
**A Critical Assessment of the Qualification for Recruitment and Appointment of
Electoral Management Board (EMB) Members**

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ABSTRACT

This study sought to critically assess the qualification for recruitment and appointment of EMB members. Some form of consultation in appointing members of the EMB is more common. Involving the legislature, including opposition parties, in the confirmation process can help provide some degree of multiparty support for the appointments. Parliamentary factions and groups are consulted in Ukraine, and in Trinidad and Tobago appointments are made based on the advice of the prime minister following consultation with the opposition leader. Whether the final choice is made by the head of state or the legislature, a nominating committee or less formal grouping of individuals is used for part of the process in some cases. In many cases, the nominating committee decides who to appoint, but in some cases a committee presents a list of names that includes more names than there are places to be filled, and another body makes the final choice from within that group. The study concluded that there is no optimal number of EMB members, and no general principle to indicate that either full- or part-time EMB membership is preferable. The size of the country and its population, economic and geopolitical issues; the EMB's powers and functions; the strength of its secretariat; and whether electoral management follows the Independent or the Mixed Model may determine the size and work schedule of the EMB membership. One of the recommendations made was that a quality EMB membership selection process can be achieved by open advertising for candidates and ranking all applicants according to a transparently applied 'fit and proper' test.

KEYWORDS: Qualification, Recruitment, Appointment, Electoral Management Board, Internal Regulations, Appointment, Pledge-taking, Service and Security of Tenure

Introduction

According to PewTrust (2013), in EMBs under the Independent Model, the policy function is undertaken by individual(s) (i.e. the EMB's 'members') from outside the executive branch who are specially appointed for this task. Their role is similar to that of the board of a corporation—to guide the direction of the EMB—although in many cases EMB members have a full-time and more 'hands on' role than would be usual for a corporate board. Similarly, under the Mixed Model, the component independent EMB is guided by a 'board' of members. As opined by Rallings & Thrasher (2009), the process of appointing EMB members involves nomination or advertisement, selection and appointment. In some countries, the law has specific rules for all three stages in the process, but in others, only the body that makes the appointment is specified.

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Recruitment through Open Advertisement

In Iraq, members of the expert-based EMB are recruited through open advertisement. Interested candidates may apply directly to be considered for appointment or be nominated by members of the public. Applications are received and screened (through public interviews) by an independent body. The names of shortlisted candidates are submitted to the head of state for final appointment. While open advertising and screening mechanisms can provide a broad range of applicants for EMB member positions and promote competence in the selection of members, they do not necessarily guarantee that the most appropriate candidates are chosen. Where the mechanism for screening and appointing EMB members is dominated by one political grouping, competent candidates who are not in favour with this grouping may have lesser chances of selection.

Some Advantages and Disadvantages of Open Advertising for Members of EMBs

Advantages: Fosters transparency in appointment, Provides a wide pool of prospective members, Allows for open selection on merit, Promotes inclusiveness by allowing all stakeholders to nominate candidates, Contains checks and balances in the appointment process as the responsibilities for nomination, screening and appointment can lie with different bodies, and Opens opportunities for candidates outside the favoured elites.

Disadvantages: Eminent professionals may be unwilling to submit themselves to public screening. People may be discouraged from applying, as failure to be appointed will be publicly known. Cost of advertising and screening processes, Time taken to complete appointment process. Oversight of membership and operations of screening committees may be required and Open advertising and selection processes may disguise the fact that a dominant political group still determines EMB Membership.

Appointment of EMB Members

The head of state appoints EMB members in many countries. In Canada, Latvia and Mexico, the legislature is responsible for appointment, while the court is responsible for appointment in Costa Rica. The division of EMB appointment powers between the executive and legislature (and judiciary) provides checks and balances in appointment procedures and enhances the appointment process. If one branch of government (especially the executive) has the sole right to appoint EMB members, there is a danger that such appointees, even if they are men and women of integrity, may be perceived by the public, and especially the opposition parties, as pawns of the appointing authority (UN 2005). Even if the power to appoint EMB members is divided between the executive and the legislature, this arrangement will be fettered if the same party dominates both branches, or if the executive effectively controls the legislature. In this case, the requirement of a two-thirds majority in the legislature to approve EMB appointments could be a useful remedy, because it may give minority parties a veto power; this voting rule is used in Mexico, Nigeria, Uruguay and Yemen.

The extent to which the head of state makes his or her own choice, chooses after consultation or follows the decision of others varies. In Pakistan, the head of state chooses all members, while in Guyana and Saint Lucia the head of state appoints all members but chooses only some of them. The unilateral appointment of EMB members, especially by the executive branch, has been criticized by many analysts, who argue that it could encourage the appointment of government and ruling party sympathizers rather than impartial arbiters. Some form of consultation in appointing members of the EMB is more common. Involving the legislature, including opposition parties, in the confirmation process can help provide some degree of multiparty support for the appointments. Parliamentary factions and groups

are consulted in Ukraine, and in Trinidad and Tobago appointments are made based on the advice of the prime minister following consultation with the opposition leader.

Whether the final choice is made by the head of state or the legislature, a nominating committee or less formal grouping of individuals is used for part of the process in some cases. In many cases, the nominating committee decides whom to appoint, but in some cases, a committee presents a list of names that includes more names than there are places to be filled, and another body makes the final choice from within that group. In Indonesia and South Africa, the legislature chooses from the names proposed by the panel. In Brazil, the president selects two from a list of six provided by the Supreme Federal Court. In Lithuania, the minister of justice and the bar association each provide a shortlist and the members are selected by drawing lots (Binder 2008).

Another way to share the role of appointing EMB members is to let specified bodies select a certain percentage of members instead of appointing all members in the same way. For instance, in South Korea, three of nine are appointed by the president, another three are elected by the National Assembly and the final third is nominated by the chief justice of the Supreme Court. In Lithuania, some members are nominated by the minister of justice and the bar association. In Latvia, the Supreme Court elects one member of the EMB and in Botswana the Judicial Service Commission chooses five of the seven members from a list of recommendations from the all-party conference. Key government departments each designate a member of the EMB in Portugal.

Qualifications for Appointment

Whether the personal qualifications required for appointment to an EMB are detailed in the electoral law generally depends on whether the EMB is expert based or multiparty based. For multiparty EMBs, political parties usually use their own criteria for appointing their representatives to the EMB, such as seniority in the party hierarchy, party membership or professional qualifications. There are some multiparty EMBs for which the law defines criteria for members' qualifications, such as not being a party activist or not having recently held political office. In Mozambique for example, members of the multiparty EMB are required by law to be professionally qualified and to carry out their work with integrity, independence and impartiality. This means that political parties are obliged to nominate candidates who meet the qualifications of non-partisanship and independence. Such nominees are in many cases eminent members of the community rather than members of the political parties that nominated them.

In the case of expert-based EMBs, the electoral law may define an extensive set of personal qualifications for EMB members, as it does in Indonesia. Alternatively, the law may rely on its definition of the EMB's expected behaviour and functions to define the qualities of EMB members to be appointed, such as being known for their moral integrity, intellectual honesty, neutrality and impartiality (Senegal). It is typical to expect EMB members to meet the criteria of professional competence and political neutrality. In Mexico, the Philippines and Vanuatu, previous election candidates are not eligible, and in Bosnia and Herzegovina, Mexico, Moldova, Nepal and South Africa, those with a high political profile are not considered in some countries, appointment is open only to those with legal training.

The manner in which EMB members are nominated for appointment may influence the type of person chosen, which may work in favour of or against certain sectors of society. For example, in Indonesia in 2001, it appears that the initial nominations for potential members of the new EMB were sought solely from distinguished academics; thus, most nominees were

also academics. Open processes can hide a more controlled environment of appointment to EMBs. For example, the 1999 EMB law in Azerbaijan required that half the EMB members be appointed by the legislature and half by the president. Since the president's party controlled the legislature, this resulted in a nominally non-partisan but in reality, government-influenced EMB. While some electoral laws specify that EMB members must have a certain occupation, few specify any appropriate mix of experience or skills. Where qualifications are required, these are generally legal. In the corporate world, a company with activities as large and broad as an EMB's would be unlikely to have a narrowly focused board.

Conditions of Service and Security of Tenure for EMB Members

In countries with full-time EMB members, their conditions of service, especially salaries and benefits, are generally publically known. As constitutional public bodies, the conditions of service for many EMBs are determined by the independent body that sets terms for parliamentarians, judges and other public bodies—such as the Commission on Remuneration of Representatives (South Africa) or the Law on Remuneration of Public Officials (Latvia). EMB members may be appointed under the same conditions of service, including pay levels, as senior judicial officers or other senior public officials. For instance, in Ghana, the chair has the same terms as a justice of the Court of Appeal, and the other commissioners are equivalent to a justice of the High Court. In some places such as Bangladesh and Liberia, EMB members receive police protection in recognition of their senior public position.

Part-time EMB members usually receive a sitting allowance when they attend EMB meetings. Some countries augment this with a monthly retainer allowance. Such allowances are determined by the government in line with its own policies and regulations. EMB members' remuneration is often charged directly to the consolidated fund. This arrangement assures members' benefits and salaries during their term of office and helps them maintain full independence in their work.

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

Another safeguard for commissioners who may be taking decisions that are unpopular with some political groups is immunity from prosecution for activities undertaken while serving on the EMB. In Senegal EMB members cannot be investigated, arrested or prosecuted for their work on the EMB, and in Mozambique they have legal immunity except for actions that would have an improper effect on the election result. In Guinea and South Sudan, commissioners can only be prosecuted if they are caught in the process of committing a crime (Renwick, 2010). Protecting the tenure of party representatives on multiparty-based EMBs can be a complex issue. If parties are responsible for appointing and removing their EMB representatives, they may also be free to replace them when they wish, as they are in Mexico.

Oath/Pledge-taking or Affirmation

In many countries, such as Botswana, Lithuania, Nigeria, Pakistan, Senegal, South Sudan and Ukraine, EMB members take a formal oath or a pledge of allegiance, loyalty and integrity

before taking office. The oath or pledge may be administered by a senior official or judicial officer, for example, the chair or deputy of the Seimas (the legislature) in Lithuania. The oath/pledge-taking binds the EMB members to uphold the country's constitution and electoral laws. The text of the oath or pledge may be simple, or more detailed. It may also include or refer to the code of conduct or any law governing conflicts of interest for EMB members.

For example, the oath used in Guinea is: 'I swear on my honor to faithfully and honestly fulfill my duties as a member of the CENI, to obey only the sole authority of the Act, not to engage in any activity that may affect the Independence, neutrality, transparency and impartiality of the Independent National Electoral Commission (INEC), to keep strictly secret deliberations and vote, even after the termination of my functions. For perjury, I face the rigors of the law' (Renwick,2010).

Internal Regulations

An EMB will generally need to issue and maintain a series of regulations governing the internal functioning of its operations. These may cover administrative, financial and technical issues, such as staff safety and security, authorizations to speak to the media, meeting procedures and standing orders, the membership of internal committees, logistics controls, purchasing, asset controls, financial disbursements and records management. These regulations may have more impact if the EMB members (or the head of the secretariat in a governmental EMB) are required to agree on and formally issue them. EMBs can delegate powers to make less critical internal rules to specified members of the secretariat. Distribution of these rules to all EMB members and staff (in regional/local as well as central offices) will promote adherence. Clear and enforceable sanctions for breaches of these regulations are necessary.

Meetings of EMB Members

In many instances, a quorum consists of 50 per cent of the members; sometimes, as in Botswana, one of those must be the chair or their designated deputy. A number of decision rules apply. In many places, including Bhutan, Botswana and Latvia, a majority of those present can take a decision, which given a quota of half of the members means a decision can be made by a quarter of members. In Georgia, a decision is made by a majority vote of those at the meeting, as long as that also comprises a third of the total membership. It is common for the minutes of EMB member meetings to be signed by both the chair and the secretary, and in some cases (especially in multiparty EMBs) by all members of the EMB, in order to authenticate them. While full-time EMB members may be available daily to provide direction to EMB secretariat staff, part-time members are more likely to meet only occasionally to deliberate policies and activities that shape the EMB's operations. Outside electoral periods, full-time EMBs may meet every week, while part-time EMBs usually meet less frequently, often monthly. During peak electoral event periods, more frequent meetings are usual; full-time EMBs may meet as often as daily.

Closed or Open EMB Meetings

EMB meetings that are open to the public may promote greater trust in the EMB. Where meetings are open to the public by law, it is important that the EMB publicizes the dates of its meetings. It is also important that it cooperates with the police to ensure the maintenance of security and protocol during EMB sessions. In Bosnia and Herzegovina, Lithuania and Moldova, the law provides for EMB meetings to be open to members of the public, and members of the public may record or film EMB sessions provided that such activities do not disrupt the proceedings. In Lithuania, EMB meetings are broadcast live on their website. In Guam, the EMB holds a public meeting at 4 p.m. on the third Thursday of every month (Dutzler, 2002).

In South Africa, EMB meetings are closed to any person who is not a member, unless he or she attends by special invitation, and often only for a specific item. Closed EMB meetings may allow more open discussion, especially on sensitive matters, and members do not have to fear public reprisals for personal views on any matter brought before the EMB. Decisions can be presented as agreed upon by the entire EMB, with no report on how close the vote was, and so give a unified voice to the EMB, similar to the idea of cabinet decisions in the Westminster model. However, closed meetings reduce the transparency of EMB decision-making and can lead to public suspicions about the influences on the EMB. Any closed EMB meetings need to be followed quickly by a public announcement or media conference on their deliberations and results. Decisions taken during each meeting still need to be publicized, and the law often specifies that certain decisions must be included in the formal gazette or government newsletter. Many EMBs list all decisions on their website.

EMB Member Committees

For EMBs with a relatively large number of members, it can be advantageous for the EMB to form committees to oversee or manage some of its activities. In Indonesia, the formation of such committees, which are responsible to the full membership of the EMB, has allowed greater specialization and concentration by EMB members on key policy tasks. They may be an advantageous means of rationalizing oversight workloads during periods of peak electoral activity. In some cases, such committees have the power to co-opt non-EMB members, such as professionals from outside the EMB, or EMB secretariat staff. Some EMBs establish a smaller group that is entirely or mainly made up of their members, which interacts with the EMB secretariat on behalf of the members as a whole. In Mexico, the law provides for the permanent use of six committees: electoral training and civic education; electoral organization; political parties; professional electoral service; voter register and reports and complaints. The Nigerian EMB has 15 committees covering core election roles such as logistics as well as organizational matters such as tendering and staff welfare.

EMB Members' Relationships with the EMB Secretariat

Where Independent or Mixed Models of electoral management are used, the relationship between EMB members and EMB secretariats is critical. Appropriate roles for EMB members can vary widely. EMBs made up of part-time members are more likely to adopt a more hands-off approach of providing broad policy review and oversight, while full-time members may be more directly involved. Members of component independent EMBs under the Mixed Model may be less likely to be involved in detailed administration issues, and more involved in overall integrity and quality control. In elections marking a transition to multiparty democracy, members of EMBs under the Independent Model that use a public service secretariat, and members of component independent EMBs under the Mixed Model,

may find it particularly prudent to assume a publicly visible operational management role in order to enhance the public credibility of the electoral process. In some countries, EMB members may assume the responsibility of head of a department of the secretariat. Where EMB members are involved in the day-to-day leadership and management of the EMB's activities, as was the case in Indonesia in 2004, allocating specific direction and oversight tasks in this manner clarifies responsibilities and provides greater clarity to the secretariat staff. Individual members of the EMB in Thailand take on a similar management-oriented role.

According to Donno, (2006), elements that can promote an effective working relationship between EMB members and the secretariat include a clear delineation of powers and tasks between the members and the secretariat, clear hierarchical authority between the two, and competent appointments that generate mutual respect. Where public servants make up the secretariat of an EMB under the Independent Model, it is important that they report directly and only to the EMB—not also to an outside government department. Where the Mixed or Governmental Model is used, a single departmental reporting responsibility for electoral issues handled by the secretariat staff of a governmental EMB is highly preferable for the same reasons. Attendance by the head of the secretariat or his/her nominee at all EMB plenary meetings as an invited speaker or guest, a non-voting EMB member or as an EMB member with full rights (as in Australia) reinforces the links between EMB members and the secretariat staff and ensures that all meetings have the benefit of advice on the practical operations of the EMB.

Conclusion

1. Independent EMBs are found under both the Independent and Mixed Models and are guided by a board of EMB members. With very few exceptions, EMBs under the Governmental Model, and governmental EMBs under the Mixed Model, do not have EMB members, only secretariat staff.
2. There is no optimal number of EMB members, and no general principle to indicate that either full- or part-time EMB membership is preferable. The size of the country and its population, economic and geopolitical issues; the EMB's powers and functions; the strength of its secretariat; and whether electoral management follows the Independent or the Mixed Model may determine the size and work schedule of the EMB membership.
3. Independent EMBs under the Independent and Mixed Models may have a membership that is multiparty (nominated by political parties qualified to do so) or expert (politically non-aligned members appointed on the basis of their professional skills) or a combination of political and professional appointees. The type of membership that is suitable for a particular country will depend on its political environment and stage of democratic development.

Recommendations

1. EMB members need to develop decision-making and management mechanisms that are suitable for the type of EMB and the country's management culture. They also need to adopt standing orders that ensure transparent EMB meeting and decision-making processes, and internal regulations for the effective administration of the

EMB. It may be useful for the EMB membership to form subcommittees that deal with different aspects of electoral administration.

2. A quality EMB membership selection process can be achieved by open advertising for candidates and ranking all applicants according to a transparently applied 'fit and proper' test. The most widely accepted procedure for EMB appointments is for one branch of government to nominate and another to confirm. This process could start with the executive or judiciary and end with the legislature, or vice versa.

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