

**ELECTORAL COMPLAINTS COMMISSION**  
**Procedures for Polling and Counting Complaints**  
**2010 Wolesi Jirga Elections**

**Preamble**

The Electoral Complaints Commission (ECC), pursuant to the authority granted it under Article 62(3) of the Electoral Law, adopts the following Procedures:

**Article 1: Definitions**

As used in these Procedures, the following terms shall have the meanings indicated below:

1. **ECC:** The Electoral Complaints Commission
2. **ECC HQ:** The Electoral Complaints Commission Headquarters
3. **PECC:** The Provincial Electoral Complaints Commission: 34 provincial commissions for addressing electoral complaints
4. **IEC:** The Independent Election Commission
5. **PIEC:** The provincial IEC office
6. **Polling and counting complaints:** Complaints submitted or referred to the ECC or the PECCs concerning the polling and counting process on and following Election Day
7. **Intake:** The process of receiving and registering complaints that are submitted or referred to the ECC and the PECCs
8. **Triage:** The process whereby each complaint is reviewed, assessed and assigned a priority code for investigation: A, B, or C

**Article 2: Receiving complaints**

1. According to the ECC Regulations, a complaint can be submitted:
  - i. at polling stations
  - ii. at PECC or ECC HQ offices
  - iii. at IEC provincial offices
2. In addition, the ECC and the PECCs are empowered to deal with electoral violations on their own initiative.
3. Complaints that are filed at polling stations on Election Day should be transferred along with IEC sensitive materials to the IEC provincial warehouse. The PECC will collect the complaints in coordination with the provincial IEC staff and with adequate security measures in place. The PECC is to liaise with the PIEC in order to ensure PECC representatives' access to the PIEC warehouse. These complaints should be delivered in sealed blue boxes labelled for the ECC, with an accompanying tracking document. The PECC is to ensure that this document

reflects the names and signatures of the officers handing over and taking delivery of the blue boxes, as also the time and date of handover. The PECC team for collecting the ECC materials at the IEC provincial warehouse should consist of one commissioner and the Intake Supervisor. If no commissioner is available, a PECC staff member is to be assigned to replace her/him.

4. Complaints filed at a PIEC after Election Day will be forwarded by the PIEC to the PECC offices.
5. Complaints that are filed at PECC offices directly are to be processed immediately. If complaints are submitted at ECC HQ, these complaints will be scanned and sent to the relevant PECC to be processed.
6. Nevertheless, in terms of Article 62(5) of the Electoral Law, the ECC HQ may in exceptional circumstances process a complaint.

### **Article 3: Intake**

1. The intake staff at the PECC and ECC HQ will receive and process the complaints relating to polling and counting that are submitted within their respective jurisdictions from Election Day until the certification of results. Although a complaint must be in writing and contain the prescribed essential information, it need not be on a complaint form.
2. Complaints should be processed promptly.
3. The intake shall first be performed by the PECC Intake Section which will allocate a case number to each complaint according to ECC HQ instructions. After triage, the Intake team will complete the official spreadsheet issued by ECC HQ and send the daily report form listing all complaints received to the ECC HQ Intake Section at an assigned time. The ECC HQ Intake Section will then enter all this information in the consolidated database.
4. Intake should be performed by the Intake Section established at each PECC and at ECC HQ offices under the supervision of the Intake Supervisor.

### **Article 4: Triage**

1. Triage will be performed by Triage Teams consisting of at least one PECC staff member and at least one commissioner, according to a consistent standard as previously determined by ECC HQ.
2. For the purpose of prioritizing the complaints, the Triage Team will categorize them into three groups:

**Priority A:** The violation alleged in the complaint, if confirmed, could alter the result of the election. These complaints will be investigated immediately.

**Priority B:** The violation alleged in the complaint, even if confirmed, could not alter the result of the election. These complaints should be investigated by the ECC (HQ or PECC) after all the Priority A complaints have been adjudicated.

**Priority C:** The complaint does not require further investigation because:

- i. The complaint was submitted more than three days after the event concerned or of it having become known to the complainant (Article 4.3 of the ECC Regulations).
  - ii. The complaint is incomplete or does not meet the formal requirements of a complaint (Article 4.6 of the ECC Regulations).
  - iii. The complaint does not allege a violation related to the elections.
3. In case of doubt in deciding between Priority A and Priority B, a complaint should be recorded as Priority A, and in case of doubt in deciding between Priority B and Priority C, a complaint should be recorded as Priority B.
  4. At the end of the process, another PECC commissioner (who was not part of the Triage Team) will ensure that the Priority B and Priority C complaints do not belong in the Priority A category.

#### **Article 5: Scanning**

1. After the complaint has been processed through intake and triage, PECC staff should scan all the complaint forms and triage forms to ensure backup and archive.
2. The scanning will take place every day as the next step of the process. Unless a technical difficulty occurs, no complaint should be investigated before this step has been taken.
3. The PECC staff will send digital copies of complaint forms and triage forms to ECC HQ when required.

#### **Article 6: Intake and data entry**

1. The PECC shall promptly and on at least a daily basis enter and maintain data in spreadsheet form of all the complaints received and transmit such data to ECC HQ.
2. The Intake and Data Entry Section at ECC HQ shall be in charge of entering the data, shall maintain a consolidated and updated database of all the complaints and shall produce statistics for internal reports and public information.

## **Article 7: Investigations**

The PECC and ECC HQ investigation teams shall work from scanned copies of the complaint and triage forms and keep the originals for the archives. They shall start by investigating Priority A complaints. Their investigations shall be conducted lawfully and according to ECC Regulations and instructions.

## **Article 8: Response to a complaint**

According to Chapter 6 of the ECC Regulations, respondents should be given the opportunity to respond to complaints. PECC staff must do their best to facilitate such opportunity. Response forms will follow the same chain of custody as complaint forms.

## **Article 9: PECC decisions**

1. The PECC must at all times try to take decisions on complaints consistently and fairly, without fear, favour or prejudice, in accordance with the principles identified and guidelines provided by the ECC. PECCs are encouraged to consult their colleagues in other provinces and to seek guidance from ECC HQ whenever the need arises.
2. When a matter has been decided, the PECC shall scan the decision form and send one copy to the ECC HQ Legal Section and post another copy in a prominent place outside the PECC office for a period of not less than five days. A copy of the decision will be available on a party's request at the relevant PECC office.
3. The PECC shall notify the parties of the decision and mention in the notice that the decision is subject to appeal within three days of notification.
4. The ECC HQ Legal Section shall ensure that ECC HQ Intake Section updates the database to reflect such decisions.

## **Article 10: ECC HQ decisions**

Whenever possible ECC HQ should notify the parties of its decisions, whether on appeal or in the exercise of its extraordinary jurisdiction in terms of Article 62(5) of the Electoral Law, and post the decision in Dari and/or Pashto and in English on the ECC website and by public display outside the PECC office where the complaint was filed. A copy of the decision will be available on a party's request at the relevant PECC office.

## **Article 11: Appeals**

1. A party wishing to appeal against a decision of a PECC shall upon request be given an appeal form and if necessary be assisted to complete it.
2. The intake staff at the PECC and ECC HQ will receive and process the appeal, noting the date of receipt of the appeal form. Although an appeal must be in

writing and contain the prescribed essential information, it need not be on an appeal form.

3. Intake should be performed by the Intake Section established at each PECC and at ECC HQ under the supervision of the Intake Supervisor.
4. Appeals must be processed promptly at the PECC by:
  - if reasonably possible, notifying any other party of the appeal and of the right to respond
  - if required, assisting such party to complete the Response to Appeal Form
  - scanning the Appeal Form together with all other relevant documents, including any evidence submitted by the parties
  - transmitting the documents to the ECC HQ Legal Department
5. As soon as possible after receipt of the documents the ECC HQ Legal Department shall establish whether the appeal was noted and the response filed within the prescribed period of three days, and prepare a case summary for submission to the Commission.
6. The Commission shall consider the appeal with reasonable expedition and, if satisfied that the decision of the PECC was clearly wrong, the board shall set aside or revise any decision and order made and any penalty imposed by the PECC.

### **Article 12: Archiving**

The PECCs and ECC HQ will archive all the original documents relevant to the complaints and appeals. Archiving is an ongoing process. Each PECC should make sure that the archive file contains all the relevant documents relating to the case in question: complaint form, triage form, investigation reports, response to a complaint form, evidence, appeal form, response to an appeal form, first and final decisions, and translations if they exist of any of these documents. The archive will form part of the retrieval plan at ECC closure.

### **Article 13: Kuchi seats polling and counting complaints: special instructions**

The entire country forms one constituency for the ten Kuchi seats (of which three are reserved for women) and the IEC has allocated polling stations in some centers or even entire polling centers in certain provinces for Kuchi voters.

The ECC has decided that polling and counting complaints related to Kuchi seats will in principle be dealt with in the same way as are other complaints (in other words, as described above). Such Kuchi-related complaints will primarily be dealt with in the provinces in which they arise.

The Kuchi complaints process is therefore as follows:

**A- At the PECC level:**

1. *Jurisdiction:* Each PECC will routinely process complaints related to Kuchi polling and counting that arise within its province.
2. *Intake:* For Kuchi-related complaints, the standard recording system will be used with the letter “K” added at the beginning of the case number: thus the case number would look like this: KA-10-00-0000.
3. *Triage:* The Triage Team will check if the Intake Team has used the correct numbering system (as in 2. above) for any Kuchi cases.
4. *Investigation:* The PECC should collect together the Kuchi cases and give them all to the same investigation team at the PECC level.
5. *Decision:* The PECC must make sure that it adjudicates all the Priority A Kuchi cases and send status reports to ECC HQ.

**B- At the ECC HQ level:**

One of the legal teams at ECC HQ will be designated by the Head of the Legal Department to:

1. collect together all the Kuchi cases and decisions received by ECC HQ from the PECCs and perform quality control on these cases
2. ensure that all Priority A Kuchi cases have been adjudicated by the PECCs
3. process and where necessary investigate and follow up any appeals on these cases
4. prepare a final updated status report for the ECC commissioners

**Article 14: Enforcement**

These Procedures for Polling and Counting Complaints shall be enforced once they have been approved by the ECC commissioners and published on the ECC website.