawyers. In Costa Rica and Guatemala, all EMB members are serving judges. This approach exists uniquely in Latin America and was adopted as a specific solution to a unique history of elections being undermined by executive branches of government. However, in countries where judicial impartiality is lacking, there is a risk that this approach may increase incentives for a political party or executive to corrupt the judiciary.

Commissions with mixed political party and non-party participation

Achieving political impartiality in a commission may prove to be a challenge, particularly in countries with a polarized political culture or adversarial political system. In these contexts, and where a combination of partisan and technical expertise is desired, it may be optimal for a commission to comprise political parties and expert members, to encourage impartiality. Mixed membership commissions assume numerous and diverse forms, born out of the need to ensure cross-party support for an EMB's mandate and broader acceptance of an election result. They can further promote public trust, inclusive decision-making and the professional delivery of electoral processes.

For example, in the Republic of Korea, three of the nine commissioners are appointed by the president. The National Assembly selects another three, and the final three are nominated by the chief justice of the Supreme Court. In Mozambique, the National Election Commission has 17 members—10 nominated by the largest political parties and 7 representing civil society organizations. In the UK, a country with a plurality electoral system, the Electoral Commission can have up to 10 commissioners. A maximum of four are nominated by the political parties in Parliament, with three nominated by the leaders of the three largest parties and the fourth nominated by the remaining smaller parties. The other six commissioners are subject to restrictions on any political activity, with four nominated to represent the interests of the devolved nations of the UK. Before 2009, all commissioners were prohibited from any political activity. New legislation in 2009 (Political Parties and Elections Act 2009) required the four political-party-nominated commissioners to contribute their experience from party politics to the Electoral Commission's work.

While the overarching principle guiding the appointment of a commission is to ensure political impartiality, broader social inclusion should not be overlooked. Mixed membership commissions provide an enhanced opportunity for the appointment process to promote inclusion—particularly of ethnic minorities—and gender parity. This is likely to enhance support for an EMB from a wider

cross-section of society, potentially contributing to the reduction of contested election results.

Commission appointment mechanisms

Commission appointment mechanisms are an integral component to encourage and ensure the independence of an EMB. Many factors influence the appointment process. Mechanisms for appointing commissioners are diverse and based on a multitude of contextual reasons. A commission composed of political-party-nominated members requires an appointment mechanism that reflects the balance of political parties represented in the legislature or—in some countries—even those that were registered at the previous election. Commissioners must collectively possess the required professional competence to fulfil their role. Commissioners selected based on their individual professional competence will serve as strong contributors to the impartial, independent and constructive behaviour of an EMB commission.

The legitimacy of a commission will further be enhanced if it is professional, possesses a gender-balanced membership and is representative of minority groups in a particular society. Some countries enshrine this requirement in law. For example, the Constitution of Kenya 2010 (article 250) specifies that the vice-chairperson of the commission must be of the opposite gender to the chairperson. The Central Election Commission of Kosovo has 11 members, and 4 are reserved for Serbian and other ethno-cultural minorities in the country (Constitution of Kosovo 2008, article 139).

Political-party-appointed commissioners

Political systems characterized by two-party politics with a differentiated government and opposition often use a bipartisan selection process for commissioner appointments. The method may require agreement between the prime minister and the leader of the opposition for each appointment. An advantage of this mechanism is the inclusion of the opposition even if it has only a small parliamentary representation—possibly the consequence of a disproportional electoral system, such as first-past-the-post. A disadvantage is that minor parties and independent members are often excluded (Bulmer 2019). In countries with majoritarian electoral systems or with a dominant political party, a two-thirds majority rule may exclude the opposition from genuine representation in the commission. If commissioners are appointed by a two-thirds majority vote in the legislature, but a government enjoys a two-thirds majority, it has absolute control over commissioner appointments. In Hungary, which has a mixed parallel electoral system, the National Election Commission has six members and a president; they were appointed based on a two-thirds legislative majority when the ruling coalition held two-thirds of the seats, undermining the principle of impartiality.

In contrast, inclusive appointment systems typically rely on a system of proportional representation to appoint commissioners, with the legislature performing the function of an electoral college. The design is appropriate for multiparty systems. A two-thirds majority rule should ensure that no single party can make appointments unilaterally and that agreement would have to be reached with at least some of the opposition parties (Lara Otaola 2018). For example, Colombia's National Election Commission consists of nine members elected by the congress in a plenary session 'in accordance with a system of proportional representation and based on proposals submitted by the political parties' (Constitution of Colombia 1991, article 264). The Central Election Commission in Albania consists of seven members appointed by the Parliament. Two are nominated by the largest party, one by the second largest party, two by the largest opposition party, and one by the second largest opposition party. The entire Parliament selects the chair through an open application process (Electoral Code 2008, amended 2015). The principle of inclusion and balanced political representation may result in the commission not having a neutral arbitrator if the position of chair is filled by a member nominated by the largest party in the legislature. In highly polarized contexts, a commission may effectively be dominated by the ruling party or parties. It may also be desirable for parties not represented in the legislature to be involved in selecting certain commission members. In Botswana, for example, the Independent Electoral Commission has seven members, comprising a chair, deputy chair and five commissioners. The five commissioners are chosen from candidates deemed qualified and impartial, and then nominated by an all-party conference convened on an ad hoc basis, which includes all registered political parties (Constitution of Botswana 1966, article 65A).

Non-political-party-appointed commissioners

A commission consisting of members without political party nomination does not mean party politics are absent from the appointment process. Rather, the emphasis is placed on individual members selected for technical expertise over political interest. Depending on the political context, it can be challenging to eliminate political party influence from the appointment process. Often, the head of state or a legislative committee will be consulted or directly involved in the appointment process. In New Zealand, the Electoral Commission comprises three members—a chairperson, a deputy chairperson and a chief electoral officer serving as chief of staff. Appointments follow an open, merit-based competitive process conducted by the Ministry of Justice. Candidates must be politically neutral and possess the necessary skills and experience, often with a background as a public servant or member of the judiciary, although this is not a requirement. The electoral legislation includes a provision for a judge to retain their rights and privileges if appointed (Electoral Act 2010). Prospective candidates are

interviewed by the deputy secretary of justice, a high court judge and the state ombudsman. The minister of justice circulates the names of recommended candidates to the leaders of the political parties in Parliament.

In India, the independence of the commission is enshrined in the Constitution (Constitution of India 1949, article 324). The chief election commissioner is appointed by the president on the advice of the prime minister and the cabinet, as is the nomination and appointment of additional commissioners. Neither the prime minister, nor the chief justice of India, nor the legislative opposition is involved in the appointment process. However, the executive does have an opportunity to provide advice on appointments, therefore potentially influencing the procedure, which the opposition does not have. The president appoints a chief election commissioner and also determines—and where applicable appoints—the number of additional commissioners, who are typically selected from senior-ranking public servant positions with reputations for neutrality and fairness. The first election in 1950 had a single chief election commissioner; in an attempt to limit the power of the position, two additional commissioners were added in 1989 and in 1993.

Alternative appointment mechanisms

Alternative appointment mechanisms designed to curtail political influence exist in several countries. In Brazil, the Superior Electoral Court comprises 12 members, all of whom are judges but selected by separate state actors. Five members are appointed by the judiciary (two by the ministers of the Superior Court of Justice and three by the ministers of the Federal Supreme Court), and the president nominates two from a pool of members of the judicial branch. In Fiji, a six-member Constitutional Offices Commission has been established to appoint members to independent bodies, including the EMB. It consists of the prime minister as chair, the leader of the opposition, the attorney-general, two members appointed by the president on the advice of the prime minister, and one person appointed by the president on the recommendation of the leader of the opposition (Constitution of Fiji 2013, article 132). The composition is designed to represent opinions from across the political landscape and state institutions. However, its impartiality is dependent on its political composition. It is possible for a qualified majority of members to represent the government or be appointed by the government, which would give the opposition a voice, but not a veto, therefore not preventing the government from making partisan appointments.

Security of tenure

The security of tenure for EMB commissioners is a principal determinant for upholding EMB independence. They must enjoy the confidence to execute their mandate and make decisions under electoral legislation and without political pressure. Legal protections for commissioners making decisions unpopular with

some political groups provide immunity from prosecution for activities undertaken while serving on the commission. In some countries, commissioners achieve an independent and highly regarded standing through a formal legal status equivalent to that of a parliamentarian or judge (e.g. India). Politically motivated attacks to subvert the work of an EMB may include reductions in members' salaries and conditions of service or the threat of removal from office.

Electoral legislation should state that commissioners serve for a legally defined, fixed term in office that is ideally longer than the electoral cycle and without the opportunity for recall by the government. Commissioners may be appointed to serve on a single-mandate commission, beginning and ending their tenure together, or they may be selected independently of each other with overlapping tenures. Staggering commissioner appointments against the legislative term facilitates their political independence and maintains institutional memory (Catt et al. 2014). Furthermore, longer and fixed-term limits may strengthen the autonomy of a commission if their tenure is longer than the government of the day.

For example, in the Republic of Korea, the National Election Commission is appointed for a six-year term (Constitution of the Republic of Korea, article 114), while the president is elected for five years. Shorter-term limits and renewable appointments could weaken a commission's independence if members are seeking reappointment. Non-renewable, single-term limits or an indefinite term are mechanisms for reducing any erosion of the impartiality or independence of a commission. Accordingly, the power of commissioners to enact electoral legislation and hold political parties to account without interference is strengthened. Election commissioners in India are appointed for up to 6 years or until age 65, whichever is earlier. The president can specify a shorter term of office. The law stipulates that the chief election commissioner must be granted the salary and benefits available to a supreme court judge and these entitlements cannot be reduced after appointment. The chief election commissioner can be removed from office only through impeachment by Parliament. Once the president makes an appointment, the Election Commission is insulated from political or other external influence. In New Zealand, the three commissioners are appointed for a maximum term limit of five years by the governor general on Parliament's recommendation. A parliamentary term in New Zealand is limited to a maximum of three years.

Safeguards to protect impartiality and independence do not mean that commissioners should be immune from removal or punishment for improper or illegal behaviour. A legal and democratic process for recall under such circumstances should also exist. Commissioners should only be removed through a process that requires cross-party support or the demonstration of wrongdoing. For example, the Constitution of Kenya 2010 states that 'a member of a commission may be removed from office only for: (a) serious violation of this

constitution or any other law, including a contravention of Chapter Six [which sets out a code of conduct for those in leadership positions]; (b) gross misconduct' (Constitution of Kenya 2010, article 251). EMBs should also adopt a code of conduct for their commissioners and staff to uphold the integrity of an electoral processes by deterring behaviour that conflicts with their responsibility to act with independence, transparently and impartially. The code of conduct must include reasonable and enforceable sanctions for any violation, such as dismissal or other disciplinary action.

Chief commissioner

The role of the chief commissioner or chair of a commission is an essential determinant for ensuring its effectiveness—as leader of the organization and as a neutral arbiter of a commission's work if required. The position may be defined on the principle of 'first among equals', with the appointment of the chief commissioner based on separate terms, at a higher level, to other commissioners—for example, at the same level as head of state, prime minister or judge (Catt et al. 2014). In India, the chief commissioner has the legal status of a supreme court judge. Commissioners cannot be removed except upon the recommendation of the chief commissioner (Constitution of India 1949, article 324). The case for a 'first among equals' position is stronger when an EMB is a new institution or a political system and respective state institutions are not established. However, if a chief commissioner is appointed by the executive or a head of state and enjoys greater protection under the constitution than other members, the independence of the position and that of the commission may be more susceptible to political influence. Chief commissioners may also possess additional powers to hire and fire staff or represent the EMB in state institutions or a court of law. In countries where no legal distinction is made between the chief commissioner and other members, a chair is often selected from the commission. All commissioners are appointed on equal terms and elect the chair at the beginning of their tenure.

Endnotes

1. Globally, 63.7 per cent have an Independent model EMB; 20.5 per cent have a Governmental model EMB; 13.5 per cent have a Mixed model EMB; 2.3 per cent do not hold national elections. Data correct at the most recent election, according to the International IDEA Electoral Management Design Database (September 2021).
2. Comparing the International IDEA Electoral Management Design Database for 2006, 2014 and 2021. The changes of model between 2006 and 2014 were: Governmental to Independent: Egypt, Jordan, Montserrat, New Zealand, Sri Lanka, Syria, Tonga; Mixed to Independent: Cameroon, Côte d'Ivoire, Madagascar, Maldives, Togo, Tunisia; no elections to Independent: Libya. The changes of model between 2014 and 2021 were: Governmental to Independent: Nauru, Oman; Mixed to Independent: Central African Republic. Note that changes of EMB model between the selected years (2006–2014, 2014–2021) differ as changes to the database description of each model were adapted (in 2014), as more information was gathered and classifications were revised.

4. Additional considerations for EMB independence

The legal and institutional frameworks form the foundation for independence and political autonomy in electoral management. However, there are several key attributes external to this framework that will allow an EMB to consolidate its functional independence to independently fulfil its mandated functions.

4.1. Accountability

An independent EMB must be held to account with appropriate rigour to instil confidence and ensure acceptance in its work and ultimate election outcome. Following principles of good governance and quality in the performance of public service delivery, the EMB management and operational policy decisions—a strategic plan—should be formed in open, transparent, inclusive and deliberative settings. Moreover, this process must involve genuinely meaningful—rather than merely routine—engagement with stakeholders, otherwise it is a worthless exercise. EMBs should maintain necessary records of their own financial activities and decision-making processes, and publish these for public scrutiny and submission to the state audit agency, according to relevant national legislation. Independent EMBs should be held accountable to the electorate and government through a permanent legislative committee that scrutinizes its political impartiality, financial expenditure and operational activities (Shein and Brown 2020; Shein et al. 2020; OECD 2002). Notably, the legislative committee should have a balanced number of members from different political parties to ensure the governing party does not have a political advantage in the oversight of the EMB.

EMB may not be legally subjected to legislative scrutiny; however, good practice requires an EMB to be transparent in its work and make necessary

records of its activities voluntarily accessible. The Election Commission of India is not legally required to report to Parliament each year or following an election. However, it prepares reports on relevant electoral matters and makes these available to the public and Parliament. The Election Commission does not possess any formal mechanism to recommend changes to electoral law but submits legislative proposals for reforms on an ad hoc basis to the government. The New Zealand Electoral Commission is required to submit a statement of intent—a business plan—at the beginning of each fiscal year. It includes a forecast of its operating environment, specific objectives, anticipated outcomes, its intended impact and how it intends to achieve this, financial and non-financial performance forecasts, and matters on which it will consult or notify the minister of justice before making a decision, as well as the frequency of reporting (Crown Entities Act 2004). Despite the independent status of the Electoral Commission, the minister has the authority to decide the content of the statement of intent. However, New Zealand enjoys a strong culture of accepted neutrality in public service. It would be considered controversial for the minister of justice to amend the Electoral Commission’s submission. Following each fiscal year, the Electoral Commission prepares an annual report providing an assessment of its operations and performance. The minister of justice approves the statement of intent and the annual report with Parliament.

An EMB held to account, and accounting for itself, is a stronger deterrent against political attempts to influence or undermine it. Accountability mechanisms provide an EMB with resilience and evidence to empower it against threats to its independence.

4.2. Finance and budget

An integral component of a politically and functionally independent EMB is its financial independence to fund its operational costs and the activities it deems necessary at a specific point in an electoral cycle. A budget that does not reflect the accurate cost of activities, staff or other institutional and/or operational costs undermines its independence and ultimately its effectiveness in discharging its mandate (Neufeld 2020). An EMB dependent on multiple disbursements throughout a budgetary cycle, or with an un-costed budget from an executive, is exposed to the possibility of being placed under increased political pressure.

In most countries, the budget approval and disbursement process are contained in public administration legislation rather than specific electoral legislation. A lack of adequate legislation creates the opportunity for EMB independence to be compromised by a government. In these circumstances, any successful budgetary formulation may be the outcome of personal relationships between commissioners or senior staff and government officials, undermining the EMB’s

primary role as an independent body, and potentially exposing it to coercion and pressure to adopt or implement policy favouring the executive (Maley 2019).

The budgetary formula devised to finance an EMB will vary between countries, dependent on a country's public finance and fiscal governance model (OECD 2015, 2019). However, a point of consideration is the source of an EMB's budget within a government's national budget. An EMB may be financed as a statutory expenditure—an ongoing mandatory expense part of a national budget. It may also be financed as an appropriated expenditure—subject to negotiation and approval by the legislature each fiscal year. In Canada, the EMB is financed under both sources: directly from the public account as a statutory provider of public services for expenses related to its mandate; and with annual appropriations for additional costs, such as temporary staff or electoral materials for a year with significant electoral events such as a general or presidential election (Thomas and Gibson 2014; Elections Canada 2021). Guaranteeing a portion of an EMB's budget in statute law for ongoing operational expenses, subject to transparency and accounting practices, allows the EMB to plan and finance electoral processes while empowering it to maintain its independence.

Formulating the budget

A budget should be disbursed as a single sum at a recognized interval in a fiscal year. Several disbursements throughout a spending period may serve as an opportunity for an EMB to be subjected to political pressure from the executive to withhold an activity it has identified in its strategic plan.

The budget may be a single consolidated item in the national budget or consist of multiple items from the executive, at national, regional and local levels of government. An EMB will likely be required to formulate and submit its proposed budget for a defined period to the government (Maley 2019; Neufeld 2020). In Australia, the EMB is allocated an annual budget from the Department of Finance, based on itemized expenditure, each subject to approval. In India, the Election Commission submits its budget for approval by the legislature annually as an appropriated expenditure. The budget is disbursed from the federal Ministry of Law and Justice to finance the activities within its mandate and operational expenditure.

An EMB's budget should include staff and operational costs and a contingency sum for unplanned by-elections and other activities. An itemized budget may be required, which may pose a challenge to the independence of an EMB if the government identifies specific activities it does not want to fund, even if the EMB has identified such activities as necessary. For example, a government may not want to approve a budget line for voter education or adopt new practices such as voter registration management (Maley 2019). An accurately costed budget will provide an EMB with increased power to lobby effectively for the budget it requires and object to any budgetary shortcoming or rejected budget line.

Approving the budget

The legislature usually approves the budget of independent public institutions and will likely be informed by the executive's priorities. The budget should be presented and evaluated in a specific legislative committee scrutinizing the operations of an EMB. Subsequent amendments, if required, should be consensual before approval by the legislature. The greater the number of political parties involved in the budget approval process the stronger the political support for an EMB and, subsequently, for its independence and autonomy in implementing its responsibilities. The EMB should also be invited to participate in relevant legislative public finance committees following a public audit of its activities and performance (OECD 2002, 2015).

Non-state sources of funding

Integral to the independence of an EMB is its strength of autonomy in upholding the interests of all stakeholders involved in an electoral process in an equal manner. In emerging democracies, external funds and assistance to support an EMB's implementation of its mandate may serve this purpose. In some circumstances, a budget is approved by other actors, including international organizations, such as in post-conflict countries experiencing democratic transition. For example, the international community has assisted with the management of elections in Afghanistan since 2004. Private funding sources can raise concern over the security of an EMB budget and its impartiality in discharging its remit. Private, non-state funds may be provided with conditions attached that may influence an EMB in favour of a particular political or other agenda, therefore undermining its independence. Under limited circumstances, private companies have funded election management activities. Before the US presidential election in 2020, counties in several states in the USA, including Arizona, Georgia, North Dakota and Pennsylvania, received donations from private, not-for-profit organizations to arrange voter registration and voter education (NPR 2021).

Procurement

Procurement of services from private vendors is also essential for EMBs to implement their remit, particularly for voter registration and the production of ballot materials. For example, purchasing electronic voting machines or ballot paper printing. An Independent EMB procuring services from external providers requires a regulatory framework or system that should be independent of government. It should be flexible in its procedures, ensuring transparency and proper use of public funds to mitigate vested interests—which may be expected when, as is often the case, a general election is the largest single event organized by a country in peacetime.

4.3. Staff

Determining the personnel requirements, as well as the conditions under which staff are recruited and dismissed, and having independent control over the recruitment of seconded staff are integral to the independence of an EMB. A staff recruitment and remuneration policy that is formally separate from that of the government civil service serves to protect staff from political patronage. Upholding impartiality across an EMB will depend on the autonomy its staff has from the executive. Most EMBs have a permanent staff body to manage the continuous activities under their mandate that occur throughout an electoral cycle. EMBs also rely on numerous temporary employees on and around election day to support the administration of voting in the polling station and voter registration in countries with an active voter registration system.

Staff appointments should be guided by transparent recruitment processes, based on possession of necessary qualifications for a particular position, to ensure staff are not politically active or in a position that may otherwise represent a conflict of interest for the EMB. Staff should be employees of the EMB. Their employment conditions, allowances and approved salaries should be appropriate to deter staff from being susceptible to external influence by the government or corruption from other stakeholders. Qualified staff with a public-service-minded leadership provide an alternative and additional oversight mechanism (Shein et al. 2020; Catt et al. 2014). Professional staff will possess the knowledge and motivation to uphold the law and the impartiality of an EMB.

4.4. Remit

The number and type of electoral management activities and the extent of regulatory power that an EMB possesses may elevate the susceptibility of an EMB to the threat of political manipulation (Garnett and van Ham 2019). Some activities are perceived as more politically contentious than others. For example, in some contexts, political party and electoral campaign finance regulation, boundary delimitation and voter registration may be regarded as decisive to the outcome of an election. The mismanagement or fraudulent manipulation of these activities provides a significant opportunity for a political party to win or lose votes, making the regulation of these activities more attractive to interference. For example, in politically or ethnically polarized societies, an executive or political party with a legislative majority may seek to impede a specific electoral management activity it perceives may result in an outcome to its detriment. Voter registration and boundary delimitation activities in plurality and majoritarian electoral systems are two examples, as electoral results may reflect demographic change and related voting patterns. Activities such as the production of ballot

papers, ballot counting and tabulation of results can be closely observed and are well-understood activities. A safeguard to protect an EMB from malicious intent is to stipulate in law that any amendment to electoral legislation should only apply after the next election. This limits any direct intended benefit to a current government.

It may be the case that the broader an EMB's remit, the stronger its political and societal value, prominence and consequential power will be, therefore deterring political influence. However, in some instances, a division of responsibilities between several independent institutions mandated to perform electoral management may be a solution to deter politically motivated efforts to undermine an EMB's independence. A single-remit EMB may be more effective in delivering its remit. It can serve as a specialized institution but may be less able to defend itself from political manipulation. Amending a single electoral activity may command less attention from an electorate, limiting potential interest for opposition. An EMB with a remit covering all electoral activities may defend itself more robustly as it may enjoy greater public prominence. The context and the political culture within which an EMB functions will contribute significantly to the ideal scope of its remit.

In the UK, the Electoral Commission has a narrow role, with supervisory, investigatory and punitive powers. It is responsible solely for the registration of political parties and the regulation of political party and electoral campaign finance (Political Parties, Elections and Referendums Act 2000, and Political Parties and Elections Act 2009). The Electoral Commission has the power to seek a judge-issued warrant to retrieve documents from the premises of a political party or candidate, as it deems relevant to financial reporting that it believes may have been withheld. It also has the power to summon a witness to a compulsory interview. Failure to comply is a criminal offence. The Electoral Commission can issue fines (maximum GBP 20,000), leading to a criminal conviction if unpaid.

5. Contextual considerations

5.1. Political culture and institutional strength

Political will is a crucial determinant for an EMB's ability to function independently. Establishing an independent EMB in constitutional or statute law alone and providing it with legal personality and structural independence does not inherently guarantee or translate into effective functional independence. The legal and institutional environment must be conducive for an independent state institution to administer and regulate a political process autonomously. In the same context, where functional independence is more prone to being compromised, structural independence provides guidelines for political behaviour and serves as a deterrent and a corrective mechanism for dealignment and wrongdoing. Securing political will in any context is often the primary obstacle for designing and achieving independence in electoral management and maintaining it for the long haul.

In contexts where high levels of impartiality and professionalism are routinely expected of public services, and the judiciary is independent, the rules overseeing decision-making processes can afford to be more general than specific, without having negative consequences for elections. In Australia, for example, there is no constitutional provision establishing an independent EMB. Therefore, there is no barrier to prevent a government with a majority in Parliament from undermining or amending aspects of the EMB's remit. Yet, the rule of law, political stability and customary practices are satisfactory to prevent any threat to its existence or remit. However, where these norms do not exist, specific reference to an EMB's existence and subsequent protections in the constitution may be required.

5.2. Political tradition and electoral system design

Legislatures derived from plurality or majoritarian electoral systems are often more disposed to adversarial and polarized political discourse. If politics are polarized and the stakes are elevated by the design of a political system, that particular tradition may be extended towards institutions connected to the political process, such as an EMB. Political parties may seek to undermine or manipulate the remit or existence of an EMB. They may impede the implementation of its responsibilities by proposing new legislation or amending existing electoral legislation if it is perceived that the EMB is curtailing their interests. Furthermore, a commission consisting of political party representatives, depending on the nomination and approval mechanism in the legislature, may serve as a platform to replicate political division in the work of the EMB, leading to deadlock and reducing its effectiveness.

Box 2. Summary: Core legal instrument features to assist fearless independence

- Constitutional protection of basic features of an independent EMB
- Inclusive and transparent appointment process for commissioners
- Commissioners must be impartial and may not play an active political role
- Commissioners have guarantee of tenure and salary
- Commissioners have specified status
- Commission has full power over staff appointments through transparent processes
- Commission budget approved directly by the legislature
- Financial process for the commission guarantees disbursement and cashflow
- Transparent audit

6. Conclusion

This Primer has sought to provide an overview of independence and impartiality in electoral management. It has also aimed to stimulate analysis of the established classification of EMB design and structural independence, in a context that more accurately reflects electoral management moving into the third decade of the 21st century. However, the overriding message of this Primer is that independent electoral management is multi-faceted and highly context-dependent. The main attributes establishing and upholding independence in electoral management should be viewed from a legal and normative perspective, as well as an structural and functional perspective.

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Annex

About the author

Oliver Joseph is a member of the Electoral Processes Programme at International IDEA. He has a background working globally on electoral assistance and democratic governance support at the policy and practitioner level. At International IDEA, his work focuses on strengthening the integrity of electoral processes with an emphasis on electoral management design and special voting arrangements. He previously managed the voter registration and ballot paper production process for local authorities in the UK. He also serves as an Election Observer and Election Analyst on OSCE Office for Democratic Institutions and Human Rights election observation and assessment missions. He holds an MA in International Relations and BA in Political Science from University College London (UCL).

About International IDEA

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

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International IDEA's Electoral Processes Primers are arranged around various thematic aspects of the electoral cycle. The Primers are intended to explain existing issues as well as emerging trends in elections to policymakers, practitioners, public officials and civil society organisations.

Democratic elections depend on electoral management bodies (EMBs) – the institutions mandated to deliver elections – to be politically impartial and independent of government influence. This Primer examines the normative, structural and functional dimensions of EMB independence, such as constitutional and legislative protections, organisational leadership and composition, powers and remit over electoral cycle activities and EMB relations with government and other public entities.

Structural independence – formally independent institutions – enhance the ability of an EMB to defend itself robustly from attempts to undermine its legitimacy. Functional independence ensures EMBs possess autonomy over decision-making processes, delivery of their remit and the budget-making and financing mechanisms for their operational and electoral cycle activity delivery costs.



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