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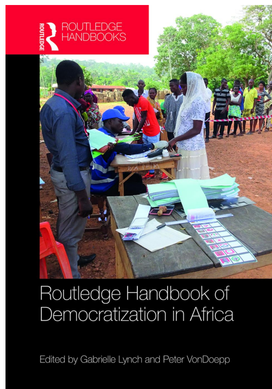


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Gabrielle Lynch, Peter VonDoepp

## Electoral administration

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# 12

# ELECTORAL ADMINISTRATION

*Mamoudou Gazibo*

Before 1990, elections were associated with limited choice in the sense that they were neither competitive nor free (Hermet, Rose, and Rouquié 1978). Since then multiparty elections at the national and local level have become routine across most of the subcontinent. To hold these increasingly complex and conflictual operations, virtually all countries have abandoned the traditional mode of housing election administration within the Ministry of the Interior and established (at least nominally) independent electoral management bodies (EMBs). How can we explain the rapid diffusion of this mode of election administration? Is it possible to categorize EMBs according to their varied political and institutional characteristics? Do they influence the course of democratization or not, and why?

This chapter addresses these questions. The first part provides some background in order to understand the genesis of electoral commissions in light of the democratization processes of the 1990s. The second part provides a typology of electoral bodies in contemporary Africa and proposes a tentative explanation of each type's impact on democratization through some brief case studies. The final part will examine how other factors, such as the broader institutional arrangements (e.g., constitutional courts), the international environment, and the nature of the political cleavages of each country, influence electoral bodies' performance. The main argument in this chapter is that electoral commissions, while important, are one among many variables that affect elections and ultimately democratization. This is due to at least three reasons. First, each electoral commission is forged during a specific process that determines their formal strength and limitations. Second, beyond this legal aspect, their influence depends on the empirical powers they are able to secure relative to other actors. Third, given the broader context in which they operate, they may be "epiphenomenal" to other political dynamics.

## The origins and diffusion of electoral management bodies in Africa

One common trend since the return to multiparty politics in the early 1990s is the creation of EMBs, or separate and nominally independent institutions to administer elections. Such an institution is "an organization or body which has the sole purpose of, and is legally responsible for, managing some or all of the elements that are essential for the conduct of elections and of direct democracy instruments" (International IDEA 2016, 9). According to IDEA,[1] "essential elements" include determining voter eligibility, receiving and validating nominations for

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parties and candidates, polling, and counting and tabulating votes cast. Additional functions may include voter registration, boundary delimitation, voter education and information, media monitoring, and electoral dispute resolution.

Prior to the 1990s, few African regimes were fully pluralist and competitive, but two types of them—plebiscitary and competitive one-party regimes—were semi-competitive and held elections (Bratton and van de Walle 1997, 78–82). However, despite the variety of regimes, virtually all elections held were organized under the supervision of the Ministry of the Interior and were thus under the direct control of incumbents. This is why the crucial element in the IDEA definition above is that, to be qualified as an electoral body, the management of the elections must be the *sole* purpose of that body.

The creation and spread of EMBs in Africa can be explained by two factors. First, they are the direct consequence of the postcolonial electoral experience and the absence of confidence in the ability of incumbent regimes to organize free and fair elections. Opposition parties considered government-organized elections as harmful to the transparency and fairness of the process since electoral fraud was pervasive on the continent (Adejumobi 2000). Second, they are also the consequence of the dominant mode of transition in Africa in the early phase of the democratic experiments, which were imposed upon the authoritarian regimes by fierce popular mobilizations. Many scholars have pointed out that given the neopatrimonial nature of African regimes, leaders neither quit nor reform unless they are forced to do so (Médard 1991; Bratton and van de Walle 1997). Also, given the huge concentration of power in the hands of the president, and personalized links with other institutions, the inherited government-managed election was dismissed by opponents and civil society organizations. In such a context of power politics, the creation of electoral bodies was a result of tense political battles. Politicians and activists alike are aware that institutions and the rules of the electoral game heavily determine political outcomes, particularly who wins and who loses (Pierson 1994; Hall and Taylor 1997).

After three decades of democratic experiments, nearly every country across the subcontinent has implemented a separate body in charge of organizing general elections. This is not an African peculiarity. However, nowhere has the implementation of electoral commissions been so widespread. For example, by 1999, "of twenty advanced industrialized democracies, the governments—not independent commissions—are responsible for conducting the elections in fifteen, or 75 percent" (Pastor 1999a, 77). In Africa, separate bodies were responsible for conducting the elections in fifty of fifty-four, or 92.6 percent, of countries; the government responsible for conducting the elections in only four countries (see Table 12.1). This is because, as Pastor (1999a, 78) accurately noticed:

> ECs (electoral commissions) are not important in advanced democracies where people have confidence in the conduct of elections, but they are of central importance in countries where many people assume that the conduct of elections is manipulated to serve one party's interests.

If the demand by opposition parties for separate electoral bodies in Africa was widespread, the process of their creation was not always conducive to the implementation of legitimate institutions. The nature of each electoral body depends on the balance of force between political actors. As argued elsewhere (Gazibo 2006, 621), the formation of electoral bodies varied according to three criteria: the unilateral or multilateral nature of the process (imposition by one actor or agreement between actors); the actor whose preferences prevailed (incumbents or outsiders); and the extent to which one camp dominated the process. This led to different types of institutions with varying levels of legitimacy.

*Table 12.1* Electoral bodies in Africa by type (in 2017)[8]

| *Type* | *Administrative/ Governmental Board* | *Fake Autonomous* | *Autonomous* | *Political* | *Mixed* |
|---|---|---|---|---|---|
| *Number* | *4* | *16* | *27* | *5* | *1* |
| Cases | Algeria, Eritrea, Equatorial Guinea, Morocco | Angola, Cameroon, Chad, Congo, DRC, Djibouti, Ethiopia, Gabon, Gambia, Rwanda, South Sudan, Sudan, Swaziland, Togo, Uganda, Zimbabwe | Benin, Burkina, Botswana, Cabo Verde, CAR, Comoros, Côte d'Ivoire, Ghana, Guinea B, Kenya, Lesotho, Libya, Liberia, Madagascar, Malawi, Mali, Niger, Nigeria, São Tomé, Senegal, Sierra Leone, South Africa, Seychelles, Somalia, Tanzania, Tunisia, Zambia | Burundi, Guinea, Mauritania, Mozambique, Namibia | Mauritius |

At the same time, in many cases, these bodies evolved over time, depending on the balance of forces or other intervening factors. For example, Ghana went from an incumbent-led interactive mode of institutional crafting in the 1992 constitution to a consensual one in 2000, and Niger had an outsider-imposed model in 1994, a managed mode in 1996, and a consensual mode in 2010. With this in mind, a mere focus on the institution-building moment is misleading because it has little predictive power regarding the impact of the commissions. Only by analyzing institutional types distinguished along criteria such as their membership, the scope of their control over electoral matters, or their status vis-à-vis the executive body, is it possible to understand their empirical role. We now turn to this issue.

## Electoral bodies in Africa: types and impact on democratization

According to Lindberg (2009), elections per se have a democratizing power in the sense that they positively influence democratic rights and processes. More precisely, he suggests that "even autocratic regimes will get better if the cycle of de jure participatory and competitive elections continues" (Lindberg 2009, 73). In his model, elections tend to become free and fair from the third and subsequent elections. However, the role of the electoral bodies is not investigated in his study. This is unfortunate because their inclusion would have possibly emphasized the impact of the quality of the electoral process over time rather than the mere existence of electoral cycles and, therefore, the diverging effect of each type of electoral body on the democratic process.



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Of course, some observers are cautious when it comes to assessing a causal relation between types of electoral body and democratization. As Massicotte, Blais, and Yoshinaka (2004, 101) have pointed out:

> many countries whose elections are administered by a public official or a minister have been successful in preventing fraud or other irregularities … Emerging democracies wishing to set up a neutral administration should remember that there is no single magic recipe to ensure free and fair administration of elections.

However, of the sixty-three countries they studied, only eight were African[2] and none of these countries has had a government-organized election. In most of them, the electoral commission is composed of representatives appointed either by the stakeholders (such as political parties or civil society), or by the legislature (usually among the judges of the courts). Moreover, these countries are among those whose elections are usually free and fair. Given the nature of the sample of African countries they studied, which consists of successful cases, their conclusion lacks comparative depth and nuance regarding Africa.

Among those who believe that the nature of electoral bodies affects politics there is little agreement on the most important feature. Some have found that the autonomy or independence of the electoral commissions from the government (Mozaffar 2002) and both from the government and the opposition parties (Gazibo 2006, 629–33) is an explanatory variable of successful democratization. However, others like Opitz, Fjelde, and Höglund (2013, 727) have studied democratization through electoral violence and found that "inclusive EMBs can play decisive roles in the reduction of electoral violence by preventing the opposition from taking to the streets and challenge the incumbent, which at times may create escalatory dynamics."

This chapter takes a more nuanced stance, following the work of Hartlyn, McCoy, and Mustillo (2008) who, in a comparative study of the role of electoral commissions in nineteen Latin American countries since 1980 or the founding election, concluded that professional, independent electoral commissions have an important positive impact on electoral outcomes, but warned that other socioeconomic and political factors must be taken into account. Electoral bodies in Africa vary in terms of their contextual, political and institutional characteristics. The classification below highlights these variances and builds on them as a useful starting point for inquiry into their impact.

## *Classifying electoral bodies*

Several typologies of electoral bodies exist in the literature (see Mozaffar 2002; International IDEA 2016; Kambale 2011). However, many authors do not present the criteria upon which the typology is based. Given the importance of getting the nature of electoral commissions right in order to better understand their impact, this methodological lacuna needs to be addressed first.

In this chapter, the following criteria to classify the electoral bodies in Africa will be used: organic separation from government (Mozaffar 2002), mode of designation of members, functional/empirical autonomy (Diarra 2004; Gazibo 2006), and the extent of control over the electoral process, in particular *rule-making*, *rule application*, and *rule adjudication*[3] (Mozaffar 2002; Mozaffar and Schedler 2002, 8). The mode of designation is of particular importance. Although it can be misleading (as will be seen with the *fake autonomous* category below), it informs us greatly about the possible political instrumentalization of commissions because the membership of a commission "can determine whether an election is a source of peaceful change or a cause for serious instability" (Pastor 1999b, 5).[4]

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Government-organized elections are now rare in Africa. Most countries either institute fake autonomous or more substantively independent administrative commissions to organize elections. While the latter are official government bodies, fake autonomous commissions formally look like autonomous commissions: they are usually labeled as "independent" and located outside the government branches, but are in fact under the control of the executive via, for example, the power given to the head of state to appoint its members and terminate their duties. Even though in some cases a government-appointed national electoral body may generate its own autonomy and conduct free elections (as in Senegal in 2000—see Gazibo 2006), these two types of electoral bodies are organically linked to the executive branch and lack functional autonomy even when they have large control over the electoral process. Not surprisingly, they rarely foster democratization.

Apart from these two categories, there are several subtypes of independent (or organically separate) electoral bodies: *autonomous*, *political*, *judicial*, and *mixed*. In these subtypes, members of the commission are rarely appointed by one actor. *Autonomous* commissions are usually separate bodies with inclusive membership, functional independence, and large control over the electoral process. However, autonomy does not necessarily mean total independence and, in fact, even the most autonomous commissions (as the below examples of Ghana and Benin will demonstrate) may face legal and empirical limitations and are sometimes subject to criticism. *Political* electoral commissions are characterized by a power-sharing arrangement and are usually found in contexts like war-torn societies where actors trust neither each other nor autonomous institutions (see, for example, Höglund, Jarstad, and Kovacs 2009). Here, members come from stakeholders (such as parties or rebel groups) and report to them. In *judicial* bodies, members are selected from the judicial branch. Obviously, they are autonomous only in countries where the judiciary itself is independent from the government. Otherwise, they belong to the fake autonomous category.[5] Finally, there is a *mixed* category in which several types of institutions are simultaneously in charge of different parts of the electoral process.

The next section sets out four brief case studies to illustrate the four modal categories and their impact on democratization before turning, in the last part of the chapter, to other contextual factors that can interfere with the influence of electoral commissions. The case studies presented are representative of the category to which they belong.

## Electoral bodies and democratization: case studies

Administrative electoral boards or government-organized elections have become a marginal feature in Africa. As of 2014, the government directly oversaw the electoral process only in Algeria, Morocco, Eritrea, Equatorial Guinea, and São Tomé and Príncipe. In Algeria and Morocco (respectively classified by Freedom House as *not free* and *partly free*), the Ministry of the Interior is directly responsible for organizing the elections. In Morocco, given that the king's power is not at stake (he can even appoint a prime minister from among those who lose the vote), the nature of the electoral body is not of great importance. On the contrary, control over the electoral body in Algeria is part of the strategy devised by the regime to retain power, so it is not surprising that opposition parties have boycotted several electoral cycles in that country.

São Tomé is an atypical case because this tiny country is among Africa's most democratic nations. However, it is an electoral commission—termed by IDEA as a "technical cabinet"—that is in charge of elections, not the Interior Ministry directly. According to the 2016 African Union (AU) electoral observation mission, its members "are mostly selected by the National Assembly … The CEN (electoral commission) is seen by all electoral stakeholders as an independent, qualified and competent body" (AU 2016, 4). Nevertheless, the 2016 elections were

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troubled, with the incumbent President Manuel Pinto da Costa refusing to remain in the race for the second round, arguing that he won after the first one. However, this demonstrates that an administrative electoral board can manage successful elections and highlights how, as will be discussed in further detail below, context matters. The fairness of the political process as well as the presidential alternations that have occurred in the country even in the absence of an independent commission are precisely why actors no longer push for a permanent separate body. This tends to reinforce the fact that government-organized elections belong to either advanced democracies where electoral procedures have become routine events, or authoritarian and semi-authoritarian countries where incumbents use state resources to preclude any power alternation.

Many electoral commissions named as independent are in fact fake autonomous commissions. For example, in its survey of electoral management in 217 countries, the International IDEA (2016, 374–95) classified commissions of countries such as Eritrea, Ethiopia, Sudan, and Rwanda as independent. If independence means more than mere organic separation, then many of these commissions are fake independent commissions. Such bodies have organized elections in Cameroon and Ethiopia, for example, since the early 1990s. Cameroon's first commission (National Elections Observatory) was created in 2000. Even though it had juridical control over large aspects of the electoral process—such as the compilation and revision of voters' lists, the production of electoral documents, the control of the availability of the elections' material requirements, and the control of the fairness of the electoral process—in reality, the Commission was controlled by the government, since the president had the power to appoint its members. For this reason, opposition parties boycotted the process of its inception.

In 2012, Elections Cameroon (ELECAM) replaced this body in the new Electoral Law.[6] According to the Electoral Law, "Elections Cameroon shall be an independent body responsible for the organization, management and supervision of all election and referendum operations" (Section 4, 1). The Law also stipulates that "[M]embers of Elections Cameroon shall, under no circumstances, seek or receive instructions or orders from a public or private authority, be it national or foreign, during the performance of their duties" (Section 5, 2). However, ELECAM is far from being autonomous, as the president appoints and terminates the duties of the members of the entire body. The eighteen members of the board, including the chair and vice-chair are "appointed by decree of the President of the Republic upon consultation with political parties represented in the National Assembly and civil society" (Section 12, 3). In addition to that board, the president appoints by decree a director general and a deputy director general of elections. ELECAM is also financially dependent since the ministry of finance appoints its treasury accounting officer (Section 36). Finally, "in the event of shortcomings or dysfunctions on the part of Elections Cameroon, the President of the Republic shall take the remedial measures he deems necessary" (Section 44, 1). Given this legal architecture, it is not surprising that no election in Cameroon has been declared free and fair since 1990. Opposition parties have never recognized any electoral results and Cameroon is commonly depicted as an electoral authoritarian regime (Gros 1995; Albaugh 2011; Freedom House 2018).

This observation can be generalized to other countries sharing similar electoral administration patterns, such as Ethiopia (see Opitz, Fjelde, and Höglund 2013, 720–3). The National Electoral Board of Ethiopia (NEBE) was instituted by proclamation in 1992. Its nine members as well as the chief and deputy chief of its secretariat are nominated by the prime minister and confirmed by the House of Peoples' Representatives. Given that the incumbent Ethiopian People's Revolutionary Democratic Front (EPRDF) and its allies totally dominate the parliament (with 100 percent of the 547 seats in the House of Peoples' Representatives after the 2015 elections), one can easily imagine that the NEBE is independent only in name.

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Autonomous electoral commissions are more democracy-compatible (see Gazibo 2006). However, as shown in Table 12.1, many countries that have autonomous commissions are not fully free. In addition, autonomy only means the possibility for "a politically differentiated agency [to take] a self-consistent action that neither politicians nor organized group interests prefer, but that they either cannot, or will not, overturn or constrain in the future" (Carpenter 2001, 17). Ghana and Benin are two examples of how relatively autonomous commissions are correlated with fair elections and democratic "success stories."

Ghana's National Electoral Commission (NEC) was instituted in the 1992 constitution and established in 1993. It has seven members and although the chair and two vice-chairs are appointed by the president in consultation with the council of state, the commission has large autonomy in terms of rule-making, application, and adjudication; the members have permanent tenure of office and are subject to the same conditions of service as Superior Court judges (Gyimah-Boadi 1999). For example, the first chair of the Commission was appointed in 1993 under President Jerry Rawlings and retired only in 2015 after serving under four presidents from the two main rival political parties. The commission is internationally considered as one of the most respected in Africa and has been able to successfully manage some very tense elections. One of these is the 2000 open-seat election won by the opposition candidate John Kufuor against the outgoing vice-president, John Atta Mills. Another is Ghana's closest open-seat election of 2008, in which Mills defeated Kufuor's vice president, Nana Akufo-Addo.

If opponents in open-seat elections won the 2000 and 2008 contests, the situation was dramatically different in 2016. For the first time in Ghana, a challenger, Nana Akufo-Addo, defeated a sitting president, John Dramani Mahama. Once again, the electoral commission was able to manage a peaceful turnover. As Debrah (2011, 25) rightly put it, the NEC has made "the electoral process transparent by fostering agreement on the rules of the game and asserting its autonomy in relation to the performance of its mandate." If Ghana's electoral procedures are now among the most fair and legitimate in Africa, it is also due to several other factors. One is the willingness of parties to accept judicial settlement of electoral disputes rather than using violence; and another is the reforms that have been implemented in order to address opposition concerns (Gyimah-Boadi 1999, 112–15). A third factor is party institutionalization (Morrison and Woo Hong 2006; Osei 2006) and capacity to deploy agents and effectively monitor electoral processes.

The same can be said of the National Autonomous Electoral Commission of Benin (CENA), created in 1995. Of its twenty-three members, the National Assembly (sometimes dominated by opposition parties) appoints fifteen, the government appoints three, four are chosen by the *Collège des Magistrats du siege* (the judiciary), and one by the Commission of Human Rights. The members do not have the same conditions of service as in Ghana, but are not appointed by the government. Some, like Kambale (2011, 4), consider Benin's CENA as a part of the political EMB category in the sense that it is an "institution that is independent of government but mainly or fully composed of party political representatives." Benin's CENA has presided over five presidential elections and, except in 2001, the parties have rejected none of the results of these elections. Benin is now one of Africa's more consolidated democracies.

However, even autonomous commissions do not always contribute to effective elections and ongoing democratization, because confidence in electoral commissions can be quickly lost. Even in Ghana, one must recall that the opposition disputed the 2011 elections and criticized the electoral commission. The Kenyan 2007, 2013, and 2017 electoral violence and disputes also demonstrate how volatile the trust in the commission's independence and neutrality is. While the commission is autonomous, its credibility has seen sudden drops during each electoral cycle

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since 2007 (Erlich and Kerr 2016). This is why other contextual factors must be taken into account, as presented below.

Political electoral commissions constitute another category. As we have seen, some political electoral bodies are implemented in war-torn or highly politically polarized countries. These tend to be replaced by another type of commission when the crisis is over or when one party finally becomes dominant. The case of Central African Republic (CAR) is a good example.

After a "'successful' democratic transition" in 1993, the CAR went through (and still is going through as of 2018) a tense political turmoil that began in 1996 and turned into a civil war after a succession of "three army mutinies [that] undermined the country's stability" (Mehler 2005, 126, 136). In such a polarized environment, which confirms the idea that electoral commissions are one factor among others, opposition parties refused to leave the elections in the hands of the Ministry of the Interior, as they did in the 1993 first multi-party elections. They also called for a more inclusive government. To help solve the political crisis, a new government of national unity was appointed in February 1997 following international mediation. In addition, a new electoral body was created in March 1998. This was a joint electoral commission in charge of the process of rule-making and rule implementation. Its powers went from the establishment of a voters' list to the compilation of the results. The constitutional court was in charge of the certification of the results. The electoral body had seventy-three members, including thirty-four designated by the political parties, and thirty-nine others coming from the administration and civil society organizations, but as simple observers. The commission was thus highly politicized and lacked organic autonomy from the political stakeholders. It succeeded in organizing the parliamentary elections in 1998, even though the international observers noticed several serious shortcomings, especially in the first round.[7] But the commission failed to organize a presidential election accepted by all parties in 1999 and instead quickly split into factions in support of or against President Ange-Félix Patassé. As Mehler (2005, 143) points out:

> in the period following the 1999 elections, politics in the CAR have witnessed a dangerous remilitarization of political life [due to factors such as] a climate of extreme distrust among key political actors and groups, exclusionary and even authoritarian tendencies from the state, and uncertain signals and problematic actions by international actors.

After escaping several coup attempts, President Patassé was finally overthrown by a military rebellion led by the former army chief of staff, François Bozizé. The country then moved away from this institutional formula and, since then, has had several commissions—some mixed, others independent, like the National Authority of Elections that organized the 2016 "post-conflict" election.

Several lessons come out of these case studies. First, it is difficult to establish clear-cut causal links between the nature of an electoral body and democratization, even though some seem more conducive to successful elections than others. Fake autonomous commissions rarely organize undisputed elections because they are controlled by authoritarian incumbents and are part of autocrats' toolkits (Albaugh 2011). The same can be said of administrative boards, although this formula can work fairly well in an already institutionalized democracy. Political bodies seem to be transitory agreements in situations where political conflicts and mistrust are tense. In Africa's fragile democracies, autonomous commissions seem to perform better, although autonomy is rarely total and other measures are necessary in order to establish trust among parties and in the electoral body.

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Second, electoral systems are complex in the sense that, alongside each electoral body, other institutions are involved in some aspects of the electoral process (for example, constitutional courts and finance or interior ministries). Moreover, an electoral board is part of a broader political arena. As Mozaffar and Schedler (2002, 7) point out it is important to understand "its institutional location in the political system." It is also important to acknowledge that actors who fight for power see electoral institutions in an instrumental way and use them in order to reinforce their position. Electoral systems are, therefore, heavily influenced by several contextual factors. These will now briefly be discussed, before reflecting on the case study of Côte d'Ivoire, where these contextual aspects of electoral administration have played out dramatically.

## Electoral bodies in their environment

Institutions influence politics, but they are also influenced by it. First, electoral commissions are influenced by the regional situation. In West Africa, for example:

> [T]he Protocol on Democracy and Good Governance adopted by the Economic Community of West African States (ECOWAS) in 2001 states that among the principles to "be declared as constitutional principles shared by all Member States" is that "(E)very accession to power must be made through free, fair and transparent elections" (Article 1[b]). It also provides that "(T)he bodies responsible for organising the elections shall be independent or neutral and shall have the confidence of all the political actors" (Article 3).
>
> *(Kambale 2011, 1)*

Second, the confidence in and efficiency of commissions depend on the level of democracy. In fledgling democracies where electoral procedures are imperfect,

> the reason why election administration is a critical variable … is that the technical problems converge into the political ones, threatening the entire process. Technical problems are inevitable, and in a polarized environment, one group is likely to see 'irregularities' as politically-inspired by the other side.
>
> *(Pastor 1999b, 10)*

Electoral bodies are thus at the heart of political battles involving a variety of actors with legal, civic and/or political motivations. These actors typically include political parties, local and international observers, activists and civil society organizations, other domestic institutions like constitutional courts, and regional and international organizations (see Elklit and Reynolds 2002).

Third, beyond their legal status, confidence in electoral commissions—and thus their efficiency—depends greatly on the extent to which they are seen to treat opposition concerns fairly. For example, the Inter-Party Advisory Committee (IPAC) played such a role in Ghana (see Debrah 2011; Gyimah-Boadi 1999). This situation is in sharp contrast with countries like Mauritania, Togo, or Uganda, where suggested electoral reforms are usually resisted by opposition parties. In a comparative study of elections in Malawi, Ethiopia, and Zanzibar, Opitz, Fjelde, and Höglund (2013, 725) go as far as arguing that

> critically, it was not the legal independence of the EMBs—all electoral commissions were formally autonomous from the ruling regime—but the extent to which they were able to accommodate the interest and mistrust of the oppositions which mattered

> … EMBs do not work in a societal vacuum, but must be analysed as 'embedded institutions' that interact with their environment.

The challenges of mistrust between politicians, a large number of intervening actors, and the intensity and depth of their intrusion in the electoral matters are especially visible in post-conflict countries. The 2010 post-conflict presidential election in Côte d'Ivoire offers perhaps the most comprehensive illustration of the fact that organic separation and legal provisions do not mean effective autonomy from political interference, that broad context and history matter and make it difficult to disentangle the specific impact of electoral commissions from that of other variables.

### *Côte d'Ivoire 2010: organizing presidential elections in a violent political context*

From its independence in 1960 to 1990, Côte d'Ivoire, under the personal rule of Félix Houphouët-Boigny, was one of West Africa's richest and most stable countries (Wong 2005, 7; Förster 2013, 10). The situation changed dramatically after his death in 1993. The decade that followed witnessed sharp intra-elite conflict, contests over citizenship, intense regional division, and military intervention. In 2002, a bloody failed coup turned into a civil war as rebels retreated to the north and took control of half of the country. After eight years of political turmoil, the 2010 elections were supposed to put the country back on the democratic track. The electoral commission put in place was a political commission, with its members coming mainly from the competing parties. But it was only one institution among many involved in the electoral process.

The 2010 elections in Côte d'Ivoire were among the most violent and tumultuous ever held in Africa. They took place in a very tense political context and although the then electoral commission—a political one according to the typology above—had sizeable control over the process, the overall framework of the elections was much more complex. Given the political crisis the country was undergoing, the process was embedded in a series of political treaties that implied important legal consequences. The 2003 Linas-Marcousis Peace Agreement was among the most important of them. Signed in France, it ended the civil war and led to the appointment of a government of national unity that included former rebels—a power-sharing formula the Agreement stipulated must remain in place until the next elections. The second set of treaties was the Accra Peace Agreements, particularly those of 2003 (Accra Agreement I) and 2004 (Accra Agreement II), which aimed to reinforce the peace achieved at Linas-Marcoussis. Finally, there were the 2005 Pretoria Agreement and the 2007 Ouagadougou Peace Agreement. The Pretoria Peace Agreement was particularly important in two ways. First, it recognized the United Nations Operation in Côte d'Ivoire (ONUCI) not only as an actor of the electoral process, but also as the institution empowered to certify the results of the election. Thus, the UN operation was, from a juridical perspective, above both the electoral commission and the constitutional council. This means that the Ivoirian government had voluntarily relinquished part of the country's sovereignty regarding electoral matters. Second, this agreement modified, for the 2010 elections only, the composition of the electoral commission, which became political in the sense that its members came mainly from the political actors involved in the sets of agreements mentioned above. Concerning the Ouagadougou Agreement, it insisted on several electoral questions such as the delivery of new national identity documents to the Ivoirians in order to establish an inclusive national electoral list.

The institutional density of the 2010 elections was also reinforced by the fact that, as an AU and ECOWAS member and one of the biggest economies of its region, Côte d'Ivoire was under



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the scrutiny of both organizations, especially by West African states that were severely impacted economically and politically by the crisis. Although there were some disagreements between African states, the region as a whole was heavily involved in the process and sought an end to the crisis (Vines 2011, 25). However, the multiplicity of invested institutional bodies led Venance Konan, a prominent Ivoirian journalist and political activist, to warn that the opposition parties were naïvely focused on the electoral commission and neglecting the constitutional council, which was in charge of settling the electoral disputes and whose chair had been appointed by President Gbagbo alone (Konan 2011).

The first round of the presidential elections went well. As none of the candidates got more than 50 percent of the votes, a second round was organized between the two first candidates: the incumbent President Laurent Gbagbo, and Alassane Ouattara, who was supported by the former rebels. The situation then spiraled out of control. The electoral commission failed to overcome the sharp polarization of the political environment and split along political lines, with President Gbagbo's allies unsuccessfully trying to prevent the institution from announcing Ouattara's victory by 54.1 percent of the votes. Soon after the results were announced, the constitutional council annulled the results in several northern regions and declared Laurent Gbagbo elected with 51.4 percent of the votes. Violence, civic engagement, and mass demonstrations erupted across the country, and in Abidjan in particular. The UN mission certified the results announced by the electoral commission and got the support of ECOWAS, the AU, and the UN. In March 2011, the UN Security Council adopted Resolution 1975 that imposed sanctions against President Gbagbo and urged him to quit. As President Gbagbo refused to concede defeat, civil war erupted again. Finally, the rebels stormed the capital and arrested him. Alassane Ouattara was inaugurated in May 2011, five months after the elections.

The Ivoirian scenario demonstrates that institutions, and the electoral commission in particular, count. But it also calls for a more nuanced and contextualized view of its role and capacity. Other case studies may reveal further important contextual variables—such as the role of judicial independence, international and domestic observers, civil society strength, and the military—that play a role in electoral cycles (Hartlyn, McCoy, and Mustillo 2008). In countries where state resources are overtly used to buy or rig elections, where opposition parties have no access to the press or even to their electoral base, or where the registration of voters and delimitation of constituencies are manipulated, even relatively autonomous electoral commissions are mere epiphenomena with little positive impact on elections and democracy.

## Conclusion

Since the beginning of the democratic experiments in Africa in the 1990s, election administration systems have dramatically evolved. Government-organized elections have been abandoned in almost every country across the continent because new actors, eager to get access to political positions, lacked confidence in the incumbents' capacity and willingness to organize free and fair contests. Thus, they struggled for the institutionalization of separate bodies in charge of organizing the elections. These bodies are generally given constitutional freedom and independence, and have broadly contributed to the progress of free and fair elections in many African countries. According to Freedom House ratings, a dozen countries at least can be considered as *free* and about twenty are ranked among the *partly free* category. What differentiates the *free* countries from the *not free* ones is mainly the quality of their elections, along with the existence of some other types of freedoms. Interestingly, the *free* countries have different types of electoral administration; some organically separate from the executive branch (e.g., Benin and Ghana),

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and others more or less linked to it (e.g., Namibia, Seychelles, and Senegal). However, they share a common trait: a certain degree of autonomy of their electoral body.

The diverse forms taken by electoral bodies, and the varied levels of success across these diverse forms, mean that legal provisions as well as empirical capacity count, and that the political context and other local and international factors influencing the electoral competition, such as constitutional courts, civil society associations, international observers, and regional organizations, must be taken seriously. This is particularly true in fledgling democracies where elections are monitored by a web of institutions and actors and are no longer mere governmental or even domestic issues.

These points remind us that the study of electoral bodies is indeed important, but that there are several cautionary notes for future research in this area. First, electoral bodies can be moving targets for researchers. If some legally independent bodies appear to be weak, other less autonomous bodies may gain autonomy over time, like in Senegal. Moreover, electoral reforms—consensual or imposed—are widespread on the continent and the nature of an electoral body may change over time in the same country from one election to another.

Second, legal and constitutional attributes may only offer partial insight into the performance of electoral bodies. For example, in Namibia the members of the commission are appointed by the president and approved by the National Assembly (where the presidential party is dominant). Still, the commission fulfills its tasks independently. From the other direction, organic separation and legal provisions do not mean effective autonomy from political interference (Makulilo et al. 2015, 7). This is why, except for robust democracies like Botswana, Mauritius, South Africa, or Ghana, one needs to go beyond legal aspects in order to better understand both the nature and effectiveness of electoral bodies.

Finally, building on this point, the political environment of each country strongly affects their nature and effectiveness. Because of this, their specific impact is difficult to disentangle from that of other variables, such as those detailed above. The uneasy task is to assess the impact of electoral bodies on democratization in light of this, and other, considerations.

## Notes

1 The International Institute for Democracy and Electoral Assistance is an intergovernmental organization that supports sustainable democracy worldwide.
2 Benin, Cape Verde, Madagascar, Malawi, Mali, Namibia, São Tomé and Príncipe, and South Africa.
3 *Rule-making* refers to the rules of electoral competition (such as district magnitude and boundary, franchise, electoral formula) and the rules of electoral governance (such as voter registration, party and candidate registration, campaign financing and regulation). *Rule application* refers to the electoral game (such as voter education, electoral organization, voting, counting, and reporting). *Rule adjudication* refers to the certification of the results and the resolution of disputes. These rules vary greatly from one country to another.
4 As shown in Table 12.1, we see that no matter the type, electoral bodies rarely have a rule-adjudication role, which is commonly exercised by Supreme or Constitutional Courts. On the contrary, most of them have rule-making roles and all of them have large rule application prerogatives.
5 The judiciary as an institution is involved in the appointment of electoral commission members in several countries, but no country has a pure judicial electoral commission in the data we have gathered for the purpose of this study.
6 Law No. 2012/001 of 19 April 2012 relating to the Electoral Code, amended and supplemented by Law No 2012/017 of December 21, 2012.
7 http://aceproject.org/ero-en/regions/africa/CF/republique-centrafricaine-rapport-de-la-mission-1.
8 The data used for the compilation of this table can be found on the web pages of the electoral commissions of each country.

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