

1-30-2017

A Taxonomy of Independent Electoral Reapportionment Systems

James Ruley

Indiana University Maurer School of Law, jruley@indiana.edu

Follow this and additional works at: <http://www.repository.law.indiana.edu/ijcd>

 Part of the [American Politics Commons](#), [Constitutional Law Commons](#), [Law and Politics Commons](#), [Models and Methods Commons](#), [Policy Design, Analysis, and Evaluation Commons](#), [Public Administration Commons](#), [Public Affairs Commons](#), [Public Policy Commons](#), and the [State and Local Government Law Commons](#)

Recommended Citation

Ruley, James (2017) "A Taxonomy of Independent Electoral Reapportionment Systems," *Indiana Journal of Constitutional Design*: Vol. 2, Article 4.

Available at: <http://www.repository.law.indiana.edu/ijcd/vol2/iss1/4>

This Article is brought to you for free and open access by Digital Repository @ Maurer Law. It has been accepted for inclusion in Indiana Journal of Constitutional Design by an authorized editor of Digital Repository @ Maurer Law. For more information, please contact wattn@indiana.edu.

A Taxonomy of Independent Electoral Reapportionment Systems

Cover Page Footnote

Editorial Affiliate, Center for Constitutional Democracy; J.D. Candidate, 2017, Indiana University Maurer School of Law. My deepest thanks to Professor David Williams, without whose insight and passion this paper would never have been written.

A Taxonomy of Independent Electoral Reapportionment Systems

James Ruley*

INTRODUCTION

One of the fundamental principles of democracy is that government is both of the people and for the people.¹ To that end, elections on both the provincial and national levels receive great scrutiny because elected officials are, by design, supposed to represent their constituents. Democratic societies allow citizens to vote by proxy; though citizens cannot all serve in government, all citizens can choose the individuals they want representing them. The United States Supreme Court has crystalized a fundamental principle of democracy in the mantra “one person, one vote”, summarizing the chief principle that, under the law, all have equal say in who governs them, and all votes count equally.²

Most countries are subdivided into constituencies, or districts.³ Two major methods underlie the division of constituencies. The first is the majority/plurality system. Underlying this system is the theory that each constituency should have only one elected representative.⁴ Ideally, this will result in a large number of small constituencies where voters feel personally represented by their representatives.⁵ The second method is called Proportional Representation (PR). This system seeks to provide fairer, and more equal, representation of citizens.⁶ For supporters of PR, the fundamental problem with majority/plurality systems is that only a majority of votes are required to win the seat in government. Thus, while a candidate may win the election with fifty-one percent of the vote, his party gains one hundred percent of the legislative seats. As a result, in PR systems constituencies are larger, and both majority and minority parties gain seats in the legislature. In a simplified example with only ten legislative seats, if the majority party wins seventy percent of the votes and the minority party gains thirty percent of the votes, the majority gets to send seven representatives to the legislature and the minority party gets to send three.⁷ Both of these systems have benefits and problems with them, far beyond the scope of this paper.⁸ However, it is essential to remember that countries do draw their boundaries based on different principles, and these principles affect all other election-related policies and practices.

*Editorial Affiliate, Center for Constitutional Democracy; J.D. Candidate, 2017, Indiana University Maurer School of Law. My deepest thanks to Professor David Williams, without whose insight and passion this paper would never have been written.

¹ For a discussion of forms of democracy and the expression of this principle in the United States, see BUREAU OF INT’L. INFO. PROGRAMS, U.S. DEP’T. OF STATE, *DEMOCRACY IN BRIEF* 5-7 (2007).

² See, e.g., *Baker v. Carr*, 369 U.S. 186 (1962) (codifying the principle of one person, one vote in the United States). See also Harvard Law Review Ass’n, *Congressional Redistricting*, 97 HARV. L. REV. 135 (1983) (discussing the development and importance of redistricting in the United States).

³ Because the majority of countries call these constituencies, I will call them constituencies throughout this paper.

⁴ ANDREW REYNOLDS, ET AL., INTERNATIONAL INSTITUTE FOR DEMOCRACY AND ELECTORAL ASSISTANCE, *ELECTORAL SYSTEM DESIGN: THE NEW INTERNATIONAL IDEA HANDBOOK*, 28 (2005).

⁵ *Id.* at 28.

⁶ *Id.* at 29.

⁷ For other examples, see *id.*

⁸ See, e.g., SIMON HIX ET AL., BRITISH ACADEMY POLICY CENTRE, *CHOOSING AN ELECTORAL SYSTEM* (2010); John C. Courtney, *Plurality-Majority Electoral Systems: A Review*, UNIV. SASKATCHEWAN (1999); Pippa Norris, *Choosing Electoral Systems: Proportional, Majoritarian, and Mixed Systems*, 18(3) INT’L POLITICAL SCIENCE R. 297 (1997).

Constituency boundaries, whether in a majority/plurality system or a PR system, must change over time in accordance with population shifts. Thus, while constituency A and constituency B may have one hundred citizens each in year one, by year eleven, due to migration, constituency A may have grown to one hundred twenty citizens while constituency B may have only eighty constituents. Constituency boundaries become even more complicated when factoring in births and deaths. As a result, unless one is willing to sacrifice the concept of one person, one vote, constituency boundaries must change.

Problems arise when determining who draws these boundaries. A traditional answer has been the legislature, but this leads to inequitable results as legislators often draw constituencies to benefit themselves and their parties.⁹ This process, known as gerrymandering,¹⁰ allows legislatures to distribute their supporters (and their opposition) among districts so that the majority party will win the maximum number of districts possible.¹¹ This process clearly violates the concept of one person, one vote, because, while each person's vote is counted, each vote does not carry equal weight because the elections are structurally predetermined by the legislature.

This paper addresses a means of checking legislative gerrymandering, which I have called the Independent Electoral Reapportionment Commission (IERC).¹² Its purpose is to prevent self-interested politicians from drawing biased constituency lines. While scholars have researched gerrymandering, few scholars have researched commissions designed to limit such gerrymandering, and no comprehensive work details the global means of accomplishing this goal.¹³

Thus, the purpose of this paper is not to normatively prescribe the best practices for composing and empowering an IERC, but rather to descriptively show how different countries conduct this process. While Part II makes some determinations about which commissions may conceptually function better than others, these conclusions are theoretical and not based on careful scrutiny of how these systems are actually functioning. This paper dissects how current committees function

⁹ Legislatures, by their nature, are political and thus are inherently self-interested in the process of boundary drawing. This can easily lead to systematic abuses of redistricting by the majority party.

¹⁰ "The term 'gerrymander' is a portmanteau of the last name of Elbridge Gerry, the eighth governor of Massachusetts, and the shape of the electoral map he famously contorted for partisan gain, which included one district shaped like a salamander." *Ariz. State Legislature v. Ariz. Indep. Redistricting Comm'n*, 135 S. Ct. 2652, 2658 n.1 (2015).

¹¹ Gerrymandering involves "dividing political units in ways that deliberately creates advantages for incumbents or their political allies, by placing voters based on their predicted behavior at the polls in districts that dilute the vote of some voters and consolidate the votes of others." BOUVIER LAW DICTIONARY: GERRYMANDERING (Stephen Michael Sheppard ed. 2012).

¹² Countries call these commissions many things—from a boundaries commission to a central election commission. Here I have chosen the title "Independent Electoral Reapportionment Commission" because all commissions discussed in this paper strive to be independent and are tasked with the process of reapportioning pre-existing boundaries.

¹³ See, e.g., Anthony J. Gaughan, *To End Gerrymandering: The Canadian Model for Reforming the Congressional Redistricting Process in the United States*, 41 CAP. U. L. REV. 999 (2013) (analyzing the benefits of Canada's IRCs); Bruce E. Cain, *Redistricting Commissions: A Better Political Buffer*, 121 YALE L.J. 1808 (2012) (examining redistricting commissions within the United States); Nicholas O. Stephanopoulos, *Our Electoral Exceptionalism*, 80 U. CHI. L. REV. 769 (2013) (looking briefly at global alternatives, but mostly focusing on American redistricting solutions).

so that knowledge can be used contextually to aid those trying to design a better commission for their own country.

I. Factors of Independence

In this section, I will examine various factors that contribute to the independence of an IERC.¹⁴ My analysis begins with the formation of the committee, asking which individuals or governmental branches choose the commissioners. Next, I examine the constitutional or statutory requirements for serving on an electoral commission. Following this, I analyze the requirements placed on the composition of the commission as a unit. Subsequently, I discuss the powers held by the commission as a whole. Finally, I scrutinize the process for removing commissioners by delving into the sorts of actions that merit removal and which entities may remove commissioners.

A. Bodies Choosing the Commission

One of the most important initial considerations for an IERC is which governmental branches or individuals choose the commissioners. Five major families of member selection and approval exist, with subcategories in each family.

1. Legislative Branch

When the power of appointing members of an IERC rests solely with the legislature, it carries out this function in two ways: in a partisan manner or in a multi-partisan manner. By defining countries that choose IERC members in a partisan manner, I am not implying that the manner of appointment is inherently partisan. Rather, there are no structural checks within electoral or constitutional law to ensure that majorities do not choose members from within their own parties. Two countries currently appoint commissions in a partisan manner: Rwanda, through its Upper House,¹⁵ and Japan through both houses.¹⁶

Countries use three methods to allow the legislature to choose commissioners in a multi-partisan manner. First, Venezuela requires a super-majority of two-thirds of the legislature to approve candidates.¹⁷ Second, Albania grants majority and minority parties equal seats, but also gives the tiebreaker seat on the commission to the Speaker of the House.¹⁸ Finally, Azerbaijan seeks to make

¹⁴ The development of these factors stemmed, in part, from useful talks with Professor David Williams, as well as fellow students Alexander Avtgis, Rafael Macia Briedis, Brittany Shelmon, Ashley Lenderman, and Samantha von Ende. However, the factors and the research to support them are solely the work of the author. Research notes are on file with the author.

¹⁵ The commissioners are put forth to the Senate by the “government,” an undefined term within the law. Law No. 31/2005 of 24/12/2005, <https://repositories.lib.utexas.edu/bitstream/handle/2152/5078/4170.pdf>. The Constitution establishes the Commission in Article 180. CONST. OF RWANDA art. 180.

¹⁶ The Diet chooses members for a Central Election Management Council, and the Prime Minister formally appoints them. FREE CHOICE FOUND., ELECTION SYSTEM IN JAPAN 5 (2007), <http://www.freechoice.jp/electionssystem.pdf>.

¹⁷ In Venezuela, individuals must apply or be nominated to be considered by the legislature. The legislature, while sitting in a joint session, chooses members. A two-thirds majority is required for approval. LEY ORGÁNICA DEL SUFRAGIO Y PARTICIPACIÓN POLÍTICA art. 53 (1997), <http://pdba.georgetown.edu/Parties/Venezuela/Leyes/LeySufragio.pdf>.

¹⁸ Obviously, this system would still grant control of the commission to the majority party in the United States. However, this system at least recognizes the need for all parties to be represented in the commission. This system is

the commission impartial by granting seats to independent parties,¹⁹ while Mexico requires the chair of the commission to be an individual deemed apolitical by all parties.²⁰

2. Executive Branch

An executive with the sole power of appointment chooses members of the IERC in one of four ways: by either partisan or multi-partisan coordination with the legislature, on the advice of an independent advisory group, or simply by the decree of the executive, completely independent of any required external input.

By “partisan” executive appointment, I mean the executive is only required to consult with the head of the legislature before making his decision. This is distinct from a partisan system that requires the branches to cooperate in appointing members to the commission because, while the executive is required to consult with the legislature, he is not bound to act in accordance with its wishes. Currently only Malaysia appoints its commissioners in this manner.²¹

Multi-partisan executive appointment varies from partisan appointment because the executive is required to consult with the leaders of the majority party and opposition before appointing candidates. Seven countries, Antigua and Barbuda,²² Barbados,²³ Belize,²⁴ Malta,²⁵ Mauritius,²⁶ St. Kitts and Nevis,²⁷ and Trinidad & Tobago,²⁸ currently utilize this method of appointment.

used in Albania, where the majority and minority parties elect two members each, and the “minority” majority parties and “minority” minority parties each get to elect one. The final member must be approved by a majority vote in the legislature. Thus, while in the United States it would give control of the committee to the majority party, this problem is avoided due to the parliamentary structure of government in Albania. ALBANIAN ELECTORAL CODE art. 14 (Org. for Sec. & Cooperation in Europe ed. & trans., 2015), <http://www.osce.org/albania/159501?download=true>.

¹⁹ Azerbaijan elects its committee members in this way. The majority and minority party each get to elect six candidates, and the independent representatives also get to choose six seats. CENTRAL ELECTION COMM’N, REPUBLIC OF AZER., ELECTION CODE OF THE REPUBLIC OF AZERBAIJAN art. 24 (2003), http://www.msk.gov.az/uploads/qanunvercilik/election_code_eng.pdf.

²⁰ In Mexico, parties choose ten members of the commission. The eleventh member, the “President Councilor,” is chosen by the full legislature and must receive two-thirds approval. Ley General de Instituciones y Procedimientos Electorales [LGIPE] art. 36, Diario Oficial de la Federación [DOF] 23-05-2014, http://www.diputados.gob.mx/LeyesBiblio/pdf/LGIPE_130815.pdf, translated in ELECTORAL TRIBUNAL OF THE FED. JUDICIARY, GENERAL LAW ON ELECTORAL INSTITUTIONS AND PROCEDURES OF MEXICO art. 36 (Mikaela Christiansson trans., 2014), <http://portales.te.gob.mx/ccje/sites/default/files/GENERAL%20LAW%20ON%20ELECTORAL%20INSTITUTIONS%20AND%20PROCEDURES.pdf>.

²¹ The Constitution of Malaysia requires the Yang di-Pertuan Agong choose the candidates after consultation with the legislature. The Constitution specifically notes that consulting with the legislature is important in determining that the candidates on the commission “enjoy[] public confidence”. CONST. OF MALAYSIA art. 114, §§ 1–2.

²² CONST. OF ANTIGUA & BARBUDA § 63(1).

²³ CONST. OF BARBADOS § 41(A)(3).

²⁴ CONST. OF BELIZE § 88(1–2).

²⁵ CONST. OF MALTA art. 60(3).

²⁶ CONST. OF MAURITIUS § 38(1).

²⁷ CONST. OF ST. CHRISTOPHER AND NEVIS, § 49(1).

²⁸ CONST. OF TRINIDAD & TOBAGO, art. § 71(3).

In the Gambia,²⁹ Lesotho,³⁰ Seychelles,³¹ the Solomon Islands,³² Swaziland,³³ and Vanuatu,³⁴ the executive appoints members of the IERC on the advice of an independent commission. Conceptually, this appointment process differs from legislative recommendations because these commission members are supposed to be apolitical, unlike elected representatives. However, the executive is not bound by these recommendations, so their weight is contextual.³⁵

A final method utilized by Bangladesh,³⁶ Germany,³⁷ Hong Kong,³⁸ Sri Lanka,³⁹ and Tonga⁴⁰ requires the executive to directly appoint IERC commissioners. While this method may at first appear tyrannical, every Executive is still restrained by constitutional or statutory provisions regarding the character or qualifications of the individuals he or she may appoint. Thus, while appointments may be biased, commissioners must meet certain minimum qualifications.⁴¹

3. Judicial Branch

Only two countries utilize their judiciary as the sole means of choosing commissioners, and each country has a slightly different system. In Costa Rica, the Supreme Court of Justice—the country’s

²⁹ The executive chooses candidates on the advice of both the Judicial Service Commission and the Public Service Commission. While the Public Service Commission is entirely composed of candidates appointed by the executive, the Judicial Service Commission is much more balanced. Its membership includes the Chief Justice, a judge from a superior court, the Solicitor General, a legal practitioner appointed by the Attorney General, one member appointed by the President, and one member appointed by the National Assembly. CONST. OF THE GAMBIA §§ 42, 145, 166.

³⁰ Members are recommended by the Judicial Service Commission, an advisory body of the executive branch that is not generally designed to be independent. However, this body still serves the function of providing the executive with qualified candidates to hold these committee seats. CONST. OF LESOTHO §§ 66(1), 132.

³¹ The President chooses the members of the committee on the advice of the Constitutional Appointment Authority, a three person body. One member is chosen by the President, and one is chosen by the Leader of the Opposition. Together, these members are supposed to choose a third member to sit on the committee with them. Uniquely, this body then chooses seven members, of which the President selects five to sit on the Electoral Commission. CONST. OF SEYCHELLES arts. 115.A; § 1; 140 § 1.

³² CONST. OF THE SOLOMON ISLANDS §§ 53(1)(a), 117 (same process as Lesotho, *supra* note 30).

³³ CONST. OF SWAZILAND §§ 90(2), 159(1) (same process as Lesotho, *supra* note 30).

³⁴ CONST. OF VANUATU, arts. 18 § 1; 48 § 1 (same process as Lesotho, *supra* note 30).

³⁵ *Supra* note 29–34.

³⁶ CONST. OF BANGLADESH § 118, cl. 1.

³⁷ Bundeswahlgesetz [BWG] [Federal Elections Act], July 23, 1993, BUNDESGESETZBLATT, Teil I [BGBl I] at 1288, as amended, § 3(2), *translation at* https://www.bundeswahlleiter.de/en/bundestagswahlen/downloads/rechtsgrundlagen/bundeswahlgesetz_engl.pdf.

³⁸ Electoral Affairs Commission Ordinance, (2012) Cap. 541, 2, § 3(2), [http://www.legislation.gov.hk/blis_pdf.nsf/6799165D2FEE3FA94825755E0033E532/B1CF624C2B6AA815482575EF0016AA19/\\$FILE/CAP_541_e_b5.pdf](http://www.legislation.gov.hk/blis_pdf.nsf/6799165D2FEE3FA94825755E0033E532/B1CF624C2B6AA815482575EF0016AA19/$FILE/CAP_541_e_b5.pdf).

³⁹ CONST. OF SRI LANKA art. 95, para. 1.

⁴⁰ Electoral Boundaries Commission Act 2010 (Act No. 15/2010) § 4(1), http://www.tongaelections.com/images/stories/TECdocuments/ENG/ElectoralBoundariesAct/electoralboundariescommissionact2010_1.pdf.

⁴¹ In some countries, these qualifications limit the individuals that may be chosen. For example, in some countries one commissioner must be the Surveyor General or Chief Statistician. Other meaningful checks include requiring that the appointee is not political. *See supra* Part I.C.

highest court⁴²—chooses members to sit on the commission by a two-thirds majority.⁴³ In Turkey, on the other hand, two different courts are used to appoint members. The Supreme Court of Appeals chooses six candidates, while the Supreme Council of State, the nation’s highest administrative court, chooses the other five members.⁴⁴

4. Multiple Branches

A majority of countries utilize a form of appointment that requires input and active approval from multiple branches of government. Countries involving more than one branch in the process generally utilize a combination of approaches stemming from six different methodological families.⁴⁵

The first commonly used method involves the legislative and executive branches working in tandem to choose candidates in a partisan manner. Once again, “partisan” here means that candidates must be approved by a simple majority, providing no affirmative protection for minority candidates. In Eritrea,⁴⁶ Kiribati,⁴⁷ Liberia,⁴⁸ Sierra Leone,⁴⁹ Tajikistan,⁵⁰ Tanzania,⁵¹ Turkmenistan,⁵² Uganda,⁵³ and Zambia,⁵⁴ this partisanship is accomplished by requiring legislative approval of candidates appointed by the executive. The Maldives,⁵⁵ New Zealand,⁵⁶ and

⁴² The Supreme Court of Justice is comprised of four sub-courts: three Cassation Courts and a Constitutional Court. The members of the Court are elected for eight year terms by the Legislature. Thus, committee members are certainly not chosen by the legislature, but since the term limits of the Justices are short, the legislature presumptively has some degree of influence. For a brief overview of the Court, *see* DESCRIPTION OF THE JUDICIAL SYSTEM OF COSTA RICA, ORGANIZATION OF AMERICAN STATES, https://www.oas.org/juridico/mla/en/cri/en_cri-int-des-gen.pdf.

⁴³ Código Electoral Ley No. 8765, art. 13, <https://www.tse.go.cr/pdf/normativa/codigoelectoral.pdf>.

⁴⁴ While eleven members are appointed, only seven serve. The other four are alternates. Law on Basic Provisions on Elections and Voter Registration, Law No. 298, Apr. 26, 1961, as amended, art. 11, https://www.ecoi.net/file_upload/1504_1220346141_law-on-basic-provisions-on-elections-and-voter-registers.pdf.

⁴⁵ Once again, this framework has been created by the author simply as an analytical tool to understand the distinctions between various countries.

⁴⁶ ERITREAN ELECTORAL LAW, art. 4, <http://www.ku.ac.ke/actil/wp-content/uploads/2015/07/ERITREA-ELECTION-LAWS.pdf>.

⁴⁷ The Executive chooses candidates after consultation with his cabinet. The decisions are laid before the Legislature, but are assumed to be accepted unless they are affirmatively rejected. CONST. OF KIRIBATI § 62(2-3).

⁴⁸ Liberian electoral law requires the Executive to choose candidates “with the advice and consent of the Senate.” REPUBLIC OF LIBER., THE NEW ELECTIONS LAW § 2.1 (2011), http://www.necliberia.org/admin/pg_img/Election%20Law%20Incorporated%202011final.pdf.

⁴⁹ CONST. OF SIERRA LEONE § 32(3).

⁵⁰ Tajikistan requires candidates to be approved by the lower house. (On Elections to the Majlisi Oli of the Republic of Tajikistan, Dec. 10, 1999, as amended, art. 11, <http://www.legislationline.org/documents/action/popup/id/6930>).

⁵¹ CONST. OF TANZANIA art. 74(1-3).

⁵² ELECTORAL CODE OF TURKMENISTAN, art. 21, http://www.legislationline.org/download/action/download/id/5097/file/Turkmenistan_law_approval_Electoral%20Code_2013_en.pdf.

⁵³ CONST. OF UGANDA art. 60, cl. 1.

⁵⁴ Electoral Commission Act, Cap. 17 (1996) § 4(3), <http://www.parliament.gov.zm/sites/default/files/documents/acts/Electoral%20Commission%20Act.pdf>.

⁵⁵ The executive must appoint someone approved by a legislative majority. CONST. OF THE MALDIVES art. 168.

⁵⁶ In New Zealand, the same process is followed as the Maldives, but approved candidates specifically come from the lower house. Electoral Act 1993, § 4D.

Ukraine,⁵⁷ by contrast, require the executive to appoint someone from a list of candidates proposed by the legislature. Finally, Belarus⁵⁸ and Zimbabwe⁵⁹ allow the executive and the legislature to each appoint a set number of candidates to the commission.

The second method, and one of the most frequently used, is the executive working together with the legislature in a multi-partisan manner to select commissioners. Several processes are used to make the process multi-partisan. First, as in St Vincent, the majority and minority parties are each allowed to choose an equal number of commissioners, while the executive chooses the final member of the commission.⁶⁰ A second method—used in Dominica,⁶¹ Grenada,⁶² and St. Lucia⁶³—grants the Executive power to choose two members from both the majority and minority party while assigning the final seat to the speaker of the lower house. Pakistan⁶⁴ and Yemen⁶⁵ utilize a third method, allowing each party to nominate a prescribed number of candidates, who must then be approved by the executive. A fourth method, used in Sudan⁶⁶ and South Sudan,⁶⁷ allows the executive to make all the nominations, subject to approval by two-thirds of the legislature. The fifth and final method, used in Georgia⁶⁸ and Guyana,⁶⁹ grants the executive greater power in picking candidates by allowing him to pick slightly less than half of the commissioners while allowing the political parties to choose the other members.

⁵⁷ The executive must appoint someone approved by a legislative majority. LAW OF UKRAINE ON THE CENTRAL ELECTION COMMISSION, art. 6, <http://www.legislationline.org/documents/action/popup/id/7148>.

⁵⁸ Six members of the committee are chosen by the President, and six are chosen by the Legislature (Council of the Republic). These individuals are recommended to the national branches by regional committees. Electoral Code of the Republic of Belarus, No. 370-Z, Feb. 11, 2000, as amended, art. 32, http://www.sze.hu/~smuk/Nyilvanossag_torvenyek_east_south_eur/Jogforr%C3%A1sok/V%C3%A1laszt%C3%A1si/BEL%20-%20Electoral%20Code.pdf.

⁵⁹ The President chooses the Committee Chair “after consultation with the Judicial Service Commission” and the legislature. CONST. OF ZIMBABWE § 238(1)(a). The other eight members are chosen from a list proposed by the legislature. *Id.* at § 238(1)(b).

⁶⁰ CONST. OF ST. VINCENT § 32(1).

⁶¹ CONST. OF DOMINICA § 56(2).

⁶² CONST. OF GRENADA § 55(1).

⁶³ CONST. OF ST. LUCIA § 57(2).

⁶⁴ The Prime Minister and Leader of the Opposition present a list of names to the president; from that list, he can nominate whoever he prefers. CONST. OF PAK., art. 213, cl. 2A (authorizing the committee). a description of the electoral process can be found on the Electoral Commission of Pakistan’s website. *Overview of ECP*, ELECTION COMM’N OF PAK., <http://ecp.gov.pk/frnGenericPage.aspx?PageID=21>.

⁶⁵ The legislature must nominate fifteen members to the executive for consideration; those fifteen must receive approval from at least two-thirds of the legislature. GENERAL ELECTIONS AND REFERENDUM LAW art. 19 (2001), http://publicofficialsfinancialdisclosure.worldbank.org/sites/fdl/files/assets/law-library-files/Yemen_General%20Elections%20and%20Referendum%20Law_2001_en.pdf.

⁶⁶ National Elections Act 2008 § 6(1), <http://nec.org.sd/en/wp-content/uploads/sites/2/2013/09/THE-NATIONAL-ELECTIONS-ACT-2008.pdf> (requiring approval of the vice president as well)

⁶⁷ National Elections Act, 2012, § 10(1) (S. Sudan), <http://www.ku.ac.ke/actil/wp-content/uploads/2015/07/ELECTION-ACT-SOUTH-SUDAN.pdf>.

⁶⁸ Five members are chosen by the president, while the remaining seven members are chosen by various legislative parties. The committee chairman is nominated by the president, subject to approval by the legislature. ORGANIC LAW OF GEORGIA: ELECTION CODE OF GEORGIA art. 10, paras. 1–2 (2012), http://www.transparency.ge/sites/default/files/August%202012,%20Election_Code_of_Georgia_EN_-_codified.pdf.

⁶⁹ The Leader of the Opposition nominates six candidates to the president, one of whom is chosen as the chairman of the committee. Acting in his deliberative judgment, the president chooses three more committee members and the Leader of the Opposition chooses the other three. CONST. OF GUYANA art. 161, paras. 2-3.

A third method for choosing commissioners requires the legislative and judicial branches to jointly choose nominees. This method is used in Botswana,⁷⁰ Canada,⁷¹ Honduras,⁷² Malawi,⁷³ and the United Kingdom,⁷⁴ and it requires the judicial and legislative branches to separately choose a pre-determined number of commissioners; usually the judiciary chooses the tiebreaking commissioner.

The fourth method is the judicial and executive branches working in concert with independent commissions to appoint electoral commissioners. Currently, only one country, South Africa, chooses members in this manner. A panel consisting of members of the judiciary, electoral experts, and members of various gender and diversity committees, chooses the members who then must be approved by the Executive.⁷⁵

A fifth method is the legislative and executive branches working in concert with an independent commission to choose electoral commissioners. Both Kenya⁷⁶ and Namibia⁷⁷ require a highly diverse Selection Commission to nominate candidates to the executive who then appoints a set number, subject to approval by the legislature.

The final method utilizes every branch of government: executive, legislative, and judicial. Countries have utilized the branches in two ways for choosing members. With the first method,

⁷⁰ Judges are appointed to serve on the committee by the Judicial Service Commission, and the remaining members are chosen by the Legislature. CONST. OF BOTSWANA § 65A(1).

⁷¹ Boundaries commission members are chosen in each province. Therefore, in each province the Chief Justice chooses one judge to serve on the committee, and the other two are chosen by the Speaker of the Legislature. Electoral Boundaries Readjustment Act, R.S.C. 1985, c. E-3, § 4, <http://laws.justice.gc.ca/PDF/E-3.pdf>.

⁷² The Supreme Court of Justice chooses a candidate and an alternate, as do each registered party. If there is an even number of commissioners, then the executive appoints an extra member. CONST. OF HONDURAS art. 52.

⁷³ Judges are appointed to serve on the committee by the Judicial Service Commission, and the remaining members are chosen by the Legislature. CONST. OF MALAWI § 75(1).

⁷⁴ The situation in the United Kingdom is similar to the one in Canada. The Speaker of the House serves as the Chair of each of the four committees. The Deputy Chair is a judge of the High Court of that region. The other two members are chosen by the Secretary of State. Parliamentary Constituencies Act 1986, c. 56, sch. 1, http://www.legislation.gov.uk/ukpga/1986/56/pdfs/ukpga_19860056_en.pdf.

⁷⁵ More specifically, the selection panel must include a member of the Constitutional Court, a judge designated by the Chief Justice, one member of the Commission of Gender Equality, two persons with specific knowledge of boundary demarcation, and the Chair of the Select Committee of the National Council of Provinces. Local Government: Municipal Demarcation Act 27 of 1998 § 8(1), <http://www.gov.za/sites/www.gov.za/files/a27-98.pdf>.

⁷⁶ The Selection Commission consists of two persons (one male and one female) nominated by the president, two persons (one male and one female) nominated by the Prime Minister, one member from the Judicial Service Commission, one member from Kenya's Anti-Corruption Advisory Board, and one person from the Association of Professional Societies of East Africa Independent Electoral and Boundaries Commission Act (Act No. 9/2011), as amended, sched. 1, <http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/IndependentElectoralandBoundariesCommissionNo9of2011.pdf>.

⁷⁷ The Selection Commission must include the Chairperson of the Public Service Commission, the Chairperson of the Council of the Law Society of Namibia, the Chairman of the Public Accountants' and Auditors' Board, the Registrar of the High Court, and the Director of the Namibian Qualifications Authority. The law also provides for alternates. Electoral Act, 2014 (Act No. 5/2014), §6, <http://www.ecn.na/documents/27857/193258/Electoral+Act+5+of+2014.pdf/1bd1c3e3-bdd1-4183-a2fa-2ae6e397180e>.

utilized in the Bahamas⁷⁸ and Puerto Rico,⁷⁹ each branch has a say in who sits in a specific number of seats on the commission. With the second method, used in Bhutan⁸⁰ and Thailand,⁸¹ the executive chooses the commissioners from a list of nominees proposed by the other branches.

5. Popular Election

A final, and quite rare, method of choosing commissioners is direct, popular election. The only place where this occurs is the Virgin Islands where seven members are elected to serve on a board that has redistricting power.⁸²

B. *Committee Composition*

A second pertinent consideration for determining the independence of a commission is the requirements that are placed on the composition of the commission as a whole. These considerations fall into five categories: the number of commissioners, the degree of overt political affiliation allowed of members, the requirement of specialized committee members, geographic restrictions on members, and quotas based on gender or ethnicity.

1. Number of Commissioners

There are three ways to establish the number of commissioners. The first approach, utilized by the vast majority of countries, requires a set number of commissioners.⁸³ The second approach—

⁷⁸ The Speaker of the House serves as the Committee Chair. The other committee members include a Justice of the Supreme Court (chosen by the Governor-General and the Chief Justice), two members of the majority party, and one member of the opposition (chosen by the Governor-General in consultation with the PM and Leader of the Opposition). CONST. OF THE BAHAMAS art. 69, para. 2.

⁷⁹ The Chief Justice always serves as the Chair of the Commission, while the Governor and Senate choose the other two members, neither of whom can be from the same party. CONST. OF PUERTO RICO art. III, § 4.

⁸⁰ A Selection Commission consisting of the PM, Chief Justice, Speaker, Chairperson of the National Council, and Leader of the Opposition nominates members to the executive. The executive then must appoint three nominees. ELECTION ACT OF THE KINGDOM OF BHUTAN, 2008, § 22 (2008), http://publicofficialsfinancialdisclosure.worldbank.org/sites/fdl/files/assets/law-library-files/Bhutan_Election%20Act_2008_en.pdf.

⁸¹ The Selection Commission, under the 2007 constitution (superseded in late 2016 by a new constitution), contained the President of the Constitutional Court, President of the Supreme Court of Justice, President of the Supreme Administrative Court, President of the House of Representatives, Opposition Leader of the House, and a member appointed by a committee from the Supreme Administrative Court. These nominees were then approved by the executive. CONST. OF THAILAND, § 231(1).

⁸² V.I. CODE ANN. tit. 18, §§ 41, 47 (2016).

⁸³ The vast majority of countries utilize this approach. For the sake of example, I will only list six countries, but there are many more. CONST. OF GUY. § 161; CONST. OF UGANDA, art. 60, cl. 1; CENTRAL ELECTION COMM'N, REPUBLIC OF AZER., ELECTION CODE OF THE REPUBLIC OF AZERBAIJAN art. 24 (2003), http://www.msk.gov.az/uploads/qanunvericilik/election_code_eng.pdf; ERITREAN ELECTORAL LAW, art. 4, <http://www.ku.ac.ke/actil/wp-content/uploads/2015/07/ERITREA-ELECTION-LAWS.pdf>; Organic Law on National and Local-Level Government Elections (Act No. 3/1997), as amended, § 26 (Papua N.G.), http://aceproject.org/ero-en/regions/pacific/PG/papua-new-guinea-1997-organic-law-on-national-and/at_download/file; Parliamentary Constituencies Act 1986, c. 56, sch. 1 (U.K.), http://www.legislation.gov.uk/ukpga/1986/56/pdfs/ukpga_19860056_en.pdf.

utilized in Kiribati,⁸⁴ Mauritius,⁸⁵ Trinidad,⁸⁶ and Zambia⁸⁷—requires the appointing body to discretionarily appoint a number of commissioners between a fixed range.⁸⁸ Finally, Malawi⁸⁹ and Malta⁹⁰ do not cap the number of commissioners, requiring only a minimum number of commissioners.

Countries that require a set number of commissioners must also determine whether they want to require an odd or an even number of commissioners.⁹¹ There is a tradeoff here because an even number of commissioners ideally promotes comprise from both parties in redistricting, but may result in gridlock. Conversely, an odd number of commissioners is more efficient, but may allow the majority to run roughshod over the minority.

2. Political Nature of Commissioners

There are two different approaches regarding the political nature of commissions. The first approach, utilized in a majority of countries including Barbados,⁹² Canada,⁹³ and Dominica,⁹⁴ places no restrictions on the political affiliation of commissioners (although usually the constitutions of these nations try to apportion a specific number of seats to majority and minority parties). The second approach, utilized in Georgia,⁹⁵ Namibia,⁹⁶ Seychelles,⁹⁷ Sri Lanka,⁹⁸ and

⁸⁴ Kiribati requires a minimum of three and a maximum of five commissioners. CONST. OF KIRIBATI § 62(1).

⁸⁵ Mauritius requires a minimum of three and a maximum of eight commissioners. CONST. OF MAURITIUS § 38(1).

⁸⁶ Trinidad requires a minimum of three and a maximum of five commissioners. CONST. OF THE REPUBLIC OF TRINIDAD AND TOBAGO § 71(2) (1976).

⁸⁷ Zambia allows a maximum of five commissioners. Electoral Commission Act, Cap. 17 (1996) § 4(2), <http://www.parliament.gov.zm/sites/default/files/documents/acts/Electoral%20Commission%20Act.pdf>.

⁸⁸ Each of these countries do this in a slightly different way.

⁸⁹ Malawi requires a minimum of seven commissioners. CONST. OF MALAWI § 75(1).

⁹⁰ Malta requires a minimum of five commissioners. CONST. OF MALTA art. 60(2)

⁹¹ There are many examples of commissions with odd and even numbered constituencies. For a few examples of odd numbered commissions, *see* CONST. OF GUY. § 161; CONST. OF UGANDA, art. 60, cl. 1; and ERITREAN ELECTORAL LAW, art. 4, <http://www.ku.ac.ke/actil/wp-content/uploads/2015/07/ERITREA-ELECTION-LAWS.pdf>. For a few examples of even numbered commissions, *see* CENTRAL ELECTION COMM’N, REPUBLIC OF AZER., ELECTION CODE OF THE REPUBLIC OF AZERBAIJAN art. 24.1 (2003),

http://www.msk.gov.az/uploads/qanunvericilik/election_code_eng.pdf (requiring roughly a two-thirds majority vote to approve decrees of the commission); Organic Law on National and Local-Level Government Elections (Act No. 3/1997), as amended, § 26 (Papua N.G.), http://aceproject.org/ero-en/regions/pacific/PG/papua-new-guinea-1997-organic-law-on-national-and/at_download/file; and Parliamentary Constituencies Act 1986, c. 56, sch. 1 (U.K.), http://www.legislation.gov.uk/ukpga/1986/56/pdfs/ukpga_19860056_en.pdf.

⁹² CONST. OF BARBADOS § 41A.

⁹³ Electoral Boundaries Readjustment Act, R.S.C. 1985, c. E-3, § 6, 10, <http://laws.justice.gc.ca/PDF/E-3.pdf>.

⁹⁴ CONST. OF DOMINICA § 56(4).

⁹⁵ ORGANIC LAW OF GEORGIA: ELECTION CODE OF GEORGIA art. 12, para. 4 (2012),

http://www.transparency.ge/sites/default/files/August%202012,%20Election_Code_of_Georgia_EN__codified.pdf.

⁹⁶ Electoral Act, 2014 (Act No. 5/2014), §7(1)(A),

<http://www.ecn.na/documents/27857/193258/Electoral+Act+5+of+2014.pdf/1bd1c3e3-bdd1-4183-a2fa-2ae6e397180e> (requiring a commissioner to not be an “active politician”).

⁹⁷ CONST. OF SEYCHELLES art. 115B) (requiring candidates to not be hold office within a political party).

⁹⁸ CONST. OF SRI LANKA art. 95, para. 1) (allowing the president to appoint anyone that he is convinced is not “political”).

Sudan,⁹⁹ places limitations on members, either requiring they be determined to be non-partisan or to not have major affiliation with a political party.

3. Specialized Members

Many countries require at least one member of the commission hold special qualifications, This is usually accomplished by requiring one or more committee members to hold a specific public office. Examples of required offices include the Surveyor General,¹⁰⁰ Head Statistician,¹⁰¹ the Speaker of the Lower House,¹⁰² a judge,¹⁰³ an ombudsman,¹⁰⁴ the clerk of the legislature,¹⁰⁵ the Secretary of the Environment,¹⁰⁶ or the Auditor General.¹⁰⁷

⁹⁹ National Elections Act 2008 § 6(1), <http://nec.org.sd/en/wp-content/uploads/sites/2/2013/09/THE-NATIONAL-ELECTIONS-ACT-2008.pdf> (stating that candidates must not be “political”).

¹⁰⁰ A Surveyor General is responsible for mapping boundaries and particularly laying out city sites. Requiring an individual holding this office to sit on the commission can be useful because the individual is familiar with drawing local boundaries, and would understand logical cutoff points. Countries requiring the Surveyor General to serve as a commissioner include Australia (Commonwealth Electoral Act of 1918, § 60(2)(c)); Papua New Guinea (Organic Law on National and Local-level Government Elections, § 26(b) (1997) <http://aceproject.org/ero-en/regions/pacific/PG/papua-new-guinea-1997-organic-law-on-national-and/view>); and Tonga (Electoral Boundaries Commission Act 2010 (Act No. 15/2010) § 4(1c), http://www.tongaelections.com/images/stories/TECdocuments/ENG/ElectoralBoundariesAct/electoralboundariescommissionact2010_1.pdf) (requiring a “qualified surveyor”).

¹⁰¹ Essentially, this individual would be a statistical expert. This would be useful for an IERC because a statistician would have useful skills for ensuring districts are equally populated. Countries requiring the Head Statistician to serve as a commissioner include Germany (Bundeswahlgesetz [BWG] [Federal Elections Act], July 23, 1993, BUNDESGESETZBLATT, Teil I [BGBL I] at 1288, as amended, § 3(2), *translation at* https://www.bundeswahlleiter.de/en/bundestagswahlen/downloads/rechtsgrundlagen/bundeswahlgesetz_engl.pdf) (requiring the President of the Federal Statistical Office to serve); Papua New Guinea (Organic Law on National and Local-level Government Elections, § 26(c) (1997) <http://aceproject.org/ero-en/regions/pacific/PG/papua-new-guinea-1997-organic-law-on-national-and/view>); and Tonga (Electoral Boundaries Commission Act 2010 (Act No. 15/2010) § 4(1), http://www.tongaelections.com/images/stories/TECdocuments/ENG/ElectoralBoundariesAct/electoralboundariescommissionact2010_1.pdf) (requiring a “person with skill and experience as a statistician”).

¹⁰² Many countries require the Speaker of the House to serve as a commissioner. Two examples are the Bahamas (CONST. OF THE BAHAMAS art. 69, para. 2(a)); and Grenada (CONST. OF GRENADA § 55(1)(a)).

¹⁰³ Many countries require a judge to serve as a commissioner. A few of these include the Bahamas (CONST. OF THE BAHAMAS art. 69, para. 2(b)); Germany (Bundeswahlgesetz [BWG] [Federal Elections Act], July 23, 1993, BUNDESGESETZBLATT, Teil I [BGBL I] at 1288, as amended, § 3(2), *translation at* https://www.bundeswahlleiter.de/en/bundestagswahlen/downloads/rechtsgrundlagen/bundeswahlgesetz_engl.pdf); (requiring a judge from the Federal Administrative Court to be a commissioner); Ireland (Elections Act, 1997, § 7(a), <http://www.irishstatutebook.ie/eli/1997/act/25/enacted/en/pdf>) (requiring a judge of the Supreme Court or the High Court); Puerto Rico (CONST. OF PUERTO RICO, art. III, § 4) (requiring the Chief Justice to serve); Tanzania (CONST. OF TANZANIA, art. 74(1)(a)) (requiring a judge of the High Court or a Justice of the Court of Appeals to serve); and Tonga (Electoral Boundaries Commission Act 2010 (Act No. 15/2010) § 4(1a), http://www.tongaelections.com/images/stories/TECdocuments/ENG/ElectoralBoundariesAct/electoralboundariescommissionact2010_1.pdf) (requiring a “person who holds or has held judicial office”).

¹⁰⁴ The only country requiring an ombudsman to serve as a commissioner is Ireland. Elections Act, 1997, § 7(b), <http://bit.ly/1QziTEP>.

¹⁰⁵ The only country requiring the clerks of the legislature to serve as a commissioner is Ireland. *Id.* § 7(d–e).

¹⁰⁶ The only country requiring the Secretary of the Environment to serve as a commissioner is Ireland. *Id.* § 7(c).

¹⁰⁷ The only country requiring the Auditor General to serve as a commissioner is Australia. Commonwealth Electoral Act of 1918, § 60(2)(d).

4. Geographic Restrictions

Two countries uniquely place geographical limitations on commissioners. In both Liberia¹⁰⁸ and Tanzania,¹⁰⁹ commissioners are required to come from different parts of the country, presumably to keep commissioners from districting in favor of their home constituency.

5. Gender or Ethnic Quotas

A small number of countries have created provisions to ensure that their commissions have a diverse membership. Armenia,¹¹⁰ Namibia,¹¹¹ and Rwanda¹¹² have established gender quotas for their IERCs. Bosnia and Herzegovina has also established ethnic quotas for their commission.¹¹³

C. Individual Commissioner Qualifications

In addition to placing restrictions on the overall composition of a commission, most countries also place qualifications on each individual commissioner. These requirements generally fall into five categories.

First, the majority of countries place educational requirements on commissioners. Generally, this entails requiring either a law degree or just a general bachelor's degree.¹¹⁴

¹⁰⁸ In Liberia, this restriction applies to all commissioners. REPUBLIC OF LIBERIA, THE NEW ELECTIONS LAW § 2.1 (2011), http://www.necliberia.org/admin/pg_img/Election%20Law%20Incorporated%202011final.pdf.

¹⁰⁹ In Tanzania, this restriction applies only to the Chair and the Vice-Chair. CONST. OF TANZANIA art. 74(2).

¹¹⁰ Electoral Code of the Republic of Armenia, art. 40, § 2, http://res.elections.am/images/doc/_ecode.pdf (requiring two out of a committee of seven to be women).

¹¹¹ Electoral Act, 2014 (Act No. 5/2014), §6(2), <http://www.ecn.na/documents/27857/193258/Electoral+Act+5+of+2014.pdf/1bd1c3e3-bdd1-4183-a2fa-2ae6e397180e> (requiring at least two of five commissioners to be women).

¹¹² Law No. 31/2005 of 24/12/2005, <https://repositories.lib.utexas.edu/bitstream/handle/2152/5078/4170.pdf> (requiring at least 30% of commissioners to be women).

¹¹³ The law requires the commission to have two Serbs, two Croats, two Bosniaks, and one other member. Election Law of Bosnia and Herzegovina, art. 2.5.

¹¹⁴ A few examples of these countries include Armenia (Electoral Code of the Republic of Armenia, art. 40, § 2, http://res.elections.am/images/doc/_ecode.pdf) (requiring at least one of the members to have “legal education or a scientific degree in law”); Belarus, (Electoral Code of the Republic of Belarus, No. 370-Z, Feb. 11, 2000, as amended, art. 32,

http://www.sze.hu/~smuk/Nyilvanossag_torvenyek_east_south_eur/Jogforr%C3%A1sok/V%C3%A1laszt%C3%A1si/BEL%20-%20Electoral%20Code.pdf) (requiring “higher juridical experience”); Maldives (CONST. OF MALDIVES, art. 169) (requiring educational requirements necessary to be competent); Mexico (Ley General de Instituciones y Procedimientos Electorales [LGIPE] art. 38(1)(d), Diario Oficial de la Federación [DOF] 23-05-2014, http://www.diputados.gob.mx/LeyesBiblio/pdf/LGIPE_130815.pdf, translated in ELECTORAL TRIBUNAL OF THE FED. JUDICIARY, GENERAL LAW ON ELECTORAL INSTITUTIONS AND PROCEDURES OF MEXICO art. 38(1)(d) (Mikaela Christiansson trans., 2014),

<http://portales.te.gob.mx/ccje/sites/default/files/GENERAL%20LAW%20ON%20ELECTORAL%20INSTITUTIONS%20AND%20PROCEDURES.pdf>) (requiring candidates to have held a bachelor's degree for five years prior to appointment); and Thailand (CONST. OF THAILAND § 230(2) (2007)) (requiring at least a bachelor's degree).

Second, many countries require work experience before serving as a commissioner.¹¹⁵ Relevant areas of experience include organizing and holding elections and referendums,¹¹⁶ or experience in management, finance, governance, public administration, or law.¹¹⁷

Third, many countries explicitly require their candidates to be of “good moral character.” In some countries this seems to ensure that commissioners are paragons of virtue; in others, it simply requires them not to have been recently convicted of a crime.¹¹⁸

Fourth, a large number of countries place age limitations upon their commissioners, particularly on the commission chair, presumably to incentivize commissioners to have greater wisdom and maturity.¹¹⁹ Some countries also force commissioners to retire or do not allow them to be appointed past a certain age.¹²⁰

Fifth, a few countries place financial requirements on commissioners. These requirements seek to ensure that the candidates are fiscally responsible.¹²¹

¹¹⁵ ORGANIC LAW OF GEORGIA: ELECTION CODE OF GEORGIA art. 12, para. 4 (2012), http://www.transparency.ge/sites/default/files/August%202012,%20Election_Code_of_Georgia_EN_-_codified.pdf (requiring three years of work experience and a certificate).

¹¹⁶ Electoral Code of the Republic of Belarus, No. 370-Z, Feb. 11, 2000, as amended, art. 31, http://www.sze.hu/~smuk/Nyilvanossag_torvenyek_east_south_eur/Jogforr%C3%A1sok/V%C3%A1laszt%C3%A1si/BEL%20-%20Electoral%20Code.pdf.

¹¹⁷ Act No. 9/2011), as amended, § 6(2)(c) <http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/IndependentElectoralandBoundariesCommissionNo9of2011.pdf> (requiring members to have at least one of the above qualifications in Kenya).

¹¹⁸ A few example countries include Liberia (REPUBLIC OF LIBERIA, THE NEW ELECTIONS LAW § 2.1 (2011), http://www.necliberia.org/admin/pg_img/Election%20Law%20Incorporated%202011final.pdf) (requiring commissioners to be “of good moral character”); Sudan (National Elections Act 2008 § 6(1), <http://nec.org.sd/en/wp-content/uploads/sites/2/2013/09/THE-NATIONAL-ELECTIONS-ACT-2008.pdf>) (requiring seven years to have passed since convicted of a crime); Uganda (CONST. OF UGANDA art. 60, cl. 2) (requiring good moral character); and Yemen (GENERAL ELECTIONS AND REFERENDUM LAW art. 19 (2001), http://publicofficialsfinancialdisclosure.worldbank.org/sites/fdl/files/assets/law-library-files/Yemen_General%20Elections%20and%20Referendum%20Law_2001_en.pdf) (requiring “good character”).

¹¹⁹ A few example countries include Georgia (ORGANIC LAW OF GEORGIA: ELECTION CODE OF GEORGIA art. 10, paras. 1–2 (2012), http://www.transparency.ge/sites/default/files/August%202012,%20Election_Code_of_Georgia_EN_-_codified.pdf) (requiring candidates to be at least twenty-five years old); Mexico (Ley General de Instituciones y Procedimientos Electorales [LGIPE] art. 38(1)(c), Diario Oficial de la Federación [DOF] 23-05-2014, http://www.diputados.gob.mx/LeyesBiblio/pdf/LGIPE_130815.pdf, *translated in* ELECTORAL TRIBUNAL OF THE FED. JUDICIARY, GENERAL LAW ON ELECTORAL INSTITUTIONS AND PROCEDURES OF MEXICO art. 38(1)(c) (Mikaela Christiansson trans., 2014), <http://portales.te.gob.mx/ccje/sites/default/files/GENERAL%20LAW%20ON%20ELECTORAL%20INSTITUTIONS%20AND%20PROCEDURES.pdf> (requiring candidates to be at least 30 years old); and Thailand (CONST. OF THAILAND § 230(1) (2007)) (requiring candidates to be at least 40 years old).

¹²⁰ Two countries require commissioners to retire at the age of sixty-five or not be appointed after sixty-five: Malaysia (CONST. OF MALAYSIA art. 114, § 3) and Sierra Leone (CONST. OF SIERRA LEONE § 32(7)(b)).

¹²¹ These countries include Botswana (CONST. OF BOTSWANA § 65A(6)(a)) and Bhutan (ELECTION ACT OF THE KINGDOM OF BHUTAN, 2008, § 21(d) (2008), http://publicofficialsfinancialdisclosure.worldbank.org/sites/fdl/files/assets/law-library-files/Bhutan_Election%20Act_2008_en.pdf) (requiring commissioners not be behind in their taxes).

D. Removal of Commissioners

Another important factor on the independence of a given commission is how members may be removed from that commission. Countries utilize two avenues to discharge members: removal by tribunal and direct removal. In this section, we will look first at the avenues of removal, and second at the accepted causes for removal.

1. Removal by Tribunal

Procedurally, removal by tribunal keeps commissioners from being removed at the discretion of the branches of government. Three different types of tribunals are utilized to remove commissioners. First, and most prevalent, Armenia,¹²² Dominica,¹²³ the Gambia,¹²⁴ Sudan,¹²⁵ and Yemen¹²⁶ require a panel of judges to determine the ability of a commissioner to continue serving. Second, as in Belize,¹²⁷ Malawi,¹²⁸ and Namibia,¹²⁹ the advisory council that initially nominates commissioners comprises the tribunal. Finally, in Armenia,¹³⁰ Bosnia and Herzegovina,¹³¹ and South Sudan,¹³² the commissioners themselves are authorized to recommend or initiate the removal of fellow commissioners.

2. Direct Removal

A second avenue for removal is direct removal by one of the political branches. Countries grant removal power to the political branches in four combinations. In Sri Lanka,¹³³ Tonga,¹³⁴ and

¹²² Electoral Code of the Republic of Armenia, art. 43, § 5, http://res.elections.am/images/doc/_ecode.pdf (allowing termination by the High Administrative Court).

¹²³ CONST. OF DOMINICA § 56(8) (allowing removal by president after a tribunal appointed by the Chief Justice has determined this is the proper course of action).

¹²⁴ CONST. OF THE GAMBIA § 42(6) (requiring a tribunal of superior judges to find guilt).

¹²⁵ National Elections Act 2008 § 8(2), <http://nec.org.sd/en/wp-content/uploads/sites/2/2013/09/THE-NATIONAL-ELECTIONS-ACT-2008.pdf> (requiring commissioners to appoint judges to serve on the tribunal).

¹²⁶ GENERAL ELECTIONS AND REFERENDUM LAW art. 22(c) (2001), http://publicofficialsfinancialdisclosure.worldbank.org/sites/fdl/files/assets/law-library-files/Yemen_General%20Elections%20and%20Referendum%20Law_2001_en.pdf (allowing removal by executive after an “irrevocable court order” is given).

¹²⁷ CONST. OF BELIZE § 88(7).

¹²⁸ CONST. OF MALAWI § 75(4).

¹²⁹ Electoral Act, 2014 (Act No. 5/2014), §11(4-5), <http://www.ecn.na/documents/27857/193258/Electoral+Act+5+of+2014.pdf/1bd1c3e3-bdd1-4183-a2fa-2ae6e397180e> (requiring the Selection Committee to investigate, followed by removal on the order of the executive with the approval of the National Assembly).

¹³⁰ Electoral Code of the Republic of Armenia, art. 40, § 2, http://res.elections.am/images/doc/_ecode.pdf (allowing termination by a two-thirds vote of fellow commissioners)

¹³¹ Election Law of Bosnia and Herzegovina, art. 2.5 (requiring the committee to notify the legislature for removal).

¹³² National Elections Act, 2012, § 10(1), <http://www.ku.ac.ke/actil/wp-content/uploads/2015/07/ELECTION-ACT-SOUTH-SUDAN.pdf> (allowing removal upon recommendation of two-thirds of the commissioners).

¹³³ CONST. OF SRI LANKA art. 95, para. 2.

¹³⁴ Electoral Boundaries Commission Act 2010 (Act No. 15/2010) § 4(1)(c)(ii), http://www.tongaelections.com/images/stories/TECdocuments/ENG/ElectoralBoundariesAct/electoralboundariescommissionact2010_1.pdf.

Zimbabwe,¹³⁵ the Executive branch has sole removal power. In Albania¹³⁶ and Tajikistan,¹³⁷ the Legislature can unilaterally remove commissioners. Malta¹³⁸ and St. Kitts and Nevis¹³⁹ require the executive and legislative branches to cooperate to remove a commissioner. Thailand requires the legislative and judicial branches to cooperate to remove a commissioner.¹⁴⁰

3. Removal Causes

Constitutions and enabling legislation authorize three major reasons for removing commissioners. First, and most common is removal for misconduct.¹⁴¹ Second, and still highly common is removal for inability to discharge the functions of the office.¹⁴² Finally, removal is permitted for repeated absenteeism to commission meetings.¹⁴³

E. Commission Funding

Another significant factor in evaluating the independence of an IERC is how the commission, and the commissioners, are funded. Worldwide, there are two approaches to this question. The first

¹³⁵ CONST. OF ZIMBABWE § 238.

¹³⁶ ALBANIAN ELECTORAL CODE art. 18(2) (Org. for Sec. & Cooperation in Europe ed. & trans., 2015, <http://www.osce.org/albania/159501?download=true>) (requiring a motion by the CEC and then legislative approval).

¹³⁷ On Elections to the Majlisi Oli of the Republic of Tajikistan, Dec. 10, 1999, as amended, art. 18, <http://www.legislationline.org/documents/action/popup/id/6930> (allowing removal by the organ that chose them—the legislature).

¹³⁸ CONST. OF MALTA art. 60(6).

¹³⁹ CONST. OF ST. CHRISTOPHER AND NEVIS § 49(2)(d).

¹⁴⁰ CONST. OF THAILAND, art. 233 (2007) (requiring one-tenth of the members of the legislature to call for removal, prompting an investigation by the Constitutional Court).

¹⁴¹ There are obvious concerns over the generalized nature of the misconduct standard. While it is useful as a catch-all category (as opposed to defining each crime that could lead to removal), it could also lead to commissioners being removed for petty crimes. *See e.g.*, Antigua & Barbuda (CONST. OF ANTIGUA & BARBUDA § 63(5)); Kenya (Act No. 9/2011), as amended, § 10(8)(b)

<http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/IndependentElectoralandBoundariesCommissionNo9of2011.pdf> (referring to removal of the committee secretary); Liberia (REPUBLIC OF LIBER., THE NEW ELECTIONS LAW § 2.1 (2011), http://www.necliberia.org/admin/pg_img/Election%20Law%20Incorporated%202011final.pdf); New Zealand (Electoral Act 1993, § 4G.) (allowing removal for “just cause”); and Uganda (CONST. OF UGANDA art. 60, cl. 8(c)).

¹⁴² *See e.g.*, Dominica (CONST. OF DOMINICA § 56(6)); Lesotho (CONST. OF LESOTHO § 66(4)); Malta (CONST. OF MALTA art. 60(7)); Tonga (Electoral Boundaries Commission Act 2010 (Act No. 15/2010) § 4(1)(c)(ii), http://www.tongaelections.com/images/stories/TECdocuments/ENG/ElectoralBoundariesAct/electoralboundariescommissionact2010_1.pdf); Ukraine, (LAW OF UKRAINE ON THE CENTRAL ELECTION COMMISSION, art. 30, § 4(9), <http://www.legislationline.org/documents/action/popup/id/7148>); and Zambia (Electoral Commission Act, Cap. 17 (1996) § 5(3)(a), <http://www.parliament.gov.zm/sites/default/files/documents/acts/Electoral%20Commission%20Act.pdf>).

¹⁴³ *See e.g.*, Albania (ALBANIAN ELECTORAL CODE art. 18(1)(e) (Org. for Sec. & Cooperation in Europe ed. & trans., 2015), <http://www.osce.org/albania/159501?download=true>); Sudan, (National Elections Act 2008 § 8(1a), <http://nec.org.sd/en/wp-content/uploads/sites/2/2013/09/THE-NATIONAL-ELECTIONS-ACT-2008.pdf>); and South Sudan (National Elections Act, 2012, § 12(1), <http://www.ku.ac.ke/actil/wp-content/uploads/2015/07/ELECTION-ACT-SOUTH-SUDAN.pdf>).

option, utilized in the Maldives,¹⁴⁴ Tajikistan,¹⁴⁵ and Uganda¹⁴⁶ makes the funding of the committee dependent on the budget set forth by the legislature each calendar year. The second option, utilized in Kenya,¹⁴⁷ Mexico,¹⁴⁸ and Tonga,¹⁴⁹ requires predetermining the funding for the commission by either granting the commission whatever funding it deems necessary, or making legislative funding alterations applicable only as the commission begins a new term.

F. Powers of the Commission

While all IERCs are tasked with the job of drawing fair and impartial boundaries, their determinations are given different degrees of weight in different countries. In some countries, commissions are empowered to make binding decrees; while in other countries, commissions are tasked solely with making recommendations subject to the approval of the political branches.

1. Binding Decrees

About half of the countries with IERCs have determined that the decisions of the commission are binding once issued. Most of these countries, including Armenia,¹⁵⁰ Lesotho,¹⁵¹ Thailand,¹⁵² and Turkey,¹⁵³ do not provide an explicit process to appeal these decisions, effectively making them

¹⁴⁴ CONST. OF MALDIVES art. 176 (allowing the legislature to determine salaries and allowances).

¹⁴⁵ CONST. OF UGANDA art. 60 (requiring emoluments for commissioners to be determined by the legislature).

¹⁴⁶ On Elections to the Majlisi Oli of the Republic of Tajikistan, Dec. 10, 1999, as amended, art. 11, <http://www.legislationline.org/documents/action/popup/id/6930> (requiring expenses to be covered by the Republican budget).

¹⁴⁷ Kenya (Act No. 9/2011), as amended, § 10(8)(b),

<http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/IndependentElectoralandBoundariesCommissionNo9of2011.pdf> (requiring an independent fund to be set up for the commission, money to be administered by the legislature into the fund).

¹⁴⁸ CONST. OF MEXICO art. 127, Ley General de Instituciones y Procedimientos Electorales [LGIPE] art. 38(1)(c), Diario Oficial de la Federación [DOF] 23-05-2014,

http://www.diputados.gob.mx/LeyesBiblio/pdf/LGIPE_130815.pdf, translated in ELECTORAL TRIBUNAL OF THE FED. JUDICIARY, GENERAL LAW ON ELECTORAL INSTITUTIONS AND PROCEDURES OF MEXICO art. 38(1)(c) (Mikaela Christiansson trans., 2014),

<http://portales.te.gob.mx/ccje/sites/default/files/GENERAL%20LAW%20ON%20ELECTORAL%20INSTITUTIONS%20AND%20PROCEDURES.pdf> (requiring salaries to not change until election or reelection of commissioners).

¹⁴⁹ Electoral Boundaries Commission Act 2010 (Act No. 15/2010) §§ 5, 10,

http://www.tongaelections.com/images/stories/TECdocuments/ENG/ElectoralBoundariesAct/electoralboundariescommissionact2010_1.pdf.) (allowing commissioners to determine proper remuneration of members, coming from a specifically designated legislative fund).

¹⁵⁰ Electoral Code of the Republic of Armenia, art. 36, § 2, http://res.elections.am/images/doc/_ecode.pdf (making all acts within the scope of the commission's power binding).

¹⁵¹ CONST. OF LESOTHO art. 67, § 67(4) (making all acts of the commission binding upon the dissolution of the legislature).

¹⁵² CONST. OF THAILAND art. 236 (2007).

¹⁵³ Law on Basic Provisions on Elections and Voter Registration, Law No. 298, Apr. 26, 1961, as amended, art. 13, https://www.ecoi.net/file_upload/1504_1220346141_law-on-basic-provisions-on-elections-and-voter-registers.pdf.

final, settled law. Some countries including Kenya,¹⁵⁴ Malawi,¹⁵⁵ Palau,¹⁵⁶ South Sudan,¹⁵⁷ and Uganda,¹⁵⁸ allow appeals, usually by the country's highest court—although usually those appeals must occur within a very narrow time window.

2. Recommendations

Many countries have limited commission's power to recommending a districting plan to the legislature. The plan is normally only placed into effect if the legislature approves it. Most of these countries, including Canada,¹⁵⁹ Kiribati,¹⁶⁰ and Swaziland,¹⁶¹ require the legislature to either approve or reject the plan, but the legislature cannot modify the plan. However, in a small number of countries, including Antigua and Barbuda,¹⁶² Belize,¹⁶³ Grenada,¹⁶⁴ and the United Kingdom,¹⁶⁵ the political branches may alter the plan before passing it, giving the commission's recommendation less weight.

II. Preferred Practices

As I stated in the Introduction, the primary purpose of this paper is to lay out a framework of how current IERCs are structured. However, in this part my goal is to make brief, theoretical conclusions about what types of practices may, in sum, create the most independent commissions. The best solution when considering forming or reforming a commission for any country is to evaluate each factor contextually against the unique needs and attributes of that country.

A. Bodies Choosing the Commission

As a general matter, it seems likely that commissions will be the most objective and independent when commissioners are chosen either in a bipartisan (or multi-partisan) manner by the legislature or by multiple branches. Either of these methods acknowledges that the political branches are and will be self-interested in who sits on the commission, but seeks to alleviate that concern by forcing the self-interested parties to work together to appoint members who will represent everyone. Selection commissions may also play a very important role here because these commissions can

¹⁵⁴ Act No. 9/2011), as amended, sched. 5, §§ 4-5,

<http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/IndependentElectoralandBoundariesCommissionNo9of2011.pdf> (requiring appeals to the High Court to be made within 30 days)

¹⁵⁵ CONST. OF MALAWI § 76(3).

¹⁵⁶ CONST. OF PALAU art. IX, § 4(c) (allowing appeal by the Supreme Court).

¹⁵⁷ National Elections Act, 2012, § 43, <http://www.ku.ac.ke/actil/wp-content/uploads/2015/07/ELECTION-ACT-SOUTH-SUDAN.pdf> (allowing appeal within 12 days to the High Court).

¹⁵⁸ CONST. OF UGANDA art. 64 (allowing appeal to the High Court).

¹⁵⁹ Electoral Boundaries Readjustment Act, R.S.C. 1985, c. E-3, § 21-22, <http://laws.justice.gc.ca/PDF/E-3.pdf> (allowing legislative members opportunity to make objections and request the commission to change the report).

¹⁶⁰ CONST. OF KIRIBATI § 63(4-5).

¹⁶¹ CONST. OF SWAZILAND § 92(4) (requiring the King to examine and approve before publication).

¹⁶² CONST. OF ANTIGUA & BARBUDA § 65.

¹⁶³ CONST. OF BELIZE § 90(3-4).

¹⁶⁴ CONST. OF GRENADA § 56.

¹⁶⁵ Parliamentary Constituencies Act 1986, c. 56, § 3-4,

http://www.legislation.gov.uk/ukpga/1986/56/pdfs/ukpga_19860056_en.pdf.

hopefully present candidates who are well-qualified for the job, and then the other branches can balance the political composition of the commission.

In some countries, the judiciary may also be a viable option. However, the chief concern with granting the power of appointment to the judiciary is the realization that the judicial branch, like other branches, is to some degree political. In some countries, this is less of a problem than others, so if the judiciary is chosen as the means of commissioner selection, the court's reputation for fairness and impartiality in that nation must be scrutinized.

Popular election of commissioners may be a viable option in some nations, however, the problem with this approach is that voters are generally disinterested or uninformed about electoral matters. Thus, unless there is a well-informed voter base, it seems likely that popular election of candidates will result in more partisan commissions than other methods.

Finally, it seems likely that in most nations granting the power of appointment to only one branch will likely not help commissions be truly independent. If the executive or the majority in the legislature has the sole power of appointment, then the problems which have necessitated the creation of commissions in the first place will likely be perpetuated by commissioners—acting as political agents of the parties that elected them. This may not be the case in every nation, but it remains a serious concern countries must grapple with.

B. Committee Composition

Having an odd number of commissioners seems appropriate where commission procedures require majority approval to pass decrees. Allowing decrees to pass with a majority vote can be beneficial because this will safeguard the commission from gridlock. However, this can be problematic unless the committee is structured to keep the majority party from having control of the committee. Requiring an even number of commissioners may be appropriate if the goal of a committee is to force commissioners to find common ground to achieve majority approval. However, this approach may result in gridlock. As a general matter, requiring a fixed number of commissioners is wise because this will not allow parties to add additional members to pack the commission with their supporters.

For a variety of reasons, it makes sense to have specialized commissioners, particularly requiring an individual who has knowledge of statistics, surveying, or electoral law. This will help ensure the committee has knowledgeable members who can make informed decisions.

Depending on the country, geographical and ethnic requirements for the commissioners may make sense. These requirements would be particularly useful in countries that have a long history of ethnic distrust, by ensuring that all ethnic groups feel they are properly represented on the committee.

C. Individual Commissioner Qualifications

Generally applicable educational and experiential requirements make sense for choosing commissioners because they seek to ensure that qualified, competent individuals will serve. Also,

some sort of well-defined “moral character” qualification is also a good idea, because commissioners, above all else, must be fair and impartial. The more tailored the requirements are to the needs of the job, the more likely it is that commissioners will be well equipped to carry out their functions; furthermore, it will be less likely that the appointments process can be abused.

D. Removal of Commissioners

Procedurally, it is most just to require a tribunal to investigate a commissioner’s guilt or innocence before allowing removal by the appointing body. This limits the appointing body’s coercive control over the commissioners, and seeks to ensure that commissioners are only removed for legitimate reasons.

In addition, the standards for removal should be clearly delineated within the country’s constitution or electoral law. Vague standards like “misconduct” seem more prone to abuse than providing concrete examples of what misconduct might be. While this would take more effort from the legal draftsman, it would provide more clear and rigid standards against which to judge conduct.

E. Commission Funding

The independence of the commission can be measured in proportion to its funding. If the legislature has complete control over funding and salaries on a yearly basis, then the legislature can coerce the commission into actions that are favorable to it. Thus, commissioners should be paid salaries that do not change during appointment, and the commission should receive a steady stream of revenue so that it can effectively accomplish its work.

F. Powers of the Commission

The whole point of an IERC is to remove the power of reapportionment from the political branches to an independent body. Thus, allowing a commission only an advisory role in that process greatly undermines the goal. An even greater usurpation of this goal is allowing the legislature to amend the report of the commission at will before passing it, because in effect, the legislature can amend it at will.

Instead, the decisions of the commission should be binding, yet appealable. Making them binding gives greater weight to their decisions and fulfils the primary function of the commission: demarcating boundaries in an impartial manner. Allowing appeals is wise because it does not give the commission unbridled discretion. Just because the commission is designed to be independent, it cannot be given godlike authority because commissioners are human, and are prone to error and bias. However, the standard of review for appeals of decisions should be high, sufficient so that the judiciary cannot amend the decisions of the commission at will, but can amend serious abuses of discretion.

CONCLUSION

Independent Electoral Reapportionment Systems have tremendous potential for ensuring that boundaries are drawn in an impartial manner. Accomplishing this goal, however, is difficult, and requires careful design to ensure that the commission is appropriately chosen and has appropriate

powers. A well-designed IERC will never be a perfectly impartial entity, but it will certainly be more impartial than the alternatives. This paper has laid out a framework of the current state of IERCs in hopes that the factors of independence outlined here will help designers contextually create IERCs that will be effective, impartial, and truly independent.