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Understanding and Assessing Electoral Commission Independence: a New Framework

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Acronyms

CEAZ	Albania: Commission of the Electoral Zone
CEC	Nepal: Chief Election Commissioner Albania: Central Electoral Commission
CEO	Chief Electoral Officer
DP	Democratic Party
EC	Electoral Commission
ECK	Electoral Commission of Kenya (prior to 2010)
EMB	Election Management Board
IEBC	Independent Electoral and Boundaries Commission
KIEMS	Kenya Integrated Election Management System
ODIHR	Office For Democratic Institutions and Human Rights
OSCE	Organization For Security and Co-operation In Europe
SP	Socialist Party
VCC	Voting Centre Commission

Executive summary

Electoral commission independence – the extent to which electoral commissions can operate independently of political pressures and external interference – is an important driver of public perceptions of electoral integrity. As a result, it directly impacts on the legitimacy of those political parties and individual politicians who are elected to political office. A commission that is seen to be compromised is unlikely to be able to confer credibility on a contested general election. In turn, this may undermine the legitimacy of the wider political system. Assessing the independence of electoral commissions is therefore important because it is an essential component of the kinds of electoral reform processes that can help to strengthen new democracies.

However, efforts to understand and assess electoral commission independence have been hampered by a lack of conceptual clarity and the absence of a common system of evaluation. This paper responds to this need by seeking to clarify the concept of electoral commission independence and presenting a standardised framework for those – election observers, civil society groups, parties, journalists, the public – who wish to assess the independence of a specific electoral commission.

The paper differentiates between formal or *de jure* independence and informal or *de facto* independence, and argues that both must be taken into account. Formal independence refers to the official rules as they are described in constitutional, legal, and other instruments. Informal independence refers to the extent to which these rules are followed in practice. In other words, it takes into account the degree to which, on a day to day basis, an electoral commission is free to take decisions and act as it finds best or necessary in order to be able to deliver an election without undue political or external interference. Assessing both formal and informal independence is necessary, because the evidence shows that many commissions that have ‘independent’ in the title are nothing of the sort, and often the official rules are not respected in practice.

On this basis, the paper then proposes a comprehensive set of eleven criteria through which to evaluate electoral commission independence, grouped into three main categories of autonomy: **a) institutional and leadership; b) functional and decision-making; and c) financial and budgetary.** For each criteria, a battery of questions is provided to enable readers to qualitatively evaluate whether the degree of independence in each case is: ‘highly satisfactory’, ‘fairly satisfactory’ or ‘not satisfactory’. The paper then guides readers as to how these individual assessments can be combined to develop an overall assessment of the electoral commission under scrutiny as being either ‘highly independent’, ‘moderately independent’, or ‘not independent’.

However, it is important to note that this kind of evaluation requires making complex judgements about processes on which there is little reliable – or at least uncontested – information. Indeed, given that the informal relations between the ruling party and the electoral commission can change very quickly, this process should not be seen as a ‘one off’ and a fresh evaluation should be done for every election. Given this, we encourage users to see the evaluation of electoral commission independence as an open ended process that should include discussion among and between interested parties. To highlight this point, the paper ends with three brief case studies that demonstrate the challenge of conducting such evaluations in the cases of Albania, Kenya, and Nepal. While it is clear that none of these electoral commissions is ‘highly independent’, in some cases it is challenging to determine whether the commission is ‘moderately independent’ or ‘not independent’ at all.

These caveats notwithstanding, we hope that this paper will contribute to the development of a common method of assessing electoral commission independence and, indirectly, to the evolution of stronger and more independent electoral commissions around the world.

Introduction: electoral commission independence and electoral integrity

Global concern at the onset of democratic recession has shone a spotlight on the integrity of elections (Cheeseman and Klaas 2018). This is particularly true in countries that have the outward appearance of democracy - holding regular elections, making policy through the legislature - but in many ways continue to operate like authoritarian regimes. In these 'electoral-authoritarian' regimes, opposition parties often allege that governments are only able to remain in power by manipulating the electoral process (Norris et al. 2018). In many but not all cases of disputed elections, a major complaint is that the electoral commission is somehow or other operating in the interests of the ruling party.¹

By contrast, where electoral commissions are politically neutral, professional and committed to democratic values, they can play an important role in strengthening the electoral process itself. As Kaaba and Haang'andu (2020: 172) have argued, 'The legitimacy of elections cannot be separated from the competency, professionalism and independence of the institution administering them.' Moreover, recent research supported by WFD has demonstrated that electoral commissions play an important role in shaping the success - or failure - of long-term efforts to improve electoral integrity. More specifically, the strength and independence of an electoral commission is a critical factor in whether or not the recommendations made by international election observers are implemented (Dodsworth et al. 2020).

An electoral commission is supposed to be non-partisan, that is, it should not in its decisions or actions benefit any particular political parties (IDEA 2014). It adds a lot to the credibility of an electoral commission if it is perceived to be non-partisan, which in turn impacts directly on the electoral commission's perceived electoral integrity. This is especially the case in new democracies, where electoral commissions often both organise and manage the electoral process and are responsible for counting the votes and announcing the results. Indeed, in some cases, such as Zimbabwe, the electoral commission also plays an important role in identifying and drafting the very electoral regulations that it is responsible for enforcing. Similarly, in Kenya the electoral commission is responsible both for a number of contentious issues such as boundary demarcation and plays a leading role in voter education, as well as managing the organisation of voter registration and of course the election itself. In these contexts - as well as in a number of countries in, for example, Eastern Europe, Central Asia, and South America - it is clear why the credibility of the electoral commission weighs so heavily on perceptions of electoral quality (Birch 2008). Furthermore, a recent study demonstrates convincingly that *de facto* (informal) EMB independence has a strong and positive impact on electoral integrity (van Ham and Garnett 2019).

The credibility of the electoral commission has two main components: independence and performance. In turn, performance can be broken down into two main capacities: capacity and governance (Figure 1). This paper focuses on the question of independence, understood to be the formal and informal independence of the commission from partisan political and other influence. In principle, partisan interference may come from either the ruling party or the opposition (or both), but in practice the accusation is usually that the ruling party is able to use its greater power and resources to bend the commission to its will.

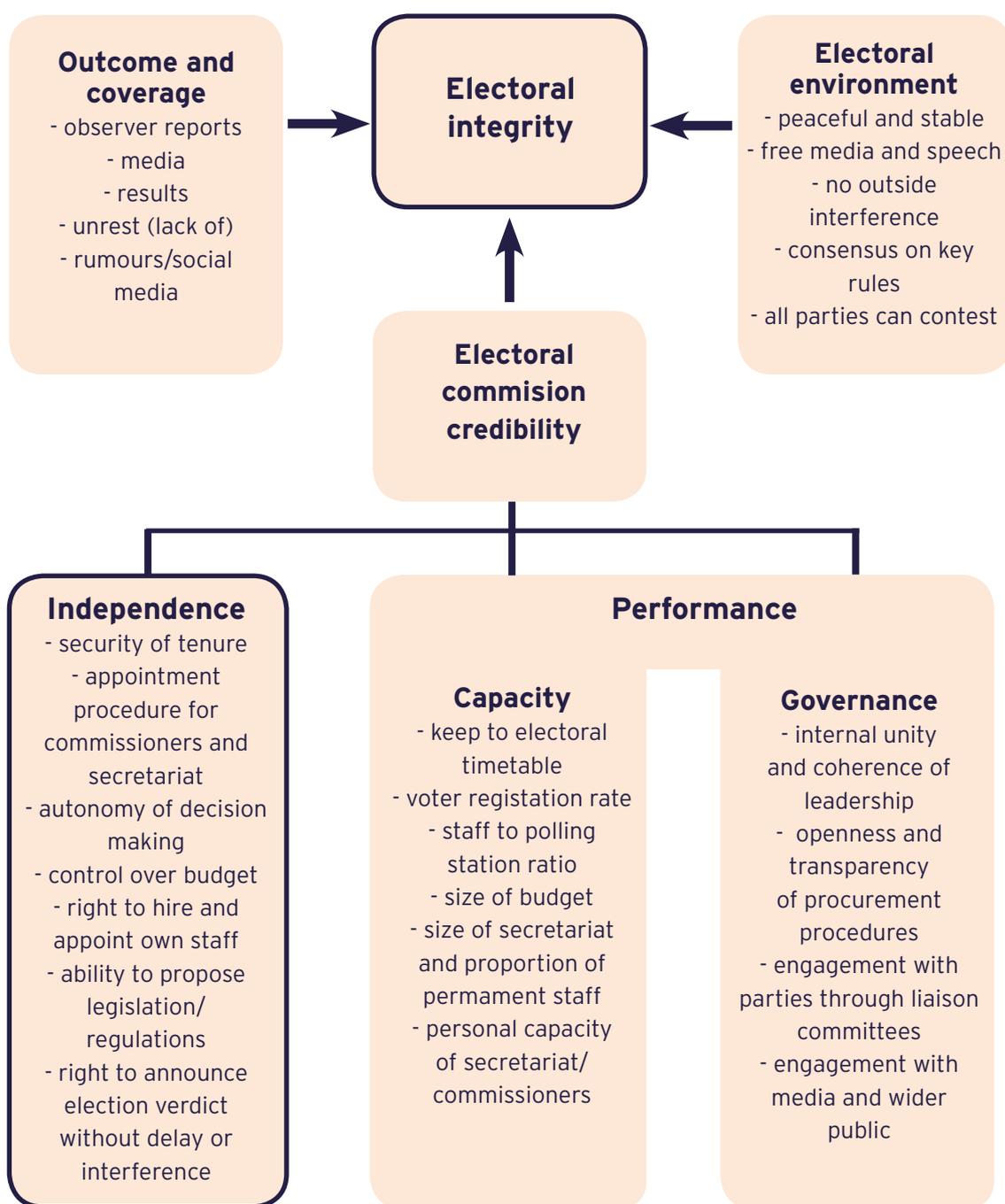
Important aspects of electoral commission independence include whether it has: a strong legal foundation that insulates it from politics; an appointments procedure that ensures that commissioners are credible individuals and not simply stooges of one party or another; security of tenure so that commissioners can make unpopular decisions without fear of losing their job; autonomy over decision-making in key areas such as staffing, the budget, and decision making in relation to acquisition of election related material such as ballot papers; and the right to announce the election result without this having to be first signed off by another institution. When electoral commissions are not seen to be independent, the election results that they announce are likely to be called into question, even if they are accurate.

1. The paper is only concerned with electoral commissions, which are not formally part of the state bureaucracy in one form or another. Electoral management bodies (EMBs) are usually categorised as either independent, governmental, or mixed.

We focus on the independence of electoral commissions as this is a particularly important driver of public perceptions of electoral integrity. It is also the hardest characteristic to conceptualise and measure. Given this, it is important to note that we do not address electoral management bodies that take the form of either government institutions (that is, those that are formally part of the government) or have a 'mixed' (part government and part independent) set up. Such commissions are not intended to be fully independent by definition and so do not fall within our scope.

Our discussion proceeds as follows. The first section sets out how electoral commission independence can be conceptualised and raises some key points that should be kept in mind when working in this area. The second develops a framework through which to assess electoral commission independence and provide a guide to civil society groups and election observers about how to do undertake such an evaluation. The third and final section then considers a few informative case studies that highlight some of the difficulties of assessing the independence of electoral commissions in practice.

Figure 1. The potential contribution of electoral commissions to strengthening electoral integrity



Before narrowing down to focus on independence, however, it will be useful to begin by briefly considering how independence and performance - which can be broken down into capacity and governance as depicted in Figure 1 - collectively shape the credibility of an electoral commission.

'Capacity' refers to the various different logistical factors that enable an electoral commission to get the job done, such as the size of the budget, the size of the secretariat and the proportion of permanent staff, the personal capacity of both commissioners and secretariat, and staff to polling station ratio. Specific manifestations of electoral commission capacity include the commission's ability to keep to the electoral timetable and the voter registration rate - the percentage of prospective, eligible voters who are actually registered.

'Governance' refers to the electoral commission's ability - and willingness - to engage with all political parties (through liaison committees at various levels) as well as the media and the wider public. It also covers the electoral commission's general openness and transparency (not only about procurement) as well as the organisation's sense of internal unity and the consistency of leadership, especially in terms of the relationship between the commission chairperson and the CEO.

A commission with no capacity - for example, that lacks the human capital and budget to do an effective job - is likely to struggle to keep to the electoral timetable and to deliver a professional service. In turn, this encourages the risk of logistical failings, while also making it harder for the commission to safeguard the process against abuse. For example, commissions with a skeletal staff and limited funding may find it all but impossible to safeguard ballot boxes and ballot papers ahead of the election, and to secure votes thereafter. In turn, the poor performance of the electoral commission is likely to undermine its credibility and, as a consequence, the integrity of the broader electoral process.

A commission with weak internal governance - for example, that lacks coherent leadership, is unable to effectively manage its own staff, or faces accusations of corruption - is likely to lose moral authority and to struggle to effectively communicate with political parties and the wider public. Accusations of wrongdoing, especially with regards to the procurement procedures for important electoral materials such as ballot papers or equipment for electronic voter registration, may also be interpreted by opposition parties and a sceptical public as evidence of electoral manipulation - even when this is not the case. This is especially the case if the commission is not seen to be transparent in its dealings with civil society groups, opposition parties, the media and the wider public. Under these conditions, weak governance can undermine the credibility of the commission and hence the integrity of the election itself.

Of course, while it is conceptually helpful to separate the three categories of capacity, governance and independence, they obviously impact on each other in multiple ways. The way that the public evaluates an electoral commission depends in great part on its performance in the areas of greatest salience - whether the election is delivered according to the agreed timetable, a high proportion of eligible voters are registered, polling stations are open on time with the right materials, votes are counted and collated in a way that appears to be both transparent, robust, and in accordance with the rules and regulations, and the result is declared in a timely manner. While independence is a different matter and can be assessed separately, each of these categories has implications for the others, and it is the overall combination of capacity, governance and independence that determines electoral commission credibility - which in turn is the basis for voters', parties', and candidates' trust in the electoral outcome and the conviction that the election has integrity (Maphunye 2019).

For example, an electoral commission may have complete control over how to spend the budget that is allocated, but if that budget is significantly lower than what is needed to safeguard key elements of the electoral process this may not be sufficient to enhance the credibility of an election. High quality governance can help a commission to make the most of scarce resources, as we often see, but not if the operations of the commission are undermined by political interference that compromises its independence. A majority of commissioners can set out to assert the independence of the commission, but this can be undermined if the entire organisation is not effectively insulated from networks of bribery and clientelism.

Given the numerous connections between capacity, independence, and governance, it is therefore important to recognise that establishing the formal independence of an electoral commission alone is not enough to confer integrity on the broader electoral process. But this caveat notwithstanding, electoral commission independence is a key element in having - or obtaining - electoral integrity.

1. Understanding electoral commission independence

Electoral commission independence is a complex issue that often proves highly controversial in new democracies, especially when elections are contested (Lekorwe 2006). The core principle underpinning independence is that the commission should be empowered to follow the constitutional, legal, and electoral regulatory framework without political and other interference in its operations.

A lack of independence might take a number of different forms:

- the absence of the formal rights and powers needed to effectively establish control over the conduct of an election; the refusal of political leaders to comply with the decisions of the electoral commission, even though it has the formal power to make them;
- the appointment of commissioners who are politically biased or even accountable to specific parties or individuals; and,
- the practical usurpation of the decision-making of commissioners by members of the secretariat or other staff (such as military personnel) seconded to help run the elections; the intimidation of commissioners through warnings and threats; and many more (Thomas et al. 2014).

The three types of electoral commission

Electoral management bodies (EMBs) are traditionally categorised into three groups (Thomas et al. 2014). The largest group are those that are formally independent, which means that they are institutionally independent from the executive branch of government (circa 63 per cent of all EMBs, according to International IDEA). EMBs in this vein are traditionally known as *electoral commissions*, and often have 'independent' added to their name to make it visible to those interested that the organisation is not part of the state structure, and is - or at least wants to be seen as - independent. It is this group, and this group alone, that this paper focuses on.

This means that we are not concerned with EMBs that sit within the state itself, for example those institutions that are located within the executive branch (circa 23 per cent). Neither are we addressing the 13 per cent of EMBs that are categorised as having a mixed model in which the EMB is composed of more than one element, one of which is formally independent, while another is located in the executive branch. However, our analysis is likely to have implications for these EMBs.

Formal and informal rules

As should be clear from the examples already provided, a lack of independence may be formal (*de jure*), that is, the law and electoral regulations may empower political actors to intervene in aspects of the electoral process, or informal (*de facto*), in the sense that rules and regulations designed to establish independence are not followed in reality. It is therefore important not to simply focus on the formal rules of the game but to also ask how these processes play out in practice (Cheeseman 2018).

For example, the formal status of electoral commission independence may be misleading. The fact that the majority of electoral commissions in regions such as sub-Saharan Africa have 'independent' in their title, for example, does not in and by itself guarantee that they are independent and don't in some cases experience some kind of political interference in what they do (Balule 2008; EIkliit 2020).

Indeed, the fact that an electoral management board terms itself 'independent' tells us remarkably little about how it performs. According to Cheeseman and Klaas (2018), there is no straightforward correlation between an electoral management body being officially 'independent' and the quality of the resulting election.

This is because the informal processes through which power is exercised by the ruling party often undermine independence in practice. As a result, regions with high levels of electoral commission independence such as sub-Saharan Africa - where around two-thirds of elections take place under 'independent' management bodies - do not necessarily see good quality electoral processes. In Africa, as in parts of Asia and the MENA region, the average quality of elections has been disappointing, just 4.9 out of 10, on a 0-10 scale in which higher scores indicate better quality elections.

It is therefore important to look beyond official titles and formal rules and regulations to assess election commission independence in practice, paying careful attention to how decisions are made and whether these reflect the spirit as well as the letter of the law.

What we don't mean by 'independence'

The independence of the commission from partisan influence should not be confused with political parties being able to recommend individuals to the electoral commission. While many electoral commissions seek to appoint technocrats and/or people considered of particular integrity and require Chairs and commissioners to have certain qualifications and in general be persons of integrity - for example, in Malawi the Chair must be a High Court judge - in other cases they may be appointed by the president, oftentimes after being nominated by parties in parliament.

Especially where there have been repeated controversies over the composition and independence of the electoral commission, countries have abandoned the idea of a technocratic body in favour of a form of 'power sharing' in which the idea is to form a neutral committee by balancing representatives of different political parties (see Cases 1 and 2 below - Cheeseman et al. 2019). These may be people with (or without) specific electoral expertise who are known to be sympathetic to the party, or actual politicians. Where the appointment of such figures is allowed (or assumed) in the official regulations, eligible parties (for example, only political parties currently represented in parliament) are able to recommend (or nominate) commissioners, and the electoral commission that results features some kind of balance of political allegiances, it may be accurate to describe it as formally independent even though it is not strictly speaking apolitical. There is, however, a clear risk that the presence of figures with strong political ties in the commission will exacerbate rumours and suspicions about its conduct or even make it difficult to function, that is, to fulfil its mandatory tasks.

A lack of political independence should not be confused with the statutory responsibility that electoral commissioners have to fulfil their duties in line with relevant legal and regulatory guidelines (Thomas et al. 2014). Some countries also have developed a code of conduct (and in some cases also ethics guidelines) for election commissioners, which prospective commissioners must subscribe to before taking office. Like all public bodies, electoral commissions will usually be required to file accounts, and in some cases commissioners may be called before a specific ministry, or before parliament, to explain their actions.

The composition of an independent electoral commission

Most (but not all) electoral commissions feature commissioners and a secretariat. The commissioners represent the public face of the electoral commission and have the authority to make policy decisions and oftentimes also important operational decisions.

They are usually between three and 12 in number and headed by a Chair who has overall responsibility for the conduct of the election and will usually be the one to read out the result.

The work of the commissioners is supported by a much larger secretariat, usually led by the Chief Electoral Officer (CEO), which is responsible for carrying out the day-to-day running of the commission.

Although these roles are often clearly demarcated in principle, in practice there may be tension between the CEO and the Chair, especially as while the Chair has ultimate authority, the CEO and their staff may have a better grasp of electoral procedures.

In principle these accountability mechanisms are appropriate because governments have a responsibility to ensure value for money for taxpayers and also to ensure that important organisations are well run. Thus, formal lines of accountability do not necessarily undermine independence. However, as we discuss below, it is also possible that in practice such provisions are used to undermine the independence of the electoral commission, and so it is important to look both at the legal framework within which electoral commissions operate and the way that this works in reality (Makulilo 2011). There are cases, for example, in which an electoral commission has requested to have its post-election report discussed in parliament, only for the request to be turned down, probably because parliament did not want anyone to have an opportunity to highlight the impact of the (overly) narrow financial and personnel hiring limitations placed on the electoral commission. But the important question in this case is: can the electoral commission still make its report available for public scrutiny - and in this way hold parliament accountable for its various decisions?

2. The Assessment Framework

Many different factors impinge on the overall independence of an electoral commission, and there is growing interest in how best to understand these issues. Recognising the importance of formal and informal political rules and practices, van Ham and Garnett (2019) suggest four key types of independence: institutional, personnel, financial, and functional. For their part, Schein et al (2020: 17) echo the importance of these four points but seek to go beyond them, outlining six dimensions of electoral commission autonomy: institutional, personnel, financial, functional, accountability and behavioural. In the remainder of his paper we build on this recent work but also seek to simplify these typologies and focus on the aspects of independence that are most important and easiest to evaluate. We do this in order to make the task of coming to an overall assessment as straightforward as possible. On this basis, we propose three broad categories of independence.

A) Institutional and leadership

Institutional independence refers to whether the electoral commission is 'independent from politics' (Van Ham and Garnett 2019: 317) in terms of the electoral laws, regulations and the constitution. The way that electoral commission is set up - and the strength of its legal standing - are particularly important to its autonomy, because without a strong legal foundation it is highly unlikely that commissioners will be able to exercise independence in practice. At the same time, how commissioners and the secretariat are selected and their security of tenure plays an important role in shaping the ability of the commission to withstand political pressure. While controversies in this area usually focus on the chair and the commissioners, the process for appointing the CEO - and the secretariat - is also important to ensure that commissioners are fully in control of the organisation. One can also look into whether or not the electoral commission is free to develop its own salary scale or has to use the state's recruitment procedures, salary scale, and rules for promotion. Are electoral commission staff in practice considered civil servants? And what about the staff who may be seconded to the electoral commission to help with the enormous logistical task of running the election on polling day - does the electoral commission get to select these individuals and control what they do?

B) Functional and decision-making

Having independent leaders and personnel will matter little if the commission lacks the authority and capacity to take basic decisions on its own. It is therefore essential to consider the range of decisions that the commission can take, and the extent to which it can make these on its own or must seek the prior approval of other bodies. Functional autonomy can be thought of as the extent to which the electoral commission's decision-making power prevents 'political, executive or other powerbroker interfering in its activities' (Schein 2020: 18). In other words, can the electoral commission modify the electoral regulations and make decisions about how to respond to challenges that emerge during the electoral process? Can it determine (that is, come to a conclusion about) the quality of the elections, and does it have the right to announce the election result? And is it able to do these things unilaterally or must it seek the permission or approval of any other institution or individual to do so? If so, who can exert a veto over the decisions of the electoral commission and do they actually do so in practice?

C) Financial and budgetary

Having strong decision making powers will matter little if the commission is not able to control its own budget and make decisions about how to spend its resources and when. While the extent of funding is an issue of capacity more than of independence, the timely disbursement of funds, and the ability of the commission to decide what to spend money on given the budget it is allocated, are very important aspects of independence. Moreover, if the budget of the commission is so low that it cannot carry out the most basic tasks, or the administrative requirements on undertaking expenditure are so great that they make the process overly cumbersome, this may effectively undermine other aspects of independence such as leadership and decision-making autonomy.

Coming to an overall assessment

Coming to an overall assessment of the quality of an electoral commission requires first considering each question in Table 2, and based on these deliberations arriving at a conclusion regarding how independent the commission appears to be for each separate category: institutional and leadership; functional and decision-making; and, financial and budgetary. This can be done by deciding whether, given the answers to the questions set out in that section, the independence of the electoral commission can be said to be: highly satisfactory, fairly satisfactory, or not satisfactory.

Those who wish to turn this into a numerical score for the purposes of tracking electoral commission independence over time, and comparing one commission to another, can do so by assigning scores for each individual category, and then adding these scores to generate an overall 'rating' out of six. We suggest using a scoring system with only three categories:

Highly satisfactory = 2

Fairly satisfactory = 1

Not satisfactory = 0

Many positive answers to the questions set out will obviously point in the direction of scoring 'highly' or 'fairly satisfactory', that is, 2 or 1, while many negative or uncertain answers will point in the direction of 'fairly' or 'not satisfactory', that is, 1 or 0. However, it should be remembered that certain issues - such as the security of tenure of electoral officials - are more important than others and such issues should weigh more than the less important ones in assessment.

It is important to remember that any attempt to give numerical scores to a complex issues such as electoral commission independence is fraught with danger. There is no foolproof way to turn a judgement about a particular category into a numerical score, and some categories - such as institutional and leadership independence - may be deemed more important than others. This caveat notwithstanding, we provide an indication of how such scores might map on to an overall assessment of an electoral commission in Table 1.

It is essential to keep in mind, though, that simply adding scores may generate a misleading finding. For example, a commission that scores 'unsatisfactory' in one category may still come out as 'moderately independent' within our framework if it scores well in the other two, but the complete absence of independence in any one area is a serious warning sign and indicates that the independence of the commission may be seriously compromised. For this reason, it is worth considering placing an electoral commission that scores 'not satisfactory' in any one of the three sub-categories in the 'not independent' category to reflect these deep concerns.

In addition to making it easier to think about electoral commission independence in a systematic way, the framework is intended - by enabling a reasonably objective and thorough evaluation - to help identify key points that need to be improved upon in order to improve the level of electoral commission independence. In this endeavour it will be especially useful to identify subcategories in which a commission's scores are particularly unsatisfactory, as these areas are likely to represent suitable starting points for future reform efforts.

How to use the assessment framework and indicators

To empower civil society groups, political parties and election observer organisations to monitor electoral commission independence, Table 2 further breaks down these three categories (A, B, and C) of independence into eleven key indicators.

It also features a list of questions that will help to guide civil society, observation groups and others interested in these issues to a grounded understanding of how each and every indicator contributes to the independence (perceived as well as real) of the electoral commission, and a suggestion of sources of data and information that are likely to help to answer these questions.

Because any assessment must capture both the official rules and the informal ways in which commissions operate in reality, it is important to ask *both* to what extent the formal laws and regulations establish electoral commission independence (in dark blue), and to what extent this is also respected in practice (in red). The questions set out below address both sides of this equation.

Evaluation Tables

Table 1. Assessing overall electoral commission independence

Overall rating	Overall score	Descriptor
Highly independent	5-6	A highly independent electoral commission that is able to resist political pressure in all key areas. Independence is both institutionalised through a set of laws and regulations that give electoral commissioners full control over their own operations, and is respected in practice. As a result, the commission can - and sometimes does - make decisions that go against the interests of the ruling party. Because of this, opposition and civil society groups are more likely to have confidence in the commission and its staff. Electoral commissions in this category are likely to be viewed as politically neutral, and are well placed to confer credibility on elections.
Moderately independent	3-4	An electoral commission that is more independent in some respects than others. Some important aspects of independence are protected by the official laws and regulations, but not all, and the formal rules are not always respected in practice. In certain areas, however, the commission can and does operate independently of political considerations, and this may include taking decisions that are not always in the interests of the ruling party. Because of this, there is likely to be some disagreement about exactly how far the commission and its staff can be trusted. Electoral commissions in this category are likely to divide opinion, and may not always be able to confer credibility on the electoral process, especially when other aspects of the election are controversial.
Not independent	0-2	A politically compromised electoral commission that suffers limited independence in a number of key areas. Independence is undermined both by a lack of formal independence and the failure to respect the official rules in practice. As a result, the electoral commission rarely, if ever, makes decisions that go against the interests of the ruling party. Because of this, opposition parties and civil society groups are likely to have little confidence in the commission and its staff. Electoral commissions in this category are likely to be viewed as politically biased and will struggle (normally in vain) to confer credibility on elections, especially where they are close.

Table 2. Indicators of independence

Note: Questions that focus on the formal powers of commissions - i.e. what is written down in the laws and regulations - are in blue. Questions that focus on informal practice - that is, what really happens in reality - are in red.

	Indicator	Examples	Data/Evidence	Key questions for assessing independence
A) Institutional and Leadership				
1	Legal standing of the electoral commission	<ul style="list-style-type: none"> - constitutional and/or legal foundation and protection - requirement of super-majority to change key provisions 	<ul style="list-style-type: none"> - constitutional regulations - legal regulations - electoral regulations 	<p>1. (a) Is the existence of an independent electoral commission set out in the constitution and (b) is the language that governs the commission clear and unambiguous?</p> <p>2. (a) Is there a strong legislative foundation for an independent commission and (b) is the legal language that governs the commission clear and unambiguous?</p> <p>3. In practice, are there examples in which (a) constitutional amendments or (b) legal changes have threatened the independence of the commission?</p>
2	Transparency and inclusivity of appointments procedures for commissioners and secretariat	<ul style="list-style-type: none"> - open adverts - public hearings - appointing body - degree of inclusivity of process in terms of opposition parties and civil society groups 	<ul style="list-style-type: none"> - constitutional regulations - legal framework - newspaper/radio/other media adverts - holding of hearings, publicly or <i>in camera</i> 	<p>4. Is recruitment conducted through (required) open adverts and with a reasonable timeframe for candidates to respond?</p> <p>5. Is the timetable for recruitment clearly set out and well publicised?</p> <p>6. (a) Are all candidates subject to the same vetting processes and are these held in public? (b) Are only names of those short-listed made public?</p> <p>7. (a) Who has the formal responsibility for appointing commissioners and the secretariat, and (b) to what extent does this benefit one party or candidate over others?</p> <p>8. In practice, what degree of inclusivity is there in the appointments process - for example, are all political parties in parliament able to make recommendations or nominations, or is this the preserve of the president?</p> <p>9. Does any institution or group have the right to challenge appointments if they have concerns about the integrity of the process or about the eligibility or integrity of candidates?</p> <p>10. Are there restrictive criteria over (a) who is eligible to stand to be an electoral commissioner or (b) to serve in the secretariat?</p> <p>11. Has it ever happened that a change in the executive (or a problematic election) has been followed by changes to the electoral commission?</p> <p>12. Has the CEO ever been replaced in similar circumstances?</p>

	Indicator	Examples	Data/Evidence	Key questions for assessing independence
A) Institutional and Leadership (cont'd)				
3	Security of tenure	<ul style="list-style-type: none"> - right of commissioners to serve out their term - length of appointment period - mechanism (if any) under which individuals can be replaced 	<ul style="list-style-type: none"> - legal framework - whether tenure runs longer than the parliamentary (or presidential) term - inability of the government to remove commissioners apart from in cases of fraud and malpractice 	<p>13. How long is the tenure of commissioners? Does this extend beyond the end of the parliamentary and presidential terms giving them independence from specific governments?</p> <p>14. Is the tenure so long that it allows the commissioners to be responsible for more than one national election at the same level, i.e. so that they can accumulate election management experience?</p> <p>15. Can commissioners be re-appointed and what is the basis for doing so?</p> <p>16. Are there any grounds on which commissioners can be removed before the end of their term and if so who has this power and what safeguards exist to prevent its abuse?</p> <p>17. In practice, are commissioners removed before the end of their terms in office and is this ever motivated by concerns other than malpractice or being unable to perform their duties (for example due to health issues or convictions in a court of law)?</p>
4	Physical security	<ul style="list-style-type: none"> - freedom of Commissioners from threats and attack - ability of commissioners to arrange their own security 	<ul style="list-style-type: none"> - evidence of attacks against electoral commission and its property and staff - police reports - election observation reports - electoral commission annual reports 	<p>18. Does the electoral commission have the right to organise its own security or must it rely on the state to provide this?</p> <p>19. In practice, is security provided in all cases when it is required?</p> <p>20. In practice, have there been attempts to intimidate or attack members of the electoral commission, including physical attacks, threats made at rallies and in speeches, and hate messages shared over social media?</p>
5	Right to hire and second own staff	<ul style="list-style-type: none"> -procedures for hiring and firing secretariat -procedures for hiring and firing regional staff -procedures for hiring and firing polling station staff 	<ul style="list-style-type: none"> -formal legislation/ regulations -official protocol regarding who hires the CEO -records of requests for secondments and hires, and how quickly they were responded to 	<p>21. Does the electoral commission enjoy the right to hire its own staff, including the CEO?</p> <p>22. If the electoral commission does not appoint the CEO, how - and by whom - is the CEO appointed, and what safeguards exist to prevent this process from being manipulated and politicised?</p> <p>23. Does the electoral commission have the instruments (the right) to apply a gender equality/ inclusivity framework in its human resources policies?</p> <p>24. Can the electoral commission - on its own - request that staff be seconded from other government bodies?</p> <p>25. In practice, are requests for secondment of supplementary staff made by the electoral commission respected and is this done in a timely manner?</p>
Overall assessment: Highly Satisfactory = 2, Fairly Satisfactory = 1, Not Satisfactory = 0				

	Indicator	Examples	Data/Evidence	Key questions for assessing independence
B) Functional and Decision-Making				
6	Decision-making autonomy	<ul style="list-style-type: none"> - reporting line for any significant electoral decisions/regulations reporting line (i.e. who do they have to be cleared with?) - right to amend EC procedures and protocols - requirement on the EC to issue an annual report covering its activities and financial situation 	<ul style="list-style-type: none"> - formal legislation/ regulations - interviews - media reports 	<p>26. Does the electoral commission have the right to make decisions with regard to its own protocols and procedures (i.e., rules and regulations)?</p> <p>27. Are amendments to the legal and regulatory framework respected in practice?</p> <p>28. Are decisions taken by the electoral commission properly publicised (e.g. in the government gazette) and made known by relevant members of electoral commission staff at all levels as well as poll workers?</p> <p>29. Does the annual report (if any) or the report written after an election (if any) formally have to be submitted to parliament and the relevant minister? What are the procedures for parliament's handling of the report? Officially, should it be debated in plenum or in a specific committee (and subsequently followed up by legal or other initiatives) or is it only shelved?</p> <p>30. Is the electoral commission (formally?) held to account, if there are issues deemed problematic during the discussion of the report(s)?</p> <p>31. Are the reports referred to in (29) made available to the general public? Can the electoral commission do so without the prior approval of parliament/the minister?</p>
7	Right to amend and propose legislation and regulations	<ul style="list-style-type: none"> - right to propose changes to the electoral laws - right to amend electoral rules and regulation framework and have such amendments publicised in the government gazette - reporting line for electoral decisions/ regulations 	<ul style="list-style-type: none"> - formal legislation / regulations - changes to electoral framework driven by EC - government gazette 	<p>32. Can the electoral commission on its own amend the electoral rules and regulations (except the electoral law as such)?</p> <p>33. In practice, has the electoral commission made changes to the electoral regulations and process, for example in line with the recommendation of international observers or because of experiences in previous elections?</p>

	Indicator	Examples	Data/Evidence	Key questions for assessing independence
B) Functional and Decision-Making (cont'd)				
8	Right to announce the election results and declare the polls 'valid'/'free and fair'/'acceptable' etc.	<ul style="list-style-type: none"> - which bodies and organisations have the right to declare results? - does this right sit solely with EC? - who (if anybody) pronounces on the acceptability of the elections? - does any organisational/ individual have a formal or informal veto? 	<ul style="list-style-type: none"> - formal legislation / regulations - rights / powers as set out in the legislation, constitution and electoral guidelines 	<p>34. Does the electoral commission have the sole right to announce provisional and final election results?</p> <p>35. Can any other body prevent the electoral commission from releasing the results and if so under what conditions?</p> <p>36. Has this ever been exercised in practice and if so, was this to prevent results that were unfavourable to a particular individual or party being released?</p>
9	Appeals process	<ul style="list-style-type: none"> - can decisions taken by the electoral commission be appealed? - what is the appeal process and who is allowed to appeal electoral commission decisions? 	<ul style="list-style-type: none"> - formal legislation / regulations - interviews - media reports - court documents 	<p>37. Can major decisions taken by the electoral commission, including the announcement of results (including results in specific constituencies), be appealed?</p> <p>38. What is the appeal process and who is allowed to appeal electoral commission decisions?</p> <p>39. Is there a fee for lodging complaints and if yes, what it is?</p> <p>40. In practice, are political parties, individual candidates, and civil society groups able to bring appeals, and are these given a fair hearing by the courts/relevant bodies?</p>
Overall assessment: Highly Satisfactory = 2, Fairly Satisfactory = 1, Not Satisfactory = 0				

	Indicator	Examples	Data/Evidence	Key questions for assessing independence
C) Financial and Budgetary				
10	Budgetary independence	<ul style="list-style-type: none"> - control over own budget line - right to ask for additional funds - timely disbursement of funds to EC - reporting line for financial/budgetary decisions 	<ul style="list-style-type: none"> - formal legislation/ regulations - size of budget - proportion of budget released at different stages of the process - ultimate arbiter of size of EC budget 	<p>41. Can the electoral commission set its own budget – either in terms of determining the budget or stipulating the amount that will be required? If so, does the government have to provide this amount or can it propose/set a different budget? If not, how is the budget determined and what safeguards are in place to prevent this process from being manipulated and abused?</p> <p>42. Does the electoral commission have formal control over the use of its own budget once it has been allocated?</p> <p>43. Is the electoral commission invited to participate in meetings in parliament’s finance committee (or public accounts committee) when the committee discusses the state audit body’s report on the electoral commission’s accounts?</p> <p>44. Must the electoral commission follow the state’s normal tender procedures?</p> <p>45. In practice, are the budget and other financial allocations paid on time and in full?</p>
11	Right to obtain external funding	<ul style="list-style-type: none"> - right to receive grants from non-governmental domestic bodies - right to receive grants from international donors 	<ul style="list-style-type: none"> - formal legislation / regulations - budget rules and regulations for country and commission 	<p>46. Can the electoral commission receive funding from domestic sources (public or private) other than the government?</p> <p>47. Can the electoral commission on its own apply for external funding from, e.g., individual donor countries or international organisations?</p> <p>48. Is there a limit to the amount of money that the electoral commission (or the Ministry of Finance) can raise from different (domestic or external) sources?</p> <p>49. In practice, does the electoral commission seek alternative sources of external funding, does it face political or other barriers when doing so – and if it does, do these sources of funding make it more independent or do they actually raise further questions about the credibility of the commission (for example because the funding is provided by a specific technology company with an interest in the election, a group that is connected to the ruling party, or a foreign donor that has a reputation for meddling in the country)?</p>
Overall assessment: Highly Satisfactory = 2, Fairly Satisfactory = 1, Not Satisfactory = 0				

3. Understanding and Assessing Electoral Commission Independence in Practice: Three Case studies

Assessing the independence of electoral commissions is far from easy. On the one hand, it requires looking at both the formal rules and how/whether they are followed in practice. On the other hand, elections normally takes place in a highly politicised atmosphere, where one often can observe the workings of a fast moving rumour machine of dubious reliability. It can therefore be very hard to separate fact from fiction - but this has to be done if one wants to reliably determine what the situation is regarding the informal independence level for the electoral commission in question. The formal rules can be very clear, but how can we know what actually happened in a conversation between a country's leader (or their representative) and the chair of the electoral commission?

Having assessed formal and informal elements contributing to the perception of an electoral commission's level of independence, one also needs to attempt to provide a more comprehensive assessment, mixing the assessments of the formal and informal elements, respectively. To demonstrate the complexities of such an exercise, we present three mini case studies - of Albania, Kenya and Nepal - which are primarily intended to demonstrate how complex the assessment of electoral commission independence is and how the various formal and informal considerations might not necessarily point in the same direction. They also hint at how some of these challenges can be addressed.

Case 1: Separating fact from fiction in Kenya 2017

The Kenyan general election of 2017 provides a compelling example of the difficulty of proving the independence (or otherwise) of electoral commissions. The Kenyan electoral commission is formally independent as indicated by its name, the Independent Electoral and Boundaries Commission (IEBC). It was created by a provision of the 2010 constitution, following the dissolution of the Electoral Commission of Kenya (ECK), which had been heavily criticised for mishandling the 2007 general elections. The Commission is made up of seven commissioners, one of who is designated to be the Chair. Although the Commission is appointed by the President, there are a number of positive indicators of formal independence. Most notably, the Commission was created by a provision in the 2010 constitution and the Independent Electoral and Boundaries Commission Act; the list of commissioners selected by the president must be confirmed by parliament; and, none of the commissioners may be a current member of a political party, implying a degree of insulation from partisan ties. As commissioners serve for a single non-renewable six-year term and may not be removed on grounds other than malpractice, they enjoy security of tenure. Moreover, the CEO is appointed by the commissioners, suggesting it is 'moderately independent' when it comes to 'institutional and leadership' issues. At the same time, while the IEBC does not always receive the budget that it requests, it has considerable authority to make decisions over how to spend the funds that it does receive, indicating that it is 'moderately independent' when it comes to 'financial and budgetary' control.

Events in the build-up to the 2017 general election called into question how independent the IEBC was in practice, however (Cheeseman et al. 2018). While individuals acceptable to both of the two main coalitions/ presidential candidates were appointed to the Commission, and all commissioners stated that they were no longer card carrying members of a political party, the allegiances of prominent figures quickly became the source of rumours. The Chair was known to have previously been a member of the opposition Orange Democratic Movement, and a number of other commissioners had held prominent positions - such as Ambassador to Russia - that were widely interpreted to imply political links to the ruling party. In the context of a close race, political tensions increased in the run up to polling day, sparking more salacious rumours about the relationship between members of the IEBC and key political figures. A particularly damaging story, which was widely repeated once the election itself became mired in controversy, was that the CEO - who was formerly viewed as being a capable figure with a strong civil society background - was compromised because he had taken a loan from the Deputy President. In particular, the murder of the IEBC's acting Communication and Information Officer, Chris Msando, a week before the election led opposition leaders to accuse the government of assassinating him because he would have prevented the election from being manipulated

through the 'hacking' of digital election technology. The murder overshadowed the election, but despite the high profile nature of the killing no allegations have yet been proven, which opposition supporters allege is because the ruling party has no incentive to make sure that they are properly investigated. Nonetheless, these developments strongly suggest that the formal independence of the Commission is not always respected in practice, throwing the independence of its 'leadership' into doubt.

The election itself initially appeared to have gone smoothly. Many key electoral processes improved between 2013 and 2017, including the proportion of polling stations with digital technology designed to safeguard the vote, the Kenya Integrated Election Management System (KIEMS). This implied that the Commission had enjoyed considerable independence when it came to 'functional and decision-making' autonomy. However, the fact that KIEMS kits failed to transmit scans of the results sheets in a significant minority of polling stations quickly raised fears of electoral manipulation. Although the IEBC had warned that some polling stations would struggle to transmit the scan due to signal issues, the list of stations that had been issued to the press was not identical with the list of stations that had problems on the day.

Opposition leaders later alleged that the IEBC's servers had been hacked, and that the 'true' set of electoral results were replaced with 'fake' ones. Such suspicion was reinforced when the IEBC refused to grant access to its servers, despite this being requested during the Supreme Court case to hear the petition against the official results. Having ruled that the extent of the procedural errors recorded during the process rendered the election illegal, and grown frustrated at the lack of IEBC transparency, the Supreme Court nullified the election and ruled that a 'fresh' election should be held. It did not, however, conclude that there was evidence that the election had deliberately been rigged in favour of the opposition party. Nor did it find that the opposition had actually won the election. Moreover, a set of the 'real' results released by the opposition was also found not to be credible.

The build-up to the 'fresh' election raised further doubts about the independence of the electoral commission. As different factions leaked documents in order to blame each other for the problems that had tainted the first election, the deep divisions within the Commission, and the tension between the Chair and the CEO, came to the fore. This thinly veiled infighting reached its peak when one of the commissioners fled to the United States saying that she was afraid for her safety, and subsequently gave a series of interviews in which she alleged that a group of commissioners aligned to the ruling party had been systematically blocking efforts to strengthen the performance of the IEBC. This information, along with other considerations, led the opposition to boycott the 'fresh' election. Thus, although the president won the new election in a landslide, it did little to legitimate the government, especially in the eyes of opposition supporters.

By the end of 2017, it was therefore clear that the electoral commission was not fully independent, that partisan pressure was undermining reform efforts, and that the murder of Mr Msando has generated a great deal of fear and concern for electoral officials at multiple levels. However, it was not clear exactly how far the IEBC's independence had been compromised, or exactly what the consequences of this had been. The Supreme Court's nullification of the first election suggests that the problems within the IEBC were substantial, and encouraged the widespread perception that the Commission had been biased in favour of the ruling party. Given a history of controversial elections and of alleged partisan bias it is natural to assume that the independence of the Commission had been fundamentally violated. But it remains possible that these errors resulted from weak governance and capacity rather than a deliberate attempt to rig the election in favour of one side or another because a parallel vote tabulation by domestic observers was in line with the official outcome. The Kenyan case therefore demonstrates how difficult it can be to *prove* a lack of independence beyond reasonable doubt, even when major questions are raised about the quality of an election.

While Kenya's IEBC is clearly not a '**highly independent**' electoral commission, it is harder to say exactly where it belongs. The reports of electoral observers would suggest '**moderately independent**' but the evidence from dissident commissioners and some civil society groups would say '**not independent**' at all. A fair evaluation would place it somewhere in between, probably falling on the '**not independent**' side.

Case 2: Too much partisanship: recent elections in Albania

Recent national and local elections in Albania (2017 and 2019, respectively) have suffered from a multitude of problems as has been demonstrated by, for example, election observation reports from OSCE/ODIHR (2017; 2019) and assessments by the Electoral Integrity Project (2018). The Albanian case is important because it demonstrates the extent to which a lack of independence in one area - 'institutional and leadership' independence - can fatally undermine the overall independence of the commission.

Elections in Albania are administered by a three-tiered election administration: The Central Election Commission (CEC), 90 Commissions of the Electoral Administration Zones (CEAZs), and more than 5,000 Voting Centre Commissions (VCCs). The individual commission members are virtually all appointed by the political parties in parliament, which means that dominant political issues and problems are often carried over into the election administration, where they have been allowed to contaminate the preparation and running of the electoral process.

The CEC was installed in the 1998 Constitution as an independent institution with members to represent political parties. The 2008 constitutional amendments (carried through by the two main political parties, the Democratic Party (DP), and the Socialist Party (SP) took CEC out of the Constitution and moved it to the Electoral Code. The seven CEC members are all appointed by parliament, according to a formula which says that the parliamentary majority and the opposition gets three seats each, and that of these three seats, two shall be given to the largest party on each side of the aisle and one to the second largest party on the same side. The seventh member, the chairperson, is then appointed by parliament after an open application process, which means that this position will normally be taken by the largest party in the majority coalition. The end result is that the majority in parliament has four loyal members in the CEC and the parliamentary opposition three - with no neutral arbitrator. This system was modified, however, by the two main parties in a secret agreement forged in May 2017, under which the chair of the CEC was given to the opposition as part of a broader deal.

The CEAZs also have seven members each (and a secretary), all nominated by the parliamentary majority and opposition according to the same formula as used for the CEC. In half of the CEAZs, the chairperson is appointed by the largest majority party, in the other half by the largest opposition party. This means that the opposition controls half of the CEAZs. The deputy chairperson (and the secretary) then comes from the political party that did not nominate the chairperson in the respective CEAZ. In times of political conflict, this provides some of the CEAZs with the opportunity to actively counter CEC decisions.

For years, the political landscape in Albania has been dominated by the Socialist Party (SP), which now enjoys an absolute majority in parliament, while the largest party in the opposition, the Democratic Party (DP), has done its utmost to be adversarial. The June 2017 parliamentary elections took place against the background of a three-month standoff between the SP and DP as well as low political trust in the electoral process. International mediation resulted in a political agreement between the two main political contenders, which gave the DP a number of concessions and also provided for a change of the election date.

Nothing had been done to depoliticise key aspects of the electoral administration, though, despite many recommendations from OSCE/ODIHR and the Venice Commission, and this passivity also heavily influenced the entire electoral process in 2017, as reported by OSCE/ODIHR in its final election observation mission report (September 2017). The election result was that the SP got a so-called 'manufactured majority', with 74 of the 140 parliamentary seats based on just 48 per cent of the vote. The public distrust in the CEC and the entire electoral process is probably one of the reasons why the turnout was just 47 per cent (in a system with automatic voter registration).

The June 2019 local elections took place against the repeated background of a political and institutional crisis, as the DP, followed by another opposition party, the Socialist Movement for Integration (SMI), had left parliament in February and decided not to participate in the elections until the Prime Minister had resigned and a technocratic, transitional government was formed. The President then cancelled

the elections; but only after hostile MPs had initiated procedures to remove the President from office. The lack of political agreement after the 2017 parliamentary elections prevented any constructive attempts to address the issues raised by election observers, including the need to de-politicise the entire electoral administration.

Opposition parties refused to nominate their share of members to the CEC and the CEAZs and the CEC then interpreted the law as saying that only parliamentary parties contesting the elections could nominate members. That left the election administration politically unbalanced and public trust in all levels of the election administration decreased accordingly. The problems were extended to the composition of the VCCs, which to a very considerable degree were now dominated by members nominated by the SP.

These developments all had a negative impact on the conduct of elections and on voters' trust in the electoral process as demonstrated by a turnout of only 23 per cent. The result was that the SP won 60 of 61 mayoral posts and the SP-dominated Alliance for European Albania Coalition got 94 per cent of all votes, the huge majority of which were cast for SP candidates.

The Albania case shows convincingly that the politicisation of the election administration can be extremely damaging for the orderly and legally correct conduct of an election, especially if the country's political life in general is already in severe crisis. The 2008 transfer of a section on the Central Electoral Commission from the Constitution to the Electoral Code was only the first step - but probably the most important - that led to CEC's declining independence and integrity. In times of political crisis, there is a particularly strong need for a non-partisan and de-politicised, professional election administration that can be trusted by voters, parties, and candidates to deliver clean and reliable election results.

This profoundly negative assessment of the first main indicator of 'institutional and leadership' independence leads us to the conclusion that in this regard the commission is: 'not satisfactory'. This and problems in relation to the other two main categories suggests that the Albanian CEC should receive the overall assessment: '**not independent**'.

Case 3: Challenged by limited authority: the case of Nepal's Election Commission (ECN)

The 1990 People's Movement (janaandolan) ushered in a new and more democratic era in Nepal. A new constitution was promulgated in October of that year, and elections to the lower house were conducted in May 1991. These elections went reasonably well, despite many challenges, not least because of the effort of the Election Commission members, in combination with election support from international development partners. Overall, however, the Nepalese case study demonstrates that factors other than partisanship can compromise independence, leaving the commission '**moderately independent**'.

Nepal has had an election commission since 1951. To start with it was appointed by the King during the country's first democratic opening, then after 1990 the King appointed the Chief Electoral Commissioner and two other members. The Secretary to the Electoral Commission was the CEO. He and other staff members were seconded to the electoral commission by the government, as provided for in the constitution.

The 2007 interim constitution stipulated that all of the electoral commission's now five members, including the chairperson and the Chief Electoral Commissioner (CEC), shall be appointed by the Prime Minister, while the current 2015 constitution demands that all five members be appointed by the President. The appointments are for a single six-year term. The President shall act on the recommendation of the Constitutional Council after endorsement of the recommendations by the Parliamentary Hearings Committee (a cross-party joint parliamentary committee).

The Electoral Commission of Nepal (ECN) is firmly established in Part 4 of the constitution, which deals with appointment procedures and functions, duties, and power of the electoral commission. But attempts by the government to alter the politics of appointment in April 2020 by decreasing the opposition's influence in the Constitutional Council (thereby increasing the government's own influence) demonstrates that the electoral

commission's perceived independence is not cast in stone, especially as electoral commissioners can also be impeached by just one quarter of sitting Members of Parliament.

So far, commissioners have to a considerable degree been persons acceptable to the main political parties (and in some cases there almost seems to be an informal rule that preserves the main parties' quota of commissioners), but they do not have full security of tenure (Sect. 245, 4, c). The government's recent attempt to reduce the role of the opposition in the Constitutional Council might also indicate that in the future things may change again, and for the worst. For the moment, however, the President has had to withdraw two controversial ordinances presented by the government because of strong political protests, but they - or something similar - may come back on the agenda.

The current ECN is headed by its Chief Electoral Commissioner and has four other commissioners. However, at the time of writing (May 2020) two of the positions are vacant, including the position for a woman commissioner. The Secretary, who functions as the CEO, is seconded from the ranks of top civil servants. All other ECN staff working in the central and district organisations are also seconded from various government organisations.

The two commissioners in the current ECN have experience from the first elections to the Federal Parliament, provincial assemblies and the local governments that took place after the approval of the 2015 constitution.

Elections were held in November-December 2017 for the House of Representatives (the federal lower house) as well as for the seven provincial assemblies. The ECN was appointed not long before the elections and a substantial amount of criticism was raised against the ECN for its apparent unpreparedness. This challenged the integrity of the elections, but it is at the same time apparent from observation reports that the ECN generally enjoyed the confidence of stakeholders. This was probably because of the way it was appointed as well as because of the personalities appointed to spearhead it. It is, therefore, interesting that the only constitutional requirement is that prospective commissioners must resign from membership of political parties (if any) prior to their appointment. This demonstrates that the mechanism for appointment of commissioners works well, as it provides for an all-important cross-party consensus.

The various issues raised in connection with the appointment and formal independence of the ECN are such that electoral commission independence in this category is clearly not 'highly satisfactory'. 'Fairly satisfactory' appears to be a more fitting scoring. Yet despite this, the current appointment procedures of the ECN contributed substantially to making the commission acceptable to most stakeholders and the various problems with the election (some substantial) did not alter that perception.

When the Election Commission Act (2017) was being debated, the ECN itself argued that it should be given the power to announce the election date(s), but it did not achieve this objective, and some would therefore say that ECN does not have full decision-making power. However, the announcement of the precise election date is in most countries the government's prerogative. Some countries do have elections on predetermined dates (for example, the second Sunday in September every fourth year), while in other countries, governments (that is, the Prime Minister) can call an early election (within the time limits established in the constitution). Such a decision can be highly personalised and in many ways it is better that it is not left to the electoral commission.

The ECN has a considerable degree - especially during election time - of autonomous decision making power, but there are also a number of examples which reveal that the ECN is not always able to have its decisions implemented, especially if they are not to the liking of the main parties. Given this, the independence of the electoral commission should probably be assessed as being 'fairly satisfactory' where 'functional and decision-making' autonomy is concerned. The same goes for 'financial and budgetary' independence, especially in non-election years.

Given that the assessment of all three categories was 'fairly satisfactory', overall the ECN appears to be **'moderately independent'**.

In all three cases, then, it is clear that the electoral commission was not **'highly independent'**, but arbitrating between **'moderately independent'** and **'not independent'** is not always straightforward and involves making careful decisions on the basis of limited information. It is for this reason that we caution against turning the evaluation of electoral commission independence into a purely quantitative analysis, which often implies a form of scientific certainty that may not be warranted.

Conclusion

This paper has sought to clarify the concept of electoral commission independence and to propose a new framework for its evaluation. It is important to note that this means that we were not concerned with electoral management bodies that take the form of either government institutions (that is to say, those that are formally part of the government) or have a 'mixed' (part government and part independent) set up. It also means that we have not focussed on such issues as electoral commissions' general capacity to deliver elections and the quality of governance that they offer. Given this, readers should keep in mind that independence, capacity and governance all contribute to public perceptions of electoral credibility.

These caveats notwithstanding, electoral commission independence is important because it is one of the most important drivers of public perceptions of electoral integrity. In turn, these perceptions impact directly on the public legitimacy of the political parties and individual politicians who gain their positions through electoral processes managed by the electoral commission. As a result, assessments of the independence of electoral commissions are important both in and of themselves and as instruments that can be used in electoral commission reform processes.

We have highlighted the difference between formal and informal independence, where formal independence refers to the official rules as they are described in constitutional, legal, and other instruments, and informal independence is the degree to which the electoral commission is able to make the decisions that matter in practice. Both informal and formal independence are important to take into account, because commissions with 'independence' in their name are often anything but, and rules and regulations may be regularly breached in practice.

Based on this approach the paper developed a framework through which to assess electoral commission independence, based on three main categories of autonomy: **a) institutional and leadership; b) functional and decision-making; and, c) financial and budgetary.** We have proposed that electoral commissions can be evaluated in terms of whether the degree of independence in each category is: 'highly satisfactory', 'fairly satisfactory' or 'not satisfactory'.

We then proceeded to show how the assessments for these individual assessments can be combined to provide an overall assessment of electoral commission independence in terms of whether a commission appears to be: **'highly independent'**, **'moderately independent'**, or **'not independent'** at all.

Although this process of translating the assessments for each of the three categories into an overall evaluation involves awarding a commission a numerical score for each component (**highly satisfactory = 2; fairly satisfactory = 1; not satisfactory = 0**), we warn against placing too much emphasis on these numbers. For example, inputting these figures into a quantitative analysis without recognition of the difficult judgements that are involved in arriving at them, especially in cases where there is very limited information, risks creating the impression of a kind of scientific certainty that is unlikely to be warranted.

Given this, we encourage users to see the evaluation of electoral commission independence as an open ended process that should include discussion among and between interested parties. To highlight this point, the paper ends with three brief case studies that have demonstrated the challenge of conducting these evaluations in the cases of Albania, Kenya, and Nepal.

The aim of the case studies was to reveal how some of these issues play out in the real world, and to highlight how difficult coming to a firm conclusion can be. It is important to note that the case studies are intentionally brief due to space limitations, and do not include all of the evidence that a full assessment would require.

While it is clear that none of these electoral commissions can be seen to be **'highly independent'**, there remains considerable disagreement over whether they are **'moderately independent'** or **'not independent'** at all. Ultimately, we conclude that while the Albanian CEC is clearly **'not independent'**, the Nepalese electoral commission is **'moderately independent'**. For its part, the Kenyan commission was probably also **'not independent'** in 2017 - despite its promising formal foundations.

Some readers will disagree with these evaluations, demonstrating the extent to which these kinds of assessments involve difficult value judgements. We recommend that readers who come to different conclusions provide supplementary evidence and arguments and then make their own assessments. These can then be shared with us and the broader group of people interested in the independence of electoral commissions so that we can refine both our understanding of these cases and our overall framework.

As these comments imply, our aim in writing this paper was not to provide the 'last word' in the debate about electoral commission independence - far more research needs to be undertaken before anyone can seriously hope to achieve that goal. Instead, we hope to start a conversation about how electoral commission independence can best be conceptualised and evaluated. This conversation will no doubt lead to the ideas presented in this paper being further refined, but we hope that it will also, in the long-run, contribute the development of a common method of assessing electoral commission independence and, indirectly, to the evolution of stronger and more independent electoral commissions around the world.

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Jørgen Elklit is Professor Emeritus of Political Science at Aarhus University, Denmark. His main professional interest have been elections (electoral systems, election administration, and electoral behaviour), political parties, democratisation in new democracies, local politics in Denmark, and ethnic identity in the German minority in Denmark. Professor Elklit has also been heavily involved in election support and advisory activities in a number of emerging democracies in Africa, Asia, and Europe - as well as in his native Denmark. He was a Member of South Africa's Independent Electoral Commission conducting the country's first democratic election in 1994. He has also worked closely with electoral commissions in other countries and he was Secretary to the Independent Review Commission (IREC) in Kenya in 2008. Professor Elklit was the 2013 recipient of the Joe C. Baxter Award, bestowed by IFES, the International Foundation for Electoral Systems.

Photograph of Professor Elklit by Poul Ib Henriksen



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