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CONFERENCE ON

**“THE EUROPEAN ELECTORAL HERITAGE:
TEN YEARS OF THE CODE OF GOOD PRACTICE
IN ELECTORAL MATTERS”**

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THE ORGANISATION OF ELECTIONS BY AN IMPARTIAL BODY

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1. Introduction

1. An election administration is responsible for the conduct of elections in line with domestic legislation, which should be consistent with international standards for democratic elections. The management of democratic elections requires that the election administration bodies perform their duties in a professional and impartial manner, independent from any political interests,¹ and subject to judicial control. The election administration bodies should also uphold the civil and political rights of all voters including women, minorities and youth.

2. Professionalism implies transparency, accountability and efficiency of performance of the election administration. These are key factors in ensuring public confidence² in the process, including in its outcome. These factors are critical as the election administration makes and implements important decisions that may have an impact on the overall conduct, and even on the outcome, of the elections. Transparent and accountable performance lends integrity to the election process, credibility to election administration bodies and builds public confidence and legitimacy towards the election.

3. The election administration and all other state authorities - the central and local government and self-government executive, and the judiciary - must act at all times in a politically impartial manner. Impartiality implies that the law should be placed above the objectives of any political interest, ensuring equal treatment for all electoral contestants in a pluralistic environment underscored by the rule of law.

2. International Standards

4. International standards for democratic elections regulating the election administration are scarce and mostly found in the so-called 'soft' international law.

5. Paragraph 20 of General Comment 25 to Article 25 of the ICCPR³ provides:

'An independent electoral authority should be established to supervise the electoral process and to ensure that it is conducted fairly, impartially and in accordance with established laws which are compatible with the Covenant.'

6. However, General Comment 25 does not elaborate further on the term 'independent'.⁴ In particular, it is unclear what dependencies should be avoided – from other public institutions, political interests, etc. As it is generally assumed that elections are funded by the public budget, 'absolute' independence appears unlikely. A predictable and legally determined budgetary allocation for election administration can, however, foster independent action, even if it cannot guarantee it.

7. One could encounter interpretations, according to which 'independent' means that the election administrators should not be members or be affiliated in any way with any political party or

¹ A political interest is a notion which could be broader than a political party – it could be a group of parties not necessarily in coalition or even a group of individuals controlling some levers of power.

² OSCE/ODIHR Report 'Common Responsibility: Commitments and Implementation', Annex 1 'OSCE/ODIHR Explanatory Note on Possible Additional Commitments for Democratic Elections', Warsaw, 10 November 2006, available at <http://www.osce.org/mc/22912>.

³ The United Nations' International Covenant on Civil and Political Rights, <http://www2.ohchr.org/english/law/ccpr.htm>. The General Comments are available at <http://www.unhcr.ch/tbs/doc.nsf>.

⁴ The author is aware of the impressive work of International IDEA on election management bodies and their classification, available at <http://aceproject.org/ace-en/topics/em/em10> and based on the qualifications 'independent' vs. 'governmental'. As the context of the adjective 'independent' carries the risk of being misconstrued, this classification was not used below.

interest. Such an opinion is not supported below for the following reasons. First, it is believed that the mere fact of affiliation with a political interest is not sufficient to assume that the respective individual is ready to act in a politically biased and unprofessional manner. Second, there have been a number of occasions when election administrators who have declared that they are not affiliated with any political interest have been observed to perform their duties in a politically biased manner, favouring most often the incumbents.

8. The second part of Paragraph 20 of General Comment 25 uses the qualification 'impartially' which is likely to mean that the performance of the election administration has to be politically impartial.

9. This qualification plays a key role in the language used by the 2002 Venice Commission's 'Code of Good Practice in Electoral Matters' (the Venice Commission's Code),⁵ which provides that⁶:

'An impartial body must be in charge of applying electoral law.'

10. Here, the emphasis seems placed on the performance of the election administration, rather than on formalistic criteria such as membership in a political party – something which is not always easy to verify. This emphasis on professionalism of performance is the key to an appropriate understanding of the way to ensure the adequate functioning of the election administration. It should not matter whether an election administrator has his or her personal political preferences, which is a basic right. What really matters is whether the election administrators – individually and as a body - apply the law in a professional manner ensuring equal treatment of electoral contestants.

3. Key Principles of Performance

3.1 Transparency

11. Transparency of the process is fundamental to democratic elections. It is the people's right to know that an electoral process honestly respects their will, and transparency is the means whereby this right should be fully assured. Transparency applies to all elements of the electoral process.

12. Transparency means that nothing related to the election process could be qualified as 'confidential' or 'secret'. The election administration should ensure that all election related information be made public in a timely manner and make it accessible to the broadest possible audience. Such information includes all acts of the election administration bodies throughout the process, and timely and accurate⁷ announcement of preliminary and final results.

13. Finally, transparency could require states to ensure that the law provides a simple and clearly defined process, including public hearings, for considering and resolving electoral complaints and appeals in a fully transparent and effective manner, within reasonable time limits established by law.

3.2 Accountability

⁵ Council of Europe's Venice Commission 'Code of Good Practice in Electoral Matters', Part II 'Conditions for Implementing the Principles', Section II.3 'Procedural Guarantees', Subsection II.3.1 'Organisation of Elections by an Impartial Body', [http://www.venice.coe.int/docs/2002/CDL-AD\(2002\)023rev-e.pdf](http://www.venice.coe.int/docs/2002/CDL-AD(2002)023rev-e.pdf).

⁶ The Venice Commission's Code, Paragraph II.3.1.a.

⁷ When a preliminary result is announced, there should be a clear message that the figures released may change after results of additional polling stations are aggregated into these figures; if preliminary results from a given area are announced, this should be clearly stated as parties' influences may depend on a particular geographic areas.

14. Accountability constitutes a fundamental principle of democratic governance. This is particularly relevant in the administration of the electoral process, where it serves as a counterweight to the potential advantages of incumbency.

15. Accountability means that all state bodies, including the election administration, the police, prosecutors and the judiciary, are accountable for their actions and inactions that affect the achievement of democratic elections. In addition, state resources must not be used for the electoral advantage of any political contestant or, alternatively, must be utilized in an equitable manner amongst all contestants.

16. Finally, legislation must be clear as to what conduct constitutes a violation of electoral rights and provide for sanctions. Possible election offenders must be held legally accountable for the violation in a timely manner as a culture of impunity will undermine confidence in the electoral process. Sanctions must be imposed according to the law and be proportional to the offence committed. A political party cannot be held collectively responsible for violations of individual members.

3.3 Professionalism, Impartiality and Public Confidence

17. Election administrators must demonstrate respect for the rule of law by strictly adhering to legislation, and applying it impartially, consistently and objectively. Where there might be a need to clarify details of the legal provisions, decisions on the approval or rejection of a draft act of the election administration must be guided only by the law and the principles mentioned above.

18. Election administrators must operate independently in the sense that their decisions must not be influenced by the executive authorities or political parties. The impartiality of the election administration is demonstrated by a commitment to the public interest, rather than narrow political party interests. It is important for the election administration to not only function impartially, but also be perceived as doing so.

19. In some states elections are administered by single individuals and in others - by collective bodies. While in both cases personal integrity matters, when the election administration bodies represent a group of individuals, these individuals must operate in a collegial manner. Collegiality implies the need to respect others' opinions and base decisions on the law alone.

20. The law should provide clear provisions on how the election administration conducts business. It should define what acts are issued by the election administration, what is the decision making mechanism to issue such acts and how can these acts be contested by the election participants.

21. The decision making mechanism should be designed with a view to satisfying two competing priorities – inclusiveness and efficiency – to achieve an optimal compromise. Inclusiveness would dictate that an act of the election administration be approved by a qualified majority of members of the election administration body.⁸ Efficiency would imply that acts are approved by a 'minimal' majority. In political environments where there might be a deficit in public confidence, inclusiveness should take precedence.⁹ The Venice Commission's Code advises¹⁰ that it is desirable that election commissions¹¹ take decisions by 'qualified majority or consensus'.

⁸ E.g., two thirds of the members present if those present are more than a half of all members.

⁹ A possible compromise between these priorities might be developed by selecting key acts of the election administration, e.g. registration of contestants, approval of results, etc., which should be approved by a qualified majority, while the other acts be approved by simple majority.

¹⁰ The Venice Commission Code, Paragraph II.3.1.h.

¹¹ Please see Section 6.2 'Several Models', below.

22. Implementation of the law by the election administration should be built on comprehensive and standard training;¹² inclusiveness in registration of candidates and voters; focused and timely voter and civic education; coherence and integrity of the voting procedures and counting of the votes, and their tabulation through appropriate measures preventing possible unlawful and fraudulent activities; and timely and accurate announcement of the preliminary partial and final results.

23. Public confidence is one of the fundamental requirements of a democratic society. There are many factors that can influence public confidence in elections. These factors encompass all aspects of the election process. However, the political will of both institutions and political parties alike is the ultimate factor contributing to building public confidence in the electoral process. Where there is deficit of political will to respect fundamental civil and political rights and to conduct a genuinely competitive election, this deficit cannot be compensated by changing the composition of the election administration bodies, the election system or other aspects of the election process.

24. A consistent point reflected in numerous OSCE/ODIHR election observation reports is the important role that election administration bodies have in building public confidence. Elections should be administered by persons who represent various interests and segments of society, are capable of acting in a professional and impartial manner and are knowledgeable (or willing and able to acquire the necessary knowledge) in election administration.¹³

4. Legislative Considerations

4.1 General Principles

25. Two approaches in drafting election legislation seem to have emerged. In some states, long standing traditions of conducting genuine elections have led to detailed legislation seeking to address all eventualities in the law, sublegal acts or case law. In others, there is tendency to adopt legislation which leaves some of the details to be tackled by the election administration.

26. However, there are a number of principles that should be reflected in election legislation in order to ensure an appropriate legal framework for the transparent and efficient administration of an election. These principles include the following:

- Election legislation should be stated in objective language and its interpretation should not be a matter of subjective opinion.
- Election legislation should be enacted sufficiently in advance of elections to provide contenders and voters with adequate time to become informed of the rules of the election processes, and should be published and readily available to the public. The Venice Commission's Code recommends that '[...] the fundamental elements of the electoral law [...] should not be open to amendments less than one year before an election [...]'.¹⁴
- The legal framework should establish election administration bodies in an unambiguous manner with regard to their composition, nomination and appointment, term of office, decision making mechanism and competencies.

¹² The Venice Commission Code, Paragraph II.3.1.g.

¹³ OSCE/ODIHR Report 'Common Responsibility: Commitments and Implementation', Annex 1 'OSCE/ODIHR Explanatory Note on Possible Additional Commitments for Democratic Elections', Warsaw, 10 November 2006, available at <http://www.osce.org/mc/22912>.

¹⁴ The Venice Commission's Code, Paragraph II.2.a; exceptions may be possible only where there is a broad political agreement to address an outstanding issue or unexpected development.

- The provisions regulating the administration of different elections should be in harmony.¹⁵ The law should include explicitly all electoral deadlines.
- Relationships between state and local authorities, and between the election administration bodies and other governmental bodies, should be clearly defined to prevent conflicting or overlapping powers during the conduct of an election.
- Important issues such as registration of candidates, campaign and election day procedures including counting of the votes, tabulation and announcement of results, and procedures for complaints and appeals should be clearly regulated by the law.

4.2 Appointment and Removal from Office

27. The members of a given election administration body should be appointed formally by one single authority ensuring equality of status, although they could be nominated by different institutions, political parties or even groups of individuals.

28. The method of selecting or appointing election administrators should be transparent, publicly known and be based on professional qualifications and standing in society. It should protect the fundamental civil and political rights of the individuals chosen including their freedom of conscience. Equally, the law should oblige the appointed individuals to act only in the interest of the law.

29. Beyond resignation and death, early removal of election administrators from their office should be possible only on an exceptional basis and be decided by a court of law. The Venice Commission's Code explicitly provides that the appointing authorities should not be free to dismiss election administrators at will.¹⁶ Members of election administration bodies should be protected against arbitrary or politically motivated removals.

30. The law should specify the rights of members of election administration bodies, including the right to receive timely and adequate notice of meetings, the right to participate in all meetings, and full and immediate access to all election documents and relevant information upon request.

4.3 Qualifications of Members

31. Where possible, persons familiar with the electoral framework should be appointed to administer elections. Common sense suggests that the majority of the members of the central election administration body should have a background or training in law. Such a requirement may be somewhat restrictive for lower level election management bodies, in particular at the polling station level.

32. Depending on the concrete responsibilities of the election administration body, it would be useful to include in its membership, notably at the central level, experts in other relevant fields such as administration, mathematics or information technology, and sociology or political science.

33. The personal integrity of members of the election administration and their willingness and ability to participate in professional discussions without antagonizing their colleagues is also critically important for the professional performance of the election administration. In their official capacity, the appointed persons must act only in the interest of the law. They should not forget that actions in their personal capacity are likely to be interpreted by the media as if they were conducted in an official capacity.

¹⁵ It might be useful to consider the adoption of an Election Code to regulate in one piece of legislation all types of elections by popular vote that a state conducts.

¹⁶ The Venice Commission's Code, Paragraph II.3.1.f.

4.4 Legislative Provisions vs. Acts of the Election Administration

34. Certain principles should be respected when authority is given to the central election administration body to issue acts that could clarify legal provisions if and where necessary for the effective management of the election process. Such principles respect the right of the legislator to adopt election legislation, while also recognizing the need to provide the possibility for the central election administration to issue supplementary acts. However, it must be remembered that an election administration is an administrative, rather than a legislative body.

35. These principles include:

- Substantive fundamental rights, such as the secrecy of the vote, may not be abrogated or diminished by any act of the election administration.
- Acts of the election administration may not be inconsistent with the law.
- Election legislation should clearly state the hierarchy of legal norms governing the elections, including that the constitutional and legislative provisions take precedence over any acts of the election administration.
- The authority of the central election administration body should be clearly defined in the law, which should unambiguously state the scope and extent of the central election authority to clarify the law, including in emergency situations and on election day.
- Election legislation should indicate the key acts that the central election administration body should issue in order to provide those details that are not included in the law. Ideally, such acts should be issued as soon as possible after the approval of the law.
- Election legislation should provide a process for contestants and voters to file complaints and appeals arising from the adoption and implementation of acts of the election administration, including from the alleged violations of the law by the central election administration;

5. Structure and Status

5.1 Structure

36. Usually, the election administration comprises one central election administration body and a high number of polling station bodies. Between the centre and the polling stations, there can be intermediate level election administration bodies. On the other hand, a decentralized (federal) state may have no central election administration.

37. The central election administration has the overall responsibility for administering the election, while the polling station bodies are responsible for the conduct of the election day process – voting and counting of the votes, and reporting results to their respective superior body(ies).

38. The number of levels of election administration bodies between the centre and the polling stations usually depends on country specifics, the election system for a given election and the structure of the local (self) government. Usually, between the top and the bottom, there are one or two more levels. The lower level election administration bodies generally replicate the principle of establishment of the central one.

39. If election results are announced at local level such as a municipality or electoral district, then at that level there should be an intermediate election administration body. Examples include

municipal elections and national elections where representation is based on several electoral districts, such as majoritarian systems or regional proportional systems.

40. However, in the context of concrete elections, one must be wary, on the one hand, of creating an excess of election administration bodies and, on the other hand, of an insufficient number of levels in the election administration.

5.2 Permanent or Campaign Central Body?

41. The central election administration body can work on a permanent or on a campaign (temporary) basis. The Venice Commission's 'Code recommends that this body should be 'permanent in nature',¹⁷ with a view to enhance continuity and institutional consolidation. However, if the executive branch of power is tasked by law to provide strong administrative support to the electoral process under the guidance of the central election administration body, the latter could still function appropriately on a periodic 'campaign' basis. Continuity of membership of a credible election administration body is always a benefit to the electoral process.

42. The state should provide adequate public budget funding for the ongoing operations of the central election administration and its subordinate bodies. However, it is normal for lower level election administration bodies, in particular at the polling station level, to be temporary, established in a timely manner before election day.

5.3 Self-Sustainable or Supported by a Secretariat?

43. A central election administration body can be self-sustainable and fully 'hands-on' in the election process. This means that members could be organised in 'working groups' which draft acts on specific topics and submit these draft acts to the body's plenary for discussion, possible corrections, approval and publication. Such a collegial mode of operation would require a higher number of members of the central administration body to handle the volume of work. In this case the central election administration body should be legally authorised to supervise the election related activities of specific departments of the executive branch which are responsible for the electoral logistics.

44. Alternatively, a central election administration body with a lower number of members would have to rely on civil servants who would be responsible for the preparatory work for each act of the body and for the election logistics. Such an arrangement is considered by some states to be more 'independent', although in practice the central election administration can become hostage to hidden political agendas.

45. The above mentioned civil servants are usually organised in a secretariat. Such an arrangement requires a clear and legally defined division of responsibilities between the election administration body and its secretariat, and the executive branch. Otherwise, duplication of activities may occur. In addition, the tasks of the secretariat between elections remain unclear. The establishment of a secretariat inevitably results in an increase of bureaucracy and related expenditures which may be difficult to motivate between elections.

6. Central Election Administration Body

6.1 Political Context

46. A broad political agreement on the type and composition of central election administration has the potential to enhance trust in the administration of elections, and boost public confidence in the entire process.

¹⁷ The Venice Commission's Code, Paragraph II.3.1.c.

47. As the central election administration body has the overall responsibility for the conduct of an election, it is often perceived as a political rather than an administrative body. This perception is fundamentally wrong as the election administration has the simple task of implementing the law. However, the performance of the central election administration can have an impact on the political outcome of the election through the manner it administers the entire process.

48. If the law is in line with international standards, the process is administered transparently and in accordance with the law, and political contestants are given equal treatment, then the outcome is likely to reflect the contents of the ballot box and therefore - the prevailing popular attitudes. If there is political will to administer an election in a professional and impartial manner, even if the law has some 'technical' lacunae, it is still possible to conduct a good election. However, if the process is administered in a non-professional, non-transparent, inconsistent and politically biased manner, even with a good law, the outcome can fail to reflect popular attitudes. Hence the importance of the composition of the election administration, from the centre to the polling station level.

6.2 Several Models

49. A wide range of models for the formation of election administration bodies has emerged over centuries of electoral practice. In the absence of specific international standards related to their type and composition, each country has found (or should find) the most appropriate model which reflects local tradition and good international practice based on the key principles mentioned in Section 3 (above).

50. Countries that have an established tradition of conducting elections in line with international standards have election administration bodies that are generally composed of civil servants, at central level – often from the Ministry of Interior, or are represented by officials elected by popular vote, even on party tickets. Such arrangements have emerged in communities where confidence was generally deeply rooted and served as the cornerstone for such models of election administration.

51. More recently, based on difficult experiences including decades of interruption in democratic traditions, an alternative form of election administration has emerged – the election commissions. Such a model is clearly recognized by the Venice Commission's Code.¹⁸ A Central Election Commission (CEC) serves as the central election administration body. This model addressed the overall reluctance to task a Ministry of Interior with administering elections after a period of non-democratic governance and eroded confidence.

52. Election commissions have been or are being gradually established also in some countries with established traditions of conducting democratic elections. This is an acknowledgement of the added value of a professional and impartial institution as a repository of national electoral experience, and also as a focal point to engage with their international peers to exchange comparative election management experience and best practice.

53. Often, the establishment of a CEC should be viewed as an attempt to address a political issue related to the transition to a democratic system of governance. The success of such an attempt could be augmented if it enjoys a broad agreement on applicable rules between election stakeholders. This would be a way to boost public confidence in the electoral process. In accordance with the Venice Commission's Code,¹⁹ inclusion of women and representatives of minority communities in the central election administration body further enhances trust.

¹⁸ The Venice Commission's Code, Paragraph II.3.1.b.

¹⁹ The Venice Commission's Code, Paragraphs I.2.4 and I.2.5.

54. The Venice Commission's Code affords a considerable measure of discretion to states with regard to the composition of election commissions.²⁰ This diversity underscores the importance of the principles²¹ already outlined. Existing modalities for the composition of a CEC include:

55. Nominees of political parties (multiparty representation): The key assumption is that major political interests contesting the election are able and willing to identify professional and publicly respected individuals who, regardless of their political affiliations, will be able to implement the legal framework in a professional and collegial manner, in accordance with the law.²² The main value of setting up a CEC based on multiparty representation is to provide key electoral contestants with close access to the process with a view to strengthen public confidence and transparency.²³ This is achieved by allowing key political interests²⁴ to take part in the administration of the election through their trusted representatives that may or may not be members of a specific political party and may or may not be civil servants. No political interest should have preponderance on the CEC. Such a model vests the responsibility for demonstrating the necessary political will with these political interests. On occasions, a CEC established in line with this model is perceived as not being 'independent'.

56. Institutional quotas with or without staggered terms: A CEC established on the basis of institutional quotas includes representatives from major state institutions, such as the legislature, the executive and the judiciary. In a pluralistic political environment, the political interests are generally represented through the nominees from the legislature. This model is easily implemented to introduce staggered terms of CEC members in order to ensure continuity.²⁵

57. Permanent quota composed of representatives of the judiciary and a temporary quota composed of nominations of the competing political parties: A CEC can be composed of two components - permanent and temporary. The permanent component is formed of representatives of the judiciary²⁶ who take leave from their permanent offices to join the CEC in the course of a few months and administer the process including the registration of candidates. After the completion of registration, a few weeks before election day, the CEC is expanded with the temporary component. The latter comprises nominees of those parties and coalitions which have been registered to participate in the election and who enjoy full voting rights and decision making authority during the remaining phases of the election process.

6.3. Activities

58. During the election period the central election administration body has to accomplish different tasks depending in country context – traditions, legislation and administrative arrangements.

59. Typically, the activities of the central election administration body include the registration of parties and candidates to contest a concrete election, the appointment of election administration

²⁰ The Venice Commission's Code, Paragraph II.3.1.d.

²¹ Please see Section 3 'Key Principles of Performance'.

²² Observers have reported, at times, that this model has been abused by granting decision making powers to one political interest.

²³ The Venice Commission's Code, Paragraphs II.3.1.d.ii and II.3.1.e.

²⁴ There is always a degree of risk for controversy with regard to naming the major political interests in a given country at a given time. This is one of the sensitive points for establishing broad agreement, however sensitivities may be limited if the election is conducted in an atmosphere of overall confidence in the process.

²⁵ In dynamic political environments, influential political interests not represented in Parliament may be excluded. Observers have reported, at times, that this model has been abused by granting decision-making powers to one political interest that has the control of both the executive and the legislature.

²⁶ One could argue that the inclusion of judges in a central election administration body may have an impact on the independence of the judiciary. If judges are included in the election administration, all measures have to be taken to avoid the situation whereby a judge, after returning to his or her permanent job, hears election related cases.

bodies below the central one, the approval of the polling station areas upon proposals of the relevant authorities and oversight of election day process.

60. Depending on the concrete electoral system,²⁷ the central election administration body could adjudicate on complaints and appeals against lower level bodies (preferably not as a last instance in the adjudication process), tabulate election results, allocate seats to election contestants and announce preliminary and final results.

61. On occasion, in the absence of relevant institutions,²⁸ the central election administration body could also be tasked to regulate the election coverage by the media, to oversee campaign funding, to draft boundaries of electoral districts and determine the number of elected officials returned by these districts, to register political parties and/or eligible voters.

7. Conclusions

62. Professional and impartial performance of the election administration, a key element of the Venice Commission's Code, represents a performance oriented approach towards the regulation of election administration. It implies the transparent performance of an accountable body of appropriately trained individual(s) who cannot be removed from office at will on the basis of political considerations. The ability and willingness of such individuals to recognize that they are not politicians are key to their professional and impartial performance.

63. In an electoral environment where the political will to administer elections in a professional and impartial manner prevails, the Venice Commission's Code provides for adequate procedural guarantees that the legal framework and its implementation would overall respect international standards for democratic elections and good electoral practice upholding public confidence. Where such political will is in deficit, procedural guarantees and a legal framework generally in line with international standards may be abused and display their advantages to a limited extent.

64. Numerous models for determining the formation, composition and key responsibilities of central administration bodies have evolved on the basis of the concept of professional and impartial performance clearly underscored by the Venice Commission's Code.

65. One of these models, the multiparty central election commission, has gained a measure of popularity because it contributes to overall transparency in societies undergoing political transition. On a number of occasions, this model has been abused to provide a single political interest with the entire decision making authority, which has not always been used first and foremost to uphold the public interest. Multiparty election commissions are successful in delivering democratic elections in line with international standards and good electoral practice only if they respect the abovementioned principles throughout the process.

²⁷ The formula to transform votes cast for party lists and/or candidates into seats in the body elected.

²⁸ Such institutions may be 'independent' agencies for the media or audit of political parties, register of the population, constituency boundary commissions, etc.