

# ELECTION AUDITS: INTERNATIONAL PRINCIPLES THAT PROTECT ELECTION INTEGRITY



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# Election Audits: International Principles that Protect Election Integrity

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## I. Executive Summary

Election audits are increasingly used as a means of settling disputes about electoral results.

Audits were used to help verify the results of elections in Afghanistan in 2009 and 2014, in Haiti in 2010, in Kosovo in 2009 and 2010, and in the poll for a new Constitution in Iraq in 2005. In developing democracies, where legal frameworks for elections are sometimes ambiguous, and governance structures and the rule of law may be weak, allegations of fraud are common and often legitimate.

When conducted in response to allegations of fraud, a post-election audit can increase the credibility of the outcome. However, such audits should be used only in limited circumstances and according to clearly defined rules. As the international community continues to support electoral processes in developing and post-conflict democracies, it is critical to review and come to consensus on standards that should be applied both to assess the need for a post-election audit and to conduct such an audit. International standards are often presented as a benchmark by which to judge the electoral process, but for these standards to be meaningful in practice it is important to provide proper guidance on implementation.

One of the most important considerations in any audit is ownership of the process. Ideally, the entity that conducted the election should also be responsible for administering the audit. If this entity lacks sufficient credibility or capacity, international technical support may be necessary. As seen in the recent elections that will be discussed in this paper, fraud allegations can bring the entire electoral process to a standstill. In these situations, audits are sometimes viewed as a means of rescuing the election by reinforcing confidence in the eventual results. When the international community is involved, audit organizations must balance the interests and concerns of the candidates with respect for the domestic electoral process.

Clearly defined standards and procedures are essential. They must be publicized in advance and adhered to strictly, in order to build trust in the process and ultimately in the result. The regulatory framework must clearly identify the triggers for an election audit, how an audit will proceed, and who will be responsible. This can be challenging in a politically fraught environment. If all parties involved – including voters – do not perceive the audit process to be transparent and well organized, the audit can further erode confidence in the election, the electoral process, and the institutions that manage it.

Audit investigations must be based on facts, as it is the facts that are in dispute. Investigators must make use of concrete evidence without relying on hearsay, assumptions or suppositions. Investigators are responsible for reviewing all evidence at their disposal and considering the reliability and substance of the evidence. In a challenging environment, this is a difficult but critical task.

Audit guidelines must strike a balance between the need for a thorough investigative process and the requirement for timely resolution. The standard of proof must be clearly articulated so that decisions are not subjective and do not *appear* to be subjective. In addition, international standards recognize the

importance of an appeals mechanism to address situations in which the results of an audit are not acceptable to various stakeholders or there are concerns that the procedures prescribed by the legal framework have not been followed. An appeals process protects the audit from arbitrary decision-making and helps to ensure that decisions are based on credible findings.<sup>1</sup> This is especially important when an audit changes an election's outcome.

Because audits are typically conducted in times of crisis when tension between candidates is high and trust in the election management body (EMB) is low, prior planning is vital. This planning should stress the fundamental principle of uniformity. All ballots should be treated exactly the same way, regardless of who cast the vote, where it was counted, or who performed the count. This principle applies equally to any audit process: it is essential for decisions about inclusion or exclusion of ballots or results to be based on the consistent application of clearly defined rules that are known by stakeholders and EMB officials prior to the commencement of the audit.

This paper discusses important considerations for conducting an audit and provides some recent comparative examples from past elections that help illuminate these key considerations. Rules and regulations for polling, counting, and reviewing ballots should be sufficiently robust to avoid needing an intensive audit. However, in developing and post-conflict democracies in particular, it is important at the outset of an electoral process for an EMB to conduct comprehensive scenario mapping and planning to set rules, contingencies and processes to prepare for the possibility of disputed results. Although post-election audits should be avoided if at all possible, there are clearly instances in which they are necessary. In these situations, audits must be based on a predictable set of procedures and be conducted in a fair, transparent, impartial, and uniform manner.

## **II. Introduction**

In both developed and developing democracies, elections are the best means to facilitate peaceful and predictable transfers of power. Many elections result in clear outcomes, in which one candidate or party is the resounding winner by a large and acceptable margin, or a clear coalition government emerges. Close contests, on the other hand, are more frequently challenged. In these situations, the credibility of the outcome depends on the strength of the electoral legal framework, the integrity of the electoral management body, and the dispute resolution process, as well as on the extent of public confidence in the legitimacy of electoral and other government institutions. Elections in both developed and developing democracies are often zero-sum contests. These elections inherently have higher stakes, which may encourage non-winning candidates to pursue challenges since they may feel they have nothing to lose – even when contesting the election involves a costly, contentious, or time-consuming legal process that may have little chance of succeeding.

When election results are close in developed democracies, existing laws and regulations generally trigger predictable procedures that confirm results, adjudicate complaints, and produce election outcomes that are respected. In developing democracies, on the other hand, legal frameworks are often more ambiguous and susceptible to dispute. Fraud, or allegations thereof, compounds these challenges, as do a

poorly administered election or a general climate of insecurity and impunity. As a result, close elections in developing democracies are often far more contentious and require the commitment of electoral authorities to navigate to peaceful and respected outcomes, and patience on the part of the public to allow the electoral authorities to do their job.

In both developed and developing contexts, election recounts and audits have become common practice to settle disputes about outcomes. In developed democracies, election regulations often require a recount or audit when specific thresholds have been met or surpassed.<sup>2</sup> Regulations in developing countries, where the environment is usually more complex, often fail to adequately anticipate the range of potential outcomes, particularly in close and disputed contests, or when there are allegations of fraud on a large scale. Recent elections in Afghanistan illustrate these challenges. In both 2009 and 2014, audits were conducted to help verify the outcome of the presidential races, applying ad hoc procedures in an effort to respond to significant political tension and insecurity. In the contexts of these elections, audits and recounts were conducted amid allegations of widespread fraud and with the credibility of the electoral management bodies in question. In 2014 in particular, international observer missions reported that electoral authorities and the international community were compelled by a political agreement to begin the audit in haste, which made it challenging to properly address key considerations, including the criteria that should be used to invalidate votes and which organization should have ultimate authority over the process. While this kind of response to serious political turmoil is not uncommon in developing and post-conflict states, it leaves the process vulnerable to ad hoc processes and decision-making.<sup>3</sup>

A closer examination reveals how audits and recounts can be used as conflict mitigation tools. But the challenges faced during these processes demonstrate also that they should be used only in extraordinary circumstances in which accepted international standards can be applied. There are no perfect elections or electoral systems, and while inevitably there are irregularities, these should not necessarily threaten an election's credibility or integrity. Rather, irregularities threaten the integrity of an election only if they are extensive, systematic, and decisive in a close race.<sup>4</sup> To mitigate this threat, preventative measures ideally should be put in place before an election, following comprehensive scenario mapping. Such preventative measures should include an electoral integrity management plan. Equally important are effective and timely remedial measures to address allegations of fraud or malpractice via an effective electoral complaints adjudication system.

Reflecting on lessons from Afghanistan, Haiti and Kosovo, audits may ultimately facilitate peaceful and largely accepted election outcomes, but may harm the longer-term consolidation of democracy in the country, requiring new leaders and the election bodies to gradually rebuild public trust. While serious political and security turmoil can arise in elections, the assertion that unique circumstances call for unique solutions can lead to the adoption of ad hoc processes – a scenario that should be avoided through extensive prior planning, preparation for contingencies, and adherence to established procedures.

Election audits and recounts are common around the globe. Any use of these processes – especially in post-conflict, transitioning environments with widespread allegations of fraud – must be guided by international standards. This paper attempts to outline these standards, including the procedures and the limited circumstances under which full-scale audits should be conducted.

### III. Audits and Recounts: Definitions and Distinctions

The terms “audit” and “recount” are often used interchangeably, but they are not the same thing. A recount is a process by which ballots in an electoral contest are tallied again. Unlike a recount, an audit is undertaken to investigate alleged fraud or malpractice. An audit may include a recount of the votes, but it also involves other aspects of an investigation into allegations of fraud. Understanding the difference between an election audit and a recount can help determine which process should be applied to a particular situation.

In general, a recount is a process by which ballots in an electoral contest are tallied again after the initial count following an election. Recounts are usually conducted under the same rules and procedures as the original count and can take many forms. A partial recount may include the ballots from specific polling stations or electoral districts; a full recount would normally involve tallying all ballots in all polling stations. Recounts can be done centrally or locally, depending on the legal framework under which the election was conducted and logistical considerations such as security or transportation infrastructure.

There is no clearly accepted international model for how and when to conduct an electoral recount, and the process can vary widely from one country to another. Regardless of the specifics, it is vital that prior to an election there are in place clearly defined processes for making the decision to recount ballots and for conducting the recount. Information on the recount process, and under what circumstances a recount would take place, should be widely disseminated and available to the public before voting takes place. A standard practice is to require that the request for a recount be made immediately after the announcement of results. Whether recounts are mandatory or optional can depend on several factors, most notably the margin of victory. Some elections require a recount wherever the winning candidate’s margin of victory is less than a pre-determined percentage.<sup>5</sup> Election procedures typically give authorization for a recount to a court, electoral tribunal, or other electoral dispute resolution body. Usually, if the non-winning candidate chooses to accept the results, a recount is not undertaken.

In a **recount**, ballots cast in an electoral contest are tallied again following an election. Often a different organization will count the ballots to confirm the results.

In an **audit**, allegations of fraud or malpractice are investigated. An audit may involve a full or partial recount as well as other actions undertaken to determine whether one or more people have deliberately sabotaged the election process, unfairly manipulated the election results, or committed extensive mistakes in administration.

An audit tends to be much less straightforward than a recount and entails a wider variety of activities. Whereas a recount is intended to confirm the accuracy of the tally, an audit is undertaken to investigate alleged fraud or malpractice. An audit may involve a full or partial recount, but it also includes other actions to evaluate whether the electoral process has been conducted according to the rules and regulations. Audit investigators may focus on whether or not certain voters were eligible to cast ballots, for example. Audits may focus on the mechanics of the vote or on broader issues such as the integrity of the voter list.<sup>6</sup>

As a practical matter, an audit can be a standard component of an electoral certification process. For instance, in elections that use electronic voting equipment, a hand count may be required in a certain percentage of polling stations. The decision to conduct an audit can also be made after a highly contested election in which the results lack legitimacy. Here, the audit can be a means of moving the process forward and determining a winner. Audits have been used for this purpose in several elections in recent years, including in Sierra Leone (2007), Kenya (2007), Haiti (2010), and Afghanistan (2009 and 2014).

While a well-conceived audit can make significant contributions to the electoral process and its integrity, audits that have not been conceptualized and planned for in advance can have the opposite effect. Electoral frameworks should clearly articulate the reasons a post-election audit might be necessary and the procedures for carrying out an audit. If the legitimacy of an election's outcome is questioned by unsuccessful candidates or the public, an audit may be needed for reasons beyond what was specified in the electoral framework. In such cases, the audit may be an integral means to restore legitimacy to the electoral process or the credibility of the election management body. One of the major problems with such an audit is that the election commission is starting from a position of weakness. When an unsuccessful candidate or political party succeeds in having the election process audited, it casts doubt on the credibility of the EMB. The audit forces the EMB into a defensive position, from which it must prove that the election was conducted fairly and according to established laws and procedures. Essentially, the electoral process is considered guilty until proven innocent, often undermining public confidence in the electoral system. Even when an electoral authority can show that the election results are credible, skepticism may linger. Supporters of a candidate who has alleged that the election was fraudulent may refuse to accept the outcome, regardless of how extensive or objective the audit.

Audits are too often used by losing candidates as last-ditch efforts to overturn an unsatisfactory result or to extract political concessions from the winning candidate or the government. It is essential to avoid a situation in which an audit is used as a tactic to prolong an electoral contest or delay a political transition. Unlike recounts, for which the process is much more straightforward, an ad hoc audit that does not follow clearly delineated international standards may not have a clear decision point. The candidates or party requesting the audit may draw it out by changing their requests for the audit's scope. Not only does a drawn-out process require the investment of considerable resources, it also undermines public trust in the election. The longer an audit process, the more frustrated all parties – including voters – tend to become. A prolonged process often further erodes the credibility of electoral authorities and confidence in the outcome of the election.

## **IV. International Standards for Partial and Full Audits**

International standards for post-election audits should address ownership of the process, predetermination and uniform application of procedures, evidentiary requirements, and the right of appeal. All of these elements are required for safeguarding the integrity of elections and their final outcomes.

### **A. Ownership of the process**

If an electoral audit will be undertaken, the country's election commission should own the process. If the electoral authority lacks sufficient credibility to stand behind an announced electoral result, however, it may also lack credibility to stand behind the outcome of an audit. Careful consideration of who will conduct an audit is therefore vital. All stakeholders in the election should agree in advance how an audit should proceed and what entities will be responsible for particular decisions about the process. In many cases, it may be necessary for a trusted third party (such as an electoral tribunal) to provide guidance to the audit process, but it is sometimes difficult to identify a neutral actor in nascent democracies. Instead, representatives of the international community may be called upon to assist with a post-election audit, as was the case with elections in Haiti in 2010 and in Afghanistan in 2014.

Depending on the capacity of the electoral authority and public confidence in the institution, some level of international technical and financial support may be appropriate, and in nascent democracies the EMB may already be supported by international technical experts. Regardless of the level and types of support the international community provides for the audit, the election commission should have supreme authority over the process, and international stakeholders should endeavor to reinforce this. Ensuring that the final decision-making authority lies with the election commission will help to mitigate the risk of real or perceived foreign interference in the election and its outcome. In addition, a credible audit led by the election commission can help build confidence in the EMB and the election process as a whole.

In Afghanistan, the July 12, 2014 political agreement between the two presidential candidates mandated an audit and outlined the National Unity Government to be formed after the conclusion of the audit process. The agreement gave a large role in the audit process directly to international entities. This was challenging for international stakeholders and technical assistance providers, as Afghanistan's legal framework for elections did not include explicit provisions for an audit process or international involvement, although Article 58 of the Electoral Law provides authority to the Independent Election Commission (IEC) to quarantine and investigate ballot boxes. Through the high-level political agreement, the international community ultimately was vested with significant responsibility for the audit process, but the legal authority remained with the IEC.

As the audit unfolded in Afghanistan, some stakeholders complained that the process was subject to the whim of the candidates. Allegations of fraud by both sides brought the electoral process to a standstill. Pressure to find a solution – even one that might be seen as outside the legal framework for the elec-

tions – was increased by concerns that failing to find a mutually acceptable solution would lead to serious instability. The IEC ultimately agreed not to release the final results of the audit as part of the negotiations that led to the National Unity Government that rules Afghanistan today.

Representatives of the candidates may be involved in the audit, but it is important to ensure that they do not control the process. If parties or candidates drive the audit, its course will be determined by partisan interest rather than protecting the public's interest in a legitimate and credible election.

## **B. Predetermination of standards and procedures**

As noted previously, audit standards and procedures should be clear, publicized in advance, and adhered to strictly. When an audit is part of a preconceived electoral certification process, standards and procedures are likely to be codified in the legal framework. In situations in which an ad hoc audit process is proposed as a means of resolving a legitimacy deficit or intractable electoral dispute, establishing standards and procedures can be challenging.

As with any other stage of an electoral process, predetermined standards and procedures are critical to the legitimacy and credibility of an audit. The statutory basis for any audit must be in the legal framework under which an election was conducted. In 2002, the European Commission for Democracy through Law (known as the Venice Commission), which is responsible for providing constitutional assistance to individual countries, adopted a *Code of Good Practice in Electoral Matters*. This code outlines internationally accepted best practices for election management. The Commission affirmed that “stability of the law is crucial to credibility of the electoral process” and that “states should codify language that safeguards fundamental principles of their legal framework.”<sup>7</sup> The conditions necessary for a recount of the votes, a runoff election, or an invalidation of particular ballots should be clear, transparent, and easily understandable under the legal framework before the election takes place.

If a decision is made to undertake an audit, electoral bodies must put in place well-defined and consistent standards and procedures to govern the process. This framework needs to be established and publicized *before* the audit is initiated. This is the same standard that applies to rules and regulations governing the management of elections, as well as those governing the resolution of electoral disputes. The rationale is simple: to be fair, the rules of the game must be clear for all stakeholders before the game begins. A system that does not define audit standards and procedures, or that does so in an ad hoc manner, enables arbitrary implementation of procedures – and erodes public trust in the process.

A clear, pre-determined regulatory framework for audits should identify not only which entities will be responsible for conducting, observing, and deciding on the audit process, but also how the audit will proceed. As illustrated by the challenges and disputes that arose during the audit of Afghanistan's 2014 presidential election, standards and procedures for dealing with sensitive issues such as similarly marked ballots and results sheets must be established in advance, understood by all stakeholders, and applied consistently. This prior planning takes time, which is usually a scarce resource in a fraught political environment. However, failing to take these steps leaves the process and those that must carry it out

vulnerable to criticism and charges of bias, and may increase the risk that other stakeholders will not accept the results.

### **C. Training and consistent application of standards and procedures**

Effective training dovetails with the requirement for predetermined standards and procedures. Even if a regulatory framework is established ahead of an audit, officials and investigators responsible for conducting the audit should be properly trained to reduce the risk of inconsistencies in how the standards are applied. Audit investigators must fully understand their mandate, how to implement audit procedures in a consistent manner, and the importance of doing so impartially. They must also understand the provisions of their code of conduct and what enforcement mechanisms are in place should they violate their duty of care under the code. Training can help ensure that audit investigators are equipped to exercise their mandate as governed by the audit framework and that all procedures are carried out properly. Again, this can be challenging where capacity may be low, or where an audit is taking place under both time and political pressures. However, this step is key to garnering the trust of political parties, contestants, and the general public in the audit and its results.

In Kosovo in 2010, the election commission adopted procedures in advance of the election that would cross-reference the candidate results form with the results and reconciliation form (party totals). The tabulation system then would automatically detect the instances in which results were compiled incorrectly at the polling station level. When the results forms were processed at the Count and Results Center, however, problems in polling station tabulation became evident. In the end, more than 50 percent of Kosovo's polling stations had failed the audit. Auditors resolved some common misunderstandings and mistakes made by polling station committees, but the vast majority of these polling stations could not be reconciled and thus were not included in the results.<sup>8</sup>

The Inter-Parliamentary Union, a global organization of parliaments established in 1889, has agreed that states are obligated to “ensure that those responsible for the various aspects of the election are trained.”<sup>9</sup> A lack of adequate training on an audit process can greatly hamper the ability of audit investigators to conduct their duties. As with other aspects of the electoral process, consistency is crucial. The public must have confidence that the standards and procedures put in place for an audit will be applied consistently across polling stations, and for individual ballot boxes, results sheets, and ballots. Without this consistent application of standards, the purpose of the audit is defeated, the process may not be accurate or trusted, and these weaknesses may affect media coverage and overall citizen perceptions of the effectiveness of the electoral system.

Candidates, political parties, audit observers, and other stakeholders (including the general public) also need to be educated about the audit process. Various stakeholders may need different training or information. It is critical to think carefully about the role various groups will play and how they can be enlisted to support the audit process and outcomes. Deficiencies in training and education leave the system vulnerable, particularly with regard to candidate interaction with an audit process, where it is critical to emphasize the rules around observation to avoid interference. This can make the process even

more challenging for EMBs and international stakeholders, as seen in Afghanistan's 2014 presidential election where disagreements between candidate teams in the audit warehouse were frequent. While political disagreements among even trained candidate agents may be inevitable, emphasizing and enforcing rules and procedures are important mitigating steps to limit these conflicts.

Lack of clear and open information can also reduce public trust in the audit process. The remedial audit processes initiated in Kosovo in 2009 and 2010 revealed significant issues with counting and tabulation, which paradoxically served to erode confidence in these elections, despite the fact that the audit process improved the accuracy of the final results.<sup>10</sup> The Kosovo example illustrates the importance of educating the public on the purpose of the audit, how it is being conducted, how it contributes to more accurate results, and what to expect in terms of process and timelines.

#### **D. Evidentiary standards**

As the U.N. High Commissioner on Human Rights has affirmed, the “purpose of an investigation should be to secure independent evidence.”<sup>11</sup> The collection and corroboration of substantiated facts and evidence goes to the very heart of an elections investigation and any subsequent adjudication process that leads to the invalidation of votes. Audit investigators should make every effort to substantiate facts and evidence without relying on hearsay, assumptions, or suppositions.<sup>12</sup> An audit of election results based on claims of fraud must be managed according to the same basic evidentiary principles as other fraud investigations.

**Types of evidence.** The United Nations General Assembly has declared that investigators have the responsibility to “identify and obtain all relevant information and evidence to establish facts relevant to an allegation, resulting in the facts being confirmed or refuted.”<sup>13</sup> To do so, investigators should consider multiple types of evidence to corroborate findings, assess the value of the evidence according to a clearly established standard of proof and, as necessary, follow applicable search and seizure policies.<sup>14</sup>

International standards currently offer very little guidance on the specific type of evidence needed to validate electoral results. In their absence, we must look to case law of regional bodies, such as the European Court of Human Rights (ECtHR), and international public law documents. In *El-Masri v. the Former Yugoslav Republic of Macedonia*, for example, the ECtHR defined a thorough investigation on the basis of substantiated evidence. Commenting on the necessity for the “prompt and thorough” investigation of rights violations, the Court explained, “That means that the authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions . . . [and] must take all reasonable steps available to them to secure the evidence concerning the incident.”<sup>15</sup>

The ECtHR has reaffirmed the importance of substantiated evidence in several recent election-related cases. In *Akatishi v. Azerbaijan*, the applicant submitted that the decision by the Constituency Electoral Commission to disqualify him as a candidate for the National Assembly – for alleged bribery of voters, insulting his opponent and disrupting his opponent's campaign – had been “arbitrary and based on

flimsy, insufficient, unreliable and fabricated evidence.”<sup>16</sup> The ECtHR ruled in favor of the applicant, finding that “the applicant’s disqualification was based on irrelevant, insufficient and inadequately examined evidence.”<sup>17</sup> The Court noted that the relevant domestic authorities had not taken into account statements from the voter retracting allegations of bribery, had not heard the voter in person, had not sought corroborating evidence, and had not called witnesses to attest to the alleged campaign disruption.<sup>18</sup> In addition, the evidence submitted by the Constituency Electoral Commission included written complaints from the applicant’s main opponent and political supporters, and thus required “exceptional scrutiny by the courts charged with the task of assessing their truthfulness.” The ECtHR noted that these complainants were not summoned to be questioned in person.<sup>19</sup>

In *Namat Aliyev v. Azerbaijan*, the applicant had submitted extensive evidence in support of his complaint alleging various electoral irregularities, including more than 30 affidavits from election observers, audiotapes, and other documents. The ECtHR emphasized that the need for the timely resolution of electoral disputes does not outweigh the responsibility to undertake a thorough review of the evidence: “[R]elevant domestic authorities may be required to examine election-related appeals within comparatively short time limits in order to avoid retarding the electoral process . . . Nevertheless, . . . it must be ensured that a genuine effort is made to address the substance of arguable individual complaints concerning electoral irregularities and that the relevant decisions are sufficiently reasoned.”<sup>20</sup> Meeting this goal requires countries to establish audit guidelines that strike a balance between timely resolution and a thorough investigative process. “Reasonableness” should characterize the audit timeframe. This was an important factor in the 2014 Afghanistan audit, in which one candidate’s team continued to request changes to the audit framework based on what was being revealed during investigations, while the other team argued for timeliness in order to resolve the deadlock and meet the deadline for presidential inauguration.

As this brief discussion indicates, audit investigators should consider multiple sources of information, including affidavits and other documentary evidence and audio recordings of witness testimony. In an election investigation, documentary evidence often takes on particular importance. The *Canadian Special Investigators’ Manual* – a unique publication that provides clear, detailed guidance for election investigators – lists the types of official election documents Canadian investigators consider in an audit process. These include nomination papers filed by candidates, documents related to revisions to the lists of electors, and various polling station returns enclosed in sealed envelopes, such as the packets of cast, rejected, and spoiled ballot papers.<sup>21</sup>

Some countries – including Chile, Costa Rica, Ecuador, Mexico, and Peru – require complainants to attach supporting documentary evidence to their initial complaint submitted as part of the dispute resolution process.<sup>22</sup> In these cases, investigators must still consider, in the words of the *Canadian Special Investigators’ Manual*, “whether the recorded information is sufficient, reliable and substantial enough to either prove or refute the allegations of the complaint.”<sup>23</sup> Furthermore, investigators should strive to corroborate the evidence by determining “whether the recorded information cross-matches or corresponds with other related information from documentary records and available sources of information.”<sup>24</sup>

Auditors and other election investigators should take into account the many types of evidence they have at their disposal, from documentary material and physical evidence to witness testimony, such as interviews or written affidavits. This can be challenging in an unstable and developing democracy, and evidence may not be immediately or easily accessible. However, this is critical to the integrity of the investigation process, and investigators should endeavor to secure multiple sources of evidence. More importantly, auditors should not simply accept evidence at face value. Auditors have the responsibility to seriously consider whether the available information is reliable and substantial enough to support or refute the allegation. To aid in this task, states should develop a clearly articulated standard of proof.

***Chain of custody of evidence.*** A proper chain of custody is a crucial component of legitimate audit processes, as the quality of the physical evidence may affect decisions of the court or auditing panel. Investigative bodies, including auditors, have the burden to prove that every step in the process of collecting, using, and preserving evidence comports with international best practices.<sup>25</sup> These best practices can be broken down into four categories: the establishment of standard operating procedures (SOPs); continuity of possession; security; and inspection.

**Standard operating procedures:** Investigative bodies should establish clear, written standard operating procedures to guide every step in the evidence chain of custody, including “the submission, receipt, handling, transfer, and disposition of evidence.”<sup>26</sup> The SOPs should clearly define the duties and responsibilities of investigators and should be provided to all parties involved in the investigative process.<sup>27</sup> To ensure that auditors and other investigators are thoroughly familiar with the SOPs, investigative bodies should provide ongoing training on the procedures for the chain of custody of evidence.<sup>28</sup>

In addition, investigative bodies should develop user-friendly forms for auditors to properly track the movement of evidence. For example, forms should track the time and date that evidence is submitted to adjudication bodies, the names of the individuals handling evidence, and the names of people with access to designated evidence control rooms.<sup>29</sup>

**Continuity of possession:** The investigative body should maintain a thorough inventory of physical evidence to ensure that all items are properly secured and preserved for adjudication.<sup>30</sup> The inventory process begins with logging evidence as it is received and ends with recording the outcome of the investigation or audit. Inventory lists must indicate the specific location within a designated control area of each piece of evidence at all times.<sup>31</sup> Auditors should routinely cross-check each piece of evidence against corresponding records.

When transferring evidence, investigative bodies must monitor the transfer and treatment of the evidence to ensure that it is returned in a timely manner.<sup>32</sup> If possible, the investigative body should require the individual authorized to transfer evidence and the representative from the receiving institution to review and sign an itemized list of the evidence.<sup>33</sup> SOPs should provide instructions for signing out evidence, monitoring the duration in which it is gone, securing and protecting the integrity of the evidence at the external location, and returning evidence to owners or archives after investigation.<sup>34</sup>

**Security:** The evidence control area should be a secure location that offers protection from unauthorized access and, when possible, from fire, water, humidity, and other physical conditions that could degrade or destroy the evidence.<sup>35</sup> To guard against the risk of alteration, unauthorized removal, or manipulation of evidence, investigative bodies should limit access to the evidence control area. At a minimum, investigative bodies should use an access log to carefully monitor entry into restricted storage areas.<sup>36</sup> In addition, SOPs should clearly state accountability policies for persons with access to designated control areas and establish disciplinary actions for misconduct, malpractice, or negligence with respect to evidence.<sup>37</sup>

**Inspection:** Maintaining a proper chain of custody of evidence requires auditors to periodically inspect the evidence control area.<sup>38</sup> Inspections serve as an “important internal control” that allow for the early identification of problems in the evidence management system.<sup>39</sup> Inspections should cover key issues, including “security, access control, [and] missing evidence,” “general cleanliness and housekeeping of the area,” and “inventory levels, safety practices, and training of [staff].”<sup>40</sup> To promote institutional learning, supervisors should keep written records of inspections.<sup>41</sup> In addition, accountability mechanisms should be built into the process. When possible, external institutions should be allowed to conduct periodic reviews of evidence management. External reviews can promote institutional integrity, compliance with legal requirements, and adherence to SOPs and policies.<sup>42</sup> To prevent arbitrary external reviews and undue interference with an investigative body’s operations, written policies should set in advance the schedule and scope of external reviews.

### **E. Right of appeal<sup>43</sup>**

The electoral process must provide complainants the right to appeal the audit findings. The right to an appeal is a key component in ensuring access to an adequate remedy. International human rights conventions all recognize, implicitly or explicitly, the fundamental value of an appeals mechanism.<sup>44</sup> Article 14, § 5 of the International Covenant on Civil and Political Rights (ICCPR) provides for such a right in criminal matters, and the United Nations Human Rights Committee has emphasized that the guarantee of an appeal should not be confined to only the most serious offenses.<sup>45</sup> The outcome of an electoral complaint can be of paramount importance, and an appeals process can reinforce the right to an effective remedy, particularly in situations in which the outcome of the election is at stake. The Venice Commission also recognizes in its code of good practice that a system of appeals is necessary to provide for an effective remedy. Individual citizens and candidates should be able to fully challenge any electoral irregularities before an election tribunal, an electoral commission, or a constitutional court.<sup>46</sup> The ECtHR has stressed that “an effective system of electoral appeals is an important safeguard against arbitrariness in the electoral process.”<sup>47</sup> In the context of audits, the process and procedure by which an audit is conducted must be predetermined and administered consistently and thoroughly. Candidates, citizens, and political parties must also have the right to appeal to protect against arbitrary decision making and to ensure that decisions are based on credible audit findings.

Within the context of an audit – particularly when election results are challenged and the electoral commission is starting from a position of weakness – the right of appeal is integral to building trust in election

results. The core function of an electoral complaints body is to maintain credibility and reliability by making available a clear, legal right of action for complainants.<sup>48</sup> As with general adjudication systems, the appeal process must encompass the fundamental right to judicial review, must be clearly established by the law, and must be known to the general public.<sup>49</sup> This is particularly important when an audit changes the outcome of elections because the public must understand why the election result was challenged and accept the remedy that was administered.<sup>50</sup> In the 2014 Afghanistan audit of presidential ballots, audit decisions by the IEC could be appealed to the Independent Electoral Complaints Commission.

The audit review process needs to be fast and effective, but it must not contravene due process protections. Specific time frames should take into account the need for the adjudication of the claim to take place within the limits of the election process,<sup>51</sup> for the remedies to be implemented in a similar timeframe, and for the decision to be released in a timely manner. Appeals should not be used to delay the certification of the results or to harass the adversarial party or candidate. Time limits for lodging and deciding appeals must be reasonably short. The Venice Commission has set the standard of three to five days for actions at first instance.<sup>52</sup> This recalls and buttresses the general principle of expeditious proceedings in the adjudication of electoral complaints.

Finally, as previously stated, a transparent right of redress requires that the complainant be informed of the reasons why the claim was dismissed or denied. Thus, the appellate body, in making its decision, should clearly state the legal basis used or factual determination made when it ruled on the particular case, based on a clear elucidation of the possible electoral offenses in the law. The judge or arbiter should detail which audit findings they have used to make their decisions, what violation was committed, who committed the violation, and whether the violation influenced or might have influenced the outcome of the elections.<sup>53</sup> Judges and arbiters should provide relevant parties with the means to understand the legal and evidentiary reasoning behind the decision. The appellate body should also provide the concurring or dissenting opinions of the judges or arbiters. This will provide transparency about the reasoning used by arbiters to reach their conclusion and any personal legal views that entered into the decision. A legal justification for a decision will also facilitate the enforcement of the decision and help to establish the legitimacy of the final electoral results.

## **V. Operational Considerations for EMBs Managing an Audit Process**

The 2010 presidential election in Haiti and the comprehensive, nationwide audit after the 2014 presidential runoff election in Afghanistan are instructive when considering the myriad of operational issues facing EMBs during audits and how election officials can best prepare for crisis situations. International research underscores the importance of proper planning to successfully prevent, identify, and mitigate fraud and malpractice.<sup>54</sup> An EMB should use fraud prevention tools, such as pre-election integrity assessments and electoral integrity management plans (EIMPs), to prioritize vulnerabilities, identify the most severe risks, and outline how and by whom the risks will be mitigated.

In Afghanistan, the IEC developed a fraud mitigation plan almost a year before the 2014 general election, which was a positive initiative. The plan laid out steps the IEC had already taken to address risks of

perceived and actual fraud and malpractice. Many of these actions would be categorized as “good election administration;” others were more directly aimed at addressing the malpractice and fraud experienced during Afghanistan’s 2009 and 2010 elections. It would have been useful, however, for the IEC to have developed a risk profile, ranked the vulnerabilities that were identified, and built into the process a monitoring and implementation mechanism. These steps would have assisted the IEC to more comprehensively prioritize reform and mitigation efforts, given the extreme integrity risk profile in Afghanistan. In Haiti, the Provisional Electoral Council (CEP) also did not conduct a comprehensive pre-election risk analysis or undertake these types of preparations, which would have helped it mitigate or at least manage challenges as they unfolded.

Neither the CEP in Haiti nor the IEC in Afghanistan anticipated the possibility of a comprehensive, nationwide audit, so no contingency plans were made to conduct these exercises. Given the frequent occurrence of integrity-related problems with elections in Afghanistan and Haiti, and the lessons learned from these audit processes, elaborate election integrity support activities should form an integral part of all future election contingency planning at those EMBs. A comprehensive electoral integrity management plan can reduce the risk of fraud by highlighting to potential spoilers that the EMB is ready to effectively combat fraud. It will also increase the likelihood of spoilers being detected. For such a plan to be effective, it is very important that a robust enforcement mechanism is in place with serious penalties.

The operational standards governing national audits largely correspond with the overarching election administration principles: transparency and uniform implementation of procedures by election officials following a clear code of conduct. Audits often are undertaken when tension between candidates is high and trust in the EMB is low. Ensuring transparency during all phases of the audit is critical, as access to the process and key documentation can remove the cloud of suspicion among stakeholders and the general public. As noted above, uniform implementation of clear and unambiguous rules governing the audit is an absolute standard underpinning all forms of adjudication, including audits. Politically sensitive audits are usually implemented by both permanent and temporary employees of an election authority, and the behavior of these employees as representatives of an EMB is of critical importance. Adherence to, and enforcement of, a well-crafted code of conduct is therefore essential.

***Transparency during movement of sensitive audit material.*** Transparency during the movement of sensitive election material is imperative to an audit’s credibility. External stakeholders should be permitted access to every step of the audit process, including transit and storage of evidence. During the 2014 audit in Afghanistan, the IEC, the International Security Assistance Force and the UN did a remarkable job of securing transportation of ballot boxes from the provincial warehouses scattered across Afghanistan to a centralized location. Procedures to ensure the presence of observers and party agents were quickly issued, facilitating sufficient transparency of this important component. For an audit process of this scale and level of controversy, the importance of transparency measures is hard to overstate. The presence of candidates and observers over many weeks was admirable. However, the complex operating environment, the pressure for rapid decisions, and the lack of pre-determined standards led to challenges in preserving the evidentiary chain of custody.

***Adherence to a code of conduct.*** Election officials should be guided by a code of conduct (CoC) in their daily work. Without such a code, the values and principles underpinning their professional conduct can quickly erode. In Afghanistan, the IEC had established codes of conduct for a wide variety of stakeholders, including the media, observers, political parties, candidates, and candidate agents. The CoC for election officials detailed the principles and behaviors that were expected of an IEC official. As with many developing countries where the rule of law is weak, however, enforcement of such a code is challenging. Accordingly, codes of conduct should clearly set out workable mechanisms for reporting breaches and outline consequences for non-adherence.

Codes of conduct used during the electoral process should be reinforced during preparations for an audit. In the Afghanistan audit process, the IEC issued a stand-alone special code of conduct for political party agents and their campaign teams, which was a positive initiative. The Expert Verification Mission tasked with assessing the 2010 Haiti election did not issue a code of conduct, although it stated that its work was based on transparency, impartiality and adherence to the legal framework.<sup>55</sup>

***Uniform implementation of procedures.*** Uniformity is one of the most fundamental principles in electoral management, including audit processes. Irrespective of where or by whom a vote is cast, each ballot should be treated in exactly the same way. This means that in an audit each ballot should be investigated using the same procedures, and the decision to include or exclude it should be based on uniformly applied rules. The audit process should accord the same respect for and protection of the rights of individual voters as it does for the interests of candidates.

In the 2014 Afghanistan audit, the single most important document guiding the auditors was the 16-point checklist agreed upon by the two presidential candidates with the U.S. Secretary of State. However, additional regulations, procedures and training are needed to guide auditors in completing a checklist, in order to reduce subjectivity and ensure uniformity. For example, question 12 of the IEC checklist asked: “Are there identical or significant patterns of the same markings on ballots? If yes, how many?” Detailed information and training was important to identify similarly marked ballot (SMB) papers, as well as to understand what constituted a pattern.

As audits are often performed by individuals with vastly different backgrounds, a certain level of subjectivity is inherent to the process. In order to reduce the level of subjectivity across auditing teams, clear and unambiguous guidelines, along with training on those guidelines, are critical. This is particularly true when auditors lack formal education as election auditors and have limited or no previous practical experience in conducting an audit. The less experienced the auditors, the more important it is to provide unambiguous rules and high-quality training.

In Afghanistan – due to an urgent focus on operational issues and the transfer of ballots to Kabul – the IEC did not issue at the outset detailed guidelines about the proper chain of custody of evidence and how to deal with fundamental fraud risks such as similarly marked ballots and similarly signed results sheets. Such clear and tangible directions would have helped to prepare auditors to perform fundamental aspects of their audit duties in a standardized manner, and reduce challenges for the IEC down the

road. Beginning the audit process under political pressure (with notice of 24 hours according to the political agreement) left little time to develop such guidelines, and one candidate team eventually chose to boycott the audit.

Elections in Kosovo and Haiti are similarly instructive. In Kosovo in 2009 and 2010, there were clearly articulated procedures to determine the type of irregularities that would trigger an audit, but the high number of irregularities combined with pressure to produce results in a reasonable time frame required additional human resources to be dedicated to the complicated audit processes. Uniform application of audit and recount procedures was extremely challenging without comprehensive training; in many cases, materials were incorrectly counted or recorded in the initial audit, requiring a repeat of audit procedures.

The 2010 audit in Haiti was even more challenging, as it was conducted without a clear procedural framework in place and with non-uniform application of the factors triggering an audit. Following the controversial presidential election, the Haitian government invited the Organization of American States (OAS) to investigate whether irregularities impacted the election results.<sup>56</sup> This mission faced a difficult task without a prior legal mandate and predetermined audit processes and procedures. Ultimately, the mission investigated only a subset of the polling stations based on a statistical model and focused on elements of fraud only, as opposed to both fraud *and* malpractice. Moreover, the election authority had previously endeavored to conduct an internal audit of election results, but it lacked a method to determine whether or not results protocols from polling stations should be included in the national tally. The major triggers for an audit of a polling station were also adjusted during the audit, causing further challenges with respect to uniformity (the trigger for closer scrutiny of a polling station results form was initially 225 ballots cast in favor of one candidate, but this trigger was changed to 150 ballots).<sup>57</sup>

## **VI. Considerations for Candidate Agents and Observers to an Audit Process**

In addition to the operational considerations detailed above, planning considerations may influence the participation of external stakeholders.

***Clearly communicated procedures.*** It is critically important to have a clearly detailed procedure and checklist for an audit before initiating the process. For the sake of accountability, all stakeholders need a clear and comprehensive understanding of how the audit will be administered. International and domestic observers cannot do their work if there is no point of reference for assessment. Candidate representatives cannot participate effectively if they do not know the rules and regulations governing their participation. Adjudication decisions and changes to the process should be clearly communicated to all stakeholders to reduce confusion and consequent setbacks.

Inviting international observers to observe an electoral audit is a best practice in emerging democracies. Allowing international observers contributed significantly to the transparency of Afghanistan's audit pro-

cess. However, the audit process should not *require* the presence of outside observers. According to universally accepted international standards, international observation missions should remain independent and impartial and should only serve the interest of building confidence in the election's integrity or documenting its weaknesses. Including election observers as a requirement of the audit procedure dictates a part of the observation methodology and can threaten the essential independence of the observation mission.<sup>58</sup> In Afghanistan's recent audit, the IEC required that one international observer be present at each audit station before IEC officials could begin auditing ballot boxes, based on a political requirement from one candidate team as a precondition for participation in the audit. While the motivation to ensure transparency of the process was important, this requirement significantly influenced the structure of the international observation missions, albeit not their findings.

***Audit site logistics.*** Depending on the scope of the audit, an EMB may have the audit officials travel to multiple locations or have all the ballot boxes transported to a central location. Audit managers should consider the stakeholders that should be present and their ability to access the locations where audits are to be performed. At a minimum, each site will need to have sufficient space for auditors, observers, and the ballot boxes; adequate security; and a relatively clean, comfortable environment. As discussed, as a result of the political agreement between candidate teams in Afghanistan, the IEC and UN went to great lengths to secure transportation of all ballot boxes to warehouses in Kabul and to ensure adequate audit site arrangements that could facilitate the participation of auditors, candidates, and observers.

***Accreditation.*** When it comes to making decisions regarding the types and number of organizations and individuals to accredit, the EMB needs to consider the space available, the competitive (and possibly disorderly) dynamic between candidate camps, and the available resources for the accreditation procedure. A slow accreditation process can be an obstacle for getting external stakeholders involved in the audit. The procedure for accreditation should take into consideration any time and material limitations and the start-up timeline for the audit. The number of candidate agents to be accredited requires careful consideration. In Afghanistan, to ensure transparency the IEC initially set no limit on how many candidate agents could be accredited or present at the audit site at one time, but the flood of agents from both candidates engendered a frenzied rumor mill that escalated minor doubts to serious accusations of fraud or misconduct. Security concerns after a few violent confrontations led the IEC and its advisers to reduce the number of agents permitted at the audit site.

In Haiti, the OAS expert verification mission established transparency as a goal for its audit operations. The mission was careful to establish a thorough process to ensure consistency and quality control among members conducting the audit, but no observers or candidate agents were present during the audit process.

## **VII. Conclusions and Recommendations**

This paper has outlined numerous considerations in the preparation for and conduct of election audits. At minimum, the following principles should serve as a guide for electoral bodies considering the use of audits:

- ✓ **Integrity management.** Election management bodies should prioritize integrity-related risks, particularly in nascent democracies, and should develop an electoral integrity management plan based on rigorous integrity assessments and scenario mapping before each electoral cycle.
- ✓ **Established legal framework.** The legal basis for any audit must be defined as part of the legal framework under which the election was conducted.
- ✓ **Established procedural framework.** The procedures under which the audit is conducted must be developed and shared with all stakeholders in advance of the audit.
- ✓ **Effective training and adherence to a code of conduct.** An audit must not begin until codes of conduct are in place and until training of audit personnel and public education have been conducted.
- ✓ **Clear jurisdiction.** Jurisdiction over the audit process should be clear and vested with a national institution, preferably the electoral management body.
- ✓ **Predetermined and uniformly applied rules.** The scope and scale of the audit must be clearly defined before the audit begins. Rules should not change after the audit has begun, and audit rules – including the standard of evidence – and regulations must be uniformly applied across all cases throughout the audit process.
- ✓ **Appropriate evidentiary standards.** Proper chain of custody of evidence should be maintained by following clearly defined standard operating procedures, continuity of possession, security, and inspection.
- ✓ **Right to an appeal.** The electoral process must maintain a right to appeal decisions of an audit, but candidates should not be able to use the audit process as a means of delaying acceptance of an electoral result.

There are best practices and lessons learned for election audits in post-conflict, transitioning environments. Ideally, audits would be unnecessary, as rules and regulations and procedures for counting and reviewing ballots should be sufficiently robust to eliminate the need for invasive auditing processes. For democracy to succeed in fragile and transitioning environments, electoral legal frameworks must be respected; electoral management bodies must be strong, independent, and impartial; and political parties and candidates must support the outcome of the election process. Challenging circumstances can test the foundations on which nascent democracies rest. Stakeholders must unite in support of the frameworks that have been adopted and the fledgling institutions that are responsible for safeguarding the democratic foundations and legal framework in which the election takes place.

When audits are determined necessary, they must be based on a predictable set of procedures and guided by best practices. This paper has attempted to provide this guidance in the hope that when such audit processes are required, there are resources available to audit managers, so that any post-election audit conducted may be less contentious, more predictable, and ultimately protect the integrity of an election and its outcome.

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<sup>1</sup> For instance, in the United States, filing a frivolous claim can result in sanctions for the filing attorney, FED. R.CIV. P. 11(b), available at [https://www.law.cornell.edu/rules/frcp/rule\\_11](https://www.law.cornell.edu/rules/frcp/rule_11).

<sup>2</sup> E.g., VA. CODE ANN. § 24.2-800 (2009); WASH. REV. CODE § 29A.64.021 (2013).

<sup>3</sup> OSCE, ISLAMIC REPUBLIC OF AFGHANISTAN: PRESIDENTIAL AND PROVINCIAL COUNCIL ELECTIONS 33 (2014), available at <http://www.osce.org/odihr/elections/afghanistan/129761?download=true>; EUEAT, ISLAMIC REPUBLIC OF AFGHANISTAN: FINAL REPORT 30 (2014), available at [http://www.eueom.eu/files/dmfile/FINAL-REPORT-EUEAT-AFGHANISTAN-2014-c\\_en.pdf](http://www.eueom.eu/files/dmfile/FINAL-REPORT-EUEAT-AFGHANISTAN-2014-c_en.pdf).

<sup>4</sup> Jørgen Elklit and Palle Svensson, *What Makes Elections Free and Fair?*, 8 J. DEMOCRACY 32 (1997).

<sup>5</sup> In Virginia, the contesting candidate is given the discretion to file for a recount when the vote difference meets a specified threshold. VA. CODE ANN. § 24.2-800 (2009). In contrast, in Washington, a recount is automatically triggered when the vote difference meets a specified threshold. WASH. REV. CODE § 29A.64.021 (2013).

<sup>6</sup> STAFFAN DARNOLF, IFES, ASSESSING ELECTORAL FRAUD IN NEW DEMOCRACIES: A NEW STRATEGIC APPROACH 15 (2011), available at [http://www.ifes.org/~media/Files/Publications/White%20PaperReport/2011/Assessing\\_Electoral\\_Fraud\\_Series\\_Darnolf.pdf](http://www.ifes.org/~media/Files/Publications/White%20PaperReport/2011/Assessing_Electoral_Fraud_Series_Darnolf.pdf).

<sup>7</sup> VENICE COMMISSION, CODE OF GOOD PRACTICE IN ELECTORAL MATTERS: GUIDELINES AND EXPLANATORY REPORT, ¶ 63, 52nd Sess., Op. No. 190/2002 (May 23, 2003), available at <http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD%282002%29023rev-e>.

<sup>8</sup> IFES, Electronic Counting of Ballots in Kosovo: IFES Guidelines for a Feasibility Study (2011) (on file with IFES) [*hereinafter* Feasibility Study].

<sup>9</sup> Inter-Parliamentary Council, DECLARATION ON CRITERIA FOR FREE AND FAIR ELECTIONS, art. 4, ¶ 2 (Mar. 26, 1994) available at <http://www.ipu.org/cnl-e/154-free.htm>; see also INTER-PARLIAMENTARY UNION, WHAT IS THE IPU?, <http://www.ipu.org/english/whatipu.htm> (last visited Feb. 20, 2015).

<sup>10</sup> FEASIBILITY STUDY, *supra* note 8.

<sup>11</sup> U.N. High Comm'r on Human Rights, Human Rights Standards and Practice for the Police: Expanded Pocket Book on Human Rights for the Police, at 12, U.N. Doc HR/P/PT/5/Add.3, U.N. Sales No. E.03.XIV.7 (2004) available at <http://www.ohchr.org/Documents/Publications/training5Add3en.pdf>.

<sup>12</sup> Material in this section has been drawn from a forthcoming IFES publication on investigative standards in election disputes, supported by the United States Agency for International Development (USAID).

<sup>13</sup> Rep. of the Joint Inspection Unit, *Investigations Function in the United Nations System* ¶ 59, U.N. Doc. A/67/140 (Jul. 13, 2012) (describing the duties of an investigator as opposed to an auditor).

<sup>14</sup> An example of when search and seizure policies would apply in the elections context would be if a poll worker took a results form home. The police should follow proper search and seizure policies to avoid an unlawful invasion of privacy and to ensure they are not improperly conducting raids in the name of collecting evidence.

<sup>15</sup> *El-Masri v. Former Yugoslav Republic of Macedonia*, App. No. 39630/09, 2012-VI Eur. Ct. H.R. 263, available at <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-115621>.

<sup>16</sup> *Atakishi v. Azerbaijan*, App. No. 18469/06, 2012 Eur. Ct. H.R. at ¶ 34 available at <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-109292>.

<sup>17</sup> *Id.* at ¶ 47.

<sup>18</sup> *Id.* at ¶¶ 43, 44, 45.

<sup>19</sup> *Id.* at ¶ 45.

<sup>20</sup> *Namat Aliyev v. Azerbaijan*, App. No. 18705/06, 2010 Eur. Ct. H.R. at ¶ 90 available at <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-98187>.

<sup>21</sup> COMM'R OF CANADA ELECTIONS, *Ch. 8 Access to Records, Books and Documents*, in INVESTIGATORS' MANUAL 11 (Appendix I) (2000) [*hereinafter* CANADIAN INVESTIGATORS' MANUAL CH. 8].

<sup>22</sup> Jesús Orozco-Henríquez et al., Int'l Inst. for Democracy & Electoral Assistance, Electoral Justice: The International IDEA Handbook 166 (2010), available at [http://www.idea.int/publications/electoral\\_justice/upload/inlay-Electoral-Justice.pdf](http://www.idea.int/publications/electoral_justice/upload/inlay-Electoral-Justice.pdf).

<sup>23</sup> CANADIAN INVESTIGATORS' MANUAL CH. 8, *supra* note 21.

<sup>24</sup> COMM'R OF CANADA ELECTIONS, *Ch. 10 Inspection, Review and Analysis*, in INVESTIGATORS' MANUAL 2 (2000).

<sup>25</sup> *Cf.* COMM'R OF CANADA ELECTIONS, *Ch. 9 Collection, Use, and Preservation of Evidence*, in INVESTIGATORS' MANUAL 1-8 (2004) [*hereinafter* CANADIAN INVESTIGATORS' MANUAL CH. 9]; *see also* Evidence Act, R.S.C. 1985, c. C-5, §§ 24-31 (*as amended 2013*)(Can.) (information on admissibility of various documents for evidentiary purposes).

<sup>26</sup> JOSEPH T. LATTA & ROBERT E. GILES, *Professional Standards*, 2012 INT'L ASS'N FOR PROP. & EVIDENCE 13, available at [http://www.iape.org/standards/IAPE\\_Standards\\_2.4.pdf](http://www.iape.org/standards/IAPE_Standards_2.4.pdf) (SOPs refer to instructions which cover operations that can be standardized or regulated without "loss of effectiveness.").

<sup>27</sup> *Id.*

<sup>28</sup> *Cf.* CANADIAN INVESTIGATORS' MANUAL CH. 9, *supra* note 25 (noting that investigators "must be thoroughly familiar with the...procedures for the control of evidence").

<sup>29</sup> *Cf.* LATTA & GILES, *supra* note 26 at 19-22.

<sup>30</sup> *Cf. id.* at 74.

<sup>31</sup> For example, Elections Canada requires its Special Investigators to identify all documentary evidence in the following manner: for evidence contained in envelopes, boxes, and electronic devices, investigators should "record the file number of the investigation on the document and/or container; state in the investigation report the exact location, the ... data base descriptions, and specific address where each document was seized or obtained, and from whom; describe each document and reference number; identify the investigator taking possession of the documents; record the date and time of the receipt or seizure of documents; [and] prepare an exhibit report ... ". For evidence and other information in electronic records, investigators should: "provide the identity and address of all persons who ... retrieved the information from the computer or database; identify the person who made entries in the record ... ; determine who has knowledge of [the evidence] and could therefore be a competent witness in any further investigation or court proceedings; [and] advise the providers that the documents will be returned once the matter has been resolved ... "

<sup>32</sup> LATTA & GILES, *supra* note 26, at 21; CANADIAN SPECIAL INVESTIGATORS' MANUAL, CH. 9, *supra* note 25, at 5.

<sup>33</sup> *Cf.* Christian A. Nielsen & Jann K. Kleffner, *A Handbook on Assisting International Criminal Investigations* 56 (Maria Nystedt ed., 2013).

<sup>34</sup> LATTA & GILES, *supra* note 26, at 21.

<sup>35</sup> NIELSEN & KLEFFNER, *supra* note 33, at 55.

<sup>36</sup> *See id.* at 35-36. The International Association for Property and Evidence defines an access log as "a document that records the entry of non-assigned personnel into the property room, and why the entry was necessary. The log should record name, ID number, reason for the entry and which employee assigned to the property unit escorted the person." *Id.* at 36.

<sup>37</sup> *Cf.* LATTA & GILES, *supra* note 26, at 35-36.

<sup>38</sup> *Id.* at 76.

<sup>39</sup> *Id.* at 76-77.

<sup>40</sup> *Id.* at 76.

<sup>41</sup> *Id.* at 76.

<sup>42</sup> *Id.* at 77.

<sup>43</sup> A version of this section was previously published in INT'L FOUND. FOR ELECTORAL SYSTEMS (IFES), GUIDELINES FOR UNDERSTANDING, ADJUDICATING, AND RESOLVING DISPUTES IN ELECTIONS (GUARDE) 37-50 (Chad Vickery ed., 2011), available at [http://www.ifes.org/~media/Files/Publications/Books/2011/GUARDE\\_final\\_publication.pdf](http://www.ifes.org/~media/Files/Publications/Books/2011/GUARDE_final_publication.pdf).

<sup>44</sup> International Covenant on Civil and Political Rights, art. 14, §5, Dec. 19, 1966, 999 U.N.T.S. 171, 177, *available at* <https://treaties.un.org/doc/Publication/UNTS/Volume%20999/v999.pdf> [*hereinafter* ICCPR]; Inter-American Convention on Human Rights, art.8(2)(h), Nov. 22, 1969, O.A.S.T.S. No. 36, *available at* <http://www.oas.org/jurld-ico/English/treaties/b-32.html>; Protocol No. 7 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, art. 2, Nov. 22, 1984, C.E.T.S. No. 117 (entered into force Nov. 1, 1988), *available at* <http://conventions.coe.int/Treaty/en/Treaties/Html/117.htm>; African Charter on Human and Peoples' Rights, art.7(a), June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (entered into force Oct. 21,1986), *available at* <http://www1.umn.edu/humanrts/instree/z1afchar.htm> [*hereinafter* African Charter]; Constitutional Rights Project v. Nigeria, African Comm'n on Human and Peoples' Rights, Comm. No. 60/91 (1995) *available at* <http://www1.umn.edu/humanrts/africa/comcases/60-91.html>; UN Human Rights Comm., CCPR General Comment No. 32, Art. 14: Right to Equality Before Courts and Tribunals and to a Fair Trial, ¶¶ 47-50, U.N. Doc. CCPR/C/GC/32 (Aug. 23, 2007), *available at* <http://www.refworld.org/docid/478b2b2f2.html> [*hereinafter* CCPR General Comment No. 32].

<sup>45</sup> ICCPR, *supra* note 44, art. 14, § 5; General Comment No. 32, *supra* note 44; U.N. Human Rights Comm., CCPR General Comment No. 13, Art. 14: Equality Before the Courts and the Right to a Fair and Public Hearing by an Independent Court Established by Law, U.N. Doc. HRI/GEN/1/Rev.1 at ¶ 17 (1994) (April 13, 1984), *available at* [http://ccprcentre.org/doc/ICCPR/General%20Comments/HRI.GEN.1.Rev.9%28Vol.1%29%28GC13%29\\_en.pdf](http://ccprcentre.org/doc/ICCPR/General%20Comments/HRI.GEN.1.Rev.9%28Vol.1%29%28GC13%29_en.pdf).

<sup>46</sup> VENICE COMMISSION CODE, *supra* note 7, at 29-30.

<sup>47</sup> Petkov v. Bulgaria, App. no. 77568/01, 2009 Eur. Ct. H.R. ¶ 63, *available at* <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-93027>.

<sup>48</sup> Steven H. Huefner, *Remedying Election Wrongs*, 44 HARV. J. ON LEGIS. 265, 291 (2007).

<sup>49</sup> Universal Declaration on Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III), at art. 8 (Dec. 10, 1948), *available at* <http://www.un.org/en/documents/udhr/>; ICCPR, *supra* note 44, at art. 2, § 3(a),(c); African Charter, *supra* note 41, at art. 7, § 1; European Convention for the Protection of Human Rights and Fundamental Freedoms, art. 13, Nov. 4, 1950, C.E.T.S. No. 5 (entered into force Sept. 3, 1953), *available at* <http://conventions.coe.int/Treaty/en/Treaties/Html/005.htm>.

<sup>50</sup> Huefner, *supra* note 48, at 291-92.

<sup>51</sup> Venice Commission, Convention on the Standards of Democratic Elections, Electoral Rights and Freedoms in the Member States of the Commonwealth of Independent States, art. 10, § 2(f), Opinion No. 399/2006 (Jan. 22, 2007), *available at* [http://www.eucom.eu/files/dmfile/compendium-of-int-standards-for-elections\\_en.pdf](http://www.eucom.eu/files/dmfile/compendium-of-int-standards-for-elections_en.pdf).

<sup>52</sup> VENICE COMMISSION CODE, *supra* note 7, at 30.

<sup>53</sup> ORGANIZATION FOR SECURITY AND CO-OPERATION IN EUROPE, OFFICE FOR DEMOCRATIC INSTITUTIONS AND HUMAN RIGHTS, REPUBLIC OF KAZAKHSTAN: REVIEW OF THE ELECTION LEGISLATION FOR ELECTION DISPUTES, APPEALS AND PENALTIES 5 (2001), *available at* <http://www.osce.org/odihr/elections/kazakhstan/14597?download=true>.

<sup>54</sup> DARNOLF, *supra* note 6, at 21.

<sup>55</sup> Organization of American States, Final Report, Expert Verification Mission of the Vote Tabulation of the November 28, 2010 Presidential Election in the Republic of Haiti 23 (2011).

<sup>56</sup> For additional information and data, *see id.*

<sup>57</sup> *Id.* at 20.

<sup>58</sup> *See* Int'l Inst. for Democracy & Electoral Assistance, Declaration of Principles for International Election Observation and Code of Conduct for International Election Observers (2005), *available at* [http://www.idea.int/re-sources/analysis/observation\\_coc.cfm](http://www.idea.int/re-sources/analysis/observation_coc.cfm).





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