
The Performance of Electoral Management Board: A Critical Assessment of the Principles and Best Practices for its Accountability

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ABSTRACT

An EMB is an organization or body that has the sole purpose of, and is legally responsible for, managing some or all of the elements that are essential for the conduct of elections and direct democracy instruments, such as referendums, citizens' initiatives and recall votes - if those are part of the legal framework. Accountability means that an EMB is responsible for its activities, and must periodically provide evidence to its stakeholders and the public that these activities are effective and meet its prescribed legal, ethical, service and financial standards. The principle of accountability requires EMBs to provide comprehensive public information on their policies, intended outcomes, performance and the resources they have used and intend to use, including public and other funds. This is especially important where the EMB's independence from the executive government excludes the type of accountability to ministers that is a characteristic feature of public administration in many countries. Accountability increases the transparency of the EMB and promotes good governance, which helps it gain the confidence of the public and important stakeholders, particularly political parties and government ministries.

KEY WORDS: Electoral Management Body, Performance, Accountability, Programme Evaluation

INTRODUCTION

According to Gabrielle (2013), an EMB is an organization or body that has the sole purpose of, and is legally responsible for, managing some or all of the elements that are essential for the conduct of elections and direct democracy instruments—such as referendums, citizens' initiatives and recall votes—if those are part of the legal framework. These essential (or core) elements include:

- a. determining who is eligible to vote;
- b. receiving and validating the nominations of electoral participants (for elections, political parties and/or candidates);
- c. conducting polling;
- d. counting the votes; and
- e. Tabulating the votes.

If these essential elements are allocated to various bodies, then all bodies that share these responsibilities can be considered EMBs. An EMB may be a standalone institution, or a distinct management unit within a larger institution that may also have non-electoral tasks.

Why is EMB Accountability Important?

Noted by Benoni (2004), accountability means that an EMB is responsible for its activities, and must periodically provide evidence to its stakeholders and the public that these activities are effective and meet its prescribed legal, ethical, service and financial standards. The principle of accountability requires EMBs to provide comprehensive public information on their policies, intended outcomes, performance and the resources they have used and intend to use, including public and other funds. This is especially important where the EMB's independence from the executive government excludes the type of accountability to ministers that is a characteristic feature of public administration in many countries.

Accountability has a number of positive effects on the operations of an EMB. It increases the transparency of the EMB and promotes good governance, which helps it gain the confidence of the public and important stakeholders, particularly political parties and government ministries. A lack of proper accountability mechanisms may lead to accusations of poor operational transparency.

Principles and Best Practices for EMB Accountability

In the financial accountability principles, transparency and integrity are especially important. Transparency increases public trust and confidence in the EMB's operations, and may protect it against unfounded allegations.

An EMB needs to ensure that it has sufficient integrity controls on the information it releases publicly under its accountability responsibilities. Knowingly or unknowingly disseminating incorrect or unreliable information diminishes the credibility of and public trust in the EMB. How fully can the public trust an EMB's election results if it has been found to have provided unreliable information on other critical issues?

As mentioned in C.E (2010), EMB accountability to stakeholders takes three main forms:

Consultation and communication (informal). Regular consultation with stakeholders promotes awareness about an EMB's operations and allows stakeholders to directly advise the EMB of their assessments of its performance and suggest potential improvements. These consultations may be regular or event driven, mandatory or voluntary, structured or informal.

Performance accountability (formal). An EMB is responsible for developing policy decisions to give effect to its mandate and ensuring their implementation. Mechanisms for performance accountability may be internal or external. According to Dahlerup (2014), EMBs are accountable for:

- electoral administration and its functioning;
- compliance with all relevant laws and regulations; and
- Delivering good-quality electoral services to voters and other stakeholders.

Financial accountability (formal), which entails the regular submission of financial statements and audits to the legislature or government, among others, to explain how the funds allocated to

the EMB have been used. An EMB has the responsibility to use the financial and other resources it receives effectively, to achieve its strategic objectives. It is accountable for:

- the efficient use of its resources to achieve value for money;
- compliance with all relevant laws and regulations; and
- Using ethical financial practices.

Financial accountability may be provided for in the electoral legal framework, as in Lesotho, or in general legal requirements for public sector entities. Some EMBs have in the past deemed it appropriate to treat their statutory requirements as a minimum, and offered more regular financial reporting than is formally required. Like performance accountability, financial accountability has two components, internal and external.

E.M.B Assessment Mechanisms

To meet internal and external accountability requirements, an EMB needs mechanisms that can assess its activities and assure itself and its stakeholders of the quality, effectiveness and probity of its operational and financial management. These mechanisms include internal quality controls, audits, evaluations, peer reviews and external oversight.

Internal Quality Controls

According to Deborah (2011), internal quality assurance programmes are the starting point for assuring an EMB and its stakeholders that EMB activities meet service, effectiveness and appropriateness standards. EMBs may wish to follow the relevant International Organization for Standardization guidelines and standards.

Components of a quality assurance programme may include:

- stakeholder consultation on new systems and methods;
- implementation of formally reviewed, benchmarked design and development processes;
- rigorous pre-implementation testing;
- comprehensive training programmes;
- ensuring that professional staff are qualified to be members of the appropriate professional associations;
- formal post-implementation monitoring programmes; and
- Robust reporting of faults and rectification processes.

In relation to quality control, a specific matter requiring attention is identifying and preventing or mitigating criminal fraud (which may take the form of financial fraud aimed at enriching the perpetrators, or electoral fraud with the objective of manipulating election outcomes or compromising public faith in their validity). To develop and implement an integrated and comprehensive fraud control plan, an EMB will likely require input from the financial, operational and legal areas of the organization. It will need to carefully consider whether parts of the plan need to be kept confidential, since there is a risk that publishing fraud control strategies may help those who wish to circumvent them. It also needs to be borne in mind that mechanisms aimed at the total elimination of the possibility of fraud may have side effects, such as the

suppression of voter participation, that are so undesirable that it is preferable to accept and manage some risk of fraud.

Auditing EMBs

An audit critically examines and assesses an EMB's activities, strictly within the parameters of its stated strategic objectives. Regular auditing is an essential means of ensuring that an EMB is accountable for its operations. As noted above, auditing is increasingly used for wider purposes than testing financial compliance; audits also assess the appropriateness and effectiveness of publicly funded organizations' strategies, operational methodologies, and performance in delivering services to the public. Just as an EMB has performance and financial accountabilities, an EMB audit can be performance based (focusing on the economy, efficiency and effectiveness of its activities) or finance based (examining an EMB's accounting records against accounting standards to assess the efficiency and probity of its handling of funds). An audit may also be a combination of performance and finance based, and may be broadly based (examining overall EMB performance or transactions) or limited to a particular activity or system operated by the EMB (Dundas, 2012).

Regardless of the type of audit, it is usually conducted in accordance with professional auditing standards. Audit reports, which are usually made public, would either certify this accordance or explain why such standards could not be applied, and justify the standards or methodology used. The audit investigation and report may identify good and bad practices found; assess operational or financial management controls; identify non-compliance with the law or policies, and breaches of financial probity or integrity in operations; note improvements made since earlier audits; and assess the appropriateness of methods and systems used or the levels of service provided to achieve the EMB's objectives.

A professional audit report is always objective, factual, accurate, complete and fair, and emphasizes the EMB's positive accomplishments as well as identifying any failings. It is good practice for auditors to discuss their draft findings and recommendations with the EMB, for the EMB to be given sufficient time to respond to these, and for the EMB's responses to be carefully considered before the audit report is finalized and publicly issued.

Performance Audits

According to EISA (2003), performance audits are an objective, independent and systematic examination of an EMB's activities and management systems to assess how effectively, efficiently and economically it has used its resources. They may be conducted internally or externally, and may cover the whole range of an EMB's activities or focus on a particular function or programme. Performance audits identify strengths and weaknesses in an EMB's activities, and recommend appropriate corrective actions. A performance audit is an important mechanism for improving electoral management, instituting good practice, improving public accountability and reinforcing institutional integrity.

Methodology and Scope of a Performance Audit

Performance audits typically involve both internal examination—reviewing an EMB's relevant policies and records and conducting interviews with relevant EMB members—and external

assessment—interviews with an EMB’s stakeholders and a review of media and other reports on its activities so as to determine the external perception of the EMB’s performance. These audits commonly undertake both cost-benefit and cost-effectiveness analyses, and use performance indicators—included in the EMB’s strategic plan, where appropriate—and the standards of service either defined by the EMB or expected by its stakeholders, to assess the EMB’s performance against its strategic objectives.

Components of a performance audit according to Elklit (2002), usually include:

- *Interviewing the principal stakeholders*, such as political parties, voters, members of the legislature, CSOs, media organizations, relevant government ministries and agencies, and suppliers. This may include joint consultation with stakeholders at workshops or seminars;
- *interviewing EMB members*, secretariat staff and where relevant, temporary staff or contractors engaged for the activities under review;
- *examining the EMB’s strategic plan*, management structure, relevant policies, operational plans and task assignments, and the implementation of these planned activities; and
- *Reviewing relevant constitutional instruments*, laws, regulations, court or tribunal decisions, codes of conduct, and the EMB’s computer and other systems, reports, procedures, manuals, guidelines and relevant records.

The specific criteria for and issues covered by a performance audit will be governed by the activity or activities to be audited.

Performance Audit Outputs

A performance audit’s output could be expected to include information related to the activities or processes being audited and recommendations targeted at assisting the EMB and its oversight bodies to improve their services to stakeholders.

Performance audits can have a wide range of impacts, on both the EMB and stakeholders’ perceptions of it. These impacts can include savings in the use of resources, higher efficiency, strengthened management policies and practices, improved service quality and a better understanding of accountability.

Financial Audits

The EMB’s internal financial audit is its final internal checking mechanism to promote financial probity and integrity. An external financial audit of an EMB reviews the EMB’s accounts to provide an independent opinion of their completeness, compliance, integrity and accuracy. Most EMBs are required to prepare and submit annual audited accounts, which are linked to achievements and activities based on the annual work plan. The report may reflect the level of financial contributions by the state and external sources, where appropriate, and the expenditure of these funds.

Electoral events generate many financial transactions related to acquiring election supplies, materials and equipment and employing large numbers of additional staff. Many EMBs have a relatively large dispersed staff, including thousands of temporary workers, and procure millions of dollars’ worth of electoral equipment, services and materials, often in a very short time. In this

environment, corruption and misappropriation of funds may occur if adequate safeguards are not in place.

Financial audits aim to provide reasonable assurance that the financial statements of an audited EMB fairly represent the financial position, the results of operations and cash flows in conformity with generally accepted accounting principles and financial reporting standards. Such audits seek to establish whether all financial transactions have followed the financial compliance criteria, based on either the EMB's own rules or regulations or on more general public sector financial accountability laws or rules. They also assess and provide an opinion on whether the EMB's internal control structure for finance and safeguarding assets is suitably designed and implemented to ensure accuracy and integrity in financial management records and to prevent fraud. Financial audits may cover some or all of the following areas. Ernst & Ernst, (1979):

- financial statements and information (such as revenue and expenses, cash receipts and disbursements, and the inventory of assets);
- budget requests and variations between estimated and actual financial performance;
- compliance with laws and regulations, especially on procurement, accounting, reporting on contracts and grants, and anti-corruption measures; and
- Internal controls on funds, assets and financial reporting.

Programme Evaluation by EMBs

Programme evaluation is another widely used tool to help EMBs improve their accountability. The boundaries between performance auditing and programme evaluation are blurred. Both provide independent, objective analyses of how an EMB may use its resources better. A performance audit will generally concentrate on the economy, efficiency and effectiveness of the EMB's performance in relation to the objectives stated in its strategic plan or other legal and operational framework documents. A programme evaluation will usually start by questioning whether the electoral framework and the EMB's strategic objectives meet the needs of its stakeholders. According to Reynolds, (2001), key questions for a programme evaluation of an EMB's activities include:

1. Do the legal framework for the EMB's activities, and the EMB's objectives, meet the needs and objectives of its stakeholders?
2. Are the services the EMB provides necessary?
3. Could the EMB's services be provided more effectively?
4. What are the long- and short-term impacts of the services being provided?

Programme evaluations are wholly outcome focused, feeding back into the EMB's strategic planning cycle. They concentrate on how an EMB serves its stakeholders, including whether the needs assessments on which an EMB's strategies and activities are based are still valid. As they are stakeholder focused, they concentrate on obtaining stakeholders' expectations of the EMB and their views on the appropriateness and performance of its current activities. In an environment of technological advances, changing societal attitudes, and evolving political and legal frameworks, these evaluations assist the EMB to identify areas of activity that no longer effectively meet its stakeholders' needs. A programme evaluation may review whether specific EMB services are still needed, or whether other institutions are better placed than the EMB to

use all or some of the public funds available for specific electoral services, for example, voter education and information.

Post-election Reviews

EMBs increasingly use post-election reviews to assess the adequacy of the legal and management structures for elections, and of their performance in delivering credible elections. These reviews are complementary to financial and performance audits. Countries that require the submission of performance reports after every major electoral event include Botswana and Georgia. The Botswana EMB engaged a team of electoral experts to conduct a review of its performance during the country's 2004 general elections. This review produced several key recommendations with far-reaching implications, including requirements for constitutional and legal amendments. In 2006–07, the certification team appointed by the UN for the 2007 elections in Timor-Leste produced a series of reports on the processes that, while not designated as performance reviews, served a similar purpose by highlighting and documenting in detail a range of issues it had identified.

According to the Union Geneva, (2004), a post-election review report analyses what worked well, what did not and why. It may cover every aspect of the electoral system, processes, and management structures and capabilities, and is better if it is based on the analysts' direct experiences of the electoral event, not just an examination of the records. Polling and vote-counting activities, voters' attitudes and stakeholders' responses to EMB actions can be matters for detailed examination in a post-election review. Such a review could also address how the EMB's funding processes help or hinder its sustainability. The review report can examine the strengths and weaknesses of the EMB and the electoral framework, and make suitable recommendations for remedial action. The results of the review need to feed into discussions about electoral reform and the procedural development of the EMB throughout the electoral cycle.

The twin approach of needs assessment studies prior to a general election and a post-election review of EMB performance during an electoral period can help identify the level of sustainability of free, fair and credible elections that can be achieved over the longer term.

Peer Reviews

Peer reviews can bring the knowledge of experienced electoral practitioners to both internal and external review (audit and evaluation) mechanisms. Using EMB field staff from one geographical area to assist with financial or performance audits or post-election evaluations in another geographical area of the EMB, as was practised by the Australian EMB in the early 1990s, can be extremely beneficial. The EMB offices being audited may be more likely to take note of recommendations from peers who have had to solve similar management problems, and both the reviewer and those being reviewed can broaden their knowledge through the exchange of ideas. Similar benefits arise from including senior experienced electoral professionals, from the same country or another country, on EMB external review teams (Reynolds, 2005).

External Oversight Issues

External oversight of an EMB is part of its external accountability, and may be implemented through mechanisms such as external audits or evaluations, reviews of EMB activities by an ad hoc or other specially appointed body, or reviews by a committee of the legislature, such as an electoral affairs or public accounts committee.

If an entity undertaking external oversight of an EMB is not fully independent, it may be subject to interference that improperly inhibits its scope and/or methodology. There may be attempts to change or influence the content of oversight reports. Constraints on oversight bodies may include restrictions on terms of reference, the time allowed for investigations, access to information, or access to sufficient funds and other resources to carry out the task. An example is the conflict that arose between the election monitoring body Panwas and the EMB in Indonesia in 2004. While Panwas was expected to act independently in its role as the monitor of the conduct of elections and the body of first instance for most electoral disputes, it had been appointed and funded by the EMB and Panwas' challenges to EMB decisions led the EMB to issue regulations that barred Panwas' involvement in challenges or disputes involving the EMB.

Oversight bodies need the rights to examine documents and computer files; to verify services paid for and property acquired with public funds; and to interview EMB members, staff and other persons. These rights can be guaranteed if they are included in the legal framework. If not, the EMB can enhance its credibility by allowing free and unimpeded access. Official oversight agencies may be given the authority to obtain court-enforceable subpoenas to compel the EMB and other organizations to produce specific documentation, with sanctions for non-compliance. Where an oversight agency is given investigative powers, it is usually able to administer and take affidavits under oath (Reynolds, 2000).

To be effective, oversight must be subject to rigorous quality control so that it is professional, impartial and accurate. Adequate numbers of skilled staff with a keen appreciation of the legal, financial and operational frameworks within which election tasks are conducted will facilitate good practice in oversight duties. The findings of oversight bodies need to be objective and targeted toward improving EMB services.

CONCLUSION

- Informal accountability through regular communication with stakeholders and formal performance and financial accountability mechanisms are all necessary, complementary measures for ensuring that an EMB is accountable for compliance with the law, financial probity, operational integrity and effective customer-focused activity.
- Performance accountability is both internal and external. Internal measures include management monitoring and the use of internal audits to examine performance issues. External measures include external reviews and requirements for reporting to stakeholders such as the legislature. Wide distribution of EMB reports can make a broad range of stakeholders aware of the EMB's challenges and achievements.
- Similarly, an EMB is internally and externally financially accountable. Internal measures include financial reporting and control mechanisms, and regular internal audits. External measures include external audits and the regular provision of audited financial statements to stakeholders such as legislatures and donors, and review by an appropriate body.

- In order to assure stakeholders of the effectiveness and probity of its performance, an EMB may use a variety of measures including pre-implementation and real-time quality assurance controls, and later audit, evaluation and external oversight mechanisms. The use of peer review processes can give added credibility to audit and evaluation findings and recommendations.
- The development of a formal, well-considered and integrated fraud mitigation and control plan, which covers both financial processes and electoral operations, can be a useful tool for improving the quality of elections and enhancing stakeholders' confidence in them.
- Evaluation is the analysis of the electoral framework as a whole, while audit is a method used to analyse/evaluate specific issues within the framework. Evaluation can encompass an audit, but an audit cannot encompass an evaluation.
- Performance and financial audits can identify good practices being used by an EMB; deter and detect fraud, corruption and malpractice; identify how an EMB can improve its methods of complying with financial requirements; and improve its operational performance and institutional integrity in order to meet the objectives of its strategic plan.
- Performance audits assess the economy, efficiency and effectiveness of an EMB's activities, and can have a significant impact on improving its quality of service, make its resource use more cost effective and strengthening electoral management. Financial audits can improve internal financial controls, and promote compliance with the relevant rules and the efficient use of financial resources.
- In addition to audits, an EMB may undertake programme evaluations of specified parts or all of its activities. Programme evaluations examine not just how well the EMB has done what it intended to do, but whether its strategic objectives are appropriate for its environment and meet its stakeholders' needs. They assess how an EMB's activities could be improved to better meet these needs in an economical, efficient and effective manner. They are an effective way of helping EMBs meet the challenges of a changing external environment.
- Independent external oversight of an EMB may be through external audit or evaluation, by a standing committee of the legislature, or by a specially appointed ad hoc body. To be effective, the body performing the oversight needs access to all relevant materials and personnel; a strongly independent, impartial and professional culture; and rigorous quality controls.

RECOMMENDATIONS

- The use of technology-based systems, especially for voting and counting votes, places additional accountability requirements on EMBs, as these systems may not be transparent to or easily understood by stakeholders. High levels of quality and integrity assurance, including evidence of transactions, must be maintained.
- Well-planned post-election reviews are particularly useful to EMBs. Recommendations from these reviews can feed into internal EMB policy and procedural reform, and EMB advocacy for electoral framework reform, throughout the electoral cycle.
- Accountability to its stakeholders promotes EMB transparency and good governance, and positively influences the general public's perception of its professionalism and impartiality.

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