

## Chapter 3

# The Powers, Functions and Responsibilities of an Independent Election Management Body

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The Commonwealth works closely with election management bodies in all parts of the globe. It has, for instance, and in response to requests from the countries concerned, deployed a large number of election observation missions. It has also provided technical assistance and capacity-building support to strengthen the work of many Commonwealth election management bodies. Furthermore, the ‘Good Offices’ activity of the Secretary-General, which seeks to support countries experiencing specific political difficulties, often focuses on problems relating to functioning of the democratic system and the role of elections.

More recently, through the Commonwealth Electoral Network, the Commonwealth Secretariat has convened a series of working groups, made up of senior officials drawn from election management bodies across the Commonwealth, to explore many of the major challenges that countries confront in their efforts to consolidate democracy: the independence of the election management body; managing the power of incumbency; political party and campaign funding; voter education and participation; voter registration; vote counting, tabulation and the dissemination of election results; and the role of new (social) media.

It is in light of this experience that the Commonwealth offers these guidelines on the powers, functions and responsibilities of such bodies.

### 3.1 The meaning of independence

*The election management body must be independent and impartial, which means not being under external direction, control or subject to undue influence – including, and most crucially, on the part of the government, but also of financial (local or foreign) and other interests.*

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It is essential that the mandate of the election management body be cast in terms of ensuring free, credible and inclusive elections, in line with the constitution: elections that meet international and regional standards. Its role, therefore, is not simply to organise elections, but to act as custodian of the integrity and legitimacy of the democratic process – in order to protect the political rights of citizens.

An election, furthermore, is not just a discrete event, but also a complex set of interlocking processes that require attention and resources at every stage. It is best, therefore, that the election management body be permanent, rather than being created for each election – making it possible for it to be present throughout the electoral cycle.

It is also important that the election management body should have influence over all aspects of the electoral process. This means, in addition to responsibility for determining who is eligible to vote and to stand for election, the organisation of polling, and the counting and aggregation of votes, the election management body should have a role in the delimitation of electoral boundaries.

### 3.2 Composition and appointment

*The election management body must be composed of people who have the confidence of society as a whole. They should command the trust of the political parties, but not necessarily be drawn from them: selfish party interests, as far as possible, must be removed from the process. The mechanism for appointment to the election management body should be designed in such a manner as to achieve these objectives.*

*Members of the election management body should be protected by and subject only to the constitution and the law – they should be removable only for cause.*

*Ideally appointees should not be persons whose further career advancement may be dependent on their performance as members of the election management body.*

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The criteria and procedures governing the composition of, and appointment to, the election management body, as well as those for disqualification or removal, must be clearly spelled out in the constitution or in statute law, which should also define the powers and functions of the institution.

What matters most, however, is not the number of commissioners or the composition of the election management body, or even the manner of its appointment, but the political impartiality, integrity and competence of those selected to undertake this onerous task. A high degree of involvement on the part of the executive – or indeed of parliament, especially when it is firmly controlled by a ruling party – in choosing who is to run the election management body, is likely to politicise such appointments.

Especially where trust is lacking, therefore, political parties often lobby for a system that allows them to appoint members. Such an approach has many drawbacks. It tends to politicise the institution and invariably leads to acrimony or deadlock. It is better to select people not on the basis of political affiliations, but in terms of their high standing within society. They should be people who carry moral authority and are known for their wisdom and common sense. It is advisable also to include a senior and respected member of the judiciary.

There should be a mechanism, independent of the executive, and preferably involving the legislature and the judiciary, responsible for selecting the chairperson and members of the election management body. The best approach is that these posts should be advertised and appointment to them should be subject to public scrutiny. To this end, it is important to allow sufficient time to ensure that political parties, and civil society organisations generally, can be fully involved in the process. It is a good idea to allow members of the public to submit written objections to a particular

candidate or candidates. Although the head of state might formally make such appointments, those chosen must be firmly independent and generally recognised as such.

The chairperson and members of an election management body, once appointed, should not serve at the whim of the executive or of parliament: they, and especially the chairperson, must be given security of tenure within legislation. Normally, the criteria for removal should be identical with, or similar to, those for the removal of a senior member of the judiciary. Such protection from dismissal, except within the terms of legislation and following defined procedures, is important in securing the independence and neutrality of the election management body.

There are no strict rules on the size of an election management body, but there are clear advantages in ensuring it is not too large and unwieldy. In some places a single person is, or has been, responsible. In others, a relatively small group of eminent persons are charged with overseeing the electoral process.

Clearly, there is a balance to be struck among the sometimes conflicting objectives of securing wide representation, effectiveness and economy. In all cases, however, issues of gender equity should be an important consideration. The complexity of a country's geographic, social and political characteristics may also need to be taken into account. In post-conflict situations, or where there are historically disaffected communities, it may be necessary – in order to encourage reconciliation and build confidence – to increase the size of the body.

Successful candidates are generally not selected on the basis of their electoral expertise. It is important, therefore, to ensure that a highly professional chief electoral officer is appointed. The members of the election management body should act as the policy organ, leaving day-to-day management to a cadre of well-trained and highly motivated election professionals.

The vexed question of whether or not all or some of the members of an election management body need be employed full-time depends on local circumstances. Clearly the question of cost would be one consideration in making such a decision. It is also important to think about how these people fill their days in discharging their responsibilities, without becoming involved in matters about which they have no particular competence. One solution is the delegation of oversight responsibilities for particular activities to individual commissioners, but this too can be problematic and has, on occasion, led to conflicts of interest and accusations of patronage.

### 3.3 Powers, functions and responsibilities

*The role and authority of the election management body, as well as the tenure of its members, should best be defined and protected in the constitution. If its independence is to be secure, its specific competencies, powers and functions need then to be enacted in legislation.*

*Such legislation needs to provide the election management body with the powers to make policy, both to conduct the elections and for the wider role of building up a democratic culture in the period between elections.*

Detailed legislation needs to be enacted, therefore, to ensure that the principles enunciated in the constitution – covering all aspects of the electoral process, including its fairness – are made a specific responsibility of the election management body and can be effectively challenged in the courts. The legislation must spell out the institution's powers, functions and responsibilities.

These specific powers and functions, and how they are defined, vary widely across the Commonwealth. Best practice, however, suggests that in order to undertake the responsibility to deliver free, fair and credible elections, an election management body must have influence over the entire electoral process. This includes responsibilities for critical processes such as:

- *The delimitation of electoral boundaries:* This appears to be an essentially technical – but is in fact a highly political – exercise that can have a significant impact on the outcome and fairness of an election. Boundary delimitation, which should – as far as possible – ensure equal weight is given to each vote, needs to take place on a regular basis. The process must be undertaken in a transparent manner, facilitating full public participation, against criteria clearly defined in the law. In many Commonwealth countries, delimitation is not within the mandate of the election management body. Even so, it is essential that the election management body is associated with this work and, in the end, is in a position to guarantee the fairness of the process. Otherwise, the outcome of any election may be open to challenge.
- *The registration of voters:* The law must establish who is entitled to vote. The objective of registration is to capture all eligible voters – but only those who are eligible – on the voters' roll. The integrity and inclusiveness of an updated voters' roll is fundamental to a fair election. Any suggestion that particular groups – for instance, rural or urban voters, certain regions of the country, minorities, opposition supporters, women or young people – are not being treated fairly, will compromise an election. Whoever undertakes the registration of voters, and it is best that the election management body does this, it is essential that the election management body is in a position to guarantee the integrity of the voters' roll. The voters' roll, subject to whatever arrangements are necessary to protect privacy, should be publicly available in good time to allow for scrutiny and use by the political parties for campaigning. It is an essential tool for good electoral planning.
- *Political party formation, registration and oversight:* Political parties are essential to the functioning of a modern representative democracy. Their registration and regulation is best undertaken by the election management body. Again, this must take place against clear and transparent laws, regulations and procedures, implemented in a non-discriminatory and prompt manner. The election management body needs then to establish a permanent dialogue with the political parties on all aspects of the electoral process. Such a dialogue should include: issues relating to the code of conduct for campaigning; the implementation of regulations on party funding and disclosure; and collective efforts to build a democratic culture – most notably in regard to internal party democracy and candidate selection.

- *Party and campaign finance:* Political parties cannot operate without raising significant amounts of money for their operations and election campaigns. Public funding of political parties can help. Such funding should be designed to strengthen multi-party democracy, rather than simply to entrench incumbency, and also to encourage financial support for political parties from the public.

Even where state financing is available, parties look for funding from other sources, including local and foreign commercial and other interests, bringing with it the risk of influence peddling. Ruling parties are particularly well placed to benefit from such abusive fundraising activities. It is most important to ensure effective disclosure of party and campaign financing. Consideration also needs to be given to limiting the size of donations and regulating (or banning) foreign funding.

Often, election management bodies do not have a specific mandate to regulate party and campaign funding and, even where they do, they lack the resources necessary to monitor compliance. As a result, spending by political parties and candidates is frequently not properly checked. Candidates, whether party sponsored or independent, therefore, sometimes pay scant attention to the accuracy of financial reports or of the legal timeframe for submission of expenses returns.

- *Nomination of candidates:* The law must establish who is entitled to stand in an election. The election management body must then have the power to validate the nomination of candidates and/or, depending on the electoral system, of parties. The rules must be clear and the procedures, including timeframes, followed to the letter. There should be no unnecessary hindrance to individuals standing for election, either on behalf of their chosen political party or as independents.
- *Regulating election campaigns:* An openly contested election, in which voters can freely engage with all those seeking their support, without fear of intimidation and on a basis of equal treatment of all parties and candidates, is essential in any democracy. Political competition needs to take place within certain agreed rules in order for an election to be considered credible. The elaboration of codes of conduct can be helpful in this regard and should cover: the behaviour of political parties; the activities of state institutions in the run-up to and during an election; the manner in which the media (especially any state broadcaster) and social media cover or otherwise intervene in the campaign; and the role of civil society voter education or observation initiatives.

The consultative process involved in drawing up or revising such codes can be an important mechanism for ensuring ownership on the part of the political parties. Such codes, which should apply to the government as well as to political parties, may be gazetted as part of the regulations or their substance covered in relevant sections of the electoral legislation. The code or related regulations should provide detailed guidelines to control the activities of the party in power, as well as those aspiring to gain public office, during the electoral process and should be vigorously enforced.

Such codes should provide for parties to meet periodically with the election management body to resolve any difficulties that may have arisen, and more frequently during the election period. This forum can also be used to resolve

inter-party, and even intra-party, disputes or to help develop alternative dispute resolution arrangements.

- *Compliance:* The election management body must have the authority and the resources to monitor all aspects of the electoral process. Equally important, it needs the capacity and the will to demand compliance with the electoral law, including electoral regulations and codes of conduct, promptly during the election campaign. It must be proactive in seeking out and seeking to resolve such breaches through consultation and mediation, before reverting to punitive measures.

Firm action is required to counter any suggestion that a culture of impunity has been permitted to take root due to a failure to prosecute offenders who commit breaches of the electoral law. Any connivance in breaches of electoral regulation or rulings by an electoral officer or police should be dealt with promptly and publicly. Prosecutions should be vigorously pursued without fear or favour and the results duly publicised.

- *Adjudication:* The tariff of punishment for illegal or corrupt practices, including electoral fraud, should be strictly applied. These powers must be applied impartially, which can prove a challenge in countries where a culture of impunity has been allowed to take root, shielding those who are politically well connected. Nonetheless, it is a challenge that must be confronted. It is important that infringements of the electoral law, or of any other regulations, should be dealt with quickly during the election campaign, preferably by the election management body. Putting off such adjudication until after the election, when electoral petitions are heard, can lead to grave injustices. Such adjudication, furthermore, needs to be dealt with through administrative rather than criminal means:

*The election management body should have specific powers to adjudicate disputes and, where necessary, apply sanctions against those who cheat or who fail to comply with its decisions. Alternatively, a judicial mechanism needs to be put in place which is specifically designed to provide immediate remedies. Either way, effective sanctions for electoral malpractice must be available, but need to be thought out carefully and applied judiciously.*

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- *Polling:* Every effort must be made to maximise participation. It is essential to ensure reasonable access to polling stations, or whatever other mechanisms are available for voting, and to guarantee the absolute secrecy of the ballot. It is particularly important to prevent parties intimidating voters by suggesting they may be victimised after an election. Equity in the distribution of polling stations around the country (among regions and between urban and rural areas) is also essential. Preventing voter fraud, through measures to combat intimidation, undue influence, attempted multiple voting, impersonation and 'ballot stuffing', is essential.
- *Counting of votes – their transmission, aggregation and the announcement of results:* The election management body should be charged with the responsibility to count,

tabulate, aggregate and announce results and must do so with accuracy, speed and integrity. The counting of votes should take place in a manner likely to enhance confidence. For instance, where there is no danger that particular communities might be victimised, by counting the votes at polling stations and immediately publicising the results. These results then need to be transmitted securely, aggregated accurately and announced promptly (for each polling station). Any unnecessary delay is likely to create uncertainty and may provoke social unrest.

- *Voter information and civic education:* The election management body should be responsible for carrying out or co-ordinating voter and civic education in an impartial manner. Such public education has three primary objectives: to impart information (for instance, to tell people they must register if they wish to vote); to build confidence in the electoral process (for instance, by reassuring people of its credibility); and to help create a democratic culture (for instance, by encouraging political tolerance and informing people of their rights and responsibilities).

In addition to these education programmes, civil society organisations may play a useful role in sponsoring non-partisan voter information and civic education initiatives. Such programmes should be carefully monitored to ensure that they are consistent with the guidelines and codes of practice established by the election management body.

It is also advisable that the election management body should have responsibility in the following areas:

- *Legislation:* In some Commonwealth countries, election management bodies have a responsibility to review relevant election-related legislation. This can make an important contribution to improving the legislation and helps ensure that the body responsible for organising elections is fully confident in the coherence, comprehensiveness and fairness of the overarching legal framework.
- *Regulations:* No body of legislation, however comprehensive, can address every eventuality thrown up by an election and it is, therefore, necessary to make regulations concerning the administration of the process. Such regulations help to provide a clear and detailed election management framework, which can then be further elaborated and simplified in the election manuals used by election officials (and made available to all stakeholders). However, the drawing up of such regulations should not be subject to political influence. To that end, in a number of Commonwealth countries the election management body has the power, where appropriate, to make such regulations. It is important that they be comprehensive, issued well in advance, and should be numbered, dated and made easily available to the public.
- *Electoral calendar:* Once the date has been set for an election, and in order to ensure transparency, the election management body should prepare and make available a comprehensive timetable of each step in the electoral process. Its primary purpose is to ensure that all statutory or administrative deadlines are respected. This should include deadlines for: the closure of the voter register; the

nomination (and withdrawal) of candidates; publication of lists of candidates; publication of the voter register; acquisition of electoral materials; packaging and distribution to polling stations; and publication of lists of polling stations. The election management body should also consider issuing a public notice that the various steps in the process have been completed and in a manner consistent with the timetable. These notices, together with information about the actions taken, such as the list of constituencies and candidates' names, should all be placed on the election management body's website for public information.

Clearly, it is the job of an election management body to protect the democratic process and the political rights of citizens. The legal framework, therefore, should make the election management body responsible for guaranteeing the integrity of the electoral process. It must ensure that partisanship, inefficiency and corruption are not tolerated and that breaches of the electoral law are dealt with judiciously. Impunity, especially for those exercising authority over state institutions, must never be tolerated.

Although an election management body must be a powerful and independent institution, it too needs to be accountable to more than itself. Its activities should be reviewable by a judicial or other body in a manner that does not compromise its independence or effectiveness. Regular reporting to and scrutiny by parliament, especially following an election, should be the norm.

### 3.4 Taming incumbency

The government in power has many natural, and perfectly legitimate, advantages compared to its electoral opponents. There is a persistent danger, however, that governments will seek to use the power of incumbency in ways that unfairly disadvantage the opposition.

Given the responsibility of the election management body to provide a level playing field for the electoral contest, it is hardly surprising that relations with the incumbent government can be fraught with difficulties and tensions. It is important that the 'rules of the game' governing how these relations should be handled are clear and concise. These rules need to remain fully consistent with the Commonwealth's core democratic values and principles, especially transparency, accountability and inclusiveness.

The following guidelines, which are based on Commonwealth experience, seek to draw out some of the practical implications of a country's commitment to holding credible elections. These principles have profound implications for the work of any election management body as it seeks, in consultation with all stakeholders (and notably the government of the day), to draw up regulations and codes of conduct to govern the conduct of elections.

Some of the issues covered, for instance the one dealing with how the date for elections is determined, may fall outside the direct authority of an election management body, but even so should be matters of concern to electoral managers and subjects for discussion and consultation with stakeholders.

General principles on incumbency:

- **Elective public office is not for life**

Where they exist, limits on the number of times a person may serve as head of government, entrenched in the constitution and only to be overturned by a two-thirds majority of the National Assembly, can provide an important safeguard against the abuse of incumbency. The Commonwealth Electoral Network Working Group on Incumbency went further and suggested that such term limits should be unchangeable by any means, including by ordinary constitutional amendment, court decision or even referendum.

- **Opportunities for arbitrary rule should be severely restricted**

The incumbent should be unable to resort to the use of arbitrary powers, except in very limited circumstances – for instance, following a catastrophic natural disaster or during wartime – and under stringent conditions. During a state of emergency, or the exercise of similar extraordinary powers, the constitution needs to provide guarantees for the political rights and freedoms of citizens.

Parliament should determine whether or not the conditions authorising a state of emergency have been met and to approve any state of emergency, or its renewal, through a ‘supermajority’. The incumbent needs to be prevented, in such circumstances, from dissolving or extending the term of parliament, amending the constitution or ruling by decree.

- **Public officials should disclose their assets and business appointments should be regulated**

The disclosure of assets helps to avoid some conflicts of interest arising from incumbency. Mechanisms need to be put in place to ensure transparency and to establish sanctions for non-compliance. The information should be publicly available.

State institutions must remain neutral in the electoral contest:

- **The neutrality and professionalism of the public service must be respected**

Civil servants should act with complete impartiality during the election and see it as their duty to enhance the openness and credibility of the entire electoral process. They must avoid any activity which might call into question that impartiality.

During an election, they should be even-handed in dealing with political parties and candidates. In the provision of factual information or briefings, for instance, public servants should be advised to respond to requests from all parties and not just the ruling party. Guidance should be provided on such matters.

- **The neutrality of the security and intelligence services must be respected**

The army and the police should be above the political fray, especially during an election period, and not used to further the interests of the ruling party.

Special security arrangements are needed to protect the head of state when campaigning. However, these arrangements should not give the impression that

such campaigning is a state event. As a matter of equity and prudence, the leaders of the other political parties should be offered similar protection by the security services, the precise nature of which would depend on the assessed level of risk.

National security and intelligence organisations, which by definition operate in a secret fashion and are not necessarily subject to full-disclosure accountability mechanisms, are often – at least in the public consciousness – closely linked to their political masters. It is important to ensure that these bodies remain studiously impartial and non-partisan, especially during the electoral period.

It is important that state resources are not inappropriately used for party political ends:

- **Public resources should not be used for party advantage**

It should be clearly spelled out and well publicised that public resources must not be diverted to serve party political ends. The ruling party should not use government resources for electioneering, except on the basis of equality or equity with other parties. Arrangements should be put in place to ensure equity in the use of such facilities, particularly in relation to rationing the use of key meeting places at prime times and access to public broadcasting.

A country's laws governing the management of state assets, and its anti-corruption regulations, invariably prohibit the misuse of public resources. These matters should be drawn to the attention of all public officers at election time. It should be stressed that any breach of the rules will be dealt with immediately and will have negative consequences for the party or candidate concerned.

- **Official facilities should not be mobilised in support of electioneering**

Ministries and the private offices of the government ministers should not be used as an adjunct to the party campaign machinery. In some countries, ministers use their offices to organise party and personal campaign activities and this should be prohibited as a Commonwealth norm.

The public service should provide detailed regulations to all civil servants on the demands a Minister might be able to place on them in regard to that Minister's political activity.

- **Government transport should not be commandeered for party purposes**

The use of government vehicles should be carefully monitored and controlled in order to stop abuse. Ministers may occasionally require official vehicles for security reasons and for related public duties during an election campaign. If so, this should be clearly spelled out in the regulations.

At the local level, particular attention should be paid to the use of government-owned vehicles by the incumbent party to support its election campaign. It is important to ensure that government officials and state employees generally are aware of this prohibition. It may be necessary to issue specific instructions, followed up by a public information campaign, to stop abuse.

- **Government public information facilities should not be abused**

The government has the responsibility to inform the public about its activities. It must be careful, however, during the run-up to an election – and, in particular, during the campaign period – to ensure that such official publications are not a disguised form of political party electioneering.

The government should not issue political advertisements for the ruling party in newspapers or other media at public expense. Nor should the state information department be involved in any way in the production of the party's manifesto or election campaign materials. The government should not use state advertising budget indirectly to subsidise publications which are sympathetic to the ruling party (or party-owned newspapers or magazines).

The rules governing the campaign period and campaigning itself should be fair:

- **The date of an election should be set in the national interest**

The principle in setting the date for elections should be to make it as easy as possible for people to cast their votes. In managing the electoral schedule, sufficient time must be allowed for parties to deal efficiently with the nomination process and to campaign effectively.

In some countries, the date is fixed by statute or by the election management body. More often, it is the prerogative of the incumbent government, within certain constitutional limits, to set the date at its own convenience. In that case, there must be sufficient time to ensure that an election can be efficiently organised. Care should be taken to avoid organising an election at times of the year that are inconvenient to the electorate (such as harvest time or rainy season).

Whatever the specific regulations, the general principle should be to ensure that the election date is fixed in a manner that allows for fair play, without giving any one contestant an unfair advantage. To that end, the incumbent should consult with the election management body – not just on the practicability but also on the suitability of the date, before making an announcement.

- **Rules governing the campaign period should be respected**

The code of conduct or other regulations should clearly define the electoral period and what constitutes legitimate campaigning.

Given the nature of modern politics, campaigning – at least on the part of the incumbent – often starts before an election date has been formally determined and announced. Issues of incumbency, and the need to keep matters of state separate from campaign activities, can arise even before an election date is announced. It is unfair if the incumbent, whose leaders – given the nature of their responsibilities – are in a position to begin active campaigning earlier, flouts this principle.

All parties, including that of the incumbent, should respect the time limit on campaigning. This must apply also to the head of state. Infringements should not be tolerated. Once an election has been called, even if the formal campaign period

has not yet started, the ruling party should take care not to misuse the advantages of office for narrow party political gain.

- **Government policy and new spending commitments should not be announced during the election period**

The incumbent has the period in office to announce government policies and spending commitments. Once an election campaign has started, the public profile of government should as far as possible be reduced. Government ministers should not have their party affiliations displayed when appearing on television in their official capacity.

Government representatives and officials should not normally announce new policies nor, more importantly, publicise new spending commitments during an election campaign. Guidance should be provided on such matters, making it clear that public officers should not seek to influence voters on behalf of the incumbent government.

- **Official visits should not be combined with electioneering**

Government ministers should not combine official visits with electioneering. Again, this practice is unfair to the opposition parties and creates confusion in the minds of the electorate regarding the distinction between the government and the ruling political party.

Since the mass media plays such an important role in any election campaign:

- **The state-controlled media should not be partisan**

Almost invariably, the state broadcaster – which is normally funded largely out of the public purse – wields a particularly powerful influence during election campaigns. It is necessary that the incumbent should not misuse the state-owned media in order to secure partisan coverage of political news or free publicity for the party so as to further its electoral prospects unfairly. Equity in regulating party political broadcasts is not normally the main issue of contention; the balance of news coverage tends to be more important.

The election management body should develop codes of conduct covering media coverage and should ensure that such coverage is carefully monitored. It must be proactive in demanding that the rules are respected. Awareness that the election management body is serious in ensuring compliance will have a powerful impact throughout the media sector.

- **The news media should not be harassed**

Especially during the campaign period, the state should not abuse its powers by limiting or unnecessarily restricting the activities of commercially owned media outlets. Obviously, at the same time, commercial and social media have a responsibility to respect and abide by the media code of conduct.

Social media is now a powerful tool in the hands not just of civil society and political parties but also the state. Government efforts to control and domesticate

social media, notwithstanding whether this is appropriate in principle, are unlikely to succeed for technical reasons. This means that governments will find it increasingly difficult to set the political agenda unilaterally.

The best approach is to embrace change and explore and exploit the opportunities which these new technologies offer to government and political parties to convey their messages.

- **The integrity of the electoral process must be respected**

It is important to ensure that ministers, especially those responsible for finance and justice, do not use their government positions to try and influence the election management body. They should not, for instance, enter any polling station or place where votes are being counted, except in their capacity as a candidate, voter or party agent.

Finally, however difficult and painful, the results of credible elections must be respected by the incumbent and, of course, by the other contesting parties or individuals. This is much easier to achieve where strong and independent institutions exist, with clear lines distinguishing the authority of the state from that of the ruling party. Major problems arise when the state and the party are in practice, if not in theory, fused together.

### 3.5 Staffing and funding

*The election management body must have:*

- *Adequate funding, assigned by parliament and not subject to arbitrary control on the part of government.*
- *Appropriate staffing, accommodation, facilities for training and equipment.*
- *The power to appoint its own personnel with effective control over any seconded members of the public service. The tenure of senior staff members should also be protected.*

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An election management body can only carry out its responsibilities effectively if it is appropriately funded and can call on the services of an adequate, and adequately trained and experienced, cadre of election staff.

#### Staffing

To underscore the independence of the institution and make clear that any failure in the areas of management and logistics is its responsibility, it is best that election management bodies should have the power to hire, dismiss and discipline staff.

It may be helpful to include in the legislation that establishes an election management body a code of conduct covering the ethical standards required of all its members. Such a code should cover the absolute need for political neutrality and personal probity. As is the case for all public officials, only even more so, any suggestion that financial

gain or career advancement is the primary motivation of electoral officials will greatly diminish the credibility of an election management body: the danger of political or financial conflicts of interest, or even the public perception of such conflicts, needs to be avoided. The proposed code should apply to all permanent and temporary staff.

Staff members need to be recruited and deployed within the framework of a clear and transparent strategic plan, and in a manner consistent with human resources best practice. Open selection on the basis of merit, non-discrimination, community sensitivity and gender balance should be the yardstick for recruitment. Members of staff need to be screened to ensure that they fully understand and accept the requirement to be non-partisan in carrying out their responsibilities at all times.

Where staff members, including temporary personnel, are seconded from the public service, it is essential to avoid divided loyalties. These officers should be deployed by – and solely responsible to – the election management body when involved in all election-related matters. They must operate under the authority of the election management body and be subject to its disciplinary and dismissal powers. Where there is serious concern about the impartiality of the public service, it may be better for the election management body to recruit such staff direct.

A comprehensive strategy for staff development, designed to build a strong skills base and retain key personnel, is an essential responsibility of any election management body. This should include clearly worked-out strategies for the recruitment and training of temporary staff in a manner designed to ensure that these skills can be retained for future elections. Especially when jobs are universally hard to come by, it is essential that appointments should be made only on merit (although always, of course, taking into account issues of gender, ethnic, regional and other relevant equities).

## Funding

Elections are costly. The amount of money required rises dramatically in those years when an election is in prospect. It is the responsibility of the state to ensure that adequate funds are provided in a timely manner. In practice, however, problems are often experienced, especially in securing in good time sufficient resources to cover the essential processes necessary to prepare for major electoral activities, such as voter registration. It is important that funding should be organised around the entire electoral cycle and not focussed just on discreet electoral events.

Equally, however, it is the responsibility of the election management body to ensure that it uses these funds responsibly. Expensive investments (for instance the purchase of high-tech equipment) should always be carefully assessed and clearly justified. The Commonwealth's core principles of transparency, integrity, inclusiveness, accountability and sustainability should characterise all aspects of financial management.

The best approach to securing the core costs of the election management body is a line item in the national budget, released direct by the national treasury. Such a procedural approach, however, is no panacea without a firm commitment on the part of the authorities to ensuring that such funds will be available in a timely manner. The

election management body should also have the power to ensure that election-related costs falling on other state institutions – for instance, the police or local authorities – are met in full.

Without such financial autonomy, there is always a danger that the government of the day may use any control it has over funding to influence or manipulate the election management body – thus undermining its independence or public perceptions of its independence. To avoid such situations arising, mechanisms should be put in place to prevent government ministries from micro-managing the flow of allocated funds. It is particularly important that the election management body has the resources immediately available to cover essential election preparation expenses, including for paying polling or registration staff.

The election management body, working closely with relevant government institutions, needs to have the expertise and capacity to draw up realistic budgets – for both recurrent costs and election-related expenses – in line with national budgeting requirements. There are strong arguments that budget approval should reside with parliament.

Procurement procedures, while remaining completely open and competitive, must be sufficiently flexible to permit the purchase of essential election materials without undue delay. To avoid accusations of corruption, the value of the goods and services that can be purchased without a public tender should be set at a low level. Budgeting, disbursement and procurement arrangements, which should be overseen by parliament, need to be transparent to all stakeholders and notably to the political parties.

The election management body is the custodian of scarce public resources. It must have in place robust mechanisms to control expenditure and manage its assets while providing full accountability, including through external review and auditing. These arrangements should be clearly spelled out in law or regulations, and must be respected. The election management body's audited accounts, and evaluations of its procurement of materials and equipment, should be open to public scrutiny without delay.

The election management body should strive to be recognised as a competent, efficient and cost-effective organisation. Taxpayers and citizens generally do not like to see the country's resources squandered, and may become disenchanted with democracy if the process looks like a mechanism for individuals and companies to enrich themselves. The election management body should, for instance, seek as much as possible to use local materials, goods and services whenever they can be acquired at comparative cost and quality.

### **Donor support**

Some Commonwealth countries remain heavily dependent on donor resources in running elections. It is important, however, that such support – though welcome and sometimes essential – should be managed in a manner which does not compromise national sovereignty or undermine the authority or priorities of the election management body.

A mixture of altruistic, political, economic or even commercial interests may well drive the generosity of donors, and especially bilateral donors. It is important that donor support be focussed in the areas of greatest need and aligned to the overall priorities of the election management body. Where donors establish joint funding mechanisms, for instance through basket-fund arrangements, it is essential that the election management body be fully involved in its deliberations and decision-making processes. The election management body should always be ‘in the driver’s seat’ in dealing with donors.

Donor support for the election-related or democracy-related work of civil society organisations should be completely non-partisan and take place in an open and transparent manner. Such assistance can play a positive role in helping to increase civil society participation in the electoral process. However, donors must keep the election management body fully informed of all such activities. Any restriction placed on the work of non-state organisations should not compromise their fundamental rights or the autonomy of civil society.

Foreign funding for political party campaigning is generally banned in Commonwealth jurisdictions. Where restrictions on foreign funding do exist, they should be applied equally to all political parties. Where donors are keen to provide training or capacity-building support for political parties, which can be beneficial, this should take place in a non-partisan manner. All parties should be treated equitably. Ideally, such assistance should be channelled through, or in partnership with, the election management body.

It is best that the election management body, rather than ministers who may themselves have an interest in the outcome of an election, should determine the role that donors might play in providing financial and technical support for the electoral process within the framework of the law.

### 3.6 Management and administration

*The election management body must administer itself with maximum transparency – consulting widely with all stakeholders (especially with political parties) and giving reasons for its decisions – and of course be accountable to the electorate within the law, with proper arrangements for parliamentary and, where appropriate, judicial oversight.*

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Being in command of the necessary human and financial resources does not, in itself, guarantee that an election management body will operate effectively and efficiently. For this to be the case, it must be competently administered, employing the best management tools available and the most appropriate technology so as to ensure optimum utilisation of these scarce resources.

It should also conduct its business openly and manage its operations in a transparent manner, including by releasing all relevant information about the electoral process to the political parties and other stakeholders in a timely fashion.

## Election management

Delivering an election is a huge logistical task that must be completed within a tight timeframe and against inflexible deadlines.

Strong leadership, capable of motivating staff and promoting democratic values, is essential. A primary task of such leadership is to create and retain a competent and disciplined management team capable of getting the most out of the human and financial resources available. The team must display high-level skills in planning, organising, staffing, directing, co-ordinating and controlling all aspects of the election management body's activities.

Keeping proper, accurate and reliable records of all election processes is essential. This entails an ability to retrieve information when required and ensure effective data security. It also means developing systems to facilitate public access.

Election records and related documents, equipment and materials should be stored securely, as stipulated by the law or by management, and should only be disposed of following approved procedures. Registration materials, in particular, should be easily available to voters. Nomination and polling documents, which may be required in court cases, must be secure and easily retrievable.

The computerisation of records and filing systems can greatly assist management. For non-computerised systems, accurate indexing and registry procedures are essential. Either way, the accuracy and reliability of the filing and storage systems should provide an audit trail of all important records.

There should be appropriate public scrutiny during the preparation, justification and approval of election budgets. The tendering of contracts for goods and services, including for technology purchases, should also follow procedures that require open and competitive tendering. In addition, accounts must be regularly and independently audited.

## Technology

Rapid advances in information technology are transforming electoral administration. There are many ways in which this technology can improve the efficiency and enhance the security of the electoral process, including through the application of computer hardware and software for word processing, spreadsheets and database management, as well as the application of modern information technologies in the areas of telecommunications, radio, networks and the internet.

The key practical areas where technology can help are: the demarcation of electoral boundaries; voter registration; candidate and party registration; voting and the counting of votes; and results reporting and transmission. These systems make it possible for senior management to connect with staff, even in remote areas, and respond immediately if difficulties arise. New technologies can also play a crucial role in improving voter information and education.

The benefits, if the technology is appropriately applied, include: the ability to process large volumes of data efficiently; reductions in staffing levels; improved accuracy

and the ability to identify errors more easily; increased speed in registration, voting and counting; reductions in or the elimination of incorrectly cast ballots; better access for people with disabilities; increased transparency; and, better fraud detection. Such technologies also tend to be environmentally friendly and more cost effective.

On the other hand, there are many possible pitfalls if the chosen technology proves inappropriate or is adopted without the necessary preparations. In such cases, the changes may prove to have been unnecessary, expensive and inefficient when compared to a manual system.

Additionally, serious problems may well be experienced in the training of staff, in the drawing up of effective procedures, in managing heavy recurrent costs, and in the provision of adequate technical support and ongoing maintenance.

### Technological failures and security vulnerabilities

Ill-conceived technical innovation may result in a potentially catastrophic systems breakdown if the technology fails because security vulnerabilities have not been addressed. The whole process may prove a distraction from dealing with other more important problems of electoral management. Introducing new technologies, furthermore, can be controversial and may risk losing public trust if stakeholders fear a loss of transparency in the electoral process.

To guard against such risks, it is essential that any new system complies with the constitutional and legal framework governing the electoral process. The chosen technology, which needs to be well-tested and ideally have a proven track-record, and must be appropriate for certain specific and well-defined operational purposes. It must be easy to manage, deploy, support and extend. The systems – which need to be environmentally, technically and financially sustainable – should be procured and piloted in a timely fashion, well before any electoral event.

The adoption of such technology should not be pushed through simply because it represents a status symbol or a proof of economic progress. Nor should its adoption be donor-driven or dependent on ongoing donor support. If this is the case, mistakes are almost certain to be made.

Finally, it is essential that the introduction of any such new technology is understood and supported by all stakeholders, notably the political parties. It must be clear that the general public will accept and have confidence in election results announced following the use of this new technology.

## 3.7 Popular participation

*The election management body should see maximising public participation in all aspects of the electoral process as a primary responsibility; and, to that end, has an obligation to provide comprehensive information to all interested parties in an absolutely open and impartial manner.*

An election is a national event of enormous importance to all sections of society. Each stakeholder, in its own particular ways, has a right to be heard and to participate in the process. The election management body must recognise and respect these rights and should develop strategies designed to realise them. People have the right to know what is being done in their name by the election management body.

Voters must be able to interrogate those seeking their support. Any constraints placed on the full participation of any group in society, including women, should be systematically rooted out; effective mechanisms need to be put in place to enhance the participation of the disabled and other marginalised groups in society. Political parties, which need to be internally democratic, have the right to campaign robustly and to be fully involved in all aspects of the electoral process. Civil society bodies have the right to observe what is happening and to help educate the electorate. The media has the right to place the actions of all stakeholders under close scrutiny.

The election management body, acting with absolute fairness and impartiality, should within the limits of its resources provide all of these stakeholders with whatever relevant assistance or information they request. The emphasis should be on disclosure, and it is those who wish to keep information confidential who need to justify their position. Even though new technologies do not necessarily reach all sections of society, they can ensure that all stakeholders have access to timely and reliable information from the election management body.

Imaginative programmes informing voters about the arrangements for the election can, in themselves, help build confidence in the process and in the election management body. Civil society bodies should be encouraged to participate in providing neutral voter education, and may be requested to act as an agent of the election management body in undertaking this task. It is helpful to provide a code of conduct governing such civil society activities.

There are tried and tested mechanisms to lessen the tensions which inevitably arise during an election campaign. The establishment of party liaison committees, which need clearly defined procedures, the adoption of codes of conduct, which need to be backed up with sanctions, and the provision of regular briefings from the election management body can all greatly help to lessen such tensions.

### 3.8 Election observation

*Bona fide election observers, including regional and international observer groups, can contribute positively to the electoral process. The election management body should encourage both citizens and, if they are present, international observers to provide a comprehensive assessment of its performance in reporting on the electoral event. The election management body should review and, where appropriate, act upon such recommendations.*

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Openness to observation is a sign of institutional transparency. There is always a great deal to learn from *bona fide* election observation initiatives, on the part of

both observer and election management body. Such initiatives provide an excellent mechanism to help propagate good practice. They can contribute to strengthening the independence of the election management body rather than undermining its authority.

Observers can also play an important role, especially where there are tensions, in helping to build confidence in the electoral process. For that reason, it has become international good practice to invite and accredit citizen and international observers to follow all aspects of the electoral cycle. Observers, who must respect the laws of the country and not intervene in the electoral process, should abide by the relevant codes of conduct.

Decisions about which international observer groups to invite, as well as regulations governing such observation, can prove controversial. The onus should be to welcome all those who are willing to abide by the rules. It is important that timely invitations are issued, and accreditation completed, in a manner consistent with clearly articulated criteria drawn up in line with international good practice.

### 3.9 Regional and international co-operation

*The election management body should co-operate closely with similar institutions at the regional and global levels, with the objectives of:*

- (i) raising standards through the exchange of information and experience;*
- (ii) ensuring consistency in approaches to improve the electoral process;*
- (iii) providing practical assistance (for instance, through the mutual observation of elections); and*
- (iv) providing moral support and solidarity in periods of difficulty.*

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There are considerable benefits to be gained from co-operation among electoral management bodies at both the regional and global levels. The Commonwealth Electoral Network (CEN) was established in 2010 to promote contact between national election management bodies and collaboration between them, especially in developing models of electoral best practice. The CEN also collaborates with regional and other groupings of election management bodies where possible.

### 3.10 Reform

*The election management body should have a responsibility periodically to review the functioning of the electoral process and legislation and make recommendations to parliament for improvement.*

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No country has a perfect electoral or democratic system. And no election management body is beyond review criticism. Democracy, and the efforts to realise this ideal through elections, are always a work in progress.

It is important, therefore, that the election management body should adopt a stance of constant self-assessment and should provide effective mechanisms to allow the views of all stakeholders on its performance to be recorded and evaluated. Its performance should also be the subject of debate within parliament.

More broadly, the election management body should be mandated to review periodically the extent to which the electoral arrangements in place are meeting the needs of the country and fostering a deepening of democratic culture.

### 3.11 Conclusions

Those responsible for running the election management body carry heavy and challenging responsibilities. The opportunities to corrupt members of the election management body are well-known – not just the crude sort of corruption involved in taking bribes, but especially the more insidious forms where rules are broken (sometimes only slightly) in the hope of some possible future personal benefit. At all times, especially when the blandishments of those in power are rejected, the election management body must be able to resist threats and intimidation.

It is of critical importance that the administrative culture of the election management body should demand the highest standards of personal integrity and honesty on the part of all members of staff. If the ‘powers-that-be’ recognise that the organisation is incorruptible, the temptation to cheat will be lessened. Similarly, this will provide confidence to all stakeholders in the transparency of the process.

Every step of the electoral process should be open to scrutiny from the political parties and civil society bodies, including via the timely release of information through a well-designed and regularly updated website. The ruling party, owing to its participation in government, should not be given unfair access to information. The media needs to be encouraged not just to stimulate informed debate about the campaign issues of concern to the electorate, but also to investigate how well the election management body is carrying out its responsibilities.