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**بنیاد انتخابات از ادو عادلانه افغانستان**

Free & fair Election Foundation  
of Afghanistan

## FEFA's Recommendations on Election Complaint Mechanism

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## **Focus on the main issue:**

The existence of a board with an obvious mechanism in a democratic election is very important. It can assess the complaint related to the election and as well as it can have the authority to take decisions over the problems. Right during the parliamentary election a foundation based on emphatic proposals of free and fair election foundation of Afghanistan and some other foundations were added to the electoral law, without any doubt these foundations left fruitful affects on the election process ,but not as much as it was expected .

And now a series of attempts have been made by related foundations for amendment of the electoral law and it is a good opportunity for civil society organizations to mark the amendable weak points in the electoral law and as well as it is time to strengthen the mechanism and focus on the election violations and offences which lead us toward free and fair election, indeed.,

FEFA is keen to focus on the amendable problems existing in the ECC (Election Complaint Commission) by exercising its own experiences, legal review of related documents and sharing them with legal experts, university professors', ex-members of (ECC) and civil activists and presents its views as solutions.

### **1. shortcomings and Considerable Issues:**

- **ECC(Electoral Complaint Commission)started working after election process:**

It should be taken into account that (ECC) assessment should be started from the beginning of election process up to two months later then announcement of election's results, unluckily it couldn't manage to do it during the parliamentary election whereas it was required for the commission to start functioning at least seven months before the election event.

- **Non-existence of absolute structural independency and dependency to limited information sources**

As a results of inquiries the (ECC) didn't manage to establish the independent offices in the provinces the ECC which had been sketched over a especial procedure as well as was supposed to be funded by (JEMB) **Joint Election Management Body** .and the (ECC) investigation and information documents were relied on (JEMB) in some extend and all these effected the process of assessment to the complaint and protests as well as caused lack of independency in the process.

- **Limited numbers of personnel their authorities and working hours:**

Limited number of three personnel working team functioning as provincial commission was another problem as well as the half working day was not enough for them to assess all the complaints and protests, other problems which faced the compliant and protests process with the challenges, was the non-existence of an absolute independent and made slow the commission process.

- **Lack of qualifications for appointing the provincial commission member non-existence of a strong mechanism for confirming the members and the foundations impartial.**
- **Lack of gender balance in organizing the central and provincial commission members.**
- **No training program was held for those who were in charged for admitting and assessment of complaints.**
- **Mis-using of the absolute legal authority of the commission for evaluating of the election complaints and protests and allocating them only against election nominees :**

In the electoral law in (52 end as well as in 53 article) about the election violations and offences says, the ECC has the absolute authority to evaluate the complaint and protests or other violation in electoral law'' but the report received recently from ECC says, the claims against election personnel based on violations and offences are inspected by (JEMB) '' whereas it is a violation and intervention against the electoral law which is committed by (JEMB) it is the (ECC)that couldn't implement it based on the electoral law and possibly it could formed the a great number of complaints and protests especially during the election process against the election personnel and as well as the non existence of a certain procedure to assess the complaints and protests which it could be an obstacle against the election process.

- Insufficient time was given for admitting and evaluating the election protests against the election nominees. (only five days)
- Lack of having legal authority in order to disqualify those candidates who have been in charge of human rights volitions, made chance for the most of warlords and ineligible nominees to replace the fair and real representation of the people in parliament.(the representation which emphasized on by Afghanistan Constitution in article 83part 6).
- Non-existence of a streamlined relationship between the (ECC) and civil society foundations especially with related election departments and non existence of a monitoring mechanism over the process as well as over the (ECC) decisions including provincial offices.

- Low level of awareness about the (ECC) among the people regarding its role, importance and actions, no effective programs were held to inspire them how to present the protests about the election violation as well as unclear presenting procedure time for presenting complaints and protests, needed qualifications, about the adopted decisions of commissions, and non-existence of an energetic mechanism, the commission and provincial foundations had a weak relationships with media.
- The existence of a complicated and time- consuming procedure for presenting and investigating the election complaints and protests.
- Weak cooperation of judicial organizations and DDR commission in order to provide clear information regarding the background of some accused nominees to crimes. As well as the accused nominees who handed over weapons or not handed over.

### **Recommendations:**

The above findings indicate that establishing of transparent mechanisms to deal with the electoral complaints will not only guarantee safety of elections, but also lead the political system in order to transparent, democratic, free, and fair elections. It also causes the satisfaction of public and leads Afghanistan to a democratic society. Regarding the above issues, the Free & Fair Foundation of Afghanistan (FEFA) has a series of recommendations; and it is hopeful that authorities, legislative institutions, and international friends of Afghanistan with proper considerations to them will pave the way for the upcoming elections in such a way that level of deficiencies and violations reach their lowest rates, so that transparency, fairness, and freedom of elections will be guaranteed.

Also FEFA strongly believes that the above mentioned issues affected the assessment process to the election complaints. And it suggests to the relevant organizations need to approach the foundations, having experiences from the past election in order to have an affective electoral law and its suggestions are as below:

1. the end of work skill for (ECC) Election Complaint Commission is specified a month after the announcement of election results but the beginning of work skill is not mentioned so (FEFA) suggests that the end of the work skill should be announced two months after the announcement and the beginning of work skill should announced at least two months before election because it takes time to prepare working plans, found provincial foundation and departments as well as launch training programs before election.
2. It should be passed in the electoral law that where should be kept the commission investigation documents, because the next ECC can use the resource.
3. The Election Complaint Commission independency including its budget and organizational structure as well as the ECC legal authority in order to

disqualify the warlords and those nominees who are involved in human rights violation should be passed in the electoral law obviously.

4. transparent and useful conditions which guarantee the independency for appointing the commission member should be added into the electoral law in all over the country because through which we can emerge a professional commission as well as we can give more authority to the commission.
5. The observance of gender is considered greatly in organizing central and provincial commissions because it builds the women capacity and as well as it makes sure the women candidates and female complainant and protestors about the assessment of their compliant and protests in the election process.
6. A legal emphasis on the government and non government provincial organizations to assist ECC in all over the country.
7. To receive the contentment of political parties, candidates and people about the transparency and impartiality of the ECC, the existence of consulting boards including international experienced members are crucial.
8. The ECC can perform its tasks and responsibilities within the required time if its structural body is not limited.
9. To handle the problems professionally and maintain the impotence of the ECC, the useful training programs should be held for the commission staffs.
10. Having an instable relationship with the stakeholders which are related to the election process as well as with the related civil society organizations, working on the problems existing in the (ECC).
11. Launching an easy and effective procedure for the ones who complain and as well as its assessment process shouldn't be complicated and time-consuming.
12. The (ECC) Electoral Compliant Commission should have the authority to assess all the complaints and protests against the personnel working to the related electoral organizations, even the key member of the IEC Independent Election Commission.
13. enough time should be given for admitting protests against the election nominees, if they don't have the needed qualifications
14. Launching public awareness campaign about the issues which really gives energy to assessment complaint and protests election process
15. Paving the way for some impartial foundations especially for civil society organizations to monitor the admitting process and assess the election complaints and protests which it really help us to have a transparent election process.