

**ELECTORAL COMPLAINTS COMMISSION
OF AFGHANISTAN**



FINAL REPORT

March 2006

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Foreword

The 2005 *wolesi jirga*, provincial council and *meshrano jirga* elections are now part of Afghan history. When the Electoral Law was revised in the spring of 2005, thereby creating, among other things, the Electoral Complaints Commission (ECC), it was unclear whether the voting public and candidates would avail themselves of this new mechanism. Recommendations for an independent complaints body had been put forward by several organizations following the 2004 Presidential election, but the numbers of complaints during that election were relatively low. As this final report is being written, the verdict would have to be that Afghans from across the country looked to the ECC to resolve not just what they perceived to be as problems with the electoral process but also with other elements of the governance structure that is being rebuilt after decades of civil war and conflict.

Following its formal constitution in May 2005, the ECC adjudicated almost 7,000 cases through the challenge and complaints processes. Quite simply this is a truly impressive number and one that completely taxed the resources of the ECC and the Provincial Election Commissions (PECs) - who were the first line of adjudication in the complaints process. Around 200 people were part of the ECC organization, over 60 at the headquarters in Kabul and another 136 around the country (each of the 34 provinces had a PEC consisting of 3 commissioners and one secretary), a number far larger than what was conceived at the beginning of this process. Over 75% of the ECC staff consisted of Afghan nationals and it is this fact that offers enormous potential for the future strengthening of the democratic process in this country.

The question often asked is: did we meet public expectations? Beginning with the candidate challenge period the ECC was pressured to bar those candidates who were alleged to have committed human rights violations or criminal activities. While the ECC was not insensitive to the arguments being put forward on this issue, in the end the Commission felt that applying the Electoral Law and the Constitution was the only correct course of action, however unhappy that may have made particular groups or individuals. It was this interpretation of the law that guided the actions of the Commission throughout its mandate.

This report offers a look back at the process and highlights some of the lessons learned. It is by no means a definitive analysis but simply our views, as a Commission, about the challenges we faced and the recommendations we feel are germane for the future ECC.

Finally, but most importantly, recognition needs to be given to the ECC staff and the PEC officials around the country. The Commission would not have been able to complete our arduous task had it not been for the hard work, tireless dedication and sense of commitment to the process that everyone displayed. The work of the ECC and PECs never stopped and was manifested by a relentless push to investigate and adjudicate each and every complaint that was sent to us. The Commission owes a great deal of gratitude to the staff for all their efforts and to the Afghan people for placing their trust in the ECC.



Grant Kippen
Chair

Electoral Complaints Commission

Executive summary

1. The Electoral Complaints Commission (ECC) was formed in May 2005 following the adoption of amendments to the Electoral Law. The ECC was mandated to adjudicate electoral offences, complaints and challenges, and to render final decisions in such cases.

2. The ECC was composed of five commissioners: three international members appointed by the Special Representative of the Secretary General for Afghanistan, one commissioner appointed by the Afghan Independent Human Rights Commission and one commissioner appointed by the Supreme Court of Afghanistan. The Commission was supported by a small group of international and national staff working, among other things, as legal officers, investigators and translators. In addition, the complaints management process relied heavily on the support of the 34 Provincial Electoral Commissions (PEC), appointed by the Joint Electoral Management Body (JEMB). The ECC was funded from the electoral budget allocated to the JEMB and its Secretariat. It also received support in the form of electoral expertise from IFES and the Asia Foundation.

3. The work of the ECC involved two overlapping processes: the challenge process, which involved adjudicating more than 1,100 challenges filed against the eligibility of 557 candidates, and the complaints process, in which the ECC handled more than 5,400 complaints alleging violations of the Electoral Law.

4. The majority of challenges to candidates' eligibility related to past criminal activity, links to armed groups, and alleged failure to resign from public office. Complaints in the period leading up to polling showed a variety of allegations, including intimidation of candidates and voters by other candidates and their supporters, especially by security personnel and district governors, and the use of government resources. During polling and counting, allegations included ballot stuffing, proxy voting, vote buying and bribery, fraud and bias by election officials, and discrepancies in the tallying of results.

5. The ECC faced a number of challenges in the implementation of its mandate, including a short period to conceptualize and plan its work, and limited resources. The ECC also had to deal with a high public expectation that the ECC would fulfill the role of a criminal or transitional justice body. The fact that the judicial system in Afghanistan had not effectively operated for many years prior to the elections – and the resulting absence or loss of documentation – meant that cases did not meet the provision of the Electoral Law stipulating that a candidate can only be disqualified for past crimes on the basis of proof of a conviction.

6. A significant amount of the challenges and complaints did not meet the formal requirements for adjudication, and more often than not lacked specific descriptions of the alleged offence, supporting evidence, or contact details of the complainant.

7. The ECC was limited in its ability to undertake its own investigations (due mainly to either resources or security) and relied considerably on the PECs and on the JEMB for information. The cooperation with these bodies was generally considered to be very good, although there were areas for improvement.

8. Notwithstanding the shortcomings, the complaints mechanism established under the Electoral Law, and the manner in which the ECC was able to implement its mandate with the

support of national and international entities, contributed positively to the credibility of the 2005 elections. In particular, the exclusion of individuals from the elections for maintaining links to armed groups was a significant and unprecedented step in the application of the rule of law in political processes in Afghanistan.

9. For a future electoral complaints mechanism, the ECC makes the following recommendations:

1. Future elections should include the establishment of an independent complaints mechanism, building on the experiences of the 2005 elections. The planning and preparation for such a mechanism should be undertaken well in advance of an election, including by means of a thorough lessons learned analysis.

2. A future electoral complaints body should have the necessary resources and authority to investigate all complaints on its own, including at the provincial level, and independently of the electoral administration. Such an entity should be administratively autonomous and have independent and direct access to its resources.

3. A future electoral complaints mechanism should include the establishment of a provincial presence. Such provincial entities should report exclusively to the central body entrusted with the adjudication of complaints, and should receive thorough training and support from the central office. Consideration should be given to including an international member in provincial bodies or to regional support coordinators.

4. Future electoral complaints mechanisms should dedicate considerable resources to public information and education regarding the role of a complaints body and the formal requirements for submitting complaints, including the need to submit details of allegations and supporting evidence

1. The functioning of the ECC

Establishment of the ECC

1. The ECC was conceived on the basis of recommendations made by the Afghan Independent Human Rights Commission (AIHRC), the European Union Observer Mission, and the Free and Fair Elections Foundation of Afghanistan (FEFA), following the October 2004 Presidential elections. These recommendations were based on the observation that the credibility of an electoral system depends on a solid process for resolving election-related complaints, and that a quick and impartial resolution of claims of misconduct promotes transparency and increases public confidence.

2. The ECC was formally established following amendments to the Electoral Law adopted by Presidential decree in May 2005. In the same month, and in accordance with the amended Electoral Law, the Special Representative of the Secretary-General for Afghanistan (SRSG) appointed three international commissioners, and each of two national Commissioners was appointed by the AIHRC and the Supreme Court of Afghanistan, respectively. The Commissioners were:

Mr. Grant Kippen, Chair	(appointed by the SRSG)
Mr. Mohammad Farid Hamidi	(appointed by AIHRC)
Ms. Hadija Miiro	(appointed by the SRSG)
Mr. Sayed Omar Munib	(appointed by the Supreme Court)
Ms. Janie Sitton	(appointed by the SRSG)

3. On 27 September 2005, the SRSG appointed Maarten Halff to replace Commissioner Janie Sitton upon her departure from the ECC.

4. The ECC was initially located at the JEMB compound in Kabul and subsequently moved to new premises, giving it a physical separation from the JEMB to support its operational independence.

Mandate of the ECC

5. Pursuant to the Electoral Law of Afghanistan, the ECC was mandated to consider and adjudicate:

- i. Complaints relating to electoral offences, including violations of the law in the conduct of the electoral process, provided the complaint has been received prior to the certification of the results of the election. (Article 52(3a)). The electoral offences were exhaustively defined by the Article 53 of the Electoral Law. Failure to comply with an order or decision of the ECC was also defined as an electoral offence.
- ii. Challenges to the list of candidates or to the eligibility or qualifications of a candidate raised during the electoral process. (Article 52(3b))
- iii. Matters otherwise within its jurisdiction on its own initiative and in the absence of a formal complaint or challenge. (Article 52(5)).

6. Article 52(8) of the Electoral Law specifies that “in order to deal with complaints at the provincial level, the ECC may delegate its authority to commissions at provincial level” and that these provincial commissions “shall consider complaints within their jurisdiction and in accordance with the procedures established by the ECC.” The Electoral Law further stipulated that the decisions of the ECC were final.

The Provincial Election Commissions

7. A Provincial Election Commission (PEC) was established by the JEMB in each of the 34 provinces and operated within the JEMB compounds. The PECs were originally envisaged as a field presence of the JEMB. Each PEC consisted of three national Commissioners, one of which was required to be a woman. The appointments were made by the JEMB based on recommendations from its Secretariat, UNAMA, the provincial Governor and the AIHRC. The three Commissioners were remunerated on a part-time basis, and were supported by a full-time secretary. The PECs were located within the Provincial Election Office, which were operated and supported by the JEMB.

8. Acting in accordance with the Electoral Law, the ECC delegated significant authority to the PEC’s in July 2005 when it adopted its rules of procedure. This delegation involved the authority to receive and consider complaints, with certain limitations on the sanctions the PEC’s were able to impose. As a result, the role of the PECs became almost fully dedicated to the handling of complaints.

The Secretariat of the ECC

9. The Commission was assisted in its duties by a Secretariat consisting of legal officers, investigators, language assistants and other staff. The Senior Legal Adviser to the ECC was Karen Gainer and the Secretariat was led by Sean Galton.

10. The structure of the ECC went through a series of changes as the workload increased and more resources were made available. The core organizational structure, reflected in figure 1 below, involved the establishment of four teams, each team being responsible for a number of provinces. Each team had a legal officer, an investigations officer and a complaints officer. The ECC also employed the services of a team of up to eight translators and interpreters.

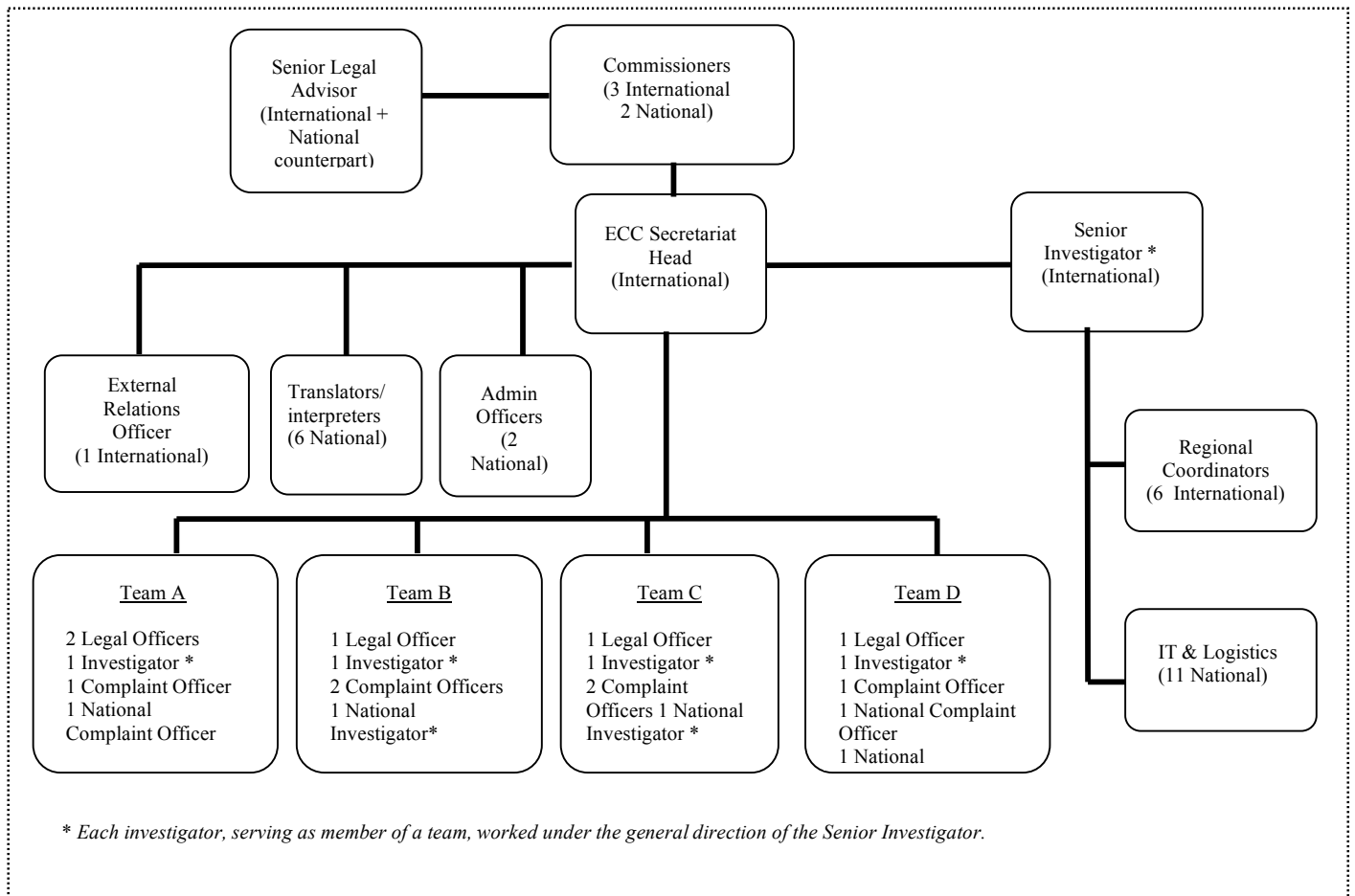


Figure 1: ECC organizational structure

11. The ECC Secretariat performed a critical function in supporting the ECC in administering a complex complaints mechanism in three languages. All aspects of this process – consideration, investigation, adjudication – required the highest degree of legal and factual accuracy. The Secretariat was often placed under very intense pressure to produce results at short notice, and was frequently faced with competing priorities, particularly following polling day.

Guiding principles and working methods

12. The work of the ECC was guided by three basic principles. The principle of impartiality meant that the ECC was committed to treating everyone - regardless of their race, age, sex or religion - equally and fairly, in accordance with the Constitution of Afghanistan. Pursuant to the principle of confidentiality, the ECC kept the details of complaints confidential. Names and identifying features of complainants were not reflected in ECC decisions. The principle of transparency meant that the ECC endeavoured to ensure that all its activities were easily understood and accessible to the public.

13. Complaints had to be submitted in written form, and had to contain, as a minimum requirement, a detailed description of the alleged violation as well as evidence in support of that allegation, or an indication where such evidence could be obtained. Any person who had an interest in the electoral process was in a position to file an election complaint. This included any registered voter, candidate, candidate agent, electoral officer, observer, or party official.

14. The following general workflow for challenges and complaints was put in place. (The manner in which this workflow was applied specifically to the challenge and complaints activities of the ECC is discussed in the next chapter). All challenges and complaints were received from the PECs by the complaints officers, who would ensure that all relevant forms had been included, and forward the case for registration in the ECC database by the database officer. After a challenge or complaint had been translated from Dari or Pashto into English it was passed to the legal and investigation officers. Under the guidance of a legal officer, an investigator would undertake efforts to obtain further information or evidence. After an analysis of all information gathered, the responsible legal officer would prepare a proposed written decision for presentation to the Commission. Where necessary, adjustments were made by the legal officer to the written decision to reflect the considerations of the Commission and submitted for translation. The final written decision, in English and Dari, would thereupon be signed by the Chair of the Commission. The complete file was returned to the complaints officer for entry into the database, notification to the complainant and the respondent (through the respective PEC), and for filing and archiving.

15. Placing phone calls to complainants, respondents and witnesses, or speaking to them in person where possible, was the main method of investigation. If necessary, the investigators would send instructions to the PEC staff to provide certain information or ask questions of the complainant or respondent. This approach was satisfactory except when a complaint had been forwarded by a PEC to the ECC due to security and personal safety issues.

16. As reflected in its rules of procedure, the ECC applied a standard of “clear and convincing evidence” in adjudicating cases. The ECC was frequently confronted with situations in which little or no evidence was provided to support the complaint, and in which the respondent denied the allegations. In such cases, and unless a credibility assessment of the respondent would require otherwise, the ECC would apply the burden of proof in favour of the respondent and dismiss the case. Similar guidance – that is, to rule in favour of the respondent in the absence of clear and convincing evidence – was given to the PECs.

Relationship to other organizations

UNAMA and AIHRC

17. In July 2005, the ECC concluded a memorandum of understanding with UNAMA and the AIHRC on information sharing with respect to complaints. This memorandum also provided the PECs with the ability to draw upon the experience of AIHRC and UNAMA officials from around the country when investigating complaints. UNAMA further assisted with the publication of ECC decisions in the last phases of the elections process, when most PECs and provincial offices of the JEMB were no longer fully operational and able to disseminate such decisions. Moreover, UNAMA provided additional legal resources to the ECC to assist in the preparation and presentation of cases for adjudication.

JEMB

18. As noted above, while the PECs were originally established as a JEMB field presence, they were soon thereafter made available to the ECC. Eventually the PECs functioned virtually exclusively as an extension of the ECC in the field. The JEMB provided resources and office accommodation to the PECs.

19. Due to its very limited investigative resources, the ECC depended in a large majority of the cases on information available from the JEMB. With only minimal representation in each province, the ECC was not in a position to obtain information independently to corroborate or refute allegations without recourse to the JEMB. Moreover, the ECC did not have direct access to individual JEMB officials which were the subject of a complaint, as the JEMB had decided that allegations against its staff had to be channeled through a central JEMB office. In general, the cooperation and exchange of information was very good. In a small number of cases, which included complaints against JEMB staff, the level of cooperation did not meet ECC expectations.

Other entities

20. The Supreme Court, the Attorney General's Office and the Ministry of Interior provided background checks on criminal convictions as requested by the ECC. A number of cases adjudicated by the ECC were also referred to the national authorities for further investigation and appropriate action. Moreover, the Ministry of Interior, through the provincial Governors, assisted the ECC in the distribution and serving of notifications and decisions. During the challenge and complaints processes, the Joint Secretariat of the Disarmament and Reintegration Commission (JSDRC) provided advice and recommendations to the ECC on whether candidates maintained links to illegal armed groups.

21. In all dealings with the Afghanistan government – with all its ministries and agencies, and at all levels – the ECC received unqualified support and assistance.

22. Two international organizations that directly supported the ECC through the provision of electoral expertise were the International Foundation for Electoral Systems (IFES) and The Asia Foundation (TAF).

2. Activities of the ECC

The challenge process

23. The purpose of the challenge process was to allow objections to be lodged against the eligibility of those persons who had nominated themselves as candidates. In addition to incorporating the citizenship and age requirements set forth in the Constitution as a condition for eligibility, the Electoral Law barred from running for office those persons who held certain government positions, and those who practically commanded, or were members of, unofficial military forces or armed groups. The Commission received a total of 1,144 challenges against 557 candidates (see Annex 1). In addition to handling these challenges, the ECC, on its own initiative, conducted a review of all candidates to determine whether they maintained links to armed groups within the meaning of the Electoral Law.

24. The challenge period was divided into various stages and commenced following the acceptance of nominations. In the period from June 4 to 9, objections to a candidate's nomination could be lodged with the ECC, which, following the ECC's consideration, resulted in the publication of a list of provisionally excluded candidates on 1 July. These candidates were given an opportunity to respond to their provisional exclusion in the period from 2 to 7 July. Candidates who had been challenged on the basis of alleged links to illegal armed groups were given an opportunity to submit weapons in order to meet the criteria of the disarmament processes. Following the further consideration by the ECC of these cases, the final list of excluded candidates

was decided on 12 July, and thereupon published by the JEMB. This list did not include candidates which, in the view of the ECC, had not met the qualification requirements under the Electoral Law. The publication of the list of final candidates marked the end of the challenge process.

25. The majority of the challenges related to candidates having alleged links to armed groups or past criminal activity. The remaining challenges related to issues such as holding a governmental position identified by the Electoral Law as being incompatible with running for office (challenges relating to female candidates were mostly of this nature), being under-age or not being an Afghan citizen. Some challenges related to the character of the candidate, which did not constitute a reason for exclusion under the Electoral Law. A number of women was also challenged for crimes allegedly committed by their husbands or other male members of their families.

26. The application of the provision which allowed the disqualification of candidates convicted of crimes was hampered by the absence of judicial records. Even if in some instances the allegations received by the ECC included evidence that a crime had been committed in the past, the Commission had to dismiss virtually all such challenges or complaints for lack of documentation demonstrating that the respondent had been convicted of a crime.

27. The ECC lacked the expertise and the resources to independently investigate challenges and complaints alleging links to armed groups, and therefore had to rely exclusively on advice from the Joint Secretariat of the Disarmament and Reintegration Commission (JSDRC), the authority responsible for disarmament matters in Afghanistan. The JSDRC, which oversees, among other things, the implementation of the Disbandment of Illegal Armed Groups programme (DIAG), comprised representatives from the Ministry of Interior, the Ministry of Defense, the National Security Directorate, the International Security Assistance Force (ISAF), the Combined Forces Command Afghanistan (CFC-A), and UNAMA. The JSDRC advised the ECC as to whether candidates had submitted sufficient weapons and severed links to armed groups. Given the sensitive issues of national security involved in this process, and its own lack of expertise in this area, the ECC was not in a position to review or verify the information and considerations underlying the conclusions of the JSDRC. These considerations included the impact the exclusion of a candidate could have on local stability and national security.

28. A number of candidates whose eligibility under the Electoral Law had been challenged for alleged links to armed groups, including some with a high public profile, was not excluded because the ECC had not received a finding from the JSDRC indicating that the person in question maintained such links. This at times led to a perception that the ECC had failed to ensure that the electoral process remained free of the influence of armed groups.

The complaints process

Overview

29. The challenge and the complaints processes were not chronologically sequential: complaints regarding alleged electoral offences were received from the very early stages of the ECC's establishment, and were handled concurrently with the challenges described above.

30. The general process for handling a complaint, from receipt by a PEC to adjudication by the ECC, is reflected in figure 2 below. In the event that a complaint concerned the work of the PEC or if dealing with the complaint would have posed a security risk to the PEC members (or their

families), PECs were instructed to send the complaint directly to the ECC in Kabul. If a complaint had no basis or was considered to be frivolous the PECs were authorized to reject it outright and send a report to the complainant and ECC. All other complaints were to be investigated by the PEC.

31. Once it had been determined that a complaint was serious, the PEC had to notify the person against whom the complaint was filed (the respondent), who was provided with an opportunity to submit a written response on the allegation within five days. PECs had been instructed to include all information from their investigation when forwarding their decision or recommendation to the ECC.

32. If a PEC decided to uphold a complaint, it also had to decide on which penalty or sanction to recommend to the ECC. All findings, recommendations and decisions by the PECs had to be reported to the ECC immediately, with copies being sent to the complainant and the respondent. Remedial orders and warnings issued by the PECs took immediate effect and did not require confirmation by the ECC. All other sanctions and remedial actions - such as fines, a recount of ballots, or the removal of a candidate from the ballot - had to be reviewed by the ECC before they took effect.

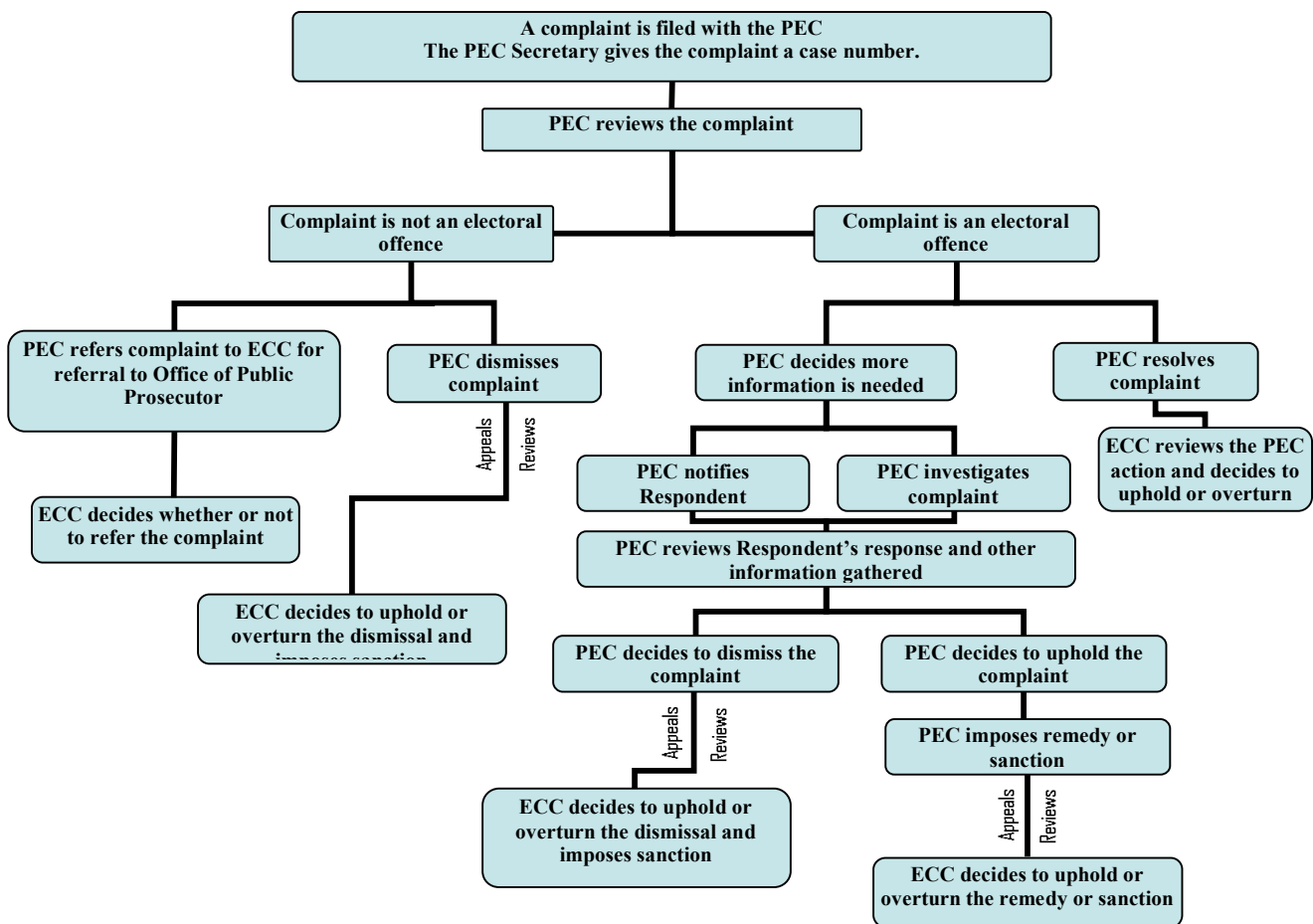


Figure 2: the ECC/PEC complaint process

Volume of complaints

33. The ECC received – either directly or through the PECs – almost 5,500 complaints during the entire electoral process, a much higher figure than originally anticipated (see Annex 1 for statistics on challenges and complaints). The volume of complaints, and the need to adjudicate all cases within a very restricted time period, led the ECC to adopt a prioritization policy in early October to ensure an efficient use of its limited resources.

34. The presence of a PEC office in each provincial capital, enabling easier access to the complaints process for citizens, was presumably a factor in the high number of complaints received by the ECC. Complaints were filed in all 34 provinces although the number of complaints varied across the provinces, ranging from 303 in Baghlan to 22 complaints in Nuristan. There may have been a correlation between the number of complaints received and the level of support from the JEMB staff in a given province.

Lack of detailed description of allegations and lack of evidence

35. Pursuant to its rules of procedure, the ECC required that each complaint contain a detailed description of the alleged violation and that a complainant submit evidence in support of the allegation, or at least provide an indication of where such evidence could be obtained. A large number of complaints received by the ECC failed to meet these basic requirements, particularly with respect to the specificity of the complaint. For example, many complaints alleged that individuals had committed electoral fraud without describing the fraudulent activity or where and when such fraud had allegedly taken place.

36. Initially, where contact information had been provided the ECC endeavoured to obtain further information from complainants in cases which were not frivolous or manifestly ill-founded. However, after the ECC initiated its prioritization process, a large number of complaints were summarily dismissed for failing to meet the formal requirements of the ECC rules of procedure. Moreover, in many cases the complainants were not able or willing to provide evidence in support of their allegations. Such cases were also dismissed.

Functioning of the PECs

37. The employment, in August 2005, of six regional coordinators funded by IFES to provide capacity building to the PECs had an immediate and beneficial impact on the volume and the quality of files received from the provinces and the level of communication with the ECC. The positive impact of the regional coordinators would have been even greater had they been deployed earlier and in greater numbers.

38. In most instances the members of the PEC were from within the community in which they operated, and this impacted at times on their real or perceived impartiality. On the whole the PECs dealt with these issues, as well as with issues of personal security and safety, with an adequate degree of professionalism and neutrality. Moreover, the PECs displayed resilience in working under adverse conditions with limited support and supervision.

39. The PECs generally enjoyed the support and cooperation of the JEMB operation in their province although in some instances PEC offices were not fully resourced. The transition from being a JEMB resource, advising on election planning and operations, to being part of the ECC,

was not implemented equally across the country and in some cases led to confusion, particularly since the PECs continued to rely on the JEMB for resources, including office space. This was further complicated by the fact that many complaints were against JEMB staff and the PECs were not always in a position to investigate the source of its funding and support.

40. Toward the end of the process a survey of PEC staff and National Provincial Election Officers (NPEO) was conducted in a selection of provincial offices (Badakhshan, Badghis, Baghlan, Balkh, Herat, Logar, Kunduz and Samangan) to obtain an insight into views of their own roles in the process (see Annex 2 for results of survey).

Polling day

41. Complaints in the period leading up to polling showed a variety of allegations, including intimidation of candidates and voters by other candidates and their supporters, especially by security personnel and district governors, and the use of government resources.

42. A temporary call center was established specifically for polling day to meet the demand for public access and to informally receive complaints. The callers were advised by the ECC staff that a telephone call did not constitute a formal complaint and that complaint forms had to be lodged. In total 168 suspected irregularities were recorded, most of them relating to intimidation (39) and general polling irregularities (31). Most calls were placed in Kabul (68), followed by Nangarhar (35).

43. Of the many written complaints received regarding incidents on polling day, the most frequent and most serious categories alleged instances of fraud (mostly ballot box stuffing) by candidates or electoral staff, intimidation by candidates or their supporters, multiple voting and proxy voting. (See Annex 1 for the number of complaints received with respect to polling day).

The counting process

44. The counting process, conducted by the JEMB at provincial count centers, was the subject of numerous complaints (see Annex 1 for numbers of complaints with respect to counting). The count process itself took longer than originally anticipated, and this provided more time for complaints to be submitted.

45. Many complaints were generated by the way in which progressive results were published. While results were first released at the count center on notice boards, figures were subsequently passed to the JEMB for verification, entry into the results database, and then for release on the JEMB website. The time difference between the release of figures at the counting center and the inclusion on the website resulted in misunderstandings and – judging by the number of complaints received in this regard – in a lack of trust in the counting process and counting officials.

46. Many of the complaints also involved allegations of irregularities being committed by the JEMB counting staff. While the ECC adjudicated a number of incidents where fraud could indeed be proven, the number of such complaints was also driven by a lack of understanding of the process and a poor public perception of electoral staff.

47. Neither the ECC nor the PECs had the capacity to meet popular expectation regarding the ECC's response time to address complaints during the counting process. This was exacerbated by the complexities of the counting, quarantine and audit processes, which were often misunderstood

by individuals within all stakeholder groups including the PEC members. In particular, the ECC and PECs were not fully prepared for the handling of requests for, or complaints regarding, the quarantine or exclusion of ballot boxes. Instructions had been provided to the PECs regarding their responsibilities in this regard, but these were deemed complicated or impractical. Moreover, JEMB staff were at times not fully informed of the role and authority of the PECs, resulting, in a very small number of cases, in the inclusion of boxes into the process despite the fact that a quarantine order by a PEC was still in place.

Meshrano jirga elections

48. Only 14 complaints were received nationwide with respect to the *meshrano jirga* elections, the process by which the elected provincial councils chose from within their midst two representatives to the *meshrano jirga*. Most of these complaints related to the eligibility of the candidates based on the age requirement as set out in the Constitution. (See Annex 1 for the number of complaints received in this regard).

Prioritization of cases

49. In the period leading up to polling day, the ECC accorded priority to challenges against candidates and complaints which could have led to the disqualification of a candidate. Other complaints were in principle handled in the order in which they were received. Following polling day, and in light of the very large number of complaints that had been received by the ECC, a new process of prioritizing and sequencing cases was instituted. Under this process, individual Commissioners, assisted by members of the Secretariat, reviewed case files before translation and investigation was undertaken, and determined the priority level of the complaint using the categorization set out below. The level of priority thereupon determined the order in which the cases were handled and allowed for a more efficient use of ECC resources. This process was critical in allowing the ECC to complete its complaint docket within the electoral timetable.

50. Resources were dedicated first and foremost to cases considered to be of the highest priority by virtue of the fact that the complaint related to polling or counting and which could have a material impact on the results. A “material impact” was considered to be at issue in all cases in which the number of votes cast for a candidate would be affected. Cases that fell outside the jurisdiction of the ECC, or manifestly ill-founded or unsupported complaints, were grouped by province and presented to the Commission for dismissal in batch decisions. A very large number of complaints were considered to fall within this category. The remaining cases which were not considered to be of either of these categories were handled as a normal priority case. This category therefore included cases that appeared to allege an offence within the jurisdiction of the ECC, but that would not have had a material impact on the outcome of the elections. Many of the cases classified in this category were considered by the ECC after the certification of election results by the JEMB.

Communications and public information activities

51. The ECC undertook a number of activities to open channels of communication with citizens and provide public information. These included press conferences, press releases, fact sheets, presentations to stakeholders, public outreach campaign (TV and radio commercials, posters and theatre performances), and a website. The press conferences were on-going and were used as a mechanism to update the public on the challenge and complaints process and decisions. Fact sheets covered topics such as the ECC mandate, the challenge and complaints process, and

issues relating to the submission of weapons. The public outreach campaign involved a series of public radio and television announcements on how to complain. In addition to all other public information material and reference documents, the website included all decisions adopted by the Commission. Due to public interest, a separate website was provided for disqualifications. The ECC was also a participant in the Political Party Consultative Forum, a public outreach activity of the JEMB.

52. There was a high public demand for personal access to the ECC, particularly from candidates who wanted to discuss their complaints or seek information from the ECC. The ECC was not able to fully meet this demand, as there was no reception function or officials assigned to receive walk-in requests, and it was able to handle such visits on an *ad hoc* basis only.

3. Conclusions and recommendations

Meeting expectations: the functioning of the ECC

53. The establishment of an independent complaints mechanism in Afghanistan was without precedent. The ECC, while recognizing shortcomings, believes that the complaints mechanism established under the Electoral Law, and the manner in which the ECC was able to implement its mandate with the support of national and international entities, contributed positively to the credibility of the 2005 elections. In particular, it is of the view that the exclusion of individuals from the elections for maintaining links to armed groups was a significant and unprecedented step in the application of the rule of law in political processes in Afghanistan.

54. The novelty of an electoral complaints process led to very high expectations and inflated perceptions of the role of the ECC as an exclusive custodian of the integrity of the electoral process. In particular, throughout the electoral process, public expectations about the role of the ECC in disqualifying candidates that were alleged to have committed criminal acts or human rights violations were high. These expectations were articulated by Afghan civil society, various candidates and also by a number of international NGOs which had been championing these issues over many years. This was also a recurring issue in election coverage by the national and international media.

55. Nevertheless, the ECC was strictly guided in its work by the relevant provisions of the Electoral Law. The ECC saw itself not as a general arbiter of who would be allowed to run for office, but as a complaints body whose responsibility was to adjudicate challenges and complaints arising from violations or offences as defined by the Electoral Law. The ECC through its various public communications activities tried to address this public expectation by emphasizing that the ECC role was not a criminal court or a transitional justice body, and that the ECC had no mandate other than that derived from the Electoral Law to disqualify candidates. Despite these efforts, the ECC continued to receive challenges and complaints that would be more appropriately addressed through other processes.

56. The ECC was established at a time when implementation of the electoral calendar had already begun and many other preparations for the elections were well underway. This meant that there was little to no time to conceptualize and plan the ECC operation. Many of the resources, procedures, forms and materials of the ECC were developed or acquired as key electoral processes – such as the challenge period – were ongoing. The PECs were similarly placed in a position of having to assume their responsibilities with little to no time for planning, support and training. This

situation impacted on the ability of the electoral complaints mechanism to properly absorb the workload.

57. The number of challenges and complaints was higher than foreseen and the financial and human resources of the ECC were not commensurate with its workload and with the requirements of a fully independent entity. This was exacerbated by the quality of the written complaints, which often lacked sufficient details or evidence, and which in many cases would have required extensive on-site investigations. This meant that in terms of handling complaints promptly and thoroughly, expectations of individual complainants were not always met.

58. The ECC managed to address these difficulties by optimizing its working methods and secretariat structure, and by implementing a prioritization process. The centralization of the teams in Kabul was deemed to be an efficient use of its resources, although it meant that on-site investigations by ECC staff were very limited in number. A major part of the success of the ECC in fulfilling its mandate was the PEC structure. While the capacity and quality of the PECs was uneven across the country in the early stages of their operation, this situation improved over time as a result of the deployment of regional coordinators from August onwards.

59. The ability of the ECC to act independently was shaped, to a certain extent, by the fact that it did not administer its own resources, and its reliance - due to its own limited investigative resources - on information and investigations by the JEMB. For example, JEMB insisted that investigations into alleged offences by its staff be conducted only through the JEMB. The functional relationship with the JEMB was generally considered to be very productive. In a few individual cases, the sharing of information by the JEMB was not satisfactory.

60. While the ECC received indications that the joint national/international composition of the Commission was regarded with some skepticism, it believes that it was critical to have both international and national commissioners actively participating in the ECC. The national commissioners played a positive role and the process was well served by their presence.

Recommendations

61. The ECC, drawing from its own experience during these elections as reflected in this report, offers the following recommendations regarding future electoral complaints mechanisms as a means of protecting and enhancing the integrity and credibility of electoral processes.

Recommendation 1

Future elections should include the establishment of an independent complaints mechanism, building on the experiences of the 2005 elections. The planning and preparation for such a mechanism should be undertaken well in advance of an election, including by means of a thorough lessons learned analysis.

Recommendation 2

A future electoral complaints body should have the necessary resources and authority to investigate all complaints on its own, including at the provincial level, and independently of the electoral administration. Such an entity should be administratively autonomous and have independent and direct access to its resources.

Recommendation 3

A future electoral complaints mechanism should include the establishment of a provincial presence. Such provincial entities should report exclusively to the central body entrusted with the adjudication of complaints, and should receive thorough training and support from the central office. Consideration should be given to including an international member in provincial bodies or to regional support coordinators.

Recommendation 4

Future electoral complaints mechanisms should dedicate considerable resources to public information and education regarding the role of a complaints body and the formal requirements for submitting complaints, including the need to submit details of allegations and supporting evidence.

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United Nations Office of Project Services

The ECC wishes to thank citizens of Afghanistan who displayed confidence in the process by submitting their challenges and complaints.

Annex 1

Challenges and Complaints

Challenges

Table 1: Challenges received and adjudicated

Challenges received and adjudicated	
Challenges received	1144
Candidates challenged	557
Challenges initially dismissed	911
Candidates provisionally excluded	233
Challenges dismissed following candidate's response	216
Candidates excluded	12
Challenges filed as complaints, resulting in exclusion	5
Reason for Exclusion	
Links to armed groups	11
Prohibited government position	1
Failed to nominate correctly (filed as complaints) as there were insufficient valid signatures on the nomination form	5

Note: Five challenges were filed as complaints, but were treated as challenges and resulted in the exclusion of the candidate for technical defects in their nomination.

Complaints

Table 2: Total number of complaints received and adjudicated

Complaint	Number
Total complaints received	5423
Complaints Received By PEC	3984
Complaints Received By ECC	1439
Number of complaints decided by PEC	2135
Number of complaints forwarded to ECC	1849
Number of PEC decisions overturned by the ECC	152
Number of complaints resulting in disqualification	37
Disqualification before Election day	28
Disqualification after Election day	9
Reason for disqualification	
Links with illegal armed groups	23
Still holding a prohibited government position	11
Violation of the code of conduct or electoral law	3

Table 3: Complaints with respect to polling (subset of total complaints)

Complaint	Number
Total complaints received	866
Complaints received by PEC	692
Complaints received by ECC	174
Number of complaints decided by PEC	506
Number of PEC decisions overturned by the ECC	N/A
Number of complaints forwarded to ECC	186

Table 4: Complaints with respect to counting process (subset of total complaints)

Complaint	Number
Total complaints received	646
Complaints Received By PEC	481
Complaints Received By ECC	165
Number of complaints decided by PEC	162
Number of PEC decisions overturned by the ECC	N/A
Number of complaints forwarded to ECC	319

Table 5: Complaints in relation to meshrano jirga elections (subset of total complaints)

Complaint	Number
Total complaints received	14
Complaints received by ECC	14
Number of complaints upheld	1
Number of complaints dismissed	13

Annex 2

Survey of PEC members and National Provincial Election Officers (NPEO)

Understanding of PEC and NPEO of :	Excellent	Good	Average	Fair	Poor	No Ans.
Electoral process as a whole	22%	59%	5%	3%	3%	8%
Registration process	33%	39%	6%	6%	12%	4%
Campaign	24%	58%	9%	6%	3%	0%
Polling process	18%	57%	6%	9%	9%	1%
Counting process	11%	43%	23%	9%	14%	0%
Complaints process	17%	52%	10%	14%	4%	3%
Electoral Law	29%	56%	6%	6%	3%	0%
Views of PEC members and NPEO of their relationship with:	Excellent	Good	Average	Fair	Poor	No Ans.
Provincial Office	36%	48%	12%	0%	3%	1%
NPEO	36%	5%	7%	7%	0%	45%
PLC	35%	31%	13%	13%	8%	0%
ECC Complaints Officer	55%	31%	7%	7%	0%	0%
ECC as a whole	46%	29%	18%	7%	0%	0%
JEMB -- PEC support unit in Kabul	41%	39%	14%	0%	5%	1%
Assessment by PEC members and NPEO of support received from:	Excellent	Good	Average	Fair	Poor	No Ans.
JEMB - PEC support unit in Kabul	36%	39%	18%	4%	3%	0%
PLO	30%	30%	19%	6%	6%	9%
PLC	23%	47%	1%	7%	13%	9%
ECC	27%	58%	9%	0%	6%	0%