



Comparative insights on electoral management bodies' independence: A deep dive into South Africa, Zambia and Zimbabwe board appointment processes

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Recommended Reference: Nshindano, K. P. (2025). Comparative insights on electoral management bodies' independence: A deep dive into South Africa, Zambia, and Zimbabwe board appointment processes. *African Quarterly Social Science Review*, 2(3), 44-56. <https://doi.org/10.51867/AQSSR.2.3.4>

ABSTRACT

This study, titled Comparative Insights on EMB Independence: A Deep Dive into South Africa, Zambia and Zimbabwe Board Appointment Processes, explores the relationship between Electoral Management Bodies (EMBs) governance structures and their independence in constitutional democracies. Guided by the interpretive ontological and epistemological paradigms, the study employed a qualitative case study design. By adopting this approach, the research sought to analyze EMB board appointment processes in selected country cases, examining their alignment with regional and international standards. The objective of the study was to evaluate whether the legal frameworks governing the appointment, tenure, and dismissal of electoral commissioners (boards) in these countries adequately safeguard EMB autonomy, fairness, and transparency in line with international best practices. The study employed a comparative case study approach to comprehensively analyze the electoral management systems and governing boards of EMBs in the respective countries. The research utilises qualitative methods to investigate the nature and appointment processes of EMB governing bodies and their impact on EMB independence. Data collection involved document analysis, reviewing legal documents, constitutional provisions, electoral laws, and academic literature. Collected data was qualitatively analysed by means of identifying themes and patterns, to assess EMB independence. A comparative analysis was conducted to highlight similarities, differences, and trends in the legal framework, appointment processes, and board composition of EMBs across the three countries, examining their relationship with perceived EMB independence and electoral processes. The findings reveal substantial disparities in the levels of transparency, independence, and executive oversight. South Africa and Zimbabwe exhibit stronger institutional safeguards, with judicial and parliamentary oversight bolstering transparency and impartiality. Conversely, Zambia's framework permits significant executive discretion, particularly through automatic ratification and presidential control over nominations and dismissals, undermining EMB independence. The study concludes that while all three countries emphasize non-partisanship and term limits, Zambia requires critical reforms, including enhanced public participation, independent oversight panels, and stronger judicial and parliamentary mechanisms, to enhance EMB independence and uphold the integrity of electoral processes.

Keywords: Appointment, Commission, EMB Independence, Electoral integrity, Dismissal, Renewal, Tenure

I. INTRODUCTION

EMBs play a central role in upholding democratic principles by ensuring free and fair elections. Independence in governance and decision-making processes is critical to their credibility and functionality. However, the methods of appointing EMB board members often vary, raising questions about their influence on institutional independence and the perceived legitimacy of electoral outcomes. As custodians of electoral integrity, EMBs play a vital role in ensuring transparency, impartiality, and the fairness of elections (Norris et al, 2014). Independence from political interference is crucial for protecting these processes and upholding public trust in democratic institutions.

The importance of EMB independence has been underscored in various legal precedents, such as *New National Party v. Government of the Republic of South Africa* (1999), where the South African Constitutional Court reaffirmed the necessity for the Independent Electoral Commission (IEC) to function independently and impartially to preserve the integrity of elections. The court emphasized that the IEC's autonomy was fundamental to its ability to manage elections without political interference.

In the context of South Africa, Zambia, and Zimbabwe, three constitutional democracies that practice multi-party politics, the legal frameworks governing EMBs prescribe their establishment and mandate to operate independently. These frameworks are designed to ensure that elections are free, fair, and managed by neutral bodies that create a level playing field for all political participants. In doing so, EMBs contribute to the protection of civil



rights, enabling citizens to exercise their right to vote and participate in governance, which is crucial for national development and the preservation of democratic values (Diamond, 2022).

Central to the independence of EMBs is the process by which their governing boards are appointed. The manner of appointment, free from political or external interference, significantly influences the impartiality of the body. According to Cheeseman and Elkli (2020), transparent and well-defined procedures for appointing EMB board members are critical to maintaining electoral integrity. A diverse and inclusive board composition, reflective of expertise and impartiality, further strengthens public confidence in the electoral system. This study explores and compares the laws guiding the composition and appointment processes of EMB boards in South Africa, Zambia, and Zimbabwe, assessing their alignment with constitutional provisions and their impact on EMB independence. The research aims to identify best practices for electoral management reforms and provide insights into improving the governance of EMBs to enhance democratic processes.

1.1 Statement of the Problem

EMBs are essential to the functioning of democratic systems, tasked with ensuring the transparency, fairness, and credibility of electoral processes. While their independence is fundamental to maintaining public trust and safeguarding electoral integrity, the procedures for appointing EMB board members often expose these institutions to political influence. As constitutional democracies with multiparty political systems, South Africa, Zambia, and Zimbabwe respective legal frameworks mandate EMB independence. However, the actual processes of board composition and appointment vary in ways that may compromise this principle. These variations raise critical concerns about whether politically influenced appointments undermine EMB impartiality, thereby eroding the legitimacy of electoral outcomes and weakening democratic governance. This study addresses the gap by examining and comparing the appointment mechanisms across the three countries, evaluating their consistency with constitutional mandates, and analyzing their implications for EMB independence and public confidence in elections.

1.2 Research Objectives

To examine the extent to which the appointment process and the composition of Election Management Body governing boards influence the independence of EMBs in ensuring fair and impartial electoral processes.

1.2.1 Specific Objectives

- i. Examine the legal framework governing the appointment of EMB board members and the role of the legislature in the process.
- ii. Investigate the extent of executive influence in the selection of EMB board members.
- iii. Evaluate the degree of public involvement or consultation in the appointment process.

II. LITERATURE REVIEW

2.1 Theoretical Review

Electoral Management Bodies are pivotal institutions tasked with ensuring the integrity and legitimacy of electoral processes. Their effectiveness relies significantly on the independence, impartiality, and accountability of their governing boards or commissions, which oversee electoral activities, enforce electoral laws, and uphold democratic principles. The processes through which EMB commissioners are appointed are critical, as they directly shape these institutions' legitimacy and operational autonomy. Transparent, merit-based, and impartial appointment procedures are therefore fundamental to fostering credible and independent electoral governance (Van Ham & Garnett, 2019).

While the broader roles and functions of EMBs have received considerable scholarly attention, the specific processes for appointing their governing boards remain underexplored, particularly in the African context. This gap limits a comprehensive understanding of the factors influencing the composition and functioning of EMBs and hampers the development of evidence-based reforms aimed at strengthening electoral integrity and democratic governance. This review synthesizes existing literature to examine the institutional arrangements, legal frameworks, and practical realities that underpin the selection and appointment of EMB commissioners. Key contributions, such as those by Mozaffar and Schedler (2002), emphasize that impartial and transparent appointment procedures are essential for safeguarding EMB autonomy and protecting them from undue influence. The review also draws on international principles and comparative studies to provide a nuanced understanding of the nexus between appointment processes and EMB independence.

Drawing on key theoretical frameworks, the review examined the relationship between legal frameworks, board appointment mechanisms, and the capacity of EMBs to uphold credible electoral governance. The review



identifies four primary theoretical paradigms. The first is Principal-Agent Theory, which explores the dynamics between appointing authorities (principals) and EMB board members (agents). It highlights potential agency problems arising from misaligned interests and emphasizes the need for clear guidelines, accountability mechanisms, and transparent appointments to ensure EMB autonomy and impartiality. This alignment is crucial for fostering free and fair elections (International IDEA, 2002; Van Ham & Garnett, 2019).

The second paradigm focuses on Institutional Design and Structure. Institutional frameworks play an important role in shaping EMB independence. Transparent and merit-based appointment processes are critical for ensuring professionalism and autonomy. Legal safeguards and accountability mechanisms within institutional structures enhance the credibility and effectiveness of EMBs, reinforcing their ability to supervise elections impartially (Van Ham & Garnett, 2019; Akpan, 2017).

The third paradigm emphasizes Legitimacy and Public Trust. Public confidence in electoral processes is closely tied to the perceived transparency and integrity of EMB appointment procedures. Transparent processes foster legitimacy, while politicized or opaque methods risk undermining EMB impartiality and public trust. For example, perceived politicized appointments in Malawi's Electoral Commission have historically raised concerns about its independence and neutrality (Patel & Wahman, 2015; Clark, 2020).

The fourth paradigm centers on Democratic Governance and Accountability. Transparent appointment processes enhance democratic governance by ensuring responsiveness to citizens' needs rather than partisan interests. Accountability mechanisms, including stakeholder and media oversight, reinforce EMB integrity and commitment to democratic principles, thereby strengthening public trust in electoral systems (Clark, 2020; International IDEA, 2002).

The synthesis of these theoretical perspectives underscores the critical role of board appointment processes in promoting EMB independence, credibility, and democratic governance. By examining the comparative contexts of South Africa, Zambia, and Zimbabwe, this study identifies commonalities and divergences in appointment practices. These insights contribute to theoretical advancements in electoral governance and provide actionable recommendations for improving EMB independence and electoral integrity across Southern Africa and beyond.

2.2 Empirical Review

2.2.1 Electoral Management Body Independence

EMB independence refers to the ability of these institutions to operate autonomously, free from external influence or control by political parties, government authorities, or other entities. This independence is critical for ensuring impartial decision-making and upholding the integrity of electoral processes. Van Ham and Garnett (2019) distinguish two dimensions of EMB independence: *de jure* (formal-legal) and *de facto* (practical). While *de jure* independence emphasizes clear legal provisions outlining the EMB's authority, decision-making powers, and accountability mechanisms, *de facto* independence assesses the EMB's operational autonomy and freedom from external pressures in practice.

Cheeseman and Elkliit (2020) caution against evaluating EMB performance based solely on formal designations of independence. They argue for a more nuanced approach, focusing on decision-making processes and adherence to legal principles. Effective assessment of EMB independence involves examining whether decisions are made impartially and in compliance with electoral regulations, free from political or external pressures. This adherence to legal principles reflects the EMB's commitment to democratic values and operational autonomy (Fombad, 2016).

A perceived lack of EMB independence can significantly undermine public trust in electoral outcomes, even when results are accurate. Cheeseman and Elkliit (2020) highlight the risks of politicization, noting that doubts about an EMB's impartiality may lead to allegations of bias or electoral malpractice, eroding confidence in the fairness of the process. This skepticism can cast doubt on the legitimacy of election results and potentially escalate into disputes or challenges, thereby compromising the credibility and transparency of the electoral system.

Therefore, both the formal and practical dimensions of independence must be considered in assessments, as perceived autonomy directly impacts public trust and the overall integrity of the electoral process.

2.2.2 Electoral Management Body Board Appointment Process

The process of appointing members to the EMB board is a critical determinant of its ability to conduct free, fair, and credible elections. The composition of the EMB board directly affects its decision-making, oversight, and accountability mechanisms. A transparent and merit-based appointment process enhances public trust in the EMB's impartiality and independence, while also contributing to the legitimacy of electoral outcomes (Cheeseman & Elkliit, 2020).

International IDEA (2002) emphasizes impartiality in the selection of EMB members to prevent undue influence and partisanship. A non-partisan, transparent, and meritocratic appointment process ensures the inclusion of diverse and qualified individuals capable of navigating complex electoral challenges. Porter and Rogowski (2018)



stress the importance of expertise, experience, and societal representation in appointments, highlighting that these qualities foster public confidence and safeguard the integrity of electoral processes.

Various approaches are employed to appoint EMB members, including selection by the executive (e.g., the president), the legislature, or judicial entities. While legislative appointments are often advocated as a mechanism to enhance EMB independence, research by Estévez et al. (2008) and Hanretty and Koop (2013) reveals that in parliamentary systems, where the government holds a legislative majority, such methods may not eliminate partisan influence. Consequently, the effectiveness of appointment mechanisms depends on the broader political and institutional context.

The selection of EMB members must balance technical expertise and societal representation with the need to minimize political bias. Appointing non-partisan individuals is generally regarded as essential for upholding the autonomy and neutrality of the EMB. However, context-specific factors, such as the political landscape and the challenges faced in each electoral system, play a significant role in determining the optimal composition and appointment process for EMB boards.

The appointment of EMB board members is a foundational aspect of electoral governance with far-reaching implications for the integrity and credibility of elections. While merit-based, non-partisan appointments are ideal for promoting public trust, considerations of political inclusivity may also be necessary in certain contexts. Careful attention to the balance between expertise, independence, and representation is critical for fostering effective electoral management and upholding democratic principles.

2.2.3 Appointment Procedures and Electoral Integrity

Electoral integrity is a cornerstone of democratic governance, ensuring elections are conducted in a manner that is free, fair, and transparent. The processes for appointing members to EMBs play a pivotal role in maintaining this integrity, as they shape the EMB's independence, impartiality, and effectiveness in managing elections. This study examines the relationship between EMB appointment procedures and electoral integrity across five dimensions: independence and impartiality, credibility and trust, expertise and competence, stability and continuity, and protection from political interference.

Transparent and merit-based appointment processes are essential for ensuring the independence and impartiality of EMBs (Van Ham & Garnett, 2019). By adhering to open and clearly defined criteria, such procedures minimize political interference and hidden agendas. Merit-based selections prioritize qualifications and professional expertise over political affiliations, promoting adherence to ethical standards and electoral laws. This commitment to professionalism and autonomy enhances public trust and strengthens the credibility of EMBs.

The credibility of EMBs is essential for the legitimacy of electoral outcomes. Fair and transparent appointment procedures foster confidence among stakeholders, including political parties, civil society organizations, and international observers (Van Ham & Garnett, 2019; López-Pintor, 2000). When stakeholders perceive appointments as impartial and based on clear criteria, trust in the EMB's capacity to administer elections fairly is strengthened. This trust facilitates cooperation between the EMB and other actors involved in electoral processes, bolstering the legitimacy of the electoral system and reinforcing the integrity of democratic governance.

The selection of EMB commissioners based on expertise and professional qualifications is crucial for effective electoral management. Competent commissioners are better equipped to navigate the technical complexities of election administration, address challenges, and implement best practices (Van Ham & Garnett, 2019). Appointments that prioritize relevant professional backgrounds enhance the EMB's capacity to uphold electoral integrity through informed decision-making and efficient administration. Furthermore, experienced commissioners contribute to institutional memory, ensuring continuity and consistency in electoral practices across cycles (Fombad, 2016).

Stability within EMBs is vital for maintaining effective operations and public trust. Clear appointment procedures, including defined term lengths and secure tenure, promote leadership stability and institutional continuity (LeDuc et al., 2010). Stable leadership allows EMBs to retain institutional knowledge and implement consistent practices, fostering confidence among stakeholders. Commissioners with secure tenure can engage in long-term planning and develop strategic responses to emerging electoral challenges, further enhancing the EMB's effectiveness and credibility.

Robust appointment procedures are critical for safeguarding EMBs from political interference. Transparent processes involving multiple actors such as independent nominating bodies, parliamentary confirmation, and public consultations reduce the risk of undue influence and manipulation (Cheeseman & Elkli, 2020; López-Pintor, 2000). Establishing clear criteria for appointments, including professional qualifications and demonstrated impartiality, ensures that commissioners are selected based on their ability to fulfill their roles objectively. These mechanisms reinforce EMB autonomy and strengthen public trust in the integrity of electoral processes.

It is therefore evident that procedures for appointing EMB commissioners significantly influence electoral integrity. Transparent, merit-based processes foster independence, build credibility, and enhance competence within EMBs. Clear and accountable appointment mechanisms ensure stability and protect against political interference, contributing to the effective administration of elections.

2.3 Conceptual framework

The study conceptual framework demonstrates the link between EMB appointment procedures within independent legal frameworks and electoral integrity. It emphasizes the importance of incorporating principles such as independence and impartiality, expertise and competence, stability and continuity, and compliance with legal frameworks. By integrating these principles into the conceptual framework for EMB appointment procedures, EMBs can enhance their autonomy, credibility, and efficacy in supervising electoral processes and maintaining democratic standards.

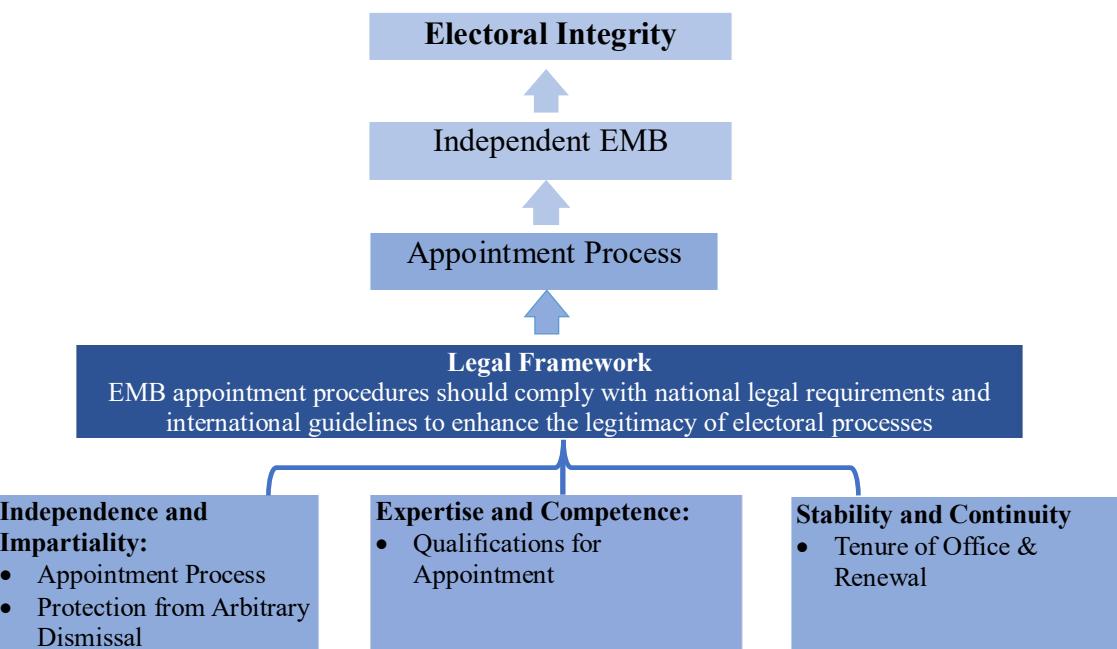


Figure 1
Conceptual Framework

III. METHODOLOGY

The study adopted a comparative case study methodology to examine the electoral management systems and governing boards of EMBs in South Africa, Zambia, and Zimbabwe. Employing qualitative research methods, the study undertook a comprehensive review of respective country legal frameworks, regional and global electoral standards and guidelines including existing literature focusing on the nature of EMB governing bodies and their appointment processes, as well as their influence on the independence of these institutions.

Data collection involved an in-depth analysis of primary sources, including legal documents, constitutional provisions, and electoral laws, alongside a review of relevant academic literature. The qualitative analysis of this data aimed to identify recurring themes and patterns related to EMB independence.

A comparative framework was employed to analyze similarities, differences, and emerging trends in the legal structures, appointment mechanisms, and board compositions of the EMBs across the three countries. The comparative approach highlights the relationship between these factors and the perceived independence of EMBs, as well as their broader implications for electoral processes.



IV. FINDINGS & DISCUSSION

4.1 Appointment Process

A comparative analysis of the appointment processes of electoral commissioners in South Africa, Zambia, and Zimbabwe reveals differences in the degree of independence, transparency, and checks and balances embedded in their respective systems. South Africa features a highly structured and transparent process for appointing members to its five-member Electoral Commission. The appointment process is governed by law as guided by Article 193 (4)(c) of the South African Constitution and Electoral Commissions Act 51 of 1996. The appointment begins with a public call for nominations, issued by an independent panel consisting of high-ranking officials such as the President of the Constitutional Court, the Human Rights Commission, the Commission on Gender Equality, and the Public Protector. This independent panel is tasked with receiving nominations, shortlisting candidates, and conducting public interviews to ensure transparency. Once the panel has identified eight candidates, the list is forwarded to the National Assembly, where a proportionally representative committee from all political parties selects one candidate. The National Assembly then adopts a resolution, and the President appoints the recommended candidate. The inclusion of an independent panel, public interviews, and proportional party representation ensures a high degree of impartiality and democratic oversight.

In contrast, Zambia follows a more centralized approach, with the President holding significant discretion in nominating members to its five-member board. Although the process is prescribed by law as per article 95 of the Constitution of Zambia (Amendment) Act No. 2 of 2016 and Electoral Commission of Zambia Act No. 35 of 2016, the President nominates candidates directly, without the involvement of an independent panel or public nomination process. Once nominated, the candidate is submitted to the National Assembly for ratification, with the committee reviewing the nomination before it is put to a vote by the Assembly. Ratification requires a simple majority and must occur within 21 days. If the National Assembly fails to ratify the appointment within this timeframe, the President is free to nominate alternative candidates. However, if the Assembly fails to ratify the President's third alternative, the appointment automatically takes effect. While this process includes a degree of parliamentary oversight, the automatic confirmation provision reduces the effectiveness of this check, potentially undermining the independence of the commission by allowing the President to circumvent the ratification process after multiple attempts.

In Zimbabwe, the process is similar to South Africa's in terms of transparency and inclusiveness but differs in structure and the number of commissioners. The nine-member Zimbabwe Electoral Commission is appointed through a legal process as outlined in Article 237 and 238(1)(a)(b) of the Constitution of Zimbabwe that involves public nominations and interviews, overseen by the Parliamentary Committee on Standing Rules and Orders. This committee is responsible for calling for nominations, shortlisting candidates, and conducting public interviews, after which it submits a list of candidates to the President. The President is constitutionally bound to select commissioners from this list, ensuring that his discretion is limited by the recommendations of the committee. This process incorporates a high level of public participation and oversight by Parliament, fostering transparency and accountability.

4.1.1 Discussion

South Africa and Zimbabwe demonstrate higher levels of transparency in the appointment of electoral commissioners compared to Zambia. This is largely due to their use of public nomination processes, public interviews, and the involvement of independent panels or parliamentary committees. These mechanisms ensure that appointments are open to public scrutiny and grounded in merit. By contrast, Zambia's appointment process lacks such transparency-enhancing features and concentrates significant power in the hands of the President, limiting public accountability.

In terms of checks and balances, both South Africa and Zimbabwe have instituted strong frameworks that include parliamentary oversight and the involvement of independent or parliamentary committees in recommending candidates. These measures help ensure that appointments are subjected to rigorous scrutiny and reflect a broader political consensus. While Zambia does require parliamentary ratification, the impact of this provision is undermined by a clause that allows the President's nominee to be automatically appointed after three failed ratification attempts. This significantly weakens parliamentary oversight.

Regarding impartiality, South Africa and Zimbabwe benefit from procedures that include independent bodies and public participation in the nomination process, which helps to minimize partisan influence. These inclusive approaches contribute to the perception of a more impartial electoral commission. In contrast, Zambia's process, which is heavily dominated by presidential nominations with limited involvement from independent bodies or the public, raises concerns about political bias and undermines confidence in the neutrality of the electoral commission.

Overall, South Africa and Zimbabwe have established more transparent and participatory processes that include greater checks on presidential discretion, promoting independence and impartiality in their EMBs. Zambia's



system, while legally structured, presents weaker safeguards against executive dominance due to the automatic ratification mechanism, potentially compromising the impartiality of its EMB.

4.2 Protection from Arbitrary Dismissal

A comparative analysis of the processes for the dismissal of electoral commissioners in South Africa, Zambia, and Zimbabwe highlights varying degrees of protection against arbitrary removal. Each country prescribes a legal process for the removal of commissioners, but they differ in the actors involved, the grounds for dismissal, and the checks on executive power. In South Africa, the removal of a member of the Electoral Commission is a multi-layered process aimed at protecting the independence of commissioners. The process is outlined in law as prescribed in the Electoral Commission Act 51 of 1996, Section 7, subsection (3), allowing dismissal only on the grounds of misconduct, incapacity, or incompetence. Importantly, the decision to remove a commissioner is not at the sole discretion of the President; instead, the National Assembly must recommend the removal following an investigation. This investigation is initiated based on recommendations from the Electoral Court, which is empowered to probe any allegations of misconduct, incapacity, or incompetence. Once the National Assembly conducts its investigation through a committee, a resolution to remove the commissioner must be adopted by a majority of its members in accordance with subsection (3) (a) (iii). While the President holds the power to remove the commissioner, he or she can only do so with parliamentary consent. Additionally, the President can suspend a member at any stage during the investigation, ensuring immediate action when necessary but with robust parliamentary oversight to prevent arbitrary dismissal.

This process places significant checks on executive power by involving both the National Assembly and the Electoral Court, maintaining the impartiality and independence of the commission. The Electoral Court's involvement ensures that allegations are thoroughly vetted, and the final decision is made through a transparent and democratic process. Zambia's approach to commissioner dismissal is also prescribed by law under section 5 of the Electoral Commission of Zambia (Amendment) Act No. 5 of 2019, but it grants the President a more prominent role. Commissioners can be removed on the grounds of gross misconduct or incompetence, similar to South Africa. However, the President has the authority to initiate the removal process either of his or her own accord or in response to a complaint. This grants the executive significant discretion in initiating the dismissal process, potentially introducing greater vulnerability to political influence.

Once the President decides to pursue the removal of a commissioner, the case is referred to the Chief Justice, who must establish a three-member tribunal. This tribunal is tasked with evaluating the allegations against the commissioner within 30 days. While the tribunal adds a layer of judicial oversight, the process allows the President to suspend the commissioner before any preliminary investigation begins. This preemptive suspension, without the need for prior inquiry, may reduce the protections against arbitrary dismissal and leaves the EMB exposed to executive interference during politically sensitive periods.

Zambia's process, while legally structured, centralizes power in the hands of the President, giving the executive a more direct role in both initiating and concluding the dismissal process. The involvement of the Chief Justice and the tribunal provides some judicial checks, but the executive's ability to act unilaterally weakens the independence of the commission relative to the South African system.

Zimbabwe's legal framework for removing members of the Zimbabwe Electoral Commission as stipulated in Article 237(3) of the Constitution of Zimbabwe closely mirrors South Africa's in terms of structure and protection from arbitrary dismissal. Commissioners can only be removed on the grounds of misconduct, incapacity, or incompetence. The President cannot unilaterally remove a commissioner; instead, the process must follow specific legal steps, starting with a referral to the Chief Justice, who appoints a three-member tribunal to investigate the allegations.

The tribunal must consist of either former judges or experienced legal practitioners, ensuring that legal expertise guides the inquiry. Similar to Zambia, the tribunal is empowered to investigate and provide a recommendation to the President regarding the commissioner's removal. However, Zimbabwe adds an extra layer of procedural rigor by linking the tribunal's actions to the Commissions of Inquiry Act, which provides a robust legal framework for conducting such inquiries. This ensures a formal, transparent process, helping to safeguard the independence of the commission.

Although the President retains the power to suspend a commissioner, the reliance on the judicial process and the tribunal's investigation ensures that there are significant checks on executive power, comparable to those in South Africa. The Commissions of Inquiry Act, guiding the tribunal's work, ensures a comprehensive and legally sound investigation before any decision is made.



4.2.1 Discussion

South Africa and Zimbabwe have instituted stronger safeguards against executive overreach in the dismissal of electoral commissioners compared to Zambia. In both countries, independent bodies play a critical role in the process. South Africa involves the National Assembly, while Zimbabwe requires the participation of the Chief Justice and a tribunal guided by the Commission of Inquiry Act. These mechanisms ensure that dismissals are subject to independent scrutiny and not left solely to executive discretion. By contrast, Zambia grants the President broader authority to initiate and conclude the dismissal process, although the involvement of a tribunal appointed by the Chief Justice provides some level of oversight.

Judicial oversight is present in all three countries through the use of tribunals or courts. South Africa stands out by involving the Electoral Court directly in the investigation phase, offering a specialized and judicially grounded approach. Zambia and Zimbabwe rely on tribunals appointed by the Chief Justice, but Zimbabwe's process is further strengthened by explicit reference to the Commissions of Inquiry Act, which provides a structured and legally rigorous framework for conducting investigations.

Parliamentary involvement varies across the three countries, with South Africa placing a strong emphasis on legislative oversight. The National Assembly not only investigates allegations but also plays a decisive role in recommending the removal of commissioners. This approach ensures that decisions reflect a broader political consensus and enhances democratic accountability. In contrast, Zambia and Zimbabwe rely more heavily on judicial mechanisms to handle investigations, with limited roles for their respective parliaments in the dismissal process.

With regard to preemptive suspension, differences in executive discretion are notable. Both South Africa and Zambia allow the President to suspend a commissioner during an investigation. However, South Africa requires that the suspension occur only after an investigation has begun, ensuring a procedural safeguard. In Zambia, the President is permitted to suspend a commissioner before any formal inquiry has taken place, granting the executive greater latitude. Zimbabwe also permits suspension, but only within the framework of an active tribunal investigation.

Overall, South Africa and Zimbabwe offer more robust frameworks for protecting commissioners from arbitrary dismissal through a combination of judicial and parliamentary checks. Zambia's process, while legally structured, grants more discretion to the President, potentially compromising the commission's independence.

4.3 Qualifications for Appointment

A comparative analysis of the qualifications required for the appointment of electoral commissioners in South Africa, Zambia, and Zimbabwe reveals variations in the legal standards for expertise, competence, and the professional backgrounds necessary for these roles. Each country prescribes qualifications in law, reflecting distinct national priorities and differing levels of emphasis on judicial, academic, and managerial expertise.

In South Africa, the qualifications for appointment to the Electoral Commission are clearly outlined in Section 6 of the Electoral Commission Act 51 of 1996, with a focus on ensuring that commissioners are not only competent but also impartial and free from undue political influence. A South African citizen is eligible for appointment, provided they do not hold a prominent political profile at the time of their nomination. This requirement is essential for maintaining the independence and neutrality of the commission, as it prevents individuals with active political affiliations from being appointed.

Moreover, South Africa's law mandates that one of the members of the Electoral Commission must be a judge. This provision emphasizes the importance of having legal expertise at the highest level within the commission, ensuring that decisions made are rooted in a strong understanding of constitutional and legal frameworks. The inclusion of a judicial figure adds credibility and reinforces public trust in the commission's impartiality and competence in handling electoral matters. The qualifications set in South Africa, therefore, highlight a balance between ensuring non-partisan appointments and securing legal expertise, particularly through the mandatory inclusion of a judge.

Zambia's qualifications for appointment to its EMB are more detailed and encompass broader requirements as stipulated in the Constitution of Zambia (Amendment) Act No. 2 of 2016, as articulated in Article 240, and the Electoral Commission of Zambia Act No. 35 of 2016, amended by Act No. 5 of 2019, section 4. The law prescribes that commissioners must be Zambian citizens, with an additional stipulation that they must be permanent residents, thereby ensuring deep national ties. A candidate must not have served a prison sentence of three years or more within five years preceding the appointment, which serves as a moral and legal filter to exclude individuals with recent criminal backgrounds.

In terms of educational qualifications, Zambia requires at least a school certificate and a degree or its equivalent. This criterion ensures a minimum standard of academic achievement, necessary for managing complex electoral processes. Additionally, the law specifies that candidates must not hold political office, a clear measure designed to avoid conflicts of interest and preserve the non-partisan nature of the commission.



Crucially, Zambia places a strong emphasis on professional knowledge and expertise in fields relevant to electoral management. Candidates must possess knowledge in areas such as electoral administration, finance, governance, public administration, or law. This requirement ensures that appointees bring specific competencies that are critical to the effective management of the electoral process, highlighting a practical, skills-based approach to appointments.

Overall, Zambia's qualification criteria are comprehensive, covering citizenship, legal background, educational attainment, and relevant professional experience. This broad framework is designed to ensure that commissioners have both the technical expertise and the integrity required for their roles.

Zimbabwe's qualifications for the appointment of commissioners to the Zimbabwe Electoral Commission (ZEC) also reflect a legal and professional approach but with an added focus on integrity and judicial leadership. As prescribed in Article 238 of the Constitution of Zimbabwe, all commissioners must be Zimbabwean citizens, ensuring national allegiance and accountability. A distinguishing feature of Zimbabwe's framework is the requirement for the chairperson to be either a sitting or retired judge or a person qualified for appointment as a judge. This provision parallels South Africa's emphasis on judicial expertise, reinforcing the role of legal oversight within the electoral body.

For the other members of the commission, Zimbabwe places a strong emphasis on the personal integrity and competence of the candidates. Commissioners are selected based on their demonstrated integrity and their competence in managing public or private affairs. This focus on ethical conduct and proven leadership ensures that appointees are not only technically qualified but also possess the moral character necessary to uphold the commission's reputation and independence.

Zimbabwe's qualifications, therefore, blend judicial expertise at the leadership level with a focus on competence in management, creating a framework that prioritizes both ethical leadership and professional capability.

4.3.1 Discussion

Both South Africa and Zimbabwe explicitly require the inclusion of judicial expertise within their electoral commissions. In South Africa, one of the members must be a judge, while in Zimbabwe, the chairperson must be either a judge or qualified to be appointed as a judge. This focus on legal expertise underscores the importance of constitutional and legal knowledge in overseeing electoral processes, ensuring that the commissions operate within a sound legal framework. Zambia does not have a specific judicial requirement but instead emphasizes a broader range of expertise.

Zambia places the most detailed emphasis on professional qualifications, requiring candidates to have knowledge in electoral administration, finance, governance, public administration, or law. This practical requirement ensures that commissioners have the technical expertise necessary to manage the complexities of electoral systems. In contrast, South Africa and Zimbabwe focus more on general competence and integrity, with Zimbabwe emphasizing experience in managing public or private affairs.

All three countries emphasize the non-partisan nature of their electoral commissions. South Africa's requirement that commissioners must not have a prominent political profile at the time of appointment is a direct safeguard against political influence. Similarly, Zambia's prohibition on holding political office ensures that appointees are not actively engaged in political activities, maintaining the neutrality of the commission. Zimbabwe, while not as explicit on political profiles, relies on the emphasis on integrity to filter out politically compromised candidates.

Zambia is the only country among the three that explicitly requires a minimum level of formal education, a school certificate and a degree or its equivalent. This requirement reflects the country's emphasis on ensuring that commissioners have the educational background necessary for handling electoral responsibilities. South Africa and Zimbabwe do not specify educational qualifications but instead focus on competence and experience.

Zambia's additional stipulation that candidates must not have served a prison sentence of three years or more in the preceding five years adds a legal and moral dimension to the qualifications process. This provision aims to ensure that individuals with serious criminal backgrounds are excluded from the commission, enhancing its credibility and ethical standing. Neither South Africa nor Zimbabwe includes such a specific provision, though both countries emphasize integrity as a key criterion.

Generally, while all three countries prescribe qualifications aimed at ensuring the competence and independence of their electoral commissioners, they vary in their emphasis on specific types of expertise. South Africa and Zimbabwe prioritize judicial and legal expertise, particularly for leadership roles, while Zambia places a stronger focus on professional and technical knowledge in fields directly related to electoral administration. All three countries share a commitment to ensuring non-partisanship and integrity in their electoral commissions, though Zambia's more detailed framework reflects a broader range of qualifications, encompassing education, professional experience, and moral standing.



4.4 Tenure of Office and Renewal

A comparative analysis of the tenure of office and renewal procedures for commissioners in the electoral bodies of South Africa, Zambia, and Zimbabwe highlights similarities and differences in the fixed terms, reappointment processes, and limits on the number of terms commissioners can serve. These variations reflect each country's approach to maintaining continuity, experience, and independence within their EMBs, while ensuring checks and balances to avoid over-concentration of power.

In South Africa, the tenure of office for commissioners is clearly prescribed by law as outlined in Section 7 (1) of the Electoral Commission Act 51 of 1996, with commissioners serving a fixed term of seven years. This relatively long term ensures a level of stability and continuity within the Electoral Commission, allowing commissioners to gain substantial experience and oversee multiple electoral cycles.

Reappointment for a second term is possible, but it is contingent on the recommendation of the National Assembly. This requirement introduces a layer of accountability, as it ensures that commissioners are subject to parliamentary oversight before their term can be renewed. However, a commissioner may only serve a maximum of two terms, which places a clear limit on the length of time any individual can remain in the role. This two-term limit prevents the over-concentration of power and encourages the periodic infusion of new perspectives into the commission.

In Zambia, according to the Electoral Commission of Zambia Amendment Act No. 2 of 2019, Section 4, subsections (3), (4), and (8), the tenure of commissioners is similarly fixed at seven years, with a maximum of two terms. This aligns with South Africa in terms of the overall duration of service, promoting stability and continuity within the Electoral Commission of Zambia.

However, a key difference lies in the reappointment process. In Zambia, reappointment for a second term is at the discretion of the President, without the direct involvement of the National Assembly. This presidential discretion introduces a potential avenue for executive influence over the reappointment process, as there are fewer checks in place compared to South Africa's reliance on a parliamentary recommendation. Despite this, the two-term limit remains, which acts as a safeguard against prolonged individual influence within the commission.

According to Article 238 (5) of the Zimbabwean constitution, Zimbabwe takes a slightly different approach with its six-year term for commissioners, which is shorter than the seven-year terms in South Africa and Zambia. This shorter tenure could allow for more frequent renewal of the commission's membership, potentially providing opportunities for fresh leadership and new ideas within a shorter timeframe.

Reappointment in Zimbabwe is also possible, but unlike Zambia, it is dependent on a parliamentary committee's recommendation, rather than presidential discretion. Furthermore, Zimbabwe's system requires that the full appointment process, including public interviews, is repeated for any potential reappointment. This process introduces a higher level of transparency and public accountability into the reappointment process, ensuring that the renewal of commissioners is subject to the same scrutiny as their initial appointment. Like South Africa and Zambia, commissioners in Zimbabwe are also limited to a maximum of two terms, ensuring regular turnover within the commission.

4.4.1 Discussion

In terms of the length of office term, South Africa and Zambia both have a fixed seven-year term for commissioners, while Zimbabwe opts for a shorter six-year term. The longer terms in South Africa and Zambia promote stability and allow commissioners to gain deep institutional knowledge over extended periods, while Zimbabwe's shorter term may encourage more frequent opportunities for renewal and change within the commission.

South Africa and Zimbabwe place reappointment under parliamentary oversight, though they differ in execution. South Africa requires National Assembly recommendation for reappointment, while Zimbabwe's system involves a more rigorous process, where commissioners must undergo the full appointment procedure again, including public interviews. In contrast, Zambia's reappointment process is left to the President's discretion, with no direct parliamentary involvement, potentially allowing for more executive influence. Zimbabwe's approach to reappointment is the most transparent, involving public participation and reapplication of the appointment process.

All three countries impose a two-term limit on commissioners, preventing excessive concentration of power and ensuring that the commission benefits from periodic turnover in leadership. This limit promotes institutional renewal and prevents commissioners from serving indefinitely, which could otherwise compromise the independence and dynamism of the commission.

When it comes to checks and balances, South Africa and Zimbabwe's reliance on parliamentary processes for reappointment introduces a higher degree of oversight compared to Zambia, where presidential discretion dominates the process. Zimbabwe's requirement for public interviews further enhances transparency, making it the most stringent of the three systems in terms of accountability for reappointment. In contrast, Zambia's process could be



viewed as offering fewer checks, as it depends heavily on presidential discretion without public involvement or significant parliamentary scrutiny.

While South Africa, Zambia, and Zimbabwe all prescribe fixed terms of office and limit commissioners to a maximum of two terms, the methods of reappointment and oversight differ significantly. South Africa and Zimbabwe emphasize parliamentary involvement in reappointment, with Zimbabwe adopting the most transparent process through public interviews. Zambia's reliance on presidential discretion introduces a greater potential for executive influence, though the two-term limit in all three countries ensures that no individual can serve indefinitely within the electoral commissions.

V. CONCLUSION & RECOMMENDATIONS

5.1 Conclusion

The comparative analysis of EMBs in South Africa, Zambia, and Zimbabwe reveals significant differences in the appointment, dismissal, qualifications, and tenure of electoral commissioners, each of which plays a crucial role in determining the independence and transparency of the electoral process. South Africa and Zimbabwe have developed more robust systems with judicial and parliamentary oversight, limiting executive discretion and enhancing the impartiality of their EMBs. In contrast, Zambia's legal framework, while structured, permits greater presidential influence, particularly in the automatic ratification of appointments and discretion in dismissals, potentially compromising the independence of its EMB.

While all three countries emphasize qualifications, non-partisanship, and term limits, the degree of transparency in appointments and reappointments differs, with South Africa and Zimbabwe adopting more participatory and transparent processes. Zambia's focus on professional and technical knowledge, as opposed to the judicial and legal expertise prioritized by South Africa and Zimbabwe, reflects a distinct approach but raises questions about the relative importance of technical versus legal expertise in ensuring electoral integrity.

Despite these insights, several gaps remain. Future research could explore the impact of these governance differences on actual electoral outcomes and public trust in the electoral process. Additionally, an in-depth analysis of how the balance between judicial, parliamentary, and executive influence affects long-term EMB stability across different electoral cycles would offer valuable insights. Lastly, there is a need to examine the role of civil society and international frameworks in strengthening the independence of EMBs, particularly in contexts where executive overreach threatens democratic governance.

5.2 Recommendations

To promote transparency and build public confidence in the EMB, Zambia should introduce mechanisms for public participation in the appointment of electoral commissioners. Emulating practices from South Africa and Zimbabwe, such reforms could include public calls for nominations, open interviews for shortlisted candidates, and oversight by an independent panel or parliamentary committee. These measures would promote merit-based appointments free from political interference, ultimately enhancing trust in the electoral process.

In addition to public involvement, Zambia should establish an independent or parliamentary committee to shortlist and recommend candidates for appointment to the electoral commission. This panel could follow models such as South Africa's independent selection panel or Zimbabwe's Parliamentary Committee on Standing Rules and Orders. Prioritizing competence and integrity in candidate selection would curb partisan influence and strengthen institutional checks and balances.

Zambia should also reform the current provision that allows the President's third nominee to assume office automatically if the National Assembly fails to ratify the first two candidates. This automatic appointment clause weakens parliamentary oversight and compromises the integrity of the selection process. Removing the provision would ensure a more balanced and transparent process, allowing only qualified and impartial individuals to be appointed.

Furthermore, the power of the President to suspend an electoral commissioner prior to any investigation should be curtailed. As in South Africa, suspensions should only be permitted following a preliminary inquiry that establishes credible grounds for further investigation. This reform would ensure that suspensions are based on substantiated concerns rather than executive discretion, thereby protecting the independence of the EMB.

To reinforce judicial oversight and due process, Zambia should also formalize tribunal procedures for the dismissal of commissioners within a comprehensive legal framework. Drawing on Zimbabwe's use of the Commissions of Inquiry Act, this approach would introduce strict legal and procedural standards, guarding against arbitrary or politically driven dismissals and bolstering the EMB's impartiality.

Parliamentary oversight in the reappointment of electoral commissioners should also be strengthened. Adopting structured parliamentary involvement, as seen in South Africa and Zimbabwe, would introduce an important



layer of accountability. Requiring approval from the National Assembly or its committees would limit executive overreach and enhance transparency in the reappointment process.

Finally, Zambia should incorporate public participation into the reappointment process of electoral commissioners. Open calls for nominations and interviews, modeled on practices in South Africa and Zimbabwe, would promote transparency, accountability, and public trust in the EMB. This would signal a strong commitment to fairness and impartiality in electoral governance.

Zambia and Zimbabwe should enhance parliamentary oversight in the dismissal of electoral commissioners by adopting a model similar to that of South Africa. In this system, the National Assembly is responsible for investigating allegations, and removal requires a majority vote. Introducing a proportionally representative parliamentary committee into the dismissal process would promote democratic accountability and transparency. This approach would help guard against politically motivated dismissals and ensure that decisions are grounded in fairness and due process.

In addition, both countries would benefit from establishing dedicated electoral courts or formalizing tribunal procedures, drawing inspiration from South Africa's use of an Electoral Court. Implementing specialized judicial bodies with expertise in electoral law would ensure that allegations of misconduct or incompetence are thoroughly and impartially assessed. This reform would provide a robust legal framework for addressing complaints, protect electoral commissions from undue political interference, and reinforce the integrity and independence of electoral institutions.

Parliamentary ratification procedures for the appointment of electoral commissioners in Zambia, South Africa, and Zimbabwe should be strengthened by requiring a two-thirds majority for approval. Implementing this higher threshold would encourage broader political consensus, minimize the risk of partisan appointments, and reinforce the independence and impartiality of the electoral commission. Such a reform would contribute significantly to the credibility and integrity of the electoral process in each country.

Additionally, electoral bodies across these three countries should actively engage in regional dialogue to exchange best practices related to the appointment, reappointment, and tenure of commissioners. Platforms such as the Electoral Commissions Forum of SADC Countries can facilitate this collaboration. By sharing experiences and lessons learned, these bodies can work toward the harmonization of standards, enhance the effectiveness of electoral administration, and promote regional stability and cooperation in the management of elections.

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