



کمیسیون شکایات انتخاباتی
دانتخاباتو د شکایتونو کمیسیون

Electoral Complaints Commission Memorandum of Understanding



کمیسیون مستقل انتخابات
د ټیساکنو خپلواک کمیسیون

Independent Election Commission

تفاهم نامه

Protocol of Cooperation between The Independent Electoral Commission and the Electoral Complaints Commission

To realize the mutual goals of holding a transparent, free, reliable and successful Wolesi Jirga Elections on September 18, 2010, the Independent Electoral Commission (IEC) and the Electoral Complaints Commission (ECC) agree on the articles written in this protocol as the basis for cooperation and collaboration between the two organizations in order to enable both institutions to fulfill their legal duties and functional responsibilities.

Whereas:

A. The ECC has the responsibility under the Electoral Law to investigate and determine all challenges and complaints related to the election and may also initiate an investigation itself, if it believes that an electoral offence has been committed and organizes all its activities in accordance with the time line approved by the IEC.

The IEC, in accordance with the Constitution, has the duty and responsibility for administering and supervising electoral affairs.

B. If there are complaints against IEC staff or against others, the IEC will cooperate fully with the ECC in all legal cases.

Therefore the parties agree as follows:

1. The IEC and ECC shall each designate two representatives (one representative and one assistant) at their respective central and provincial levels whose responsibility will be to facilitate the exchange of information pertaining to challenges, complaints or investigations. The IEC and ECC shall also immediately designate a person in each provincial office to facilitate the exchange of information under the supervision of ranking officials through e-mails or paper basis at the provincial level.

2. The ECC shall send all requests for information that relate to a challenge, complaint or an investigation to the IEC designated person in writing, by hard copy or e-mail. Each request shall show a reference number designated by the ECC to

identify the challenge, complaint or investigation to which it relates and IEC shall quote the reference number when sending the requested information to ECC.

3. If the ECC needs any kind of information related to complaints and challenges, the IEC, in case of the request of ECC, will provide the ECC with the information required immediately; the required information may include documents pertaining to voters, candidates and election results. Requests for access to the information by the designated person from the ECC mentioned above, will be shared with the IEC in verbal or written form.
4. If the request is related to complaints against the staff of the IEC or made about investigations considered by the ECC as a deficiency of the IEC, the ECC, while asking for information, will inform the IEC of the identity of the person against whom the complaint was laid or about whom the investigation has started.
5. The ECC has the right to visit any IEC premises including the IEC headquarters in Kabul or an IEC provincial office to investigate a challenge or complaint or carry out an investigation after receiving the permission of the IEC.
6. The ECC will give the IEC prior notice of visits to IEC offices or of meeting the IEC staff. The ECC will be informed if the chairman of IEC or the Chief Electoral Officer (CEO) of IEC believes that a prior notice should not be given to the premises and individuals that ECC has planned to visit.
7. The ECC has the right to send its commissioners or staff as observers of any registration, polling, counting, tabulation or other electoral process outside the scope of a specific complaint, challenge or investigation. They will wear photo identification provided by ECC, but not intervene in the work of electoral staff. If they observe any electoral violation or infringement, they will inform the electoral staff in charge of the issue and also put the ECC central office in the picture immediately. Moreover, if they have to be accompanied by guards, they will first be registered with IEC as Special Guests under the IEC Regulation on Special Guests.
8. The IEC will provide all assistance within its power to the ECC and provide access to any documents, information, record or material in the possession of the IEC that is requested by the ECC or that IEC believes that the information and material will assist the ECC.
9. The ECC recognizes that the IEC has many duties to perform; it will organize its activities in a way in order to minimize delay and disruption of the IEC's work.

10. The IEC will retain the originals of all election documents. The ECC may inspect and make copies of, but not take possession of original election documents. On the ECC's request, the IEC will certify copies of documents supplied as true copies. Otherwise, the IEC will provide the ECC with information in the form of "Read-Only Access" electronic data or hard copies. The IEC will provide the ECC with any non-documentary materials in its possession relating to the election that the ECC needs for an investigation or as an evidence, but the ECC shall return all such materials to the IEC after completing its work.

11. The IEC will cooperate with the ECC to make available to the ECC any members of the IEC staff who are needed as witnesses of any electoral violations and infringements. If the member's presence at the IEC is very crucial at the time in the election process, the IEC and the ECC shall meet to agree on a reasonable solution.

12. The ECC will treat all information received from the IEC as confidential and will not provide such information to any irresponsible third party in any cases, but the information may be used in the process of dealing with and reporting on challenges, complaints and investigations.

13. In case of receiving a complaint, the IEC will pass it on to the ECC immediately.

14. If the IEC becomes aware of evidence that an electoral offence has been committed, the IEC will inform the ECC and submit the information to the ECC with all relevant evidence that the IEC has.

15. Before making public an order or decision relating to a complaint against the IEC or its staff, the ECC shall inform the IEC of the decision. The ECC will provide details of the investigation upon request by the IEC, subject to any necessary confidentiality requirements.

16. IEC will also be carrying out audit investigations that are not based on complaints. In accordance with article 15 of the IEC Regulation on Counting, the IEC may make one of the following decisions:

- A. The results of a polling station shall not be included in the final results;
- B. In case of complaint or existence of some signs pertaining to the ballot boxes proving election fraud, the said ballot boxes shall be quarantined; or
- C. Votes cast in a polling station shall be recounted by the IEC; or
- D. The election at an electoral constituency shall be re-held by the IEC.

The IEC will inform the ECC shortly after taking such a decision. The ECC may send representatives to witness any counting or/and re-election processes.

17. In order to ensure the cooperation process between the two commissions, if any training workshops related to the activities of both commissions or any security meetings are held, both of them should try to the best of their extents to inform each other so as to enable each other to send one or several of their staff members for participation purposes.

18. If any unexpected circumstances arise, both commissions will meet to resolve the issues.

19. In order to adjudicate on media complaints in a better way:

- A. In the event that the ECC finds that the solution of the issue is not under its authority and considering the nature of the case, adjudicating on the issue is the authority of the Media Commission of IEC, the issue shall be officially handed over to the MC of IEC by the ECC.
- B. In the event that the MC of IEC finds that the solution of an issue is not under its authority, but is under the authority of the ECC, the issue shall be officially referred to the ECC by the MC of IEC.
- C. Providing that the solution of an issue of a complaint is under the authorities of both commissions, both of them in understanding and cooperation and in conformity with the Electoral Law and the related procedures shall adjudicate on the issue within their authorities.
- D. In the event that a press release or decision relates to the work of both parties, they will put each other in the picture.

20. In the event of any differences with respect to the interpretation of the contents of this MoU, the two commissions will meet and make a decision and come to an agreement in conformity with the Law.