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African election management bodies in the era of democratic backsliding

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ABSTRACT

Although democratisation has evolved unevenly across Africa since the 1990s, there has been progress in the establishment and strengthening of independent election management bodies (EMBs). Since the mid-2000s, scholars and analysts have identified a global trend toward democratic backsliding, characterised in part by the erosion of democratic institutions. Such a trend might be expected to pose significant threats to EMBs. This article contributes new insights through a review of data from the Perceptions of Electoral Integrity and Varieties of Democracy projects. While it finds wide variation in EMB performance and autonomy, there is no overall pattern of decline that might be associated with democratic backsliding in Africa. Case analysis of Ghana and Zambia further demonstrates that the challenges EMBs face are multifaceted and not only driven by anti-democratic leaders. Co-ordinated efforts are therefore needed to strengthen EMB autonomy and capacity to (re)build trust and deliver elections with integrity.

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Introduction

From the late 1950s onwards, decolonisation in Africa produced an array of different political systems, ranging from one-party dominant regimes to military authoritarian rule and civilian dictatorships of varying gradations. However, the 1990s saw 40 countries¹ drawn into the ‘third wave’ of democratisation,² which gained fresh momentum following the end of the Cold War. Arbitrary rule was gradually replaced with constitutional rule, characterised by improved dispensation of the rule of law, expanded rights and freedoms and periodic multi-party elections. By 2015, 46 countries had between them held almost 400 competitive national elections, compared to just nine in the period 1985–89.³ Although democracy was by no means consolidated, electoral contests had become both routine and accepted as the necessary means to legitimise political power.⁴

Over the last three decades, there have been significant efforts to improve election delivery and build trust in electoral processes. Electoral integrity is a recognised priority for citizens and stakeholders seeking genuine political competition and accountability,

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and for donors promoting credible elections as a necessary, though not sufficient, condition for democratic consolidation. Polls undermined by malpractice or poor management also regularly result in conflict: between 1990 and 2014 incidents of violence or intimidation marred more than half of sub-Saharan elections, with Côte d'Ivoire, the Democratic Republic of Congo, Kenya, Nigeria, Sudan and Togo routinely experiencing pre-electoral violence.⁵ Strengthening electoral governance and embedding a level of 'procedural certainty' that inspires confidence among political actors and citizens alike is therefore associated with promoting peace and stability.⁶

One particular area of progress has been in the establishment and strengthening of independent, often constitutionally mandated, election management bodies (EMBs). This marked a major shift away from conducting elections out of governmental departments or ministries, which tended to be the norm following independence. The new generation of EMBs played a crucial role in the administration of successive multiparty elections across the continent which, despite their flaws, were deemed to have contributed to the expansion and deepening of democratic values in the first decade of democratisation.⁷

However, since the mid-2000s, the emergence of an increasingly constrained political environment has exacerbated the challenges to democratisation in many African countries. This 'democratic recession',⁸ also referred to as democratic backsliding⁹ and authoritarian resurgence,¹⁰ has occurred worldwide, even in countries which have long been viewed as models and advocates of liberal democracy, such as the United States. Declining democratic conviction in the West, combined with Chinese investment in development and coordinated efforts by China and Russia to undermine liberal norms, is eroding external incentives for African elites to pursue western-style democracy.¹¹ In addition, the COVID-19 pandemic created opportunities for governments to use emergency powers to restrict democratic rights and freedoms.¹²

Democratic backsliding is understood to comprise, among other things, the gradual erosion of democratic political institutions by elected governments.¹³ While the literature identifies electoral norms, laws and institutions as key targets of those who seek to undermine democracy, to date there has been no systematic analysis of how backsliding may, or may not, be impacting EMBs. This article seeks to address the gap. It will consider first how electoral integrity is understood, the evolution of EMBs in Africa and how leaders have historically sought to constrain these institutions, before turning to the literature on how democratic backsliding has been conceptualised and identified as manifesting across the continent. The article then draws on Perceptions of Electoral Integrity (PEI) indices and data from the Varieties of Democracy (V-Dem) project to consider what they tell us about the trajectories of EMB performance and autonomy since the mid-2000s. Finally, we analyse two country cases where the EMB has experienced declines in order to identify contributing factors.

Electoral integrity and EMBs in Africa

Electoral integrity is a key focus of contemporary discussions among election practitioners, academics, and election assistance organisations. Earlier 'free and fair' measures of election quality are now supplemented with more robust standards of assessment and a holistic view of the multiple processes and range of actors involved in all stages of election delivery (ie, the full electoral cycle, as opposed to just the voting and results period).

Precise definitions of electoral integrity vary: some scholars associate it with adherence to core principles articulated in democratic theory,¹⁴ while others understand it to be the absence of fraud or malpractice.¹⁵ The current study uses the interpretation adopted by Pippa Norris, where the term describes an electoral process which is delivered in line with global democratic norms, as expressed in foundational UN agreements including the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, and subsequent international, regional and sub-regional instruments.¹⁶ The Global Commission on Elections, Democracy and Security has defined this as 'any election that is based on the democratic principles of universal suffrage and political equality as reflected in international standards and agreements, and is professional, impartial and transparent in its preparation and administration throughout the electoral cycle'.¹⁷

Election management bodies are the primary institutions responsible for elections and have broad mandates to deliver polls in line with national legal frameworks. They therefore play a central role in the realisation of electoral integrity, and their performance significantly influences how citizens evaluate the quality of elections.¹⁸ In practice, they are responsible for three interrelated sets of activities: organising, monitoring, and certifying.¹⁹ Organising comprises pre-election activities such as voter and candidate registration, procurement, civic education, and temporary election worker recruitment and training. During the voting period EMBs oversee all electoral operations including the coordination of logistics and security, polling, counting and tabulation, and once an election is concluded they must manage the wrap-up, review the process and plan for the next electoral cycle. Monitoring tasks include an EMB's various responsibilities to enforce regulations, for example relating to candidate eligibility, campaigning, political finance, and media election coverage. Certification encompasses the finalisation and declaration of results.

Furthermore, election delivery in practice involves extensive inter-organisational collaboration, consultation with a wide range of national electoral stakeholders and engagement with a range of international assistance agencies, donors and suppliers.²⁰ As these networks grow in scale and complexity, a challenging but important dimension of achieving electoral integrity is balancing relationships with different players and cultivating trust in the EMB as an institution.

In Africa today, the majority (43) of EMBs are legally independent of the executive and, in theory, autonomous. A further 10 countries have 'mixed' EMB models where there is an independent oversight body but implementation is handled by a government department.²¹ In most cases, these models were only adopted in the 1990s when there was significant advocacy for independent EMBs, partly inspired by the success of the independent election commissions of India and Costa Rica; the rationale was that separation from the executive was more likely to foster impartiality and inspire voter confidence.²² Prior to this, electoral governance arrangements had been inherited from departing colonial powers and elections were predominantly administered by civil servants, echoing arrangements in the European countries that imposed them. As Adele L Jinadu notes, these proved ineffective in the postcolonial African context:²³

[T]he inherited election administration was in effect easy to manipulate and in many cases, to outright control by successor regimes to colonial rule ... who saw no reason to develop strong independent electoral administrations that would only serve to undermine or subvert their hegemonic drive.

The regimes that emerged adapted the EMBs they inherited to suit their agendas. Many countries did administer polls of some description, ranging from ratification elections to semi-competitive elections in one-party states and non-competitive plebiscites. Responsibility for elections in Ghana shifted at least four times between 1957 and 1992 as power alternated between military and civilian governments. However, only Botswana, Mauritius and The Gambia succeeded in holding successive and broadly democratic elections throughout this period.²⁴

Advances in embedding elections since the transitions (back) to democracy in 1990s can in part be credited to concerted efforts by EMB leaders to build capacity and strengthen processes, guided by international election observation recommendations and supported by financial and technical assistance from donors. This has been realised through training programmes, improvements in the recruitment and engagement of EMB staff and temporary poll workers, as well as knowledge and experience sharing among EMBs across national boundaries facilitated by international and regional organisations.²⁵ Electoral commissions in countries including Ghana, Kenya, Nigeria and South Africa have also been at the international forefront of introducing technology in their efforts to enhance the efficiency and transparency in electoral processes.²⁶

In a review of elections in 28 African countries between 2012 and 2014 using data from the Perceptions of Electoral Integrity (PEI) index, Max Groemping and Ferran Martínez i Coma found that although the region had lower overall levels of electoral integrity compared to others, electoral authorities in Africa generally performed better than the global average. They also performed well on key operational tasks that EMBs are responsible for, such as electoral procedures, counting and the tabulation and declaration of results. In line with global patterns, scores were lowest for campaign finance, voter registration and media balance.²⁷

Strategies of EMB manipulation

Attempts to manipulate electoral authorities continued even after the establishment of mixed and independent EMBs. Indeed, the performance of individual EMBs in Africa has often been weak or inconsistent, whether due to resource constraints, partisanship, or external pressures. As Andreas Schedler wrote, 'the modern history of representative elections is a tale of authoritarian manipulations as much as it is a saga of democratic triumphs'.²⁸ He drew a distinction between electoral democracy and electoral authoritarianism and argued the key distinction between the two regime types was election quality.²⁹ This gave rise to a significant literature on what constitutes a 'democratic' election and how authoritarians seek to control them. Schedler, along with other scholars such as Sarah Birch, Nic Cheeseman and Brian Klass, have identified an array of strategies, ranging from abusing incumbency to suppressing opposition and controlling the media.³⁰ Within this, several tactics relating to the restriction of an EMB's *de facto* independence and ability to operate effectively can be identified:

1. Political interference in the appointment (and/or removal) of electoral commissioners and other EMB officials;
2. Intimidation/targeting of electoral officials to ensure desired outcomes;

3. Obstruction of legal reforms to extend EMB powers (for example to strengthen oversight of campaign finance) or more broadly provide for more inclusive electoral processes;
4. Introduction of rules that enable fraud or manipulation, for example through weak regulations around registration or voting procedures, or strategic changes to electoral laws which significantly favour incumbents;
5. The withholding of funds and other resources from electoral operations; and
6. Attempts to discredit the EMB.

By eroding institutional integrity, these interventions enable wider electoral fraud in which the EMB is complicit, such as the uneven application of candidacy rules, gerrymandering, the strategic exclusion or denial of voting rights to certain citizens, ballot box stuffing and/or the manipulation of results. They may also weaken the integrity of an election simply by limiting the capacity of the EMB to the extent that processes are riddled with problems and errors, so the results inspire little public confidence and are vulnerable to legal challenges.

These strategies were commonplace across Africa in the 1990s and early 2000s. In Zimbabwe, the 1990 Electoral Act ensured that Robert Mugabe as president had sweeping powers over the electoral process. In addition, widespread manipulation and irregularities during the registration, voting and tallying during the 2002 elections in particular were illustrative of an election body responsive only to the incumbent ZANU-PF regime. The voter register was inflated in ZANU-PF strongholds, while suspected opposition MDC supporters were excluded, and the number of polling stations in opposition areas were reduced, leading to long queues and ultimately voters being turned away.³¹ In Togo, reforms to strengthen the autonomy of the national election commission were scrapped ahead of the 2003 presidential elections as part of a series of constitutional amendments to secure the incumbent president's position.³² During the presidential election in Niger in 1996 Colonel Ibrahim Barre Mainassara, who had seized power by military coup, dissolved the electoral commission as results were being announced out of fear that he might lose. He then established a new electoral body to declare him victor.³³ In Zambia, the Electoral Commission's budgets were consistently both insufficient and unreliable: although parliament approved its funding, the amount released by the Ministry of Finance was invariably substantially less than promised; between 1996 and 2000, the EMB received around 70% of its allocation, while the late release of funds for the 2001 election resulted in the registration exercise starting just six months before the election.³⁴

Democratic backsliding

The framing of democratic backsliding depends in part on how democracy itself is understood. Precise definitions and measures vary, but there is widespread consensus on the importance of competitive elections. More comprehensive conceptualisations of democracy qualify what constitutes credible elections (for example, impartial administration and a level playing field for candidates) and underscore the necessity of additional dimensions such as political rights and liberties and the rule of law.³⁵ Larry Diamond adopts this more substantive perspective, drawing on Freedom House measures to date the beginning of the democratic recession to 2006. He identifies this as the year that global freedom and

democracy, which had been on the rise for three decades, started to flatten out. The subsequent decline, which he identifies in 29 sub-Saharan countries, has been characterised by the erosion of democratic values, culture and orientation in political praxis, and increasingly poor and exclusionary governance.³⁶ Growing autocratisation has been confirmed by successive annual reviews produced by research institutes which track a range of democracy indicators. For example, the 2023 V-Dem annual report warns of '... global levels of democracy sliding back and advances made over the past 35 years diminishing. The most drastic changes have taken place within the last ten years'.³⁷ More recently scholars have expressed alarm at leaders exploiting the COVID-19 pandemic to further stifle opposition and restrict political rights.³⁸

Part of the challenge in assessing democratic backsliding is linked to the pace of change. Although breakdowns still occur, conventional coups are no longer a strategy of choice. Instead, elected leaders (notably, though not exclusively, in Africa) engage in a much more subtle hollowing out of democratic institutions and practices that are often so gradual that it is overlooked by observers.³⁹ It is this institution-weakening aspect of authoritarian resurgence that is of primary interest to the present discussion because of its relevance to election authorities. As Stephan Haggard and Robert Kaufman write:⁴⁰

A neutral electoral authority assures competitors free ballot access for voters and an honest vote count. Meddling with the electoral system constitutes a derogation of particular importance, as it goes to the minimum requisite for a political system to be considered democratic by all.

Some scholars caution against viewing democratic backsliding as an inexorable trend. They argue that, while some autocratic leaders are actively obstructing or rolling back democratic progress, there remains a substantial appetite for representative and accountable government. Citizens, civil society, and some political actors continue to mobilise successfully for democratic rights in other contexts.⁴¹ The cross-national data does suggest that, although the overall picture may be bleak, there is diversity of experience across the continent. For example, while the 2023 V-Dem Democracy report describes sub-Saharan Africa as having the largest number of autocratising countries (12), it also identifies five democratising ones.⁴² The Economist Intelligence Unit notes a decline in the democracy score of sub-Saharan Africa from 4.38 in 2015 to 4.14 in 2022, but finds that between 2021 and 2022 a total of 14 countries improved their scores while 22 stagnated and only 8 declined.⁴³ Toby James, Khabele Matlosa and Victor Shale have also questioned the extent to which it is affecting electoral integrity suggesting that declines in the quality of democracy are not echoed in overall election quality.⁴⁴

Data analysis

Despite the fact that EMBs are core institutions in the democratic architecture, there has been no systematic review of available data to assess if democratic backsliding is impacting EMBs. To address this, this study reviews PEI data, which draws on expert assessments of national elections to provide comprehensive insights on the extent to which electoral integrity is realised. The study then looks at EMB autonomy data from V-Dem, which is also based on aggregated expert judgements, updated annually. Electoral integrity and

trust in electoral outcomes require that EMBs discharge their duties impartially, so declines in indicators relating to EMB performance and autonomy over the past decade might reasonably be associated with interference by the executive. Based on the wider literature on democratic backsliding, one would expect the data to show declines in overall electoral authority scores and EMB autonomy. However, the pattern is unlikely to be uniform and there may be several EMBs where scores have fluctuated or improved. In addition, consideration will be given to whether there have been particular declines since 2020 which might be associated with the expansion of executive power during the COVID-19 pandemic.

Perceptions of Electoral Integrity

The PEI dataset provides an overall score for national elections. This is calculated from responses to a survey using 49 questions divided among 11 sub-dimensions which were selected to reflect the key elements of the electoral cycle. The latest release includes 547 elections which took place in 169 countries between 2012 and 2022; 48 countries from the African continent are included in the data.⁴⁵

For the purpose of this study, it is instructive to look first at the Electoral Authorities Index. The index is produced by tallying scores for questions on EMB impartiality, information provision, openness to scrutiny and performance and standardising to a 0–100 point scale. Figure 1 provides a snapshot of the global index broken down by region. It

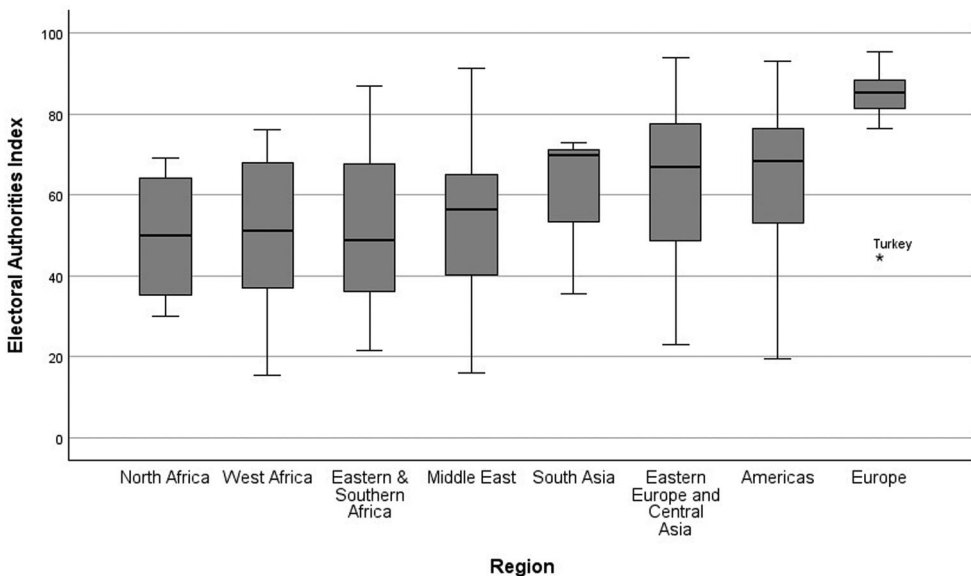


Figure 1. Global perceptions of electoral integrity electoral authorities Index (PEI 9.0), most recent election reported.

Data source: Holly Ann Garnett; Toby S James; Madison MacGregor and Sofia Caal-Lam, 'Perceptions of Electoral Integrity, (PEI-9.0)', Harvard Dataverse, V1, 2023. doi.org/10.7910/DVN/2MFQ9K.

Note: extreme values are calculated by IBM SPSS as those which are more than three box lengths from the edge of the box.

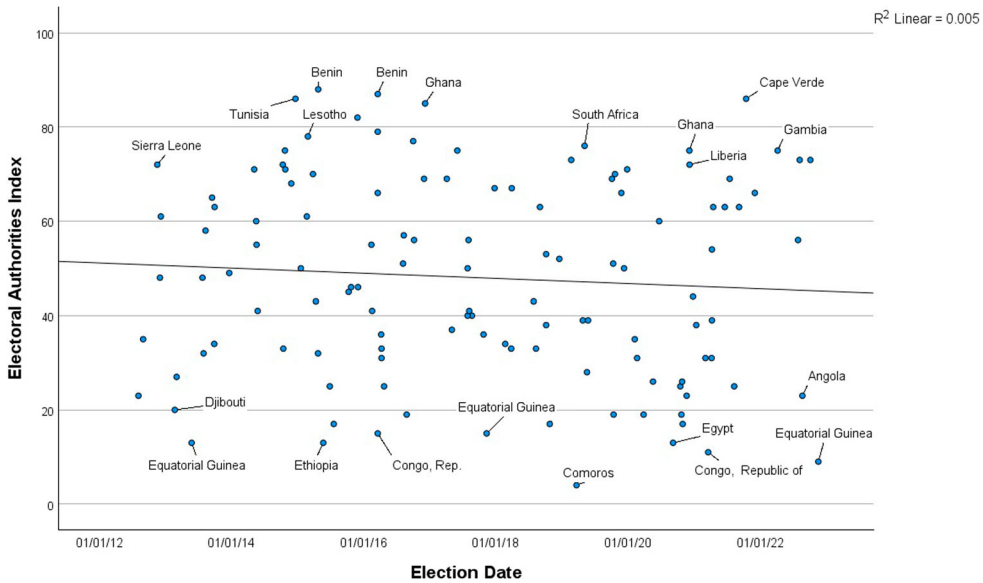


Figure 2. Perceptions of electoral integrity electoral authorities index (PEI 9.0), African elections only 2012–2022.

Data source: Holly Ann Garnett; Toby S James; Madison MacGregor and Sofia Caal-Lam, 'Perceptions of Electoral Integrity, (PEI-9.0)', Harvard Dataverse, V1, 2023. doi.org/10.7910/DVN/2MFQ9K.

shows that the latest median scores in all African regions lag behind the rest of the world but also that there is significant diversity within each African region.

Figure 2 draws on data from African elections over the last decade and demonstrates that, contrary to expectations, there has been no statistically significant decrease in the overall integrity of electoral authorities over the past decade. Instead, the diversity characterising the continent indicated by Figure 1 is illustrated over time and in more detail, with weaker scores in Central and East Africa generally balanced by stronger EMB ratings elsewhere. There is little sign of a marked decrease since 2020, which might correspond to COVID-19-related electoral backsliding, although it may be too early to assess this effectively. It is notable that there has only been one score above 80 since 2017.

We then turn to the PEI Electoral Procedures Index, which is based on questions relating to whether information about voting procedures was available and elections were well managed, administered fairly by officials and delivered in line with the law (scores are again tallied and standardised to a 0–100 point scale). This presents an opportunity to review key elements of EMB performance and impartiality from a different angle and assess if the findings are consistent. Figure 3 again shows a wide range of scores but no overall decline in the integrity of electoral procedures in Africa over the past 11 years, or signs of a decrease that might be linked to COVID-19.

Varieties of Democracy

The PEI Indices suggest that, overall, patterns of EMB impartiality and performance in Africa have not been significantly affected by wider democratic backsliding. However, there is also significant variation in experience among African EMBs. Recognising critiques

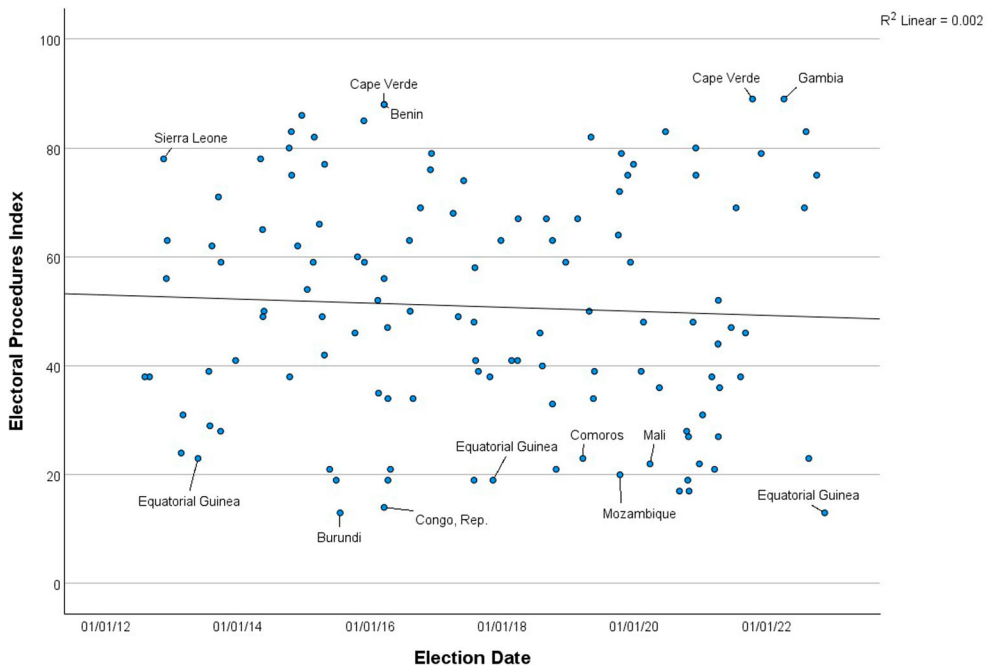


Figure 3. Perceptions of electoral integrity electoral procedures index (PEI 9.0), African elections only 2012–2022.

Data source: Holly Ann Garnett; Toby S James; Madison MacGregor and Sofia Caal-Lam, 'Perceptions of Electoral Integrity, (PEI-9.0)', Harvard Dataverse, V1, 2023. doi.org/10.7910/DVN/2MFQ9K.

of both the democratic recession narrative and the study of the African continent more broadly, it is important to look at the trajectories of individual countries in more detail to consider if individual EMBs are experiencing pressures that might be associated with authoritarian resurgence. V-Dem's data on EMB autonomy is useful in this regard; although it is based on only one question and therefore offers much less detailed information than PEI, it is updated annually and provides a more granular view of change over time. Data are also available from the year 1789, so it is possible to assess the EMB autonomy variable since the onset of democratic recession as identified by Diamond, ie, 2006.

The analysis reviews data from 51 African countries, excluding Eritrea, Somalia and South Sudan where no direct elections were held between 2006 and 2022. The data show that an almost equal number of countries have experienced net declines (23) and net improvement (24) of EMB autonomy over the past 16 years, while four are largely unchanged (Republic of Congo, Equatorial Guinea, Sao Tome and Principe and Central African Republic). Table 1 illustrates the countries which have experienced the greatest change since 2006.

Looking at variable graphs for selected countries (see Figure 4), it is concerning that some of those that have experienced declines were previously the highest performing in the region as recently as the mid-2000s. Mauritius, Ghana and South Africa were the only countries with scores that were consistently over 3.5 for the first decade of the 2000s, but EMB autonomy has declined in all three since the early 2010s. However, the direction of change has in many cases not been consistent across the period of analysis.

Table 1. Most marked changes in EMB autonomy between 2006 and 2022.

Gains		Declines	
Country	Change	Country	Change
Libya	2.15	Mali	-1.33
The Gambia	1.80	Mauritania	-1.27
Tunisia	1.29	Mauritius	-1.05
Guinea-Bissau	1.18	Ghana	-0.84
Seychelles	1.14	Zambia	-0.76
Togo	1.12	Burundi	-0.73
Ethiopia	0.66	Mozambique	-0.69
Madagascar	0.62	Sierra Leone	-0.66
Morocco	0.61	Cameroon	-0.51
Côte D'Ivoire	0.52	Comoros	-0.49
Cabo Verde	0.47	South Africa	-0.47
Guinea	0.44	Sudan	-0.34

Data source: Michael Coppedge et al., 'V-Dem Dataset v13' Varieties of Democracy (V-Dem) Project, 2023, doi.org/10.23696/vdemds23.

Note: This is based on the question 'Does the Election Management Body (EMB) have autonomy from government to apply election laws and administrative rules impartially in national elections?' Ordinal scale low to high (0–4).

For example, EMB autonomy in Comoros was gradually improving until 2017, while in Burundi it was in decline but has been showing signs of changing course since its most recent election in 2020.

Even in the countries where there has been improvement, the trajectory has only been consistently positive in a small number of cases, including Cape Verde and Seychelles, although gains in Morocco and Madagascar have also been relatively steady. Countries including Nigeria and Togo have experienced significant variation and it is unclear whether they will improve or decline in the future (Figure 5).

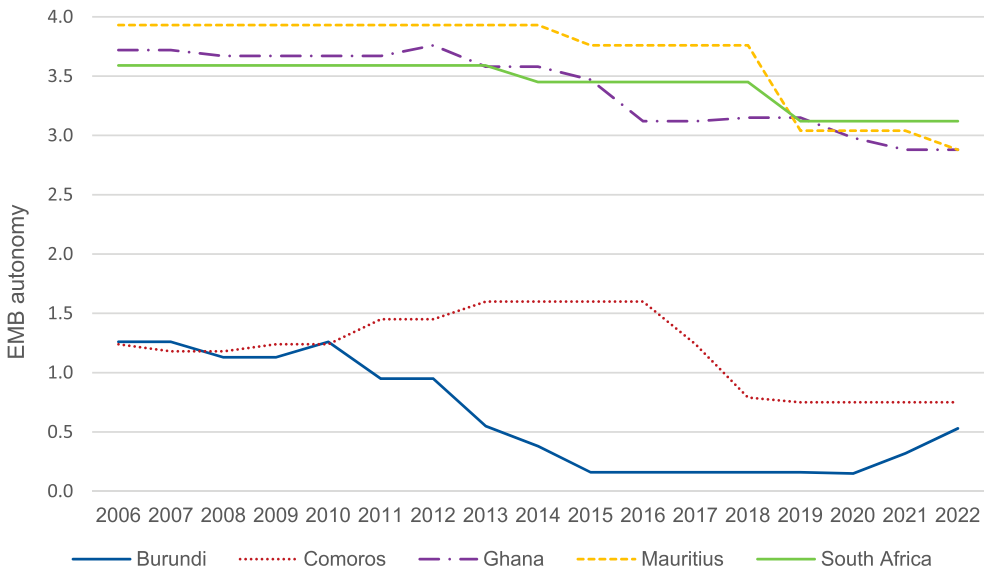


Figure 4. Trajectories in EMB autonomy in selected countries with overall decline 2006–2022.

Data source: Michael Coppedge et al., 'V-Dem Dataset v13' Varieties of Democracy (V-Dem) Project, 2023, doi.org/10.23696/vdemds23.

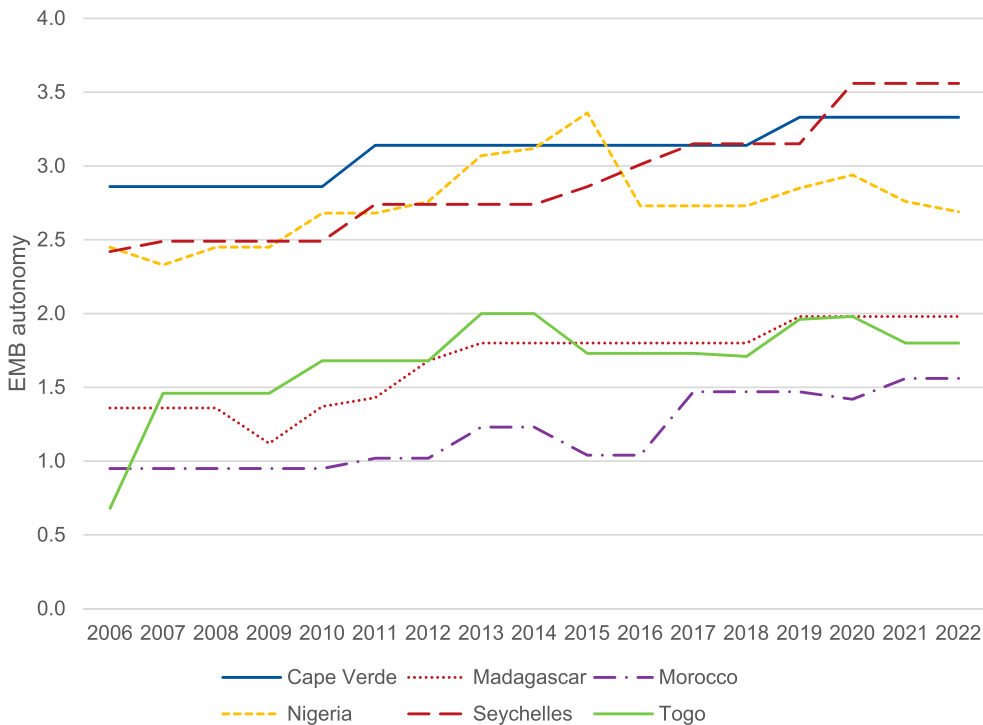


Figure 5. Trajectories in EMB autonomy in selected countries with overall improvement 2006–2022.

Data source: Michael Coppedge et al., 'V-Dem Dataset v13' Varieties of Democracy (V-Dem) Project, 2023, doi.org/10.23696/vdemds23.

Unlike the PEI Indices, the V-Dem data hint that EMB autonomy may have been impacted by COVID-19 in a handful of cases. Ethiopia, The Gambia and Guinea-Bissau were on upward trajectories that appear to have faltered since 2021. In Guinea, Sierra Leone, Sudan, and Zambia, EMB autonomy had been flat or fluctuating before the pandemic but again declined over the last year. In Tunisia, the EMB experienced a steep decline after 10 years of relatively high autonomy. Further analysis of these cases would be needed to establish the extent to which COVID-19 was a driver of these changes.

The V-Dem data on EMB autonomy therefore confirm findings from the PEI Indices that there is no consistent pattern of decline across Africa which could be correlated with democratic backsliding. The high degree of fluctuation in many countries suggests that the factors that influence EMB autonomy are much more nuanced and country specific. The fact that there are cases of improvement and in-country variation also adds weight to suggestions that mobilisation in favour of democratic strengthening should not be underestimated in the wider narrative around backsliding. But nor can we be complacent: if half of EMBs in Africa are experiencing declines, it is important to understand what is driving this.

Understanding declines of EMB autonomy in Ghana and Zambia

To unpack some of the factors constraining EMB independence and ability to deliver elections with integrity, we look at two countries in different parts of the continent which

have seen marked overall declines in performance and autonomy: Ghana in West Africa and Zambia in Southern Africa. With populations of approximately 34 and 21 million, respectively, both are mid-sized countries with a track record of delivering peaceful elections and transitions of power between different parties since the mid-1990s. As has been touched upon, by the late 2000s the Electoral Commission of Ghana (ECG) was hailed for the high degree of trust and confidence it cultivated among citizens.⁴⁶ The Electoral Commission of Zambia (ECZ), in contrast, has historically grappled with challenges of weak independence vis-à-vis the executive, but in the 1990s and 2000s delivered successive elections which were broadly accepted as credible by stakeholders and observers. However, both have experienced shifts in the past 10 years: as illustrated in Figure 4, the ECG's autonomy has declined steadily since 2012. Zambia has been described explicitly as displaying 'distinct, observable democratic backsliding' under Patriotic Front (PF) presidents since 2011⁴⁷ and this has correlated with a significant decline in the ECZ's autonomy. However, Figure 6 also illustrates that there was some recovery ahead of the presidential and national assembly elections in 2021, which merits closer inspection. These country vignettes will draw on reports from international election observers, domestic civil society organisations (CSOs) and the media, as well as secondary literature.

Ghana

Until 2016, all elections in Ghana had been presided over by the one ECG Chairperson, Kwadwo Afari-Gyan. Over the course of successive highly contested elections, including two presidential run-offs and two changes of government, the ECG developed a

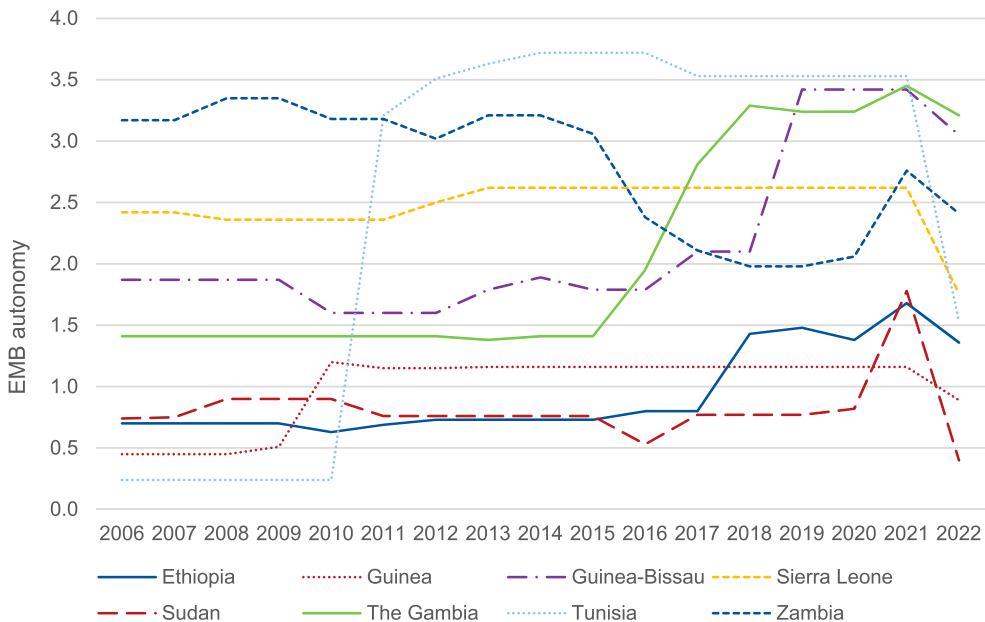


Figure 6. African countries experiencing declines in EMB Autonomy since 2021.

Data source: Michael Coppedge et al., 'V-Dem Dataset v13' Varieties of Democracy (V-Dem) Project, 2023. doi.org/10.23696/vdemds23.

reputation for autonomy and competence. However, in 2012 procedural flaws, particularly in the count, led the opposition New Patriotic Party (NPP) to appeal the result, accusing the ECG of manipulating the outcome. Although the Supreme Court eventually rejected the petition, the case was damaging for the ECG. It was broadcast live on television and revealed widespread, albeit relatively minor, errors in the process; in addition, the chairperson's performance when giving evidence was widely criticised and the ruling called for improvements before the next election.⁴⁸

The case also fuelled NPP criticism of the ECG because Afari-Gyan's retirement was looming. Ghana's constitutional provisions regarding the appointment of the ECG chairperson and commissioners grant the president significant powers over selection, requiring him to consult only with the Council of State.⁴⁹ However, National Democratic Congress (NDC) President John Mahama's appointment of Charlotte Osei in 2015 attracted strong criticism from the NPP, as well as civil society organisations such as the Coalition of Domestic Election Observers (CODEO), for the lack of consultation. In the run up to the 2016 elections, the NPP mounted a sustained, often personal, campaign against the new chairperson. The ECG's preparations for the polls were also fraught with a string of lost court cases on issues ranging from voter registration and candidate nomination to fees for journalists and domestic observers, which negatively impacted trust among stakeholders more broadly.⁵⁰

The NPP ultimately won the 2016 elections; however, they remained critical of the ECG commissioners. Following accusations of financial malfeasance brought by a number of ECG staff, a committee was set up by the chief justice which found that the chairperson had breached procurement rules in the award of several contracts. In line with the committee's recommendation, the NPP President Nana Akufo-Addo removed Osei (along with two deputies) and appointed Jean Mensa as chairperson in July 2018. The removal drew accusations from the NDC of politically motivated interference with the ECG, while the case again damaged the institution's wider reputation. A suit challenging the removal was filed by a prominent newspaper editor in the Supreme Court but was dismissed in February 2019. Ahead of the 2020 election, the NDC consistently expressed a lack of confidence in the ECG under the new leadership, including personal criticism of the chairperson. When Mahama lost the election, he accused the ECG of a 'litany of irregularities and blatant rigging'⁵¹ in favour of the incumbent President Akufo-Addo and submitted a petition seeking to have the result declared null and void. However, international observers described the elections as being organised in 'an efficient and transparent manner', notwithstanding the extra COVID-19 protocols required,⁵² and the Supreme Court unanimously dismissed the case in March 2021.

Problems over successive elections and increased scrutiny have been exacerbated by the weakness of ECG efforts to build consensus over its decision-making. One long-standing non-statutory body which has in the past facilitated this is the Inter-Party Advisory Committee (IPAC). However, despite consistent calls from international observers for this mechanism to be strengthened, it is increasingly underused. Ahead of the 2016 elections, EU observers suggested that meetings of IPAC with the ECG were insufficiently frequent, and that much more could have been made of this forum to build relations between the ECG and political parties,⁵³ while domestic observers reported that these meetings often escalated into intense political debates over contentious issues.⁵⁴

Opposition parties were also critical of IPAC's efficacy in the run up to the 2020 elections, suggesting it was not sufficiently consultative and that the ECG used it to simply inform parties of their decisions.⁵⁵ Analysts also suggest the belligerence of political parties may deter the ECG from seeking to consult them, despite the potential benefits of doing so.⁵⁶

The case of the Electoral Commission of Ghana therefore highlights a series of challenges. Since Afari-Gyan's retirement, the appointment and removal of commissioners has fuelled allegations of bias and produced sustained attacks on the ECG, predominantly from the party in opposition. Elections in Ghana have always been vibrant and tightly contested due to the 'winner-takes-all' majoritarian system, which grants extensive power and patronage to the president. However, increasing polarisation between the two main parties, alongside the weakening of IPAC, has resulted in the politicisation of disputes relating to election laws and procedures. Legal battles are also invariably used by the party in opposition to publicly question the ECG's credibility, and these criticisms are amplified through the use of online and social media channels. At the same time, increased scrutiny of the ECG, during the Supreme Court case in 2012 and subsequent disputes and legal challenges, have highlighted procedural errors and capacity problems impacting overall election quality.

The decline in EMB autonomy in Ghana over the past 10 years is therefore not obviously a product of democratic backsliding. Leaders have not sought to change the electoral framework, and indeed tend to take the position of defending the ECG when in power.⁵⁷ Despite the criticism of commissioners due to the circumstances of their appointments, there is little evidence of partisanship in the conduct of recent elections. Instead, the ECG appears to have become an accepted battleground in closely fought contests for power, with both parties adopting aggressive tactics to undermine the EC's credibility when in opposition. This has knock-on effects on its operational independence and therefore wider performance in delivering elections with integrity.

Zambia

In Zambia, the tenure of the PF between 2011 and 2021 was characterised by a marked contraction of political rights and democratic space consistent with democratic backsliding. Under President Michael Sata and (from 2015) President Edgar Lungu, justices were removed, CSO and media actors were co-opted and those that remained critical of the government were harassed or arrested.⁵⁸ Media outlets which favoured the opposition were shut down and in 2017 the leader of the opposition United Party for National Development (UNPD), Hakinde Hichilema, was arrested for treason and imprisoned for four months. A consultative process to make legal and constitutional reforms was derailed and ultimately failed in the National Assembly in 2020 due to the government's addition of provisions that threatened to undermine democratic institutions and judicial and legislative oversight.⁵⁹ However, the PF did succeed in passing legislation which granted them sweeping powers over online expression.⁶⁰ In 2021, observers from the Carter Center reported that the PF administration had produced deep polarisation across all areas of society.⁶¹

The ECZ faced challenges to its autonomy from its establishment in 1996. Reports by international observers of early elections noted the ECZ's independence was undermined by factors including the president's powers over the appointment and

removal of commissioners, its restricted financial autonomy, and its dependence on local government officials for election delivery due to a lack of decentralised structures. Parties and candidates were expected to adhere to an electoral code of conduct that specified campaign rules and electoral offences, and the ECZ was responsible for sanctioning violations. However, it was rarely proactive in this regard and observers consistently recommended that the legal basis and enforcement mechanisms should be strengthened. Lise Rakner and Lars Svåsand have noted that the ECZ's weaknesses, which manifested in incomplete voter registers and ineffective regulation of competition between parties, contributed to Zambia's limbo between authoritarianism and democracy after transition.⁶²

The highly contested national elections in 2016 saw an escalation in abuse of incumbency and the suppression of opposition freedoms of speech and assembly, particularly targeting UPND.⁶³ This included media bias and the selective application of the colonial-era Public Order Act by the authorities to prevent opposition gatherings. These were not new challenges for the ECZ but the body was ill-equipped to respond to the increased intensity, and (compared to 2011) observers were much more critical of the ECZ for not sanctioning extensive violations of the electoral code of conduct. In addition, poor communication, opaque decision-making ahead of the election and a lack of transparency during the vote tabulation, verification and declaration, which were much slower than in previous elections, were reported as factors contributing to growing concerns about the partiality of the ECZ.⁶⁴

The ECZ's task of delivering the national elections in 2016 was further complicated by constitutional amendments made in January to, among other things, update the presidential election system. Corresponding changes were to the Electoral Processes Act and the ECZ Act just two months before the poll. The late introduction and legal uncertainty around the new provisions meant that the ECZ was seeking clarification and adopting new regulations until two days before the election. The PF candidate, President Edgar Lungu won the 2016 elections with 50.35% of the vote, narrowly avoiding a run-off. The result was challenged by the UPND, but the recently established Constitutional Court dismissed the petition on procedural grounds. The Carter Center concluded, 'While considerable shortcomings occurred in prior elections... the 2016 elections signify a step backward for Zambian democracy'.⁶⁵

Ahead of the 2021 elections, opposition and civil society stakeholders signalled significant distrust in the ECZ, fuelled by an ongoing lack of consultation and a perception that the ECZ was only engaging with the PF.⁶⁶ The ECZ's decision to compile a new electoral register was also contentious. The Christian Churches Monitoring Group (CCMG), a civil society observer organisation, reported concerns relating to the lack of consultation and late announcement of the exercise, the shorter registration period, disparities in staffing levels in different locations and a lack of transparency around procedures. In addition, the ECZ did not allow the CCMG to conduct an independent audit of the new register, nor did it conduct an internal audit (unlike the 2016 election when two UN experts were contracted to do this).⁶⁷ This significantly impacted stakeholder confidence in the accuracy and credibility of the register.

The 2021 pre-election period saw problems similar to those in 2016, including large-scale abuse of incumbency and vote buying despite Zambia's dire financial position, which had seen the government defaulting on its debts in November 2020. The Public

Order Act was once again deployed selectively to constrain opposition campaigning, this time alongside the inconsistent application of COVID-19 regulations.⁶⁸ Due to the pandemic restrictions, there was a significant expansion in online campaigning and an escalation in disinformation campaigns, particularly perpetuated by state owned media.⁶⁹ Yet despite the clearly uneven playing field, Hichilema won a landslide and the UPND won 82 seats out of 167 in the National Assembly.

Observers concluded that the ECZ had administered processes professionally despite the pandemic conditions but indicated its communication and stakeholder consultation were inadequate. Enforcement of the code of conduct remained inconsistent, with European Union observers noting explicitly that the PF's campaign 'was largely exempted from restrictions'.⁷⁰ It remains to be seen if the Hichilema administration will prioritise democratic constitutional reform and institutional strengthening.

The case of Zambia shows how the trajectory of EMB autonomy can be influenced by, but remain independent from, wider democratic backsliding. Many of the factors constraining the ECZ's ability to deliver elections with integrity pre-dated the backsliding period but were exacerbated by the PF's strategies, which put greater onus on the EMB to take on a more proactive role in regulating competition in line with the code of conduct. Its authority and credibility in the eyes of opposition parties and civil society, already fragile, were undermined by its inability (or perhaps unwillingness) to do so. At the same time, direct targeting or manipulation of the ECZ was limited. For example, although President Lungu selected a new chairperson in 2015 the chosen candidate, Justice Esau Chulu, was a serving electoral commissioner originally appointed by a non-PF president in 2009 and his elevation to Chairperson was welcomed by opposition parties at the time.⁷¹ The constitutional changes in 2016 removed the security of tenure of commissioners, but as the president had already had the power to remove commissioners without cause it is unclear how significant these changes were. Some legal changes to the ECZ Act in 2019 also marginally improved the ECZ's autonomy. For example, a procedure was introduced which meant that the president had to refer any decision to remove or suspend commissioners to the chief justice, who would then appoint a tribunal to make the final decision. Although the ECZ's funding remained subject to the president's approval, its financial autonomy was improved by the removal of the requirement to get additional approvals for expenditure.⁷²

Conclusion

While democratic recession remains a significant concern in both Africa and globally, this study demonstrates that there is no overall pattern of commensurate decline in the performance of African EMBs. Instead, there continues to be huge diversity across the continent, reflecting that the factors which influence EMB autonomy and capacity are complex and nuanced. The case of Zambia shows how backsliding can significantly undermine an EMB's institutional integrity, but also that even in this context an EMB can maintain a level of functionality that ultimately delivers a turnover of power that is accepted. The case of Ghana, on the other hand, shows that backsliding is not the only driver of decline: escalating polarisation, particularly in the digital age, and the weakening of mechanisms that build political consensus around the delivery of elections can also be very damaging to the perception and functioning of an EMB.

The challenges facing EMBs are therefore multifaceted and come not just from resurgent authoritarian leaders but from factors ranging from weak legal frameworks and new technologies to pandemics and natural disasters. Further research is needed into the factors constraining the institutional integrity of EMBs, the impact of COVID-19 on formal and *de facto* EMB independence and how strategies of EMB manipulation are evolving.

The findings also underscore the need to redouble efforts to strengthen EMBs across Africa. EMBs need to bolster mechanisms to build consensus with political parties, and work with credible civil society organisations that can help to facilitate greater transparency and effectiveness. Policymakers, CSOs and citizens have a key role to play in advocating for democratic legal reforms to strengthen electoral frameworks. Electoral assistance organisations should continue to support these efforts, including through the dissemination of knowledge and policy advice on what works in safeguarding institutional independence and building EMB capacity. Although progress requires sustained and co-ordinated efforts, the fact that many countries have made gains in EMB autonomy and performance over the past decade should be a cause for optimism.

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