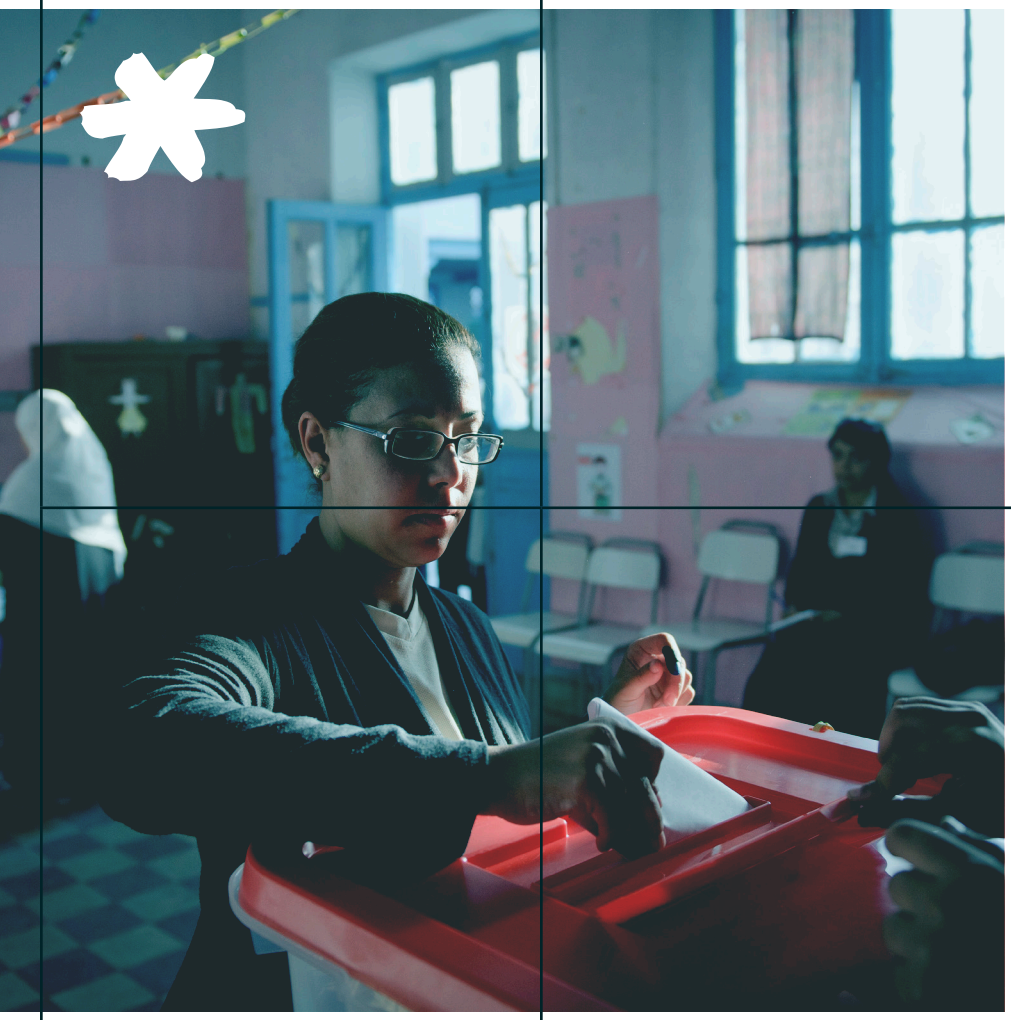
RESEARCH IN BRIEF

The importance and implications of electoral commission independence



This research brief summarises three new pieces of research on the meaning of election commission independence and its implications for the quality of polls. It was prepared by Dr Petra Alderman, Post-Doctoral Research Fellow at the University of Birmingham's International Development Department.

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HIGHLIGHTS

- Perceptions of the independence of the electoral commission are critical for the legitimacy of elections and the prospects of peaceful polls.
- New research finds that most 'independent' electoral commissions are independent in name only.
- The research shows that the formal independence of electoral commissions (the official rules) and informal norms about how things work in practice are crucial for their function and their impact on the quality of polls.
- Reform of the formal structure of electoral commissions has less impact on electoral quality than improvements in their informal independence – which should be the focus for observers.
- A new assessment framework for election commission independence can help observers move beyond often misleading categorisations of election-management bodies based on their formal legal structure.
- Local norms that shape power relations depend on the local context, and this must be taken into account before any election-related assessments and recommendations are made: one-size-fits-all approaches do not work.

COVER

A woman votes at a polling station in Tunisia, 2011.

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Commonwealth observers in the Maldives.

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EU election observers in Tunisia.

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RATIONALE AND OBJECTIVE

Election commission independence shapes, in part, public perceptions of the quality of polls. Any suspicion of political pressures or outside interference in the work of election commissions – whether substantiated or not – not only threatens the legitimacy of polls and those elected to office, but can also lead to political instability and even violence. Understanding and assessing the independence of commissions and its implications for the quality of polls is, therefore, crucial for election observers, civil society groups and those who wish to make election-related recommendations in any given context.

The three papers summarised in this brief examine different aspects of electoral commission independence and the ways in which they affect the quality of polls. Nic Cheeseman and Jørgen Elklit develop a systematic framework for assessing commission independence. They find that assessments of independence should account for both its formal (official/legal) and informal (according to custom/everyday practice) dimensions. They also encourage us to see commissions as organisations that are shaped by a range of factors including the strength of personal networks and the prevalence of clientelistic and patrimonial practices.

Carolien van Ham and Holly Ann Garnett examine the aspects of electoral commission independence that affect the overall quality of polls. They find that while informal independence has a very strong, positive and direct impact on the quality of polls, formal independence does not. The effects of formal independence on informal independence are also weak – a sign that institutional engineering alone might not be the best way to improve the quality of polls.

Through their case study of Thailand's 2019 election, Petra Desatova and Saowanee T. Alexander highlight the need for a deep contextual understanding of how formal and informal electoral commission independence interact in practice. The authors find that formal independence may even become part of the problem: perpetuating low-quality polls in highly polarised authoritarian contexts with entrenched political elites.

METHOD

The assessment framework developed by Cheeseman and Elklit is based on qualitative assessments of electoral commission independence across 11 key indicators organised into 3 broad categories: institutional and leadership; functional and decision-making; financial and budgetary. Focusing on the most important aspects of electoral commission independence, each indicator contains several key questions that probe the formal and informal dimension of commission independence. Considering answers to each question in each category determines the overall assessment of election commission independence as 'highly independent,' 'moderately independent' or 'not independent.' For comparative purposes, the authors suggest a simple scoring system for answering each question based on values of 0 for 'not satisfactory', 1 for 'fairly satisfactory' and 2 for 'highly satisfactory.' However, they caution against potential oversimplification as not all questions carry equal weight and should not, therefore, be treated as such.

Van Ham and Garnett draw on four global cross-national comparative datasets to investigate how formal electoral commission independence affects both their informal independence and electoral integrity. To quantify formal independence, the authors use new data from the global Electoral Management Survey (EMS) and its sister survey, Electoral Learning and Capacity Building (ELECT), developed by the Electoral Integrity Project. The structural survey covers 72 countries and is based on the responses of one senior official from each election commission. To measure the impact of formal commission independence on informal independence and electoral integrity, the authors draw on the Varieties of Democracy and Perceptions of Electoral Integrity datasets.

The analysis of the 2019 Thai election by Desatova and Saowanee is based on semi-structured interviews with provincial electoral commission directors, polling station staff, political party representatives and members of national election monitoring bodies generated during four months of fieldwork in Thailand. It also contains data from participant observations of electoral processes generated by 8 experienced researchers (including the authors) and 50 research assistants trained specifically to monitor election-day voting at 61 polling stations in 33 of Thailand's 77 provinces.

> "Understanding and assessing the independence of commissions and its implications for the quality of polls is crucial for election observers and civil society groups.

KEY FINDINGS

Election management bodies vary greatly in their powers, institutional designs and levels of independence, and simple categorisations based on their formal-legal structure into 'government,' 'mixed,' and 'independent' can be often misleading. As this collection of research shows, drawing on the examples of Albania, Kenya, Nepal and Thailand, most 'independent' electoral commissions are independent in name only. This is because the way they function in practice often undermines their independence, which in turn fuels public mistrust in the legitimacy of electoral processes.

It is not easy, however, to determine whether a commission is 'moderately independent' or 'not independent' and often requires difficult value judgements based on limited evidence. The example of Kenya shows that separating facts from fiction is not straightforward when it comes to commission independence: damaging rumours at the time of elections – even if unconfirmed – can undermine public perceptions of commission independence and complicate its assessment.

It is crucial to distinguish between the formal and informal independence of electoral commissions in order to understand and evaluate their work and their impact on the quality of polls. Formal independence refers to the laws and regulations that protect the electoral commission from political pressures and outside interference, while informal independence refers to the extent to which these laws and regulations are respected in practice. The two do not always go hand-in-hand. In Kenya and Thailand, for example, relatively high levels of formal electoral commission independence are accompanied by low levels of informal independence.

One barrier to an understanding of commission independence is that in some systems it is legitimate for political parties to play a role in selecting commissioners. In Kenya, for example, it has become accepted – and built into the process – that political parties can influence the selection process of election commissioners as part of a power-sharing agreement designed to build trust in the commission by balancing its composition. In Nepal, this has worked relatively well but the same is not true for Albania where the politicisation of the commission had damaging consequences for its overall independence. Similarly, some ways of holding electoral commissions accountable may be legitimate – such as commissioners being responsible to parliament for fiscal discipline and avoiding corruption – but in Nepal the ease with which commissioners can be impeached has undermined their independence.

Based on liberal democratic assumptions about the virtue of separation of powers, formal electoral commission independence has been long championed as the key institutional mechanism to improve the quality of polls, particularly in emerging democracies. Yet, as this collection of research shows, there is no positive correlation between formal independence and high-quality polls. Formal rules do not translate seamlessly into the everyday practice that is shaped by a myriad of contextual factors. These include the quality of democracy, the extent to which the rule of law is respected, and the extent of additional checks and balances such as civil society, media, and election observers. Informal independence, on the other hand, has a very strong, positive and direct effect on the quality of polls. As van Ham and Garnett find, commissions that can operate without political pressures and outside interference boost the quality of polls significantly regardless of their formal legal design. It is still possible that formal independence might have an impact on polls in some contexts by shaping informal independence, but improved electoral integrity is by no means guaranteed.

Some of the new research presented in this brief also indicates that the relationship between formal and informal electoral commission independence can be extremely complicated, and that boosting formal independence does not always reduce political interference. As Desatova and Saowanee show in the case of Thailand, formal independence might become part of the problem that perpetuates the low quality of polls in some authoritarian contexts. It can be used to insulate electoral commissions from formal politics to the extent that they become unaccountable to the wider public interest. This creates opportunities for their long-term capture by actors who wield power outside formal politics. In Thailand, an undemocratic elite comprised of the monarchy, military and senior bureaucracy used the formal independence of the commission to insulate it from public accountability. Taking control of the election commissioner selection process, it mobilised the commission to protect its power and interests from a popular political rival. In essence, this elite turned Thailand's electoral commission into a barrier to democracy.

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IMPLICATIONS FOR OBSERVERS

This research has several implications for election observers. First, any assessment of electoral commission independence needs to address both its formal and informal dimension. The tool developed by Cheeseman and Elklit can help observers to assess electoral commission independence in a systematic and nuanced way, and can be integrated into a political economy analysis of the electoral landscape. Such an approach can empower observers to understand the individual country context within which electoral commissions operate, which is vital in authoritarian contexts where the formal rules are a poor guide as to how commissions function in practice. For these cases, it is particularly important to avoid a one-sized-fits-all approach to the assessment of electoral commission independence.

Second, institutional engineering alone is not enough to improve electoral quality. Given that there is no direct correlation between formal electoral commission independence and high-quality polls, observers may wish to shift the focus of their recommendations to areas of low informal independence. This could include practical changes in the day-to-day relationship between commissions, political parties, state security forces and funders. Formal institutional reform is still worth supporting, of course, but it should be seen as one of many different factors that can impact informal independence – and one that is unlikely to work on its own.

Finally, election observers and the international community might want to reconsider whether formally independent electoral commissions are worth promoting in all contexts. This is not to say that there are no benefits to formal independence, but rather that formally independent commissions come with their own problems and challenges and do not systematically deliver better elections. As seen in Thailand, an old undemocratic elite used formal independence to insulate the commission from formal politics to protect its own power and interests and forestall the country's prospects for democracy.

CITATIONS

Nic Cheeseman and Jørgen Elklit. 2020. 'Understanding and Assessing Electoral Commission Independence: a New Framework.' *Westminster Foundation for Democracy*. https://www.wfd.org/wp-content/uploads/2021/03/WFD_A-new-framework-for-understanding-and-assessing-electoral-comission-independence.pdf.

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Carolien van Ham and Holly Ann Garnett. 2019. 'Building impartial electoral management? Institutional design and electoral integrity.' *International Political Science Review*, 40(3); 313-334. https://doi.org/10.1177/0192512119834573.

ELECTOR is the Election Observation Research Network, based at the University of Birmingham. ELECTOR aims to foster a constructive and mutually supportive relationship between civil society groups, election experts, and international and domestic observers, enabling those working at the coal face of election observation to shape the direction of new academic research. ELECTOR is funded by the Open Society European Policy Institute (OSEPI). More information about ELECTOR is available on the website: www.elector.network

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