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Independent Electoral Commission

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Botswana has since 1965 held nine successive multi-party elections, making it Africa's longest running democracy. Although elections are high tension events, they have not sparked violence in Botswana – a rare feature on the African continent.

This chapter provides an assessment on how the Independent Electoral Commission (IEC) contributes to the national integrity system of the country. This chapter examines the role and structure of the Commission; the resources it accounts for; its mechanisms for redress, as well as its relationship with other national integrity pillars. The aim of this assessment is to provide an overview of the laws that establish and govern the Commission, and the practical situation.

Formation, role and structure

Initially, elections in Botswana were run by the Permanent Secretary to the President, which compromised the autonomy of elections. Following repeated complaints by opposition parties, there was a constitutional change which led to the establishment of the Office of the Supervisor of Elections, created in terms of section 66(1) of the Constitution of Botswana, 1996. Allegations of cheating, rigging of elections and unfairness continued, as the Supervisor of Elections was not only appointed by the President, but was also answerable to him.

Thus, this electoral authority too was perceived as not independent from the President, as the reporting lines remained the same. The opposition continued to apply pressure for reform, with the Botswana National Front (BNF) making threats to boycott the 1994 general election. Consequently, and in part, as an attempt to further address the concerns of the opposition and in line with international trends, a national referendum was held which led to a constitutional amendment in 1997 and the establishment of the IEC in 1998. The IEC has successfully supervised and conducted two elections since its formation – the 1999 and 2004 elections.

The IEC is created by section 65A of the Constitution. Its functions in terms of section 65A(12) entails the conducting and supervision of elections; the conducting of referendums; the giving of instructions and directions to the Secretary of the Commission; ensuring that elections are conducted efficiently, properly, freely and fairly, and performing other functions as may be prescribed by an Act of Parliament. Although the IEC is responsible for the conduct of elections, it does not issue a writ of elections, which is issued by the President. This contradicts best practice whereby an election date is fixed in the Constitution.

The IEC is in constant contact with the public as they are its main clients. It engages in voter education, takes public opinion seriously, consults the public through *kgotla* meetings; and holds seminars and workshops including special workshops for the faith sector.

The IEC is composed of seven members: a Chairman, who is a High Court judge and a legal practitioner, both of whom are directly appointed by the Judicial Service Commission (JSC), as well as five other members, who are required to be fit, impartial and proper, appointed by the JSC from a list of names recommended by the All-Party Conference in terms of section 65A(1) of the Constitution.

The All-Party Conference is a loose and unique structure in Botswana's democratic process that brings all registered political parties together to promote inter-party dialogue and plays a part in the appointment of the IEC, that of recommending the names of persons to be appointed as members. The last All-Party Conference was held in July 2004, to propose names of persons to be appointed as election commissioners. This meeting was riddled with controversy as the main opposition parties boycotted it. Nevertheless, section 65A(2) gives the JSC the power to appoint election commissioners where the All-Party Conference fails to reach an agreement on all or any number of persons up to dissolution of Parliament. Election commissioners hold office for two successive lives of Parliament.

Relations between the IEC and its Secretary

In addition to the Commission, section 66 of the Constitution provides for a full-time Secretary of the Commission, as commissioners work on a part-time basis. The Secretary is appointed by the President, and is answerable to the Commission and to the Minister of Presidential affairs. The Secretary is responsible for the general supervision of the registration of voters and the conduct of elections.

The Commission is expected in terms of section 65A(13) of the Constitution to submit a report on the exercise of its functions to the minister responsible for elections, who in turn must present it before the National Assembly. Government notice No. 356 of 2002, which sets out various ministerial portfolios, places the IEC under the Ministry of Presidential Affairs and Public Administration, though the IEC affirms that it does not report to anyone nor is it compelled by anyone to take certain decisions. The IEC asks the Minister of Presidential Affairs and Public Administration to table its motions and reports to the National Assembly in line with past practice. The Commission takes decisions and the Secretary implements them.

In line with section 66(7) of the Constitution, the Secretary must vacate office on attaining 65 years or at such other age as may be prescribed by an Act of Parliament. Moreover, the Secretary, in terms of section 66(8) may be removed from office only for inability to perform the functions of office or for misbehaviour. However, where the President considers removing the Secretary from office, the President must, in terms of section 66(9)(a), appoint a tribunal which must consist of a Chairman and not less than two members who hold or have held high judicial office. After its investigation, the tribunal must submit a report to the President, advising whether the Secretary ought to be removed from office for inability to perform the functions of office or for misbehaviour. In this way, the Secretary's security of tenure is protected by the Constitution. However, the other members of staff of the Commission are transferable.

Resources

An electoral Commission should have adequate resources (both human, material and financial) to enable it to discharge its functions effectively. The IEC has a staff complement of 135, with three of these in senior management and another 33 in middle management. With regard to financial resources, its budget follows the normal government budgetary process. According to an official of the IEC, the Commission's budget is not an issue. Government has always shown its willingness to fund the Commission.

The IEC also receives financial assistance and support from a range of organisations in Gaborone, such as the British High Commission, the Embassy of the United States, and the Friedrich Ebert Stiftung (FES), as well as from the International Institute for Democracy and

Electoral Assistance (IDEA) in Sweden. For instance, the IEC conducted an audit of the 2004 elections with the assistance of IDEA, and the Embassy of the United States sponsored two workshops in 2005 to evaluate the 2004 general elections.¹

Integrity

The Commission has no rules on conflict of interest. With regard to gifts and hospitality, the staff of the Commission – with the exception of the Secretary who is a presidential appointee – are governed by the General Orders Governing the Conditions of Service of the Public Service, and the Public Service Act, 1998, which require them to declare gifts. Usually members of the Commission declare their interests if they are an interested party, in line with the Corruption and Economic Crime Act, 1994.

Transparency

Transparency is paramount if the public and stakeholders are to have confidence in any public institution. According to an official of the IEC, the Commission is committed to promoting transparency lest it is accused of taking sides. Even the opposition parties are beginning to appreciate that the Commission is doing a good job: however, the appointment of the Secretary by the President is a thorny issue.²

The Commission conducts its mandate in accordance with the Electoral Act, 1968. In an effort to demonstrate its commitment to transparency, the Commission, to a large extent, puts most of the information it produces, such as election reports, into the public domain. In addition to election reports, the Commission also reports on its work every six months, which reports are circulated. It also appears before the Public Accounts Committee (PAC) to account for its budget in case there are any budget queries.³

Complaints and enforcement mechanisms

The Commission has no whistleblowing mechanisms. However, the Commission is empowered to start its own investigations where a member of staff is concerned in terms of the General Orders. The sanctions are spelt out in the Public Service Act, 1998. Officials of the Commission have been dismissed in the past.⁴ However, the Constitution is silent on the removal of the commissioners of the IEC, and this is a shortcoming.

1 Sebudubudu, D. and M. Lektorwe. 2005. 'An Evaluation of the 2004 Elections: Proceedings of Workshop held to evaluate the 2004 elections'. IEC.

2 Interview. 5 October 2006.

3 Ibid.

4 Ibid.

With regard to the issue of corruption in the Commission, it has so far not dealt with a case of corruption. However, cases of corruption in Botswana are dealt with in terms of the Corruption and Economic Crime Act, 1994 which spells out punitive measures in so far as such cases are concerned. Although there have been reports and allegations of vote buying in the recent past, the Commission is handicapped as there is no law to address vote buying.

Relationship with other pillars

The Commission is a key part of the country's national integrity system. It perceives itself as an oversight institution that delivers free and fair elections, and thus contributes to integrity. Even election observers have commended the Commission for delivering credible elections.

In addition to involving election observers in Botswana's political process, the Commission actively interacts with Parliament, political parties and the media. Civil society organisations such as the women's organisation, Emang Basadi, and the Council of Churches play an active role in voter education.

Conclusions and recommendations

The IEC is staffed by commissioners who are appointed by the Judicial Service Commission after recommendations by the All-Party Conference, which consists of party leaders; and a Secretary who is appointed by the President alone. The IEC has successfully supervised two elections without major incidences. Its finances and other resources are co-ordinated through the Office of the State President, and all these have been accounted for. The IEC has successfully submitted reports detailing the manner in which elections were conducted. Parliament approved these reports, thus confirming the integrity of the IEC.

The independence and credibility of an electoral authority is central to its operations. An IEC commissioner asserted that 'there is no interference whatsoever by the government in the operations of the IEC, even though the state finances the Commission'.⁵ Despite such assertions, the independence of the IEC remains a political issue. There is a strong perception that the IEC is still not truly independent from the executive. There are a number of factors that give rise to this perception.

- The IEC does not issue a writ of elections. The President issues this. The issuing of the writ of elections has become an issue of public debate, as the President and the Minister of Local Government are interested parties.

5 Tsie, B. 2003. 'The role, functions and performance of Botswana Independent Electoral Commission.' *Journal of African Elections*, 2, 1.145—151.

- The appointment of the IEC Secretary by the President, and not by the Commission, impacts negatively on the perception of the independence of the IEC. The appointment of the Secretary is a serious political issue, especially to opposition parties. Ideally, the IEC Secretary should be appointed by the Commission and made directly accountable to it.
- The IEC is accountable to Parliament through the minister responsible for election matters.
- Nominations for the Office of the President are not handled by the IEC, but by the Chief Justice, who is himself appointed by the President.
- The IEC relies on civil servants, especially district commissioners, council secretaries and other local staff, to run its elections. Thus, opposition parties naturally question the independence and impartiality of the IEC.

In the past, opposition parties have complained of irregularities in the conduct of elections. However, apart from the Tshiamo Primary School polling station ballot box incident in 1988 – when a sealed ballot box was found by election staff – which to some extent gave credence to opposition complaints of cheating, no serious or widespread irregularities have been reported so far. Even observer groups have declared elections in Botswana as free and peaceful. Despite the foregoing concerns on the independence of the IEC:

the legitimacy of Botswana's electoral process is perceived to be high both domestically and externally.⁶

6 Elklit, J. and L. Reynolds. 2002. 'The Impact of Election Administration on the Legitimacy of Emerging Democracies: A New Comparative Politics Research Agenda.' *Commonwealth and Comparative Politics* 40(2), 86–119.