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Election Commissions and Non-Democratic Outcomes: Thailand's Contentious 2019 Election

Responding to a recent call for more in-depth qualitative studies of electoral management bodies (EMBs), this article examines formally independent EMBs by using the example of the Election Commission of Thailand (ECT) and the role it played in the recent 2019 election. We argue that in non-democratic regimes with high levels of political polarisation and entrenched elites, formal EMB independence may become part of the problem why elections fail. It creates opportunities for long-term EMB capture by actors who wield power outside of formal politics and are unaccountable to public interest. In case of the ECT, this has led to the decreasing electoral standards culminating in the highly contentious 2019 election where the ECT's administrative efficiency and effectiveness of voting came secondary to pleasing the entrenched old Thai elite. Its conduct has reduced Thailand's prospects for a peaceful transition to democratic rule as those who oppose the country's old elite have increasingly limited opportunities to challenge it through formal means.

Key words: elections, electoral management bodies, non-democratic regimes, independence, Thailand.

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On 31 March 2019, 500 protesters gathered at Bangkok's Victory Monument demanding the dismissal of Thailand's election commissioners. This was one in a series of small, yet high-profile nationwide protest directed at the Election Commission of Thailand (ECT) for mismanaging the country's 2019 election. Held nearly five years after a junta called the National Council for Peace and Order (NCPO) seized power in a May 2014 military coup, the 24 March 2019 election was ostensibly meant to symbolise the restoration of democratic processes and the return to civilian rule. It fell short on both counts. The entire electoral process was marred by controversy, while the outcome saw the junta retain its hold on power even though its proxy Palang Pracharat Party came in second (McCargo and Alexander 2019: 98-99). The 2019 election was deeply flawed for various reasons, but the highly questionable electoral management of the ECT, Thailand's formally independent election watchdog, became the source of much public disquiet.

Formally independent electoral management bodies (EMBs) have been long championed as key institutional mechanisms to improve the quality of elections in emerging democracies, yet many have failed to bring about positive change. Beyond Thailand, others include the 2018 Cambodian election, the 2019 Kazakh election and the 2020 Venezuelan election. One possible explanation is that formally independent EMBs are often introduced in contexts with underlying political problems which cannot be simply resolved through institutional EMB restructuring (Birch and van Ham 2017: 496-497; Norris 2015: 155). In the case of Thailand, these include over-centralisation, intra-elite contestation, incomplete

democratic transition and the lack of civil society space (McCargo and Desatova 2016: 73-75). As Pippa Norris (2019) argues, 'we need to understand the origins of EMBs, and why certain types of electoral governance institutions are chosen, not just their consequences' (398). She calls for more in-depth qualitative studies to help generate further 'invaluable insights' on EMBs. We respond to her call by adopting a qualitative single case study approach to formally independent EMBs using the example of the ECT and its role in the 2019 election. We argue that in highly polarised contexts with weak or no liberal democratic tradition and entrenched political elites, formal EMB independence may become part of the problem that perpetuates low quality elections as it creates opportunities for long-term EMB capture. Our findings have important implications for the broader study of formal EMB independence, its effects on electoral integrity and its role in sustaining non-democratic regimes.

Formal EMB Independence: A Step in the Right Direction?

Based on the classical liberal assumptions about the virtue of separation of powers and accountability through independent checks and balances, formal EMB independence is often recommended to strengthen the quality of elections, especially in emerging democracies. By keeping EMBs at arm's length from governments, formal independence is believed to protect them from political manipulation and partisan interests, thereby legitimating electoral processes (Birch and van Ham 2017: 487). Yet, the link between formal EMB independence and electoral integrity remains unclear. While some regional studies have shown that formally independent EMBs have had positive impact on electoral integrity in Latin America and Africa (Hartlyn et al. 2008: 76; Fall et al. 2012: 5-8), an increasing number of global studies suggests that formal EMB independence has either negative (Birch 2011: 122) or no direct effect at all (van Ham and Garnett 2019: 329; Birch and van Ham 2017: 496; Norris 2015: 151). Van Ham and Garnett (2019: 315) offer three explanations for this empirical dissonance: 1) the lack of detailed comparative data on institutional EMB design; 2) different contextual variables; and 3) the way scholars conceptualise EMB independence – some tend to concentrate more on the formal aspects of institutional EMB design or de jure independence, some focus primarily on EMBs' conduct or de facto independence, while others conflate the two (van Ham and Garnett 2019: 315).

Distinguishing between de jure and de facto EMB independence is indeed crucial. EMBs in countries such as Denmark, Sweden and Norway have high de facto independence, even though they are under direct government control (see Norris et al. 2018). Conversely, EMBs in countries such as Cambodia, Kazakhstan, Thailand and Venezuela, have low de facto independence although they are legally and structurally autonomous from government. Many studies find strong positive effect of de facto independence on the quality of elections but weaker correlations (Hartlyn et al. 2008: 90; Fall et al. 2012: 9) or no evidence (van Ham and Garnett 2019: 329; Norris 2015: 151) for that of de jure independence. A number of important questions thus remain: does de jure independence matter? And by extension, is it worth promoting? To clarify these questions, van Ham and Garnett (2019) shift their focus from establishing a direct link between formal EMB independence and electoral integrity to a more indirect approach that looks at whether de jure independence shapes de facto independence in a causal way. They identify four dimensions of de jure independence – institutional, personnel, financial and functional – and test their effects on de facto independence (323-328). Although their findings suggest that 'de jure independence is only weakly related to de facto independence' (329), they admit to a lack of contextual grounding which they themselves believe could alter their findings (329).

Using the example of the ECT, we show the importance of solid contextual grounding, by arguing that in highly polarised contexts with weak or no liberal democratic tradition and entrenched political elites, formal EMB independence may become part of the problem that

perpetuates low quality elections, since it creates opportunities for long-term EMB capture by actors who wield power outside of formal politics. Situating our Thailand case study within broader literature on non-democratic regimes, our approach to formal EMB independence emphasises the interplay between de jure and de facto independence on the one hand and our three contextual factors – political polarisation, lack of democratic stock and entrenched elites – on the other.

Independence as Freedom from Accountability in Non-Democratic Regimes

Academic discussions of formal EMB independence typically start from the premise that the main threat to the integrity of electoral processes comes from the formal political realm (for example, see Birch 2011: 53; Norris 2015: 144-146; Birch and van Ham 2017: 487). The government, elected politicians and political parties are most likely to interfere with the work of EMBs, because their political survival depends directly on electoral outcomes. In this narrow conception, independence simply means freedom from control by these formal actors. However, political power in countries lacking strong liberal democratic traditions, such as Thailand, is seldom located just within the government or even within formal political structures. There are other actors outside formal politics whose immediate political survival does not depend on electoral outcomes, yet they still might want to control them. In Thailand, they include the monarchy, military and bureaucracy – the entrenched old elite that has fought democratisation since the country became a constitutional monarchy in 1932, resulting in various forms of hybrid and full-fledged military regimes, with quasi-democratic interludes (for example, 1973-1976 and 1997-2006), as the elite searched for suitable form of rules to protect its own power and interests (for more, see Baker 2016). Formal independence in its narrow conception as freedom from formal politics does not protect EMBs from these outside actors. As we will demonstrate, it can even create opportunities for their long-term capture. This is not to say that formal political institutions do not matter but rather that a more nuanced approach to the questions of formal EMB independence is necessary, especially in non-democratic regimes like Thailand.

Most non-democratic regimes today hold periodic elections, a legacy of the 'third wave' of democratisation, which in retrospect was an era of 'plebiscitarian politics' (Brownlee 2007: 6): many initially promising cases failed to move beyond nominal democratic procedures. A significant body of academic literature has addressed this phenomenon, examining why non-democratic regimes hold periodic elections – offering explanations such as legitimation (Schedler 2002: 36), co-optation of strategic elites (Blaydes 2011: 139; Magaloni 2006: 19), deterring opposition (Magaloni 2006: 19) and gathering of information (Little 2012: 250) – and how they control them to ensure their own survival (Morgenbesser 2020: 1057; Schedler 2002: 41-46). Yet, there has been little interest in formally independent EMBs and their role in non-democratic electoral management. This is surprising since more than 80 per cent of non-democratic regimes that hold periodic elections have formally independent EMBs (International IDEA 2020). Apart from van Ham and Lindberg (2015: 469), who find a significant positive effect of de jure EMB independence on the quality of non-democratic elections, there are no other similar studies that would substantiate these findings. In fact, Norris (2015) finds no effect at all suggesting that formally independent EMBs might be nothing more than 'convenient window-dressing' (154) to cover up non-democratic regimes' interference in the work of EMBs. Yet, broader academic literature on non-democratic regimes suggests that non-democratic rulers often adopt quasi-democratic institutions to neutralise potential threats, in an attempt to secure their long-term survival (Gandhi 2008: 179; Blaydes 2011: 48-49). Non-democratic regimes that permit quasi-democratic institutions, particularly political parties and legislatures, are in fact more durable than those that lack them (Geddes et al 2018: 152). The importance of quasi-democratic

political institutions for non-democratic regimes thus should not be understated or idealised in terms of positive democratising effects. It is here that Norris's (2019: 398) call for more in-depth qualitative studies comes in.

A case in point is Thailand's ECT, which was established as a formally independent EMB in 1997. It resulted from elite-driven liberal political reforms aimed at institutionalising a form of rule to preserve the power and interests of the old elite amidst growing domestic and international demands for greater democracy (Connors 2002: 45). It was a key component of a newly created institutional framework of formally independent watchdog agencies designed to keep elected politicians in check. Other agencies included the Constitutional Court, the Administrative Court and the National Anti-Corruption Commission. Their primary purpose was to protect the old elite from politicians, not to foster Thailand's democratic development (McCargo 2005: 512). This is in line with Morgenbesser's (2020) argument that quasi-democratic institutions are often 'designed to mimic the presence of horizontal and vertical accountability, but [at the same time, they] prevent the actual practice of it' (1054) effectively sabotaging the ability of people to hold these institutions (and those who control them) responsible for their actions. Formally independent EMBs are institutions of horizontal accountability as they provide additional checks and balances on executive power, but as Norris points out, there is 'a fine line' (2017: 11) between the EMBs' need for institutional autonomy and their accountability to public interest. She identifies three channels for EMB accountability: 1) 'upward' to the international community; 2) 'horizontal' to other state institutions; and 3) 'downward' to civil society (13). Establishing formally independent EMBs already breaks down one aspect of horizontal and downward accountability: they are no longer directly answerable to the government and thereby to the people. They might still be accountable to other state institutions such as the legislature, courts and other formal oversight agencies, but this varies significantly across different political contexts and regime types. It may become problematic if both upward and downward accountability are weak – often the case in non-democratic regimes, such as Thailand (see McCargo and Desatova 2016: 83). We do not suggest that the quality of elections in non-democratic regimes would necessarily improve if EMBs were under direct government control – in fact, Norris (2015: 153) shows that there is little difference in the quality of elections between hybrid and authoritarian regimes regardless of what EMB model they use – but rather that formal 'independence' might be used to isolate EMBs from formal politics, thereby making them less publicly accountable.

The ECT has been endowed with significant de jure independence. It has almost all the trappings of institutional EMB design that van Ham and Garnett (2019: 317) expected to yield higher de facto independence: its formal-legal independence is constitutionally guaranteed, its decisions cannot be easily overturned by the legislature or the courts, it has a strictly non-partisan expert-based membership model, a secure non-renewable seven-year commissioner tenure who cannot be easily removed from their post, a multi-member election commissioner selection process with no links to the government, financial autonomy (including the day-to-day budget management) and a broad functional mandate. The level of its de jure independence is close to that of the judiciary (Khemthong 2015: 11). Its institutional integrity depends solely on the quality and professionalism of the serving election commissioners, a deeply problematic feature in non-democratic regimes, like Thailand, where the quality of public sector is typically low. The commissioners remain criminally liable and can be impeached and imprisoned on corruption charges and other gross violations of public duty, but this requires cooperation from the other formally independent watchdog agencies such as the Constitutional Court, the Administrative Court and the National Anti-Corruption Commission, again a deeply problematic feature in non-democratic regimes where judiciary and public sector impartiality is never guaranteed. This makes the election commissioner selection process an important area for institutional integrity and accountability.

Birch and van Ham (2017) point out that all formally independent EMBs are vulnerable to undue political influence as they rely on 'politicians and politicized administrators' (489) to select their members. Although it is true that the member selection process exposes formally independent EMBs to partisan interests, empirical evidence on the effect of partisan EMB representation remains mixed, which point to the broader importance of political context (see van Ham and Garnett 2019: 324; Birch 2011: 124; Hartlyn et al. 2008: 88). As Estévez et al. (2008: 258) show on the example of the Federal Election Institute, the formally independent EMB in Mexico, partisan representation in EMBs might be more effective in countries with high levels of political polarisation than the non-partisan expert model. This might seem contradictory to the prevailing principle of insulating formally independent election watchdogs from political control, but as Wood (2019: 182) points out the most successful EMBs tend to include rather than exclude key electoral stakeholders.

Thailand's election commissioners are selected by a special ad hoc committee, whose membership is constitutionally determined. The members of the first ECT (1997-2001) were selected in a process with a strong political and public representation complemented by members of the judiciary. This was in line with the country's liberalising tendencies that followed the May 1992 popular uprising against the military's interference in politics. Although the commissioners' management of the 2001 general election was not without problems, the old Thai elite let them operate without interference: they displayed a relatively high level of de facto independence and their integrity was never questioned (Khemthong 2015: 6). Members of the second ECT (2001-2006) were selected in a highly politicised process following the rise of Thaksin Shinawatra (2001-2006), who became a major problem for the old elite: he not only openly challenged their power and interests, but created a cult following in Thailand's two most populous regions that guaranteed his continuous re-election. Unable to defeat him at the polls, the elite first mobilised the judiciary (Dressel 2010: 678-680). In quick succession the 2006 snap election was annulled by the Constitutional Court, and three of the five serving ECT commissioners were jailed by the Supreme Court for electoral malfeasance (for more details, see Kuhonta 2008: 385 and 387-388). Thaksin was ousted from power in the September 2006 military coup, ushering in deep political polarization along pro- and anti-Thaksin lines. Since then, the old elite has used the election commissioner selection process to exert long-term control over the ECT in their fight against Thaksin.

Members of the third ECT (2006-2013) were selected by the 2006 military junta. They oversaw relatively clean 2007 and 2011 general elections but helped the old elite reorganise power between the polls, both of which were won by pro-Thaksin parties (McCargo 2014: 429; also see Dressel 2010: 680-684). The ECT raised highly contentious cases of electoral malpractice against Thaksin's Thai Rak Thai Party and its successor the People's Power Party so that the judiciary could dissolve them, paving way for an unelected anti-Thaksin Democrat-led coalition government (2008-2011) favoured by the old elite. The ECT also brought a token case against the Democrat Party but took much longer to investigate and provided significantly less evidence making it easy for the courts to acquit the Democrats (McCargo 2014: 428; Khemthong 2015: 7). Members of the fourth ECT (2013-2018) were selected under the provisions of the 2007 military-drafted constitution that increased the power of judges, who were opposed to Thaksin, over the election commissioner selection process at the expense of political and public representation. This was to prevent the ECT from being captured by elected politicians again, particularly those loyal to Thaksin. The commissioners quickly proved their worth: they were openly reluctant to organise the 2014 snap election called by Prime Minister Yingluck Shinawatra (2011-2014), Thaksin's sister, and effectively sabotaged the entire electoral process (McCargo and Desatova 2016: 78-9). They helped to create conditions for another Constitutional Court election annulment followed by yet another military coup. By the time the members of the fifth ECT (2018-present) were selected, the ECT had been under the

old elite's control for twelve years. Had the ECT been under direct government control, the old elite would find it harder to control electoral outcomes when Thaksin-aligned governments were in power. The ECT's long-term capture was made possible thanks to its considerable formal independence: once the old elite reduced the degree of political and popular representation in the election commissioner selection process, the ECT became unaccountable. Instead of acting as a guardian of democratic processes, it became a barrier to democracy, protecting the power and interests of the old elite against the wishes of the electorate (Khemthong 2019).

The ECT and the 2019 Thai Election

The sole objective of the 2019 Thai election was to confer a degree of democratic legitimation upon the military junta, allowing them to rebrand themselves as an 'elected government' and thereby preserve elite dominance. The junta-drafted 2017 constitution introduced a new electoral system designed to prevent the return of a Thaksin-aligned government (Ricks 2019: 445-449). The new constitution also made important changes to the ECT: disqualifying candidates and dissolving political parties became easier, the number of election commissioners increased from five to seven and qualification requirements were raised. As a result, the ECT was two election commissioners short and a number of serving commissioners found themselves retrospectively designated as 'underqualified' for their posts. This presented an opportunity for the junta to reset the election commissioner selection process ahead of schedule. The serving commissioners had proved their loyalty to the old elite, but their actions during the 2014 snap election and the 2016 constitutional referendum alienated far too many voters (McCargo and Desatova 2016: 78-79 and McCargo et al. 2017: 70-73). They became a liability for the old elite.

Initially, the new election commissioner selection process was met with considerable public support (The Nation 2017), but the exercise was never about finding better commissioners. The junta-drafted constitution created an image of increased ECT accountability by allowing eight public representatives on the election commissioner selection committee, but power to select these representatives rested with judges, who would automatically pick figures favouring the old elite. None of the new commissioners had relevant election-related experience. Sakool Zuesongdham, a leading member of Thailand's volunteer election monitoring network P-NET, pointed out that the problem was not that the new election commissioners 'did not want to do [their job] but they were not able [to do it].'[1] This was quite an ironic reversal given the fiasco of the 2014 snap election, when the ECT had the necessary technical ability to organize the polls but clearly did not want to hold them at all (McCargo and Desatova 2016: 78-79). The new commissioners had only 150 days to organise the election. Given this short timeframe, their inexperience and the complex new electoral system, the ECT faced considerable technical challenges. Yet, administrative efficiency and the effectiveness of voting were of secondary concern to an ECT that was working primarily towards pleasing the old elite by siding with pro-junta parties. The result was an election marred by management problems, double standards and questionable rulings that not only failed to bring back democracy but also enabled the continuation of a dictatorship under the guise of an elected government.

The following sections draw on qualitative data generated during four months of fieldwork in Thailand in 2019 as part of a larger election project. They consist of election-related news and social media clippings; semi-structured interviews with provincial ECT directors, polling station staff, political party representatives and members of national election monitoring bodies; and participant observations of candidate registrations, campaign rallies and voting. We had 8 experienced researchers and trained additional 50 research assistants to

monitor election day voting at 61 polling stations in 33 out of Thailand's 77 provinces: we also monitored the counting process and the announcement of official results by the ECT.

Ineffective Electoral Management

Overseas and domestic advance voting was the first test for the ECT. Overseas voters were able to cast their votes from 4–16 March while domestic advance voting took place on 17 March 2019. More than 2.7 million Thais registered to exercise their rights early in Thailand and more than 119 thousand Thais registered to vote abroad. These were remarkably high numbers given the short registration window and the ECT's failure to publicise these voting processes (ANFREL 2019: 80). Despite being aware of high voter numbers, the ECT failed to sufficiently prepare. Its management of overseas voting was fraught with inappropriate voting conditions such as long waiting lines, understaffed polling stations and inexcusable problems including voting documents containing wrong party-candidate information, and ballot papers arriving late or being returned to senders by local postal services due to confusing address formats or non-standard envelopes (Anna 2019).

By the time of domestic advance voting, the ECT's credibility was seriously compromised. Many of the issues that plagued the overseas polling processes repeated: for example, we observed around 8,000 voters flock to a small district hall in Warinchamrap, a district in Ubon Ratchathani province in northeast Thailand, to vote in eight designated polling stations as a result of an abrupt change of voting venue announced in the morning. The management of polling was disastrous despite the fact that the provincial ECT director was personally overseeing the entire process because the university district had the highest number of registered advance voters in this province. Voters queued under hot sun for up to three hours to cast their vote. Towards the end of voting, the tired-looking ECT director admitted that the only way to prevent this fiasco from happening again was to amend the constitution and rewrite the election laws.[2] Our observations in Mueang district in the same province yielded a different picture, however. Although this district also had a large number of advance voters, voting went relatively smoothly here. The polling stations were well staffed with both officials and student volunteers who guided the voters through the voting process. While voters here also had to wait in long queues, the well-shaded and spacious polling venue helped. Rather than the complicated voting procedures, it was the lack of appropriate facilities, well-trained staff and a large number of voters casting ballots on a single day that were responsible for ineffective early voting. Many of these issues could have been prevented: the ECT received the highest budget in its history to organise the 2019 poll (WeWatch 2019). The commissioners' inexperience was at least partly responsible for the ineffective early voting, but there was a deeper issue. P-NET's Sakool noted that the commissioners wanted to have a 'smooth' election, but they did not care much about what happened before or after the election day.[3] Complaints related to early voting submitted directly to the ECT by P-NET remained unanswered. The commissioners' objective was to help legitimate the junta and protect the old elite, not to serve public interest.

The election day voting on 24 March 2019 was relatively uneventful. Many more polling stations were available to accommodate voters nationwide, so crowdedness was not an issue, but we observed a few instances of inappropriate polling staff behaviour. In Constituency 5 in Ubon Ratchathani province, the wife of the village head who was also a local polling official loitered in front of the polling station, telling incoming voters to vote for a pro-junta Palang Pracharat Party (PPRP).[4] In a polling station in Nakhon Si Thammarat province, local polling officials took no action over an individual who wandered around the polling station telling voters who to vote for. In a number of provinces across the country, campaign signs for candidates of both pro- and anti-junta parties had not been removed from the compound where the voting took place, but the local polling officials did not seem to mind.[5] In another case, a

member of the Thaksin-aligned Pheu Thai Party was helping voters look for their names at a polling station in the northeast Si Saket province. Local polling officials also readily accepted desserts from pro-junta PPRP 'observers' at polling stations in Si Saket and Sa Kaeo provinces. Although some of these incidents may not have been deliberate instances of electoral malpractice, that the ECT turned the blind eye to these actions suggested a serious lack of commitment to quality electoral management.

The most significant problems, however, occurred after the polls closed at 5pm and the official counting started. The ECT provided turnout figures that were much lower than the actual voter participation and its live election results feed contained obvious calculation errors. The commissioners also failed to announce the election results within 3 hours of the polls closing as promised, instead stopping the count abruptly at 95 per cent on election night. ECT chairman Ittiporn Boonpracong half-jokingly noted that the announcement of the results had to be delayed because he did not have a calculator (Thairath 2019), showing not only a complete lack of respect for democratic processes but also a dearth of essential qualifications including expertise and professionalism in managing an election. The delay raised strong suspicions that the ECT was trying to engineer a pro-junta election result. Before long, enraged voters took to the streets to protest the ECT and more than 800,000 people signed an online petition to impeach the seven election commissioners (Bangkok Post 2019). Hashtags attacking the ECT were trending on Twitter for days. Yet, none of this led to any serious formal investigation into the ECT's conduct. Instead, the commissioners filed a number of defamation lawsuits targeting the protest activists (Prachatai 2019). This tit-for-tat approach clearly demonstrates how far de jure independence has insulated the commissioners from their responsibilities to the country's voters and politicians, neither of whom could hold them accountable. Just like their post-2006 coup counterparts, the new commissioners' impunity was guaranteed so long as they pandered to the interests of the old elite. It took them an entire six weeks to calculate and announce the full official election results.

The 2017 constitution introduced a new electoral system in which single constituency votes were used to allocate party-list seats. Scholars and critics examining the new electoral system discussed allocation formulas well before the election, but the ECT kept quiet. This turned out to be a tactical move allowing for a 'readjustment' of the election results when they did not go fully the junta's way. Originally the pro-Thaksin Pheu Thai Party, which won most constituency seats, was poised to form a coalition government with its anti-junta allies including Future Forward, a newly established political party that upset the old elite with its strong electoral performance and progressive platform aimed at curbing their power and influence. Before the ECT announced the full results, it was commonly understood that a party needed to gain around 70,000 votes to warrant a party-list seat. But deploying legal loopholes and questionable interpretations of the law, the ECT settled on an allocation formula that favoured the pro-junta Palang Pracharat Party by allowing eleven micro parties, one of which won as little as 33,754 votes, to secure party-list seats. These parties quickly pledged support to junta leader General Prayuth Chan-o-cha and Palang Pracharat, leading to a 19-party coalition government – the most fragmented government in Thai history. Prayuth was voted in as the country's prime minister on 5 June 2019 with the help of 250 junta-appointed senators. The ECT was instrumental in allowing him to stay in power and continue the old elite's political agenda. Although the commissioners might not have acted differently had they been under direct government control, the ECT's formal independence continued to protect them from accountability. Even if there was an abrupt change in power post-election, they would still be out of reach of both elected politicians and the people.

Anti-Democratic Attitudes

Feeling secure in their position, the ECT commissioners put much more pressure on anti-junta (Pheu Thai, Future Forward, Thai Raksa Chart) than pro-junta parties to comply with the new electoral rules and regulations. For example, they launched an investigation of Pheu Thai (PT) in October 2018 following a complaint by then NCPO Deputy Chairman General Prawit Wongsuwan that the long-exiled Thaksin was interfering in the party's internal affairs. Parties that allowed external influence could face dissolution under the new electoral laws. Although there was no doubt that PT was under Thaksin's influence, no similar investigations were ever launched into the PPRP, which was set up as a political vehicle for the NCPO to prolong its hold on power. This was despite the fact that the ECT received at least two formal complaints against PPRP from the anti-junta camp for allowing non-members – including General Prayuth – to interfere in its internal affairs (see Workpoint News 2019 and Prachachat Net 2019). The party even derived its name from the junta's flagship *Pracharat* policy, while General Prawit later assumed the PPRP's leadership (Thai PBS World 2020).

The commissioners repeatedly came to PPRP's defence when other parties raised concerns over its close relationship with the NCPO. They refused to investigate the junta's sudden 'welfare' spending boost in the last four months of campaigning despite Thailand's strict electoral laws on vote buying. Anti-junta parties criticized this surge of spending as the junta's thinly veiled attempt to boost popular support for the PPRP and called on the ECT to investigate. The commissioners claimed they had no mandate to do this because the scheme was a legitimate government policy, not an act of vote-buying (Matichon 2018). Highly publicised cases related to this scheme and brought to the attention of the ECT by disgruntled voters went cold. More than a year has passed with no updates on the status of its investigations into a case in Yasothorn province where a voter complained that his village head insisted his elderly relative apply for PPRP membership to receive the scheme's benefits. The voter reported that an ECT representative from Bangkok visited to collect some information early on, but he has not heard any updates since.[6] This is just one of many examples of how the ECT allowed the PPRP to get away with highly suspicious electoral behaviour in full knowledge that anti-junta parties could not hold the Commission accountable even if they won enough seats in parliament. Other examples include its failure to properly investigate complaints against the PPRP for potentially receiving donations from state officials and agencies during their December 2018 fundraising banquet and whether or not General Prayuth was considered a 'state official' – a status that could have prevented him from running as a PPRP prime ministerial candidate. The ECT's investigations into these complaints were perfunctory at best: they took significantly longer to complete and their conclusions favoured PPRP (see Isra News 2019 and Sanook 2019). Perhaps a partisan representation ECT model would have been better suited to Thailand's highly polarised political context, but that would not necessarily prevent all commissioners from colluding with the old elite.

The most prominent examples of the commissioners' anti-democratic attitudes were the high-profile dissolutions of two anti-junta parties. The first was the Thai Raksa Chart (TRC) Party, which was dissolved just seventeen days before the election day. Under the 2017 constitution, all parties had to nominate up to three prime ministerial candidates in advance of polling. On 8 February, TRC made an unprecedented move of nominating the king's older sister Ubolratana Mahidol as their sole prime ministerial candidate, the same day PPRP nominated General Prayuth as their candidate. Stripped of her royal title when she married an American in 1972, Ubolratana was legally a commoner, yet her nomination sent shockwaves through conservative elements of Thai society. Never before had a senior royal been drawn into politics so directly, even though the Thai monarchy's claim to be 'above politics' is questionable (Anonymous 2018: 370-377; McCargo 2005). TRC was a sister party of Thaksin-aligned Pheu Thai: it was strategically formed to help PT overcome the old elite's constitutional attempts to forestall a pro-Thaksin coalition government. Thaksin hoped that the Ubolratana

nomination might also help him return to Thailand from his more than a decade-long self-imposed exile and perhaps even reinstate himself politically (McCargo 2019: 129). This was unacceptable to the old elite. The commissioners initially endorsed Ubolratana's nomination, even announcing that TRC could start campaigning. Yet, following a very public intervention by King Vajiralongkorn, who hours later declared her nomination inappropriate, the commissioners swiftly disallowed Ubolratana, accused TRC of wrongdoing and petitioned the Constitutional Court to dissolve the party. The court dissolved TRC on 7 March 2019 without legal grounds, instead citing a breach of Thai norms and values.

TRC's dissolution would not have been possible without the ECT's collusion with the old elite and considerable de jure independence that protected it from accountability. Speaking at a public event, former ECT commissioner Somchai Srisuthiyakorn explained that the ECT was 'brave' to rush the TRC case through within one day: the commissioners would need to establish a sub-committee to investigate the case properly before referring it to the Constitutional Court (The Nation 2019). According to Somchai, the commissioners were potentially exposing themselves to problems by disregarding proper procedures. But there was nothing to worry about so long as the commissioners' complied with the king's wishes. The old elite was the only player, who could hold them accountable.

The second high-profile dissolution was that of the Future Forward Party (FFP), established only in 2018. FFP found particular resonance with young Thais who had grown fed up with Thailand's contentious pre-coup politics (Prajak 2019: 167). The first indication that the party's days were numbered came on 20 November 2019 when Thanathorn Juangroongruangkit, its immensely popular leader, was disqualified as an MP following a controversial Constitutional Court ruling that convicted him of holding shares in a defunct media company at the time of his MP candidate registration. Like in the TRC case, the court promptly acted on a petition submitted by the ECT. Following Thanathorn's disqualification, the ECT petitioned the Constitutional Court again: this time to dissolve the FFP and ban the party executives from politics on the grounds of a tendentious accusation that Thanathorn's 191-million-baht party loan (around USD 5.87 million) breached campaign finance regulations even though they did not mention loans at all. The commissioners claimed that Thanathorn's loan was in fact an illegal donation that exceeded the permissible legal limit of 10 million baht (around USD 307,000) (see Khemthong 2020). The Constitutional Court upheld this interpretation, dissolved the FFP and banned the party's sixteen executives from politics for ten years – the maximum permissible amount under relevant laws. The fact that 31 other parties, including Bhumjai Thai that had joined the pro-junta Palang Pracharat-led coalition, had also taken out loans did not matter: the ECT ruled them legal (Bangkok Post 2020). PPRP was also spared a trial despite potentially soliciting 600 million baht (around USD 18.43 million) in donations from the controversial December 2018 fundraising banquet.

The dissolutions of two anti-junta parties clearly shows that the ECT felt no responsibility towards protecting the rights of Thai voters, politicians and political parties. It acted on the wishes of the old elite knowing that no one else could hold it accountable. As for political ramifications, TRC was dissolved four days into the overseas voting effectively disenfranchising all Thais who had already voted for them. The FFP dissolution disenfranchised over 6.3 million Thais, most of whom had seen it as the only alternative to Thailand's pre-coup politics. The commissioners' disregard for democratic processes and double standards during the 2019 election contributed to the intensification of political confrontation between the pro-junta and anti-junta parties by reducing the opportunities of anti-junta parties to contest the old elite's power through formal means. A series of student protests erupted across the country in late February 2020 in response to the FFP dissolution calling on Prime Minister Prayuth to resign and return power to the people. Even under the emergency decree enacted to fight the COVID-19 outbreak, defiant students and activists resumed protests

in various provinces by mid-July demanding parliament dissolution, new constitution, fresh elections and reforms to the monarchy. Thailand is once again on the brink of political turmoil that reflects directly on the ECT's vast powers and formal independence, which has allowed it to operate in favour of the old elite.

Conclusion

Working with a qualitative single case study approach to formally independent EMBs, we have argued that in highly polarised non-democratic regimes with entrenched political elites formal EMB independence may become part of the problem that perpetuates low quality elections. Using the example of the Election Commission of Thailand, our findings show that formal independence has created opportunities for the long-term ECT capture by the old Thai elite comprising of actors that wield power outside of formal politics and are thus unaccountable to public interest. This has led to the decreasing electoral standards culminating in the highly contentious 2019 election where the ECT's administrative efficiency and effectiveness of voting came secondary to pleasing the old elite. This, in turn, has reduced the country's prospects for a peaceful return to democracy as those who oppose the old elite have increasingly limited opportunities to challenge it through formal means.

Given these findings, a number of important implications are pertinent to the broader disciplinary study of formally independent EMBs, their effects on electoral integrity and their role in sustaining non-democratic regimes. Contrary to some empirical findings (Norris 2015: 151; Birch and van Ham 2017: 496; van Ham and Garnett 2019: 329), our study shows that formal independence continues to matter in non-democratic regimes, but it does not automatically strengthen electoral integrity as van Ham and Lindberg (2015: 469) suggest. This is not surprising as most non-democratic regimes today hold periodic elections as part of their survival strategy (Morgenbesser 2020: 1057; Schedler 2002: 41-46). What our study shows is that formally independent EMBs might be used to forestall democratisation as de jure independence can create opportunities for their long-term capture by actors who operate outside formal politics. As seen in the Thai case, the old elite used de jure independence to insulate the ECT from formal politics to protect its own power and interests. When Thaksin-aligned parties were in power, the old elite mobilised the ECT to re-order power according to their preferences, while during the 2019 election the ECT made sure power would not change hands at all – pushing the country deeper into authoritarianism. This indicates that formal EMB independence might not be well suited to the Thai context due to its high political polarization, lack of democratic stock and entrenched elites. Similar contexts where our findings might also hold true include Egypt, Kazakhstan, Turkey and Venezuela. This is not to say that government controlled EMBs are inherently better than formally independent ones but rather that formally independent EMBs come with their own problems and challenges. More qualitative research needs to be done into how formally independent EMBs operate in different political contexts and ways in which their formal and de facto independence interact in practice. By expanding narrow notions of formal EMB independence and also looking at actors outside of formal political structures, future research might help iron out some of the empirical inconsistencies within the current cross-national comparative scholarship.

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Notes

1 Interview with Sakool Zuesongdham, 22 March 2019, Bangkok.
2 Interview with a provincial ECT director, 17 March 2019, Ubon Ratchathani.
3 Sakool interview.
4 Interview with a Thai voter, 24 March 2019, Ubon Ratchathani.
5 These included Mukdahan, Prae, Suphan Buri, Surin, Udon Thani and Ubon Ratchathani.
6 Interview with a Thai voter, 25 December 2019, Yasothorn.

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