
**Law on the Structure, Duties and Authorities of the Independent Election
Commission and the Independent Electoral Complaints Commission**

Chapter One

General Provisions

Basis

Article 1:

This law has been enacted pursuant to the provisions of Articles 156 and 33 of the Constitution of Afghanistan to regulate affairs related to the structure, duties, authorities and manner of operation of the Independent Election Commission and the Independent Electoral Complaints Commission.

Goals

Article 2:

The Independent Election Commission and the Independent Electoral Complaints Commission shall work for the realization of the following goals:

- 1-Administering and supervising all types of elections and referral to public opinion in the country.
- 2-Addressing any objections and complaints arising from the electoral violations and frauds

Establishment

Article 3:

(1) The Independent Election Commission and the Independent Electoral Complaints Commission are established and work within the framework of the Islamic Republic of Afghanistan.

(2) The Independent Election Commission and the Independent Electoral Complaints Commission shall adhere to the provisions of the Constitution, Election Law, this law and all other laws enforced in the country.

Abbreviated form and Term

Article 4:

1-The Independent Election Commission shall hereinafter be referred to as the Commission in this law.

2-The Independent Electoral Complaints Commission shall hereinafter be referred to as the Complaints Commission in this law.

3- The Selection Committee is the organ that, prior to the appointment stage of members of the Commission and the Complaints Commission, vets the competency of eligible persons and proposes them to the president for appointment.

Chapter Two

Structure and Manner of Operation of the Commission

Structure of the Commission

Article 5:

(1)The Commission shall have the following structure:

1- Central Office

2-Secretariat

3- Provincial Offices

(2) The Commission shall have a chairperson, a deputy chairperson, and a secretary who are elected, in accordance with a procedure that shall be prepared by the Commission, from amongst its members for two three-year terms through a free, secret and direct vote.

(3)The scope of work and authorities of the chairperson, deputy chairperson and secretary shall be determined by a regulation on internal duties which is approved by members of the Commission.

Obligations of Members of the Commission and Chief Electoral Officer (CEO)

Article 6:

(1)The chairperson, deputy chairperson, secretary, members of the Commission and Chief Electoral Officer shall not have, during incumbency, the right to participate in political and military activities and engage in governmental and non-governmental jobs.

Engagement in instructional affairs in educational institutions, that does not hinder the performance of the duties, shall be an exception.

(2)The chairperson, deputy chairperson, secretary, members of the Commission and Chief Electoral Officer shall perform their duties impartially and responsibly in accordance with the provisions of the Constitution of Afghanistan, this law and all other legislative documents.

Requirements for Membership of the Commission

Article 7:

A person who meets the following requirements can be appointed as member of the Commission:

- 1- Shall have citizenship of Afghanistan only.
- 2- Shall have completed higher education
- 3- Shall have competence, good reputation and at least five years' work experience with a Bachelor's degree and three years with a degree higher than that.
- 4- Shall have completed 30 years of age.
- 5- Shall not have been convicted of crimes against humanity and felony
- 6- Shall not be a member of a political party during incumbency.

Members' Appointment Mechanism

Article 8:

- (1) The eligible persons mentioned in Article 7 of this law may nominate themselves for membership of the Commission and submit their curriculum vitae to the Selection Committee.
- (2) The Selection Committee shall consensually introduce from amongst these nominated persons, twenty seven persons meeting the highest and most appropriate legal standards to the President with due consideration to ensuring national participation and gender balance.
- (3) In instances of disagreement, the majority of votes shall prevail.
- (4) Out of the twenty seven candidates introduced, the President shall appoint nine, including at least two women, as members of the Commission for a period of six years.
- (5) The Selection Committee shall be comprised of Speaker of Wolesi Jirga, Speaker of Meshrano Jirga, Chief Justice, Chairperson of the Independent Commission for Oversight of the Implementation of the Constitution, Chairperson of the Afghan Independent Human Rights Commission and one person from the civil society organization related to elections.
- (6) The chairperson for holding meetings of the Selection Committee shall be elected by its members.

Oath Taking

Article 9:

Before occupying their position, members of the Commission shall take the following oath, in the presence of the President and Speakers of both Houses of the National Assembly, administered by the Chief Justice:

“I swear to Allah the Great to perform, as member of the Independent Election Commission, all assigned duties honestly, with integrity, independently, fully impartially and neutrally in accordance with the provisions of the Constitution of Afghanistan and other laws.

Cases of Loss of Membership of the Commission

Article 10

(1) A member of the Commission shall lose his/her membership in the following circumstances:

- 1- Conviction of committing felony.
- 2- Deprivation of civil rights on the order of a competent court.
- 3- Proven membership in political parties during incumbency.
- 4- Continuous absence for more than twenty days without justifiable legal reasons.
- 5- Suffering incurable or long-lasting disease which impedes the execution of duties.
- 6- Disregarding the Article 13 of this law.

(2) Any member of the Commission may tender their written resignation to the President.

(3) In case of death or cases of loss of membership of one or more members, the President shall appoint one or more new members within a period of one month from amongst the remaining nominees stipulated in paragraph (2) of Article (8) of this law with due consideration for national participation and gender balance in accordance with provisions of this law.

(4) In case the chairperson, deputy chairperson and secretary of the Commission lose their membership, new elections shall be conducted, in accordance with paragraph (2) of Article 5 of this law, amongst members of the Commission for the remaining service term.

Immunity from Prosecution

Article 11:

Members of the Commission shall not be arrested, detained or prosecuted without the warrant of a competent court; cases of evident crime shall be an exception.

Meetings of the Commission

Article 12:

(1) Meetings of the Commission may be held at the decision of the Chairperson or upon the request of one third of the members.

(2) The quorum for meetings shall be presence of two-thirds of the members and decisions shall be taken by a majority of the members present in the meeting; in case of equal vote, the view of the side to which the Chairperson of the Commission votes shall be preponderant.

(3) The sessions of the Commission shall be held openly in instances, such as review of the documents and competence of candidates, investigation of justifiable complaints regarding fraud in ballot boxes, vote counting and certification and announcement of the results. Representatives of political parties, civil society, mass media and national and international monitors and observers can attend these sessions.

Decisions and Resolutions of the Commission

Article 13:

When taking decisions, members of the Commission shall take into account the country high interests, provisions of the Constitution of Afghanistan, the Election Law, this law and other effective laws and avoid all types of discriminations and prejudice on the basis of race, ethnicity, region, party, language and religion.

Chapter Three

Duties and Authorities of the Commission

Duties and Authorities

Article 14:

(1) The Commission shall have the following duties and authorities:

1. Approval of executive regulations for implementation of the Election Law.
2. Suggesting amendments to this law and the Election Law to the government.

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3. Approving administrative, budgetary, managerial and operational plans for elections.
 4. Monitoring the work of the Secretariat of the Commission and provincial offices of the Commission.
 5. Monitoring the conduct of training programs for electoral staff.
 6. Monitoring the processes of voter registration, preparing and updating of the voters list.
 7. Certifying the list of registered candidates in the relevant elections and the final list of voters.
 8. Planning civic education and public outreach campaigns at the national level.
 9. Approval of regulations on the use of mass media and ensuring fair access of political parties, candidates and civil society to state-owned mass media during the electoral campaign.
 10. Establishing relations and maintaining cooperation with political parties, independent candidates and civil society organizations related to elections and media.
 11. Identifying and approving voter registration centers, polling and counting stations.
 12. Issuing accreditation letter to presidential, Vice-presidential, the national assembly, Provincial Council, District Council, Village Council, Municipality Councils' and mayoral candidates..
 13. Issuing accreditation letter to national and international observers and monitors, representatives of political parties, independent candidates, and civil society organizations involved in elections and mass media.
 14. Official announcement of the preliminary and final results of elections.
 15. Approval of the electoral calendar.
 16. Executing other duties and authorities mentioned in the election law.
 17. Determining schedule for conducting by-elections.

(2) The Commission shall establish the media commission in accordance with provisions of the law.

(3) The Commission cannot amend policies, procedures and regulations related to electoral process during the electoral operations.

(4) The Commission shall prepare and devise its budget in consultation with the government, and is independent in its spending.

(5) The announcement of final results of elections that takes place based on the decision of the Complaints Commission shall be unchangeable.

Duties and Authorities of the Chairperson of the Commission

Article 15:

(1) Chairperson of the Commission shall have the following duties and authorities:

- 1- Chairing meetings of the Commission.
- 2- Overall lead of activities of the Commission.
- 3- Supervising implementation of the budget of the Commission.
- 4- Supervising and assessing activities of the secretariat of the Commission.
- 5- Representing the Commission in relevant national and international organizations.
- 6- Issuing orders and instructions in regard to implementation of the goals and provisions of this law.

(2) In the absence of Chairperson of the Commission, his/her duties and authorities shall be exercised by the deputy.

Secretariat

Article 16:

(1) The Commission, for carrying out administrative and executive affairs, shall have a secretariat presided by ahead..

(2) Chief Electoral Officer (CEO) shall be proposed with the consent of majority of members of the Commission and is appointed after the approval of the President of the Islamic Republic of Afghanistan. Other officials and employees of the Secretariat shall be recruited in accordance with provisions of the Civil Servants Law.

(3) The Secretariat shall perform its duties in accordance with provisions of law, and the procedures approved by the Commission.

Recruitment of Employees

Article 17:

(1) The temporary electoral employees in HQ, provinces and districts shall be recruited by the secretariat in accordance with the procedure enacted by the Commission.

(2) The Secretariat shall dismiss those temporary electoral employees, who violate the Election Law, this law and other relevant effective laws and shall refer them to the judicial organs.

Observing the Code of Conduct

Article 18:

The permanent and temporary employees of elections shall carry out their assigned duties in compliance with provisions of the code of conduct of civil servants.

Recruitment Barriers

Article 19:

(1) Recruitment of officials of political parties and electoral candidates as permanent and temporary employees shall not be allowed.

(2) The permanent or temporary employees of elections may not nominate themselves during incumbency.

(3) Father, grandfather, offspring, mother, brother, sister, husband and wife of candidates shall not have the right to work as electoral employees in the relevant constituency in an executive capacity that is determined by the Commission.

(4) Heads of the provincial offices/Provincial Electoral Officers of the Commission cannot be appointed from the relevant provinces.

Chapter Four

Structure, Duties and Authorities of the Complaints Commission

Establishment

Article 20:

1- The Central Complaints Commission and Provincial Complaints Commissions shall be established to address the objections and complaints arising from violations and infringements related to electoral affairs.

2- The Complaints Commission shall establish and make functional its provincial commissions in each province at the time of conduct of elections.

3- The Complaints Commission shall prepare and devise its budget in consultation with the government and shall be independent in its spending.

4- The chairperson, deputy chairperson and secretary of the Central Complaints Commission and the Provincial Complaints Commissions shall be elected by members of the commissions.

Membership Requirements:

Article 21:

The person who meets the following criteria can be appointed as member of the Complaints Commission:

1- Shall have citizenship of Afghanistan only.

2- Shall hold a Bachelor's degree.

3-Shall have competency, good reputation and five years' work experience with of Bachelor's degree and three years with degree higher than that.

4-Shall have completed 30 years of age.

5-Shall not have been convicted of crimes against humanity or felony.

6-Shall not be a member of a political party during incumbency.

Appointment Mechanism for Members of the Complaints Commission Article 22:

(1) The eligible persons as mentioned in Article 21 of this law may nominate themselves for the membership of the Central Complaints Commission and may submit their curriculum vitae to the Selection Committee.

(2) The Selection Committee shall introduce from amongst the eligible candidates mentioned in Article 21 of this law, fifteen persons meeting the highest and most appropriate legal standards to the President with due consideration to ensuring national participation and gender balance.

(3) In instances of disagreement, majority of votes shall prevail.

(4) Out of the fifteen candidates introduced by the Selection Committee, the President shall appoint five, including at least one eligible female, as members of the Complaints Commission for a period of six years.

(5) A Complaints Commission composed of three members shall be established in each province.

(6) Members of Provincial Complaints Commissions shall be appointed based on the recommendation of the Central Complaints Commission and approval of the President.

Immunity from Prosecution

Article 23:

Members of the Complaints Commission shall not be arrested, detained or prosecuted without the warrant of a competent court.

Cases of evident crimes shall be an exception.

Meetings of the Complaints Commission

Article 24:

(1) Meetings of the Complaints Commission may be held at the discretion of the chairperson or upon request of one third of the members.

(2) The quorum for holding meetings of the Complaints Commission shall be the presence of two-thirds of the members and decisions shall be taken by a majority of the members present in the meeting; In case of equal votes, the view of the side to which the chairperson of the Complaints Commission votes shall be preponderant.

(3) Meetings of the Complaints Commission shall be held openly in instances, such as adjudication of electoral complaints and violations. Representatives of political parties, civil society, mass media and national and international monitors and observers can attend these sessions.

Decisions and Resolutions of the Complaints Commission

Article 25:

When taking decisions, members of the Complaints Commission shall be obliged to take into account the provisions of the Constitution of Afghanistan, the Election Law, this law and other effective laws and avoid all types of discriminations and prejudices on the basis of race, ethnicity, region, party, language and religion.

Authorities of the Complaints Commission

Article 26:

The Complaints Commission shall have the authority of adjudication and taking decisions in the following instances:

- 1- Complaints related to electoral violations and infringements including the instances of violation of law in the execution of the electoral process.
- 2- Instances of objections concerning the list of candidates and requirements and qualifications of the candidates which are posed during the election process.
- 3- Taking disciplinary action and imposing cash fines in accordance with the provisions of the Election Law.
- 4- The Complaints Commission shall prepare the procedure and manner of adjudication on complaints and act accordingly.
- 5- Suggesting to the government, amendment to the Election Law and this Law.
- 6- Adjudication on the complaints arising from the electoral violations provided that the complaint has reached prior to the certification of the results of elections.
- 7- The Central Complaints Commission shall review once again the decision of the Provincial Complaints Commissions in case of dissatisfaction of the complainant or at its own discretion.
- 8- The Provincial Complaints Commissions shall be the primary authority of adjudicating on the electoral complaints. In exceptional cases, the Central Complaints Commission may be the primary authority of pondering the electoral complaints.
- 9- Issuance of warning or instruction to a violating person or organization to take remedial action.
- 10- Taking decision on re-polling or re-counting of votes prior to the certification and announcement of the results.
- 11- The Central Complaints Commission may, in case of presence of evidences of committing a crime, refer the violator to the Attorney's Office for judicial prosecution.
- 12- Decision made by the Central Complaints Commission shall be ultimate and unchangeable.

Oath Taking:

Article 27:

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- 1- Members of the Central Complaints Commission, before assuming their positions, shall take the following oath administered by the Chief Justice, in the presence of the President and chairpersons of the both Houses of the National Assembly:
“I swear in Allah the Great to perform, as member of the Central Electoral Complaints Commission, all assigned duties with integrity, honestly, independently, fully impartially, neutrally and in accordance with the provisions of the Constitution of Afghanistan, Election Law, this law and other laws enforced in the country”.
 - 2- The Chairpersons of the Provincial Complaints Commissions shall take the above oath, in the presence of the Chairperson of the Central Complaints Commission.

Cases of Loss of Membership of the Complaints Commission

Article 28:

(1) A member of the Complaints Commission shall lose his/her membership in the following circumstances:

- 1- Conviction of committing a felony.
- 2- Deprivation of civil rights by the order of a competent court.
- 3- Proven membership in a political party during incumbency.
- 4- Continuous absence for more than twenty days without justifiable legal reasons.
- 5- Suffering incurable or long-lasting disease which impedes performance of duties.
- 6- Disregarding Article 25 of this law.

(2) Any member of the Central Electoral Complaints Commission may directly and any member of the Provincial Complaints Commissions may through the Central Complaints Commission tender their written resignation to the President.

(3) In case of death or cases of loss of membership of one or more members, the President shall appoint one or more new members within one month from amongst the remaining nominees stipulated in

paragraph (2) of Article (22) of this law with due consideration for national participation and gender balance.

(4) If chairperson, deputy chairperson or secretary of the Complaints Commission loses their membership, new elections shall be conducted amongst the members of the Complaints Commission for the remaining tenure.

The Secretariat of the Complaints Commission

Article 29:

(1) The Complaints Commission, for carrying out administrative and executive affairs, shall have a secretariat presided by head of the secretariat.

(2) Head of the secretariat shall be proposed with the consent of the majority of members of the Central Complaints Commission and appointed after the approval of the President of Islamic Republic of Afghanistan.

(3) The secretariat shall perform its duties in accordance with the procedure approved by the Complaints Commission.

Recruitment of Employees

Article 30:

(1) Civil servants and permanent employees of the secretariat of the Complaints Commissions shall be recruited in accordance with the civil servants law.

(2) The temporary employees of the Complaints Commission in HQ and provinces shall be recruited by the secretariat in accordance with the procedure enacted by the Central Complaints Commission.

(3) The Secretariat may dismiss, in accordance with the provisions of the Election Law, those temporary employees of the Complaints Commissions who violate the Election Law and shall refer them to the judicial organs.

Respecting the Code of Conduct

Article 31:

The permanent and temporary employees of elections must carry out their assigned duties in compliance with the provisions of the code of conduct of civil servants.

Recruitment Barriers

Article 32:

(1) Recruitment of officials of political parties and election candidates as permanent and temporary employees of the Complaints Commissions shall not be allowed.

(2) The incumbent permanent and temporary employees of the Complaint Commissions may not nominate themselves for elections.

(3) Father, grandfather, offspring, mother, brother, sister, husband and wife of candidates shall not have the right to work as employees of the Complaint Commissions in the relevant constituency in an executive capacity that is determined by the Central Complaints Commission.

(4) Heads of provincial offices of the Complaints Commission may not be appointed from the relevant provinces.

Chapter Five

Miscellaneous Provisions

Security Protection

Article 33:

The Ministry of Interior Affairs and other relevant security agencies shall take necessary measures to safeguard and protect members of the Commission, the Complaints Commission and their related offices.

Publication, Logo and Stamp

Article 34:

The Commission and the Central Complaints Commission shall have specific publication, symbol and stamp.

Date of Entry Into Force

Article 35:

This law shall enter into enforce from the date of signing and shall be published in the Official Gazette. With entry into force of this law the Decree No. 39 dated 6/5/1382 of the President of Transitional Islamic State of Afghanistan on the establishment of temporary commission for electoral management; Decree No. 40 dated 6/5/1382 of the President of Transitional Islamic State of Afghanistan on establishment of the Joint Election Management Body published in Official Gazette No. 811 of the year 1382; Decree No. 110, dated 29/11/1382 of the president of the Transitional Islamic State of Afghanistan on the fundamentals of the conduct of elections during the Transitional period of Islamic State of Afghanistan published in Official Gazette No. 819 of the year 1382; decree No. 24 of the President of Islamic Republic of Afghanistan dated 17/3/1384 on conducting the national assembly, provincial council and district council elections published in the Official Gazette No. 853 of the year 1384; and the decree No. 110 dated 27/9/1384 of the President of Islamic Republic of Afghanistan on the end of the authority of the Joint Election Management Body published in the Official Gazette No. 874 of the year 1384 and other provisions contradicting this law shall be nullified.