



CONFERENCE: CODES AND STANDARDS OF ETHICS FOR PARLIAMENTARIANS

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FINAL REPORT

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Summary of Proceedings¹

During the **Opening Remarks**, speakers from the two co-organizers of the conference welcomed participants to the conference and offered some initial reflections. **Mr. Mikheil Machavariani**, First Deputy Speaker of the Georgian Parliament, thanked the OSCE and the Office for Democratic Institutions and Human Rights (ODIHR) and recalled the history of Parliament's co-operation with these. Mr. Machavariani recalled the 2010 constitutional reforms in Georgia, which aimed to strengthen a parliamentary system of government, moving powers from the president to the parliament. This, he noted, would also mean looking carefully at the ethics and conduct of parliament. **Dr. Marcin Walecki**, Chief of Democratic Governance at OSCE ODIHR, welcomed participants and thanked the Parliament of Georgia for co-hosting the conference. He noted the importance of ethics in parliament, in particular for maintaining public trust in democratic governance. Dr. Walecki welcomed all participants, in particular members of the Georgian parliament, as well as civil society participants.

Opening Session: Why parliamentary ethics? Principles, Challenges, Trends

In this session, participants were invited to examine the basic reasons, dilemmas and challenges of parliamentary ethics, as well as the possible principles that may be used to address these. In her opening remarks, the Moderator, **Dr. Elizabeth David-Barrett**, of Oxford University, noted that ethical standards were nothing exceptional in other professions. MPs, she noted, faced the need to conduct their legislative, oversight, and representation responsibilities in the public interest. However, MPs "are human", and face other social roles – responsibilities to political parties, but also families and relatives. To this one must add the fact that politics is a "messy business" which requires frequent compromise and deal-making to advance. Lastly, she noted, the public interest is not always clear – dilemmas remain. In response to these problems, Dr. David-Barrett noted the potential advantages of a code of ethics: it can help set public expectations surrounding what constitutes abuse of office; it can make parliament more efficient by clarifying what is and is not acceptable behaviour, thus making things clearer for politicians themselves; it can help return some of the prestige to the profession of politics; and, lastly, a code can increase compliance with international anti-corruption standards.

The first panelist to take the floor, **Mr. Tomasz Lenz**, a member of the Polish Sejm, recalled the Polish experience of adopting a Code of Ethics for members of the Sejm in 1997. Mr. Lenz suggested that "personal culture" and "moral backbone" were not sufficient to guarantee the conduct of Members of Parliament – formal codes and principles were necessary too. He argued that Codes resulted from three causes: 1) real-world violations of ethics by MPs; 2) the need to answer to the public's fears about politicians' conduct, and 3) the need to strengthen and support democracy and parliamentary institutions by clarifying the "rules of the game". Each parliament had to develop its own code of ethics, Mr. Lenz argued, with different implementation modalities, but he argued strongly in favour of giving such codes a legally binding status, as it would help to strengthen the idea that MPs are not above the law, and sets equal rules for all MPs, regardless of party size or importance. Crucial to developing such a Code, Mr. Lenz argued, was finding a "group of

¹ The report is prepared on the basis of notes taken by ODIHR staff and presentations of the participants. The report cannot and does not exhaustively convey the details of discussions but rather aims to identify the most salient points. The opinions expressed do not necessarily reflect the views of any individual participant, organization, OSCE participating State or the Parliament of Georgia.

values” acceptable to all – many of which are often shared across cultures, such as: “Freedom of speech”, “openness”, “selflessness”, “opposing corruption”, “independence”, “responsibility”, “diligence” and “honesty”. However, each political culture will have a different approach to certain issues – such as how to define a conflict of interest. Turning to discuss restrictions and sanctions, Mr. Lenz noted that while immunity was important for MPs, the global trend was towards a form of restricted immunity limiting itself to non-accountability for actions and speech in Parliament. A code of ethics should be accompanied, he said, with an effective sanctions regime – otherwise the rules set out in a code would be challenged. These sanctions should be proportionate, however.

The next panelist, **Mr. Gudrat Hasanguliev**, of the National Assembly of Azerbaijan, underlined that trust in politicians could not be divorced from a full separation of powers and the rule of law. Politicians, he argued, need to be able to show that their activities respect the interest of voters and to avoid activities that can create perceptions of corruption or arouse suspicion. Private life and public activities need to be separated. In Azerbaijan, the law on ethical behaviour of public officials already applies to some extent to MPs. While there was no ethics code in the National Assembly, there is a Disciplinary Committee, which can discipline MPs on the basis of the Rules of Procedure. The Committee has looked at issues of conduct, including the importance of respecting the dignity of fellow MPs, and has sanctioning powers.

Ms. Heather Wheeler, a member of the House of Commons in the United Kingdom, described the work of the Standards and Privileges Committee of the House, on which she serves. An Independent Commissioner is responsible for analyzing and considering all complaints related to MPs, and then transmitting these to the Committee with recommendations for further actions. While complaints are frequent, they are rarely upheld. In 2011, 104 complaints had been received but the Independent Commissioner had upheld only four. The Committee considers cases and then transmits these to the plenary of the House, which ultimately decides on the charges against MPs. The Committee is also in charge of reviewing and changing the Code of Conduct, recommending changes as necessary. The Committee also looks at difficult or controversial issues in parliamentary conduct. Most recently, it had been looking in detail at the balance between what is party political activity and work on behalf of the constituency – which had an impact on how House of Commons resources were to be used.

Mr. David Darchiasvhili, Chair of the Committee on European Integration of the Parliament of Georgia noted how parliamentary ethics was a very timely issue for Georgia, and that it was a crucial component of fighting corruption – ethical standards can have “preventive” effects. However, ethical standards depend largely on four variables, according to Mr. Darchiasvhili. Firstly, culture – national practices and habits can influence perceptions of what is ethical. Thus, in Georgia, using one’s public position to hand out patronage had been something normal and expected – not helping one’s contacts was seen as almost immoral. Second, accountability during elections helps to shape ethical standards. Third – what legislation is in place can shape ethical frameworks, citing for example Georgia’s Law on the Conflict of Interest. Lastly, he suggested that MP’s powers – such as the ability to make discretionary decisions on the budget, or the ability to intervene in public welfare programmes – can create opportunities for abuse. Mr. Darchiasvhili underlined that finding a balance between individual and collective responsibility as MPs was essential. He also added that a balance between confidentiality and transparency was a constant dilemma for MPs, noting that new techniques of participation (through social networking, inter alia) were rapidly changing expectations.

A period of discussions and questioning followed. The Moderator, Dr. David Barrett, asked panelists to consider whether and to what extent transparency is a good thing, and whether trust should not complement the work of MPs. Ms. Wheeler, recalling the scandals during the 2005-2010 term of the House of Commons, noted that the new system put in place had led to MPs being very cautious about their expenditure. Mr. Darchiashvili underlined that transparency is essential to protecting the public interest, recalling the new rules of political party financing adopted in Georgia. Mr. Hasanguliev concurred, noting that democracy cannot be understood without transparency, recalling that in Azerbaijan a law had been adopted which obliged MPs to submit declarations of interest. Mr. Lenz noted that in Poland, MPs have to submit annual reports on their income, including details about the income of spouses, as well as to report with whom they have met during the elaboration of laws.

In discussing how to approach the development of a Code, Ms. Wheeler noted that there was no need to “reinvent the wheel” – the example of other codes was useful. Public consultations were important, but it was also essential, she felt, to rely on the expertise of parliamentary staff to design a Code. She underlined the need to accept that the Code will need to evolve and be updated and revised. Speaking about the Polish example, Mr. Lenz noted that all parties were involved in drafting the Code, but noted that academics and civil society were consulted.

Mr. Darchiashvili clarified how, in Georgia, MPs had previously been known to intervene in decisions of the executive – for instance on the allocation of health care resources – which often lead to opportunities for, and accusations of, nepotism and corruption. Reforms were undertaken to remove such opportunities for intervention.

Mr. Akaki Minashvili, Chair of the Foreign Relations Committee of the Georgian Parliament, argued that some issues that should be regulated in a code of ethics are already covered in Georgia’s anti-corruption laws, and proposed other issues of ethics and conduct should be regulated: communication with the public and with other MPs; behaviour on the floor. He also asked what implementation arrangements should be adopted – with what sanctions. Mr. Luis Navarro, of the National Democratic Institute, noted that in the US Congress the Ethics Committee is purposely designed to have an equal bi-partisan composition, so as to encourage consensus. Mr. Lenz noted that the Sejm’s committee on deputy ethics had an opposition majority. Mr. Darchiashvili noted that the Rules and Procedures Committee of the Georgian Parliament would be the most appropriate to regulate and oversee the implementation of the Ethics Code.

Ms. Wheeler, noted that the House of Commons Committee on Standards and Privileges did not look at how MPs communicate with their constituents, as this was ultimately something over which the electorate should decide. Ms. Wheeler also noted that boycotting MPs in the UK did still have access to some resources of Parliament, so as to allow them to perform some constituency functions.

Ms. Chiora Taktakishvili, Deputy Chair of the Committee on Legal Issues, underlined that it was important to distinguish between ethics and what were clearly criminal cases of corruption, which should be handled by the judiciary.

Ms. Wheeler, responding to the discussion about cultural expectations, noted that the British House of Commons’ expenses system was discovered to be very out of date. The expenses system was abused by many MPs – even though often for small amounts. Often fraud was committed without the police initiating investigation. After the scandal broke,

she noted, four MPs were imprisoned, and the system has been reformed – it is now very onerous for MPs.

Mr. Levan Vepkhvadze, Deputy Speaker of the Parliament of Georgia, noted that a code of conduct by itself is not implementable – adequate rules for implementation need to accompany the code. This should include appropriate sanctions, but in a way that can avoid the danger of the parliamentary majority punishing the minority. Ms. Khatuna Gogorishvili, Chair of the Rules and Procedures Committee, disagreed with Mr. Vepkhvadze, arguing that the Code was equally applicable and that there was no danger that the majority would use it to punish the minority. In 2004, the Code had been signed by all MPs, but she wondered what the legal format of the Code was in other countries. Ms. Eve Samson, Clerk of the Standards and Privileges Committee of the House of Commons responded that in the UK the Code is formally adopted by a vote in the House and is deemed to apply to all – it is not signed, as it considered binding on all MPs.

Thematic Session I: The Move towards Codes of Conduct - Why Codes of Conduct? What kinds of Codes? Case Studies

In this session, participants were asked to examine the challenges of addressing ethical reform in parliaments, and in particular the opportunities and difficulties that arise in the development and adoption of Codes of Ethics and Codes of Conduct. Ms. Chiora Taktakishvili first asked the panelists to offer their overviews.

Mr. Philippe Jabaud, of the Secretariat of the French National Assembly, explained that in 2011 the Bureau – the main decision-making body of the National Assembly – had taken a decision to adopt a Code of Conduct but also to create the position of a Commissioner for Ethical Standards (CES). The new Code of Conduct, he explained, should be seen as part of this existing legal and ethical framework, including relatively strict provisions concerning political life – in particular the financing of political life

According to Mr. Jabaud, the French National Assembly adopted a code in response to the recommendations made by a special committee under the Council of State on ethics in public life. The Speaker of Parliament set up a special working group, under the Bureau of the National Assembly, which included representatives from all political groups as well as legal advisers. The proposals of the working group, which were accepted in April 2011, included a Code of ethics - something which is traditionally not that common in French institutions – as well as the setting up of a Commissioner for Ethical Standards (CES) (*déontologue* in French).

The CES was to be an independent personality, appointed by three fifths of the Bureau with the concurrence of one opposition party, for a non-renewable term of five years. The first and current incumbent is a well-known constitutional lawyer. The CES is to act as an adviser to MPs, but if an MP does not successfully resolve an issue in accordance with the advice of the CES, the CES may raise the issue for the consideration of the Bureau. Under the new system, MPs are to submit declarations of interests upon their election, and will be under an obligation to declare gifts and travel. These declarations of interest will be private, but will be available to the Bureau in case of any complaints or problems. The CES is responsible for all complaints.

The Bureau is the primary responsible body for any future changes to the code, although a working group of the Bureau would likely be used again as it was during the development

of the code. The French code was adopted as a decision of the Bureau of the National Assembly.

In conclusion, Mr. Jabaud argued that a Code must be seen as part of the broader regulation of political life – a code could be less onerous and detailed if other provisions are already in place covering such issues as incompatibilities, conflicts of interest, and campaign financing. Mr. Jabaud also underlined that a code should and must be open to improvement and reform. He warned that the success of any rules is linked to the willingness of MPs to follow rules.

Ms. Heather Wheeler, introducing the British House of Commons Code, noted that the document is not a very detailed one – it could in fact be compared to a “gentleman’s agreement”. The document was agreed by the Committee on Standards and Privileges and then by the House of Commons as a whole. The work of the Committee is based on the understanding that the House of Commons should police its own members rather than the courts. The Commissioner, who is elected for one non-renewable five year term, is an independent figure who assists the work of the Committee. The Commissioner may propose changes to the Committee, but these are not always accepted. For instance, the Commissioner suggested altering the wording of the Code on the activities of MPs in their private lives (so as to widen the scope for considering private life) and also to better regulate party political activities. Both of these proposals were, however, turned down by the MPs.

Ms. Wheeler noted that the Code was based around the Nolan Principles of Conduct in Public Life, which were considered to apply to all public officials and servants throughout the UK. Furthermore, the ethics framework exposes MPs to additional transparency – the conflict of interest declaration can lead to sometimes fierce scrutiny.

Ms. Wheeler suggested that one of the reasons that the number of upheld complaints was relatively low was because one aspect of MPs’ conduct was very actively policed by the Speaker. The Speaker is very attentive to so-called “unparliamentary” behavior and language, where only the most formal and dignified forms are tolerated. Ms. Wheeler added that another reason for the low number of upheld complaints lay in the fact that the rules allow for minor matters to be corrected through a simple apology and a rectification by the MP, before the issue even reaches the Committee.

Complaints could result in a range of penalties, which are proposed by the committee upon consideration of the report submitted by the Commissioner, which will include a conclusion on whether a breach existed or not. The Commissioner refrains from trying to assess the degree of seriousness of the breach. The Committee will then consider past cases, as well as what rules were applicable when the incident was set to have occurred. When considering complaints, Ms. Wheeler noted that the Committee found it important to develop its own case law so as to mark precedents, setting clear guidelines for future reference. The MP could be fined or be asked to write a letter of apology or even apologize to the House. A limited suspension also may be used. In all these cases, Ms. Wheeler noted, there is a strong element of humiliation which can act powerfully on some MPs.

There was some discussion about the independence of regulatory authorities, such as the Commissioner or the CES in France. Ms. Wheeler noted that the Committee on Standards and Privileges was usually chaired by an opposition figure, with an opposition majority (although the governing coalition had created an anomaly in the observance of this rule), although she felt that party politics did not play a big role inside the Committee. Mr.

Jabaud noted that it is not difficult to find independent figures if the proper guarantees are built into job descriptions. An additional crucial element, he noted, was building the opposition into the appointment process.

There was also some discussion of how MPs declare foreign travel. Ms. Wheeler noted that only trips that were paid for by a lobbying group (but not the Parliament itself) were declared, in which case details are given about who paid for a trip, how much, and who was met. Mr. Jabaud added that online social networking platforms had changed the balance: MPs were often sharing a lot of details about their private lives and travels on their profile pages. Sometimes they were even “tweeting” during closed meetings, a development which raises some issues.

Thematic Session II: Making it work: Experiences of implementing a Code of Conduct, enforcing and reforming it – Case Studies

The Moderator, **Ms. Khatuna Gogorishvili**, underlined that, during this Session, participants would be asked to focus more closely on the particular challenges of implementation and enforcement – how codes of conduct systems could be “made to work”.

In her presentation, **Ms. Eve Samson**, Clerk of the Standards and Privileges Committee, noted that rules of behavior for parliament were in fact nothing new for the House of Commons, citing rules from 1695 prohibiting the payment of MPs to raise matters in the House. The House of Commons had seen over the years a number of innovations in the regime regulating conduct. Thus, for instance, beyond the Register of Interests created for MPs in 1975, a number of additional Registers were created: for secretaries and researchers of MPs, for journalists, for All-Party Groups, and, as recently as 2012, for staff of All-Party Groups. This, she suggested, is how a conduct regime can be innovative without the impetus of a crisis or scandal.

In some cases, Ms. Samson noted, rules were codifications of earlier unwritten conventions. Thus, a convention had existed to declare interests during debate, but this was not formally codified until a resolution in May 1974.

Ms. Samson underlined the importance of the Nolan Committee on Standards in Public Life, an independent committee established to examine ethics in public life, which delivered its final report in 1995. The Committee’s remit looked beyond Parliament at other aspects of public life, and its seven principles² of public life are seen to apply to all holders of public office and to all public services. The Nolan Committee recommended that all public bodies (so, including Parliament) should draw up Codes based on the Nolan principles, as well as the development of internal systems for maintaining standards, through independent scrutiny.

Thus, Ms. Samson explained, the Nolan Committee set out some of the main features that would be adopted by Parliament: a Code and an independent commissioner. The independence of the commissioner, Ms. Samson argued, makes it easier for complaints to be processed and in particular to be dismissed. A more political figure would be more suspect if complaints were dismissed. The Commissioner was barred from being a career member of the House of Commons, and now tends to be a recently retired senior civil

² Selflessness, Integrity, Objectivity, Accountability, Openness, Honesty and Leadership – see http://www.public-standards.gov.uk/Library/Seven_principles.doc

servant or public official. The Commissioner was granted the ability to make findings and conclusions public, similarly to the Ombudsperson. The Commissioner would have the power to decide whether to investigate a complaint, and would therefore also be able to require papers, persons or records, through the operation of a special Parliamentary select committee. The appointment of the Parliamentary Commissioner for Standards was conducted through an open recruitment procedure, under the oversight of a special panel consisting of members of the committee, senior House officials, and experts in public appointments. Sometimes a search agency was hired to identify suitable candidates. The final choice was sent to the House of Commons Commission, the governing body of the House of Commons.

Ms. Samson explained that the Commissioner may investigate complaints through correspondence or through hearings. Some complaints were often addressed through simple rectifications. In some cases, however, some complaints were – though no breach was observed – still forwarded to the Committee as they contained important points of principle which the Commissioner may feel needs to be addressed or clarified. If the Committee upholds a complaint, the Committee sets out penalties. If one of these is a temporary suspension, the penalty has to be approved by the House as a whole. Ms. Samson underlined the importance the Committee attaches to discussing a matter quickly, so as not to leave an allegation “hanging” over a member.

Ms. Samson also explained that there are a number of issues the Committee does not look at: electoral matters, matters falling under criminal jurisdiction, as well as private life. Nonetheless, “private life may be considered if such conduct significantly damages the reputation and integrity of the House of Commons as a whole or of its Members generally.

Ms. Samson also discussed the importance of building in safeguards for fairness into the system for investigating complaints. The House had determined – through the Joint Committee on Parliamentary Privileges – that a number of safeguards were needed, including clear, prompt and precise allegations against the MP; an opportunity to take legal advice, to be heard in person, to call witnesses, and to examine other witnesses; to attend meetings where evidence is given, as well as any transcripts of such meetings. An extra safeguard exists in the form of the possibility, since 2003, of calling together Investigatory Panel – for serious cases, where evidence is in dispute. Such a Panel would be chaired by the Commissioner, but would have two assessors, one MP and one legal expert. The assessors report on the process of investigation undertaken by the Commissioner.

Ms. Samson also reported that the Committee was about to consider another innovation – the inclusion of two or three “Lay Members”, people who would be able to speak during the Committee and to publish minority opinions, but not to vote. It was as yet unclear what the profile of these members would be, but it was hoped that they would be robust enough to stand up to MPs and to add value to the Committee’s work.

Ms. Samson underlined that in developing and enforcing parliamentary standards, it was important to respect the basic rights of MPs, as well as their duties to represent, scrutinize and legislate.

Mr. Tomasz Lenz, speaking about the experience of the Polish Sejm, noted that the experience of other countries had been crucial in shaping the Polish code of conduct. The Nolan Committee in the United Kingdom had been of particular interest to the Polish Sejm as it shaped its system in the late 1990s, especially its emphasis on positive obligations rather than on prohibitions. Like the Nolan Principles, the Polish Code contains a number

of principles which MPs should follow: Selflessness, openness, honesty, care for the good name of the Sejm, and accountability. Beyond that MPs are obliged to obey the Constitution of the Republic of Poland, and to make decisions with respect to the public interest and according to impartial professional expertise.

The Polish Sejm's Committee of Parliamentary Ethics was created, according to Mr. Lenz, in response to the declining levels of trust in politics in Poland in the post-communist years, but also as a realization of the belief that people in public office should be held to higher standards than others.

Mr. Lenz explained that the Committee is composed in a "balanced" manner, its membership a result of a compromise between parties, and subject to approval by a majority of all MPs. The Chairmanship and Deputy Chairmanship of the Committee is rotated among members of the Committee. One representative of each of the parliamentary factions is appointed to the Committee.

Mr. Lenz recalled the discussions about how the Code would be enforced, which eventually came to the conclusion that a Code could not be enforced without some penalties or punishments. The Committee can not, however, investigate a case, it can only rebuke or reprimand an MP. Mr. Lenz also discussed the importance of finding ways so that immunity would not be abused, but felt that there was currently no consensus to amend the Constitution in respect of immunity.

Lenz concluded by noting that the Code worked well because it had been integrated into the existing legal framework regulating the conduct of MPs but also because it respected the culture of the country.

Mr. Lasha Gogidze, a Researcher for Transparency International Georgia, presented a case study on the adoption of a Code of Ethics for the Georgian Parliament in 2004. He set out that in Georgia, a Code of Parliamentary Ethics had existed since 2004, but has not been very actively invoked since then, but also proposed some recommendations for change.

Mr. Gogidze recalled that on 12 October 2004, the Georgian Parliament endorsed the Code of Ethics for its members, in part to address citizens' concerns about recurring instances of Parliamentarians' professional misbehavior. The Code itself was a two-page long document combining basic professional and ethical standards of conduct of Parliamentarians. The solemn signing ceremony at the Parliament was attended by the then Parliament Chairwoman Nino Burjanadze as well as a large number of Parliamentarians, representatives of international organizations, foreign embassies, NGOs and the media. However, in May 2008, the Parliamentary elections were held in Georgia as a result of which many Parliamentarians who had signed the Code of Ethics in 2004 ceased to be the members of the new Parliament., nor does it have any apparent enforcement mechanism. The Code does not have a date of expiry but on the other hand, few MPs elected after 2008 appeared to be aware of the Code, nor was it actively promoted among them.

Since 2004, Mr. Gogidze noted, eight years have passed since the signing of Georgia's Parliamentary Code of Ethics but the cases of Parliamentarians' unethical behavior have not been deterred from occurring while the generally low public perception of MPs' conduct remains largely the same as it was before.

In conclusion, Mr. Gogidze argued that nonetheless, a revived Code of Ethics could be a useful mechanism in raising Parliamentarians' ethical standards and improving the public image of their conduct. It would serve as a basic reference document for the Members of the Parliament (MPs) on how they should behave in their capacity as public servants; provide clear criteria for the society and the media to judge this behavior; and improve the country's international standing in terms of fighting corruption and ethical misconduct in public service.

Mr. Gogidze argued that the Code should be prominently posted on the web site of the Parliament but also that MPs should be required to take an oath or sign a pledge to abide by the Code's provisions before assuming office. Mr. Gogidze also argued that the Code of Ethics should be embedded or referenced in the Parliamentary Rules of Procedure to make it binding upon all MPs. The Code should also, he argued, include detailed references to existing and applicable legislation. In this way, the Parliamentarians would easily find their professional duties and responsibilities listed in a single overarching document. As for enforcement, Mr. Gogidze believed that the Parliament's Rules and Procedures Committee has relevant experience and expertise to perform monitoring and regulatory function when it comes to the MPs' compliance with ethical and professional standards. This Committee could embed the Code of Ethics in its mandate, thus sparing the Parliament from spending additional resources for setting up a new body. Penalties – if adopted, should, he argued, focus on “naming and shaming” MPs, as this would be effective in a Georgian context.

The Moderator, **Ms Gogorishvili**, noted that she was a member of the working group that helped draft the Code in 2004, which had decided that regulations on the conduct of MPs would be divided in two parts. Matters related to the status of MPs would be enshrined in legislation, but issues for public accountability were to be included in the Code. Currently, she explained, the Committee on Rules and Procedures was working on new Rules of Procedure which would include better and more flexible penalties. She admitted that the status of the Code is currently unclear, most probably non-binding as it was simply adopted as a declaration. Mr. Lenz noted that in Poland the Code applies from the moment an MP enters parliament.

Ms. Taktakishvili argued that it was crucial to consider implementation procedures for the Code. She believed that conflicts of interest – in particular preventing these – would be a key necessity for any revived Code of Conduct. She felt however that signing a Code would be important as a symbolic act of endorsement. In further discussions, it was felt important to highlight the multi-party nature of the process that led to the adoption of the Code in 2004, but also that in enforcing a Code, it was crucial to have pressure from media and NGOs to use the Code as something to hold politicians to account. Mr. Gogidze responded however that resolving the non-binding status of the code was a key challenge. One solution would be to have the Speaker promulgating the code as a standing order of the Parliament, thus giving it a permanent and binding status. Representatives of Transparency International added that the Code should ideally be something that is presented to MPs as a “package” upon entering parliament.

Closing Discussion

In her closing reflections, **Dr. Elizabeth David-Barrett** drew out some of the key questions that had been discussed during the conference, as well as some of the conclusions. A balance needed to be struck, she suggested, between rules and laws and informal norms in culture. She underlined that local context needs to be taken into account when drawing up rules to deal with the particular ethical and conduct problems present in a

political system. She also underlined the importance of having a system of ethics regulation that works fairly for all MPs, but one that also maintains confidentiality. Discussions had also underlined the balance between sanctions that damage reputation or that are more punitive (suspensions or fines). Lastly, Dr. David-Barrett stressed that ethics regulation – from the cases the conference had heard – can be a dynamic and changing process.

Mr. Levan Vepkhvadze, Deputy Speaker of the Georgian Parliament, agreed with the previous speaker by noting that parliamentary traditions do matter. In the Georgian context, he felt that future reforms of the code of conduct should look in particular at regulating the conflict of interest as well as so-called “cooling-off periods” after exiting parliament. He underlined the need for effective implementation of any rules adopted, but also stressed that any ethics system put in place should be politically impartial.

Dr. Nathalie Tagwerker, Deputy Head of the Democratization Department at OSCE ODIHR, thanked the Parliament of Georgia for its valuable cooperation in developing and organizing the conference, praising the professionalism of the Parliament staff who had worked with ODIHR in preparation of the event, and noting with appreciation the high quality of discussions. Dr. Tagwerker argued that ethical reforms in parliament were increasingly seen as essential in order to build transparent and accountable governance, citing the increasing number of parliaments in the OSCE region that had adopted codes of ethics, or that were in the course of doing so, as well as the fact that the European Parliament had adopted its own code in 2011. However, she cautioned that codes are not to be seen as panaceas for resolving the ethical dilemmas of politics – these will persist, as politics will always be a form of resolving competing private interests in the search for the public interest. Nonetheless, citizens nowadays expect more from politicians, and politicians themselves need and expect more guidance; standards of ethics have a part to play in addressing these two needs. She underlined that MPs themselves have to take ownership for developing and administering such standards. As regards the Georgian Parliament, she indicated that ODIHR is willing and able to offer assistance to the Parliament on concrete areas of reform:

- On the Code of Ethics, assisting and advising the Parliament on ways to improve the regime surrounding the 2004 Code of Ethics, including through the possible development of a “guide” or “handbook” for the Code;
- Looking at the wider lawmaking system, the Parliament could draw upon ODIHR’s methodology for assessing the lawmaking process and developing recommendations for reform;
- ODIHR’s ability to develop opinions on legislation affecting the human dimension will always be available, upon request, to the Parliament of Georgia.

Mr. Akaki Minashvili, Chairman of the Foreign Relations Committee of the Parliament of Georgia, praised the conference, noting its usefulness and practical orientation. He argued that Georgia, as a country in transition, places a high value on changing the political culture – a task for parliament, civil society and society at large. In such an endeavour, developing an effective code of ethics is crucial. In doing so, he stressed, any changes to the code should be a participatory and transparent process. In this regard, Mr. Minashvili welcomed in particular some of the recommendations made by Transparency International Georgia, such as the idea of including the Code into the statutes of parliament. He noted, however, that a number of issues remained for further discussion and research, such as:

- What should be the content of a Code of Ethics?
- What is the appropriate balance between a Code and other rules and regulations? In this regard he noted the sensitivities of regulating certain behaviours – stressing the

importance of not undermining basic freedoms of speech, and underlining that any such regulations should be agreeable to the opposition.

- What should be the mechanism for implementation of a code? Should there be an external instance, such as a commissioner, or a special committee? In this regard he noted that an external instance might not have the required legitimacy, whereas a commission or committee composed of all political forces could be inclusive enough to guarantee that legitimacy. He proposed that an external figure could still be included in such a committee, to balance the politicians.

Mr. Minashvili also welcomed the idea of developing a guidebook or manual to the Code of Ethics and looked forward to cooperating with ODIHR and other actors on this idea. Lastly, he stressed his deep gratitude to ODIHR for the conference and its ongoing support to democratic reform in Georgia.

Summary of Recommendations made during the Conference³

During conference deliberations, a number of general recommendations and lessons learned about parliamentary codes of ethics were shared about the development, management and implementation of codes of ethics for parliamentarians. Thus, according to participants, parliamentarians should:

In drafting and developing a Code,

- Find a group of values that are acceptable to all, to form the basic principles of the code;
- Consider the examples and experiences of other Parliaments in developing their own Codes of Ethics;
- Grant a parliamentary Code of Ethics a legally binding status;
- Consider the Code as an element of the wider framework of ethical, behavioural and anti-corruption laws and regulations, and think about how it will relate to this framework;
- Think also about how the Code will relate to the culture of the parliament and the country;
- Involve all political parties present in Parliament in the drafting process;
- Use public consultations in the drafting and reform process, including consultations with academia and civil society;
- Make use of the legal and parliamentary expertise that may be available in the parliamentary staff;
- Accept that the Code will need to be reviewed and improved periodically;
- Distinguish between ethics and behavioural issues and what is covered by criminal law;
- Accompany codes of ethics with an effective yet proportionate sanctions regime;
- Avoid using sanctions in a politically partisan way.
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In implementing a Code and its ethics regime,

- Find ways to encourage consensus on whatever enforcement body is adopted;
- If an independent figure or position is to be created, make sure that independence is really guaranteed in the terms of the position, so as to attract the best and most independent candidates;
- Build in and guarantee safeguards to ensure a fair and transparent process for MPs who are the subjects of complaints;
- In administering a parliamentary standards system, remember to respect the fundamental rights of MPs, and their duties of representation, legislation and scrutiny; in this regard, respect the importance of confidentiality when considering complaints.

A number of recommendations were also made that specifically applied to the Georgian Parliament's 2004 Code of Ethics:

- Revive and reform the 2004 Code of Ethics, so as to give MPs an overarching document for reference and advice, as well as to give the public clear benchmarks to assess the behaviour of MPs;

³ The recommendations were not formally adopted by the Conference participants and do not necessarily reflect the views of any individual participant, organization, OSCE participating State or the Parliament of Georgia.

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- If the Code is to be updated or changed, do so in a participatory and transparent process;
- Post the Code of Ethics in a prominent position on the website of the Parliament;
- Include the Code of Ethics in any “welcome pack” for Members of Parliament;
- Clearly reference and link the duties set out in the Code to obligations set out other laws and regulations;
- Consider developing sanctions that affect the reputation of MPs
- Consider using the Committee on Rules and Procedures as the lead committee for monitoring, reforming and enforcing the Code of Ethics;
- Consider including an independent figure into any committee or body overseeing the Code of Ethics;
- Consider looking detail at regulating conflicts of interest through the Code of Ethics;
- Consider including more detailed regulations of post-parliamentary “cooling off periods”;
- Consider the promulgation of the Code of Ethics as a statute of Parliament by the Speaker;
- Evaluate the possibility of developing an explanatory Guide or Manual for MPs to accompany the Code of Ethics.

Annotated Agenda

Sheraton Metekhi Palace Hotel
20 Telavi Street
Tbilisi 0103

19 April 2012

09:00 – 09:30 **Arrival and registration of the participants**

Coffee will be served

09:30 – 09:45 **Opening remarks**

- *Mr. Mikheil Machavariani, First Deputy Speaker, Georgian Parliament*
- *Dr. Marcin Walecki, Chief of Democratic Governance, OSCE ODIHR*

09:45 – 11:30 **Opening Session: Why parliamentary ethics? Principles, Challenges, Trends**

In this Session, under the guidance of the Moderator, participants will examine the basic reasons, dilemmas and challenges of parliamentary ethics, as well as the possible principles that may be used to address these. Panel participants – as experienced Members of Parliament – and political figures, will be asked to reflect on the ethical challenges that exist in political and parliamentary life. Participants will also be asked to consider the reasons for an increased attention to the issue of parliamentary ethics standards.

Moderator:

- *Dr. Elizabeth David-Barrett, ODIHR expert; Research Fellow, Centre for Corporate Reputation, Saïd School of Business, Oxford University*

Panellists:

- *Mr. Tomasz Lenz MP, Vice- chair of the Civic Platform Parliamentary Caucus, Chair of Eastern Partnership Sub-Committee, Sejm of the Republic of Poland*
- *Mr. Gudrat Hasanguliyev, Member of the Legal Policy and State Building Committee, National Assembly of Azerbaijan*
- *Ms. Heather Wheeler MP, Member of the Committee on Standards and Privileges, House of Commons, United Kingdom*
- *Mr. David Darchiashvili, MP, Chair of the Committee on European Integration, Georgian Parliament*

11:30 – 11:45 **Coffee break**

11:45 – 13:15 **Thematic Session I: The Move towards Codes of Conduct - Why Codes of Conduct? What kinds of Codes? Case Studies**

This Session will examine the challenges of addressing ethical reform in parliaments, and in particular the opportunities and difficulties that arise in the development and adoption of Codes of Ethics and Codes of Conduct. In thinking about this, participants will be asked to consider different options and models for designing such Codes, as well as the political process that leads to their adoption.

Moderator:

- *Ms. Chiora Taktakishvili, First deputy Chairperson of the Legal Affairs Committee, Georgian Parliament*

Panellists:

- *Mr. Philippe Jabaud, Director of Economic and Social Affairs Division, Secretariat of the French National Assembly*
- *Mr. Pavle Kublashvili, Chair of the Legal Affairs Committee, Georgian Parliament*
- *Ms. Heather Wheeler, MP, Member of the Committee on Standards and Privileges, House of Commons, United Kingdom*

13:15 – 14:15 Lunch

Coffee will be served before Thematic Session II

(Group photo to be taken)

14:15 – 15:15 Thematic Session II: Making it work: Experiences of implementing a Code of Conduct, enforcing and reforming it – Case Studies

Building on the reflections and discussions in Thematic Session I, this Session will focus more closely on the particular challenges of implementation and enforcement. This includes the different models for its institutional enforcement and support. In this session, participants from parliaments with a longer experience of a Code of conduct will be asked to consider how the operation of the Code changed over time, and whether and how reform or “updating” efforts were undertaken.

Moderator:

- *Ms. Khatuna Gogorishvili, MP, Chair of the Procedural Issues and Rules Committee, Georgian Parliament*

Panellists:

- *Ms. Eve Samson, Clerk (Senior Adviser), Committee on Standards and Privileges, House of Commons, United Kingdom*
- *Mr. Tomasz Lenz, MP, Vice- chair of the Civic Platform Parliamentary Caucus, Chair of Eastern Partnership Sub-Committee, Sejm of the Republic of Poland,*
- *Mr. Lasha Gogidze, Expert, Transparency International (Georgia)*

15:15 – 15:30 Coffee break

15:30 – 16:30 Closing Discussion: Issues, Conclusions, Reflections

Guided Open Floor Discussion

In this shorter final open floor discussion, participants will have a final opportunity for floor discussion and debate, hopefully arriving at a synthesis of the main points brought up during the conference, as well as possible recommendations for Georgia and other countries in the issue of parliamentary ethics reform.

*- Concluding remarks and summary of key questions from the discussion:
Dr. Elizabeth David-Barrett, ODIHR expert*

Concluding remarks

- Dr. Nathalie Tagwerker, Deputy Head of Democratization Department, OSCE ODIHR*
- Mr. Levan Vepkhvadze, Deputy Speaker of the Georgian Parliament*
- Mr. Akaki Minashvili, Chair of the Foreign Relations Committee, Georgian Parliament*

Biographies of Participants

Dr. Elizabeth David-Barrett

Elizabeth David-Barrett is a research fellow at the Said Business School, University of Oxford. As a consultant for OSCE ODIHR, she is the lead author for a forthcoming ODIHR publication, *Professional and Ethical Standards for Parliamentarians*. She is interested in the laws and norms governing relationships among business, government and society, in global and national contexts. In recent years, she has focused on bribery in international business, examining the legal and reputational risks associated with it as well as the complex ethical issues it sometimes raises. She first became interested in corruption whilst working as a journalist in Zagreb and Budapest, writing for *The Economist* and *Financial Times*.

Mr. David Darchiashvili, MP

David Darchiashvili is a member of parliament for the Unified National Movement in Georgia and is the Chairman of the Parliamentary Committee on European Integration. To this day, he is also Professor of History and International Relations at the Ilia State University. Between 1992 and 2002, he worked as Researcher at the Faculty of History at the Tbilisi State University, as well as at the Institute of Peace, Democracy and Development (1992 – 2004). He has published extensively on a variety of topics in the field of History and Social Science, but also in the field of International Relations. From 2004 and 2008, he served as Executive Director at the “Open Society – Georgia” Fund.

Mr. Lasha Gogidze

Shalva Gogidze has been working as Researcher and Analyst at Transparency International Georgia since August 2010. He is currently involved in different projects related to budget transparency, media ownership, freedom of information, and EU-Georgia cooperation within the Eastern Partnership Program. His work in these roles comprises research, advocacy, outreach and communication.

Ms. Khatuna Gogorishvili, MP

Khatuna Gogorishvili is currently a Member of the Parliament of Georgia for the Unified National Movement and the Chair of the Parliamentary Procedural Issues and Rules Committee. Previously, she worked in the Georgian Parliament as Leading Specialist in the Commission on Environmental Protection and Natural Resources from 1993 to 1995, and as Head of Staff of Parliament from 1995 to 2003. Khatuna Gogorishvili is both a biologist and a jurist by training. She has graduated from the Tbilisi Iv. Javakhishvili State University.

Mr. Gudrat Hasanguliyev, MP

Gudrat Muzaffar Hasanguliyev is a member of the National Parliament of Azerbaijan (Milli Mejlis) for the United Azerbaijan Popular Front Party. He is also a member of the Parliamentary Legal Policy and State Building Committee. Mr. Hasanguliyev is the chairman of the United Azerbaijan Popular Front Party and a member of the delegation of Azerbaijan to the NATO Parliamentary Assembly. Between 2000 and 2003, he served as Secretary of the Central Election Commission of the Republic of Azerbaijan. Mr. Hasanguliyev graduated from the Law Department of the Baku State University.

Mr. Philippe Jabaud

Mr. Jabaud is, since 2011, Director of Economic and Social Affairs Division of the French National Assembly. From 2006 to 2011, Mr. Jabaud was Director of the Legal Affairs Division in the Legislative Services of the National Assembly of France. The division is

instrumental in monitoring of legislative work in the field of Public Service regulation, Constitutional and Electoral Law, Civil Rights, Administrative and Criminal Law, and Corporate Law.

Mr. Pavle Kublashvili, MP

Pavle Kublashvili is currently a member of the Parliament of Georgia for the Unified National Movement, to which he was first elected in October 2005, where he chairs the Legal Affairs Committee of the Parliament. Between 1997 and 2000, he worked as a legal expert in the Council of Justice in Georgia, and subsequently as Head of Central Staff Judicial Board in the Ministry of Justice of Georgia. He has a long standing experience in the field of anti-corruption, which he acquired while working in the Anti-corruption Bureau of Georgia and as Director in the Anti-corruption Policy coordination Department in the National Security Council of Georgia.

Mr. Tomasz Lenz, MP

Tomasz Lenz is currently a member of the Sejm of the Republic of Poland, the Vice-chair of the Civic Platform Parliamentary Caucus, and the Chair of Eastern Partnership Sub-Committee. Previously he was a lecturer at the National Democratic Institute for International Affairs, where he was involved in running projects promoting democracy in Central and Eastern Europe and Asia including: Georgia, Kyrgyzstan, Kazakhstan and Ukraine. To this day, he still actively collaborates with the European Institute for Democracy.

Mr. Mikheil Machavariani, MP

Mikheil Machavariani has been the First Deputy Chairman of the Parliament of Georgia since April 23, 2004. He is a Member of Parliament for the Unified National Movement. He graduated from the State Agrarian University and worked in the Faculty of Soil Science from 1991 until 1995. He was actively involved in the Citizens of Georgia Union consecutively as the Main Secretary, the Chairman, and Secretary-General of the Union. Elected as Member of the Georgian Parliament in 1995 and 1999, he has also served in various governmental capacities, including as Minister of Tax and Incomes from 1999 to 2001, and Head of the Cabinet of the Chairman of the Parliament from 2001 to 2002.

Mr. Akaki Minashvili

Akaki Minashvili is currently a Member of the Parliament for the Unified National Movement of Georgia and Chairman of the Committee on Foreign Affairs. Previously, he was the Deputy Chairman of the Committee on Legal Issues. Mr. Minashvili has been involved in human rights advocacy and research work with the Freedom Institute from 2001 to 2006, where he served consecutively as jurist and Executive Director. He holds a Master's degree in Human Rights Law from the Tbilisi Iv. Javakhishvili State University.

Ms. Eve Samson

Eve Samson is Clerk to the Committee on Standards and Privileges in the House of Commons of the United Kingdom. The Committee considers reports from the Parliamentary Commissioner for Standards, oversees his work and recommends any changes to the Code of Conduct or to the rules relating to the conduct of MPs, and inquires into matters relating to privilege that have been referred to it by the House.

Dr. Nathalie Tagwerker

Nathalie Tagwerker is the Deputy Head of Democratization at the OSCE Office for Democratic Institutions and Human Rights. Prior to joining the OSCE, Dr. Tagwerker worked at the UNHCR from 2006 to 2008, where she analyzed issues related to IDP and

refugee protection, and promoted refugee and human rights standards. She subsequently served as Deputy Director of Democratization Department of the OSCE Mission in Kosovo. She has over ten years of experience in the field of human rights, rule of law, elections, parliamentary reform and good governance working worldwide, and holds a PhD in International Law and International Relations.

Ms. Chiora Taktakishvili

Chiora Taktakishvili is a Member of the Parliament of Georgia for the Unified National Movement, and the First deputy Chairperson of the Parliamentary Legal Affairs Committee. She is a Jurist and holds a dual Master's degree in Civil Law from the Tbilisi Iv. Javakhishvili State University and the University "Paris-VIII".

Mr. Levan Vepkhvadze

Levan Vepkhvadze is the Deputy Chairman of the Parliament of Georgia since 2008, and is an MP for the Christian Democrats. He also serves as a Member of the Legal Issues Committee and Budget and Finance Committee within the Parliament. Before starting his political career, Mr. Vepkhvadze worked in the media and information sector from 2001 to 2008 in TV companies such as TBC-TV, "Mze" or "Imedi".

Dr. Marcin Walecki

Marcin Walecki is currently the Chief of the Democratic Governance and Participation in Public Affairs unit at the OSCE Office for Democratic Institutions and Human Rights in Warsaw. He has over twelve years of democracy assistance and governance experience working in more than 25 countries around the world with a current focus on research, strategy, design, and implementation of programs ranging from anti-corruption, political finance and public ethics, political party assistance and development, integrity of public administration, to election administration. He has written for numerous publications on democratization, political corruption, political financing, elections, political parties, and good governance.

Ms. Heather Wheeler, MP

In 2010 Heather Wheeler was elected Member of Parliament for South Derbyshire, for the Conservative Party, in the House of Commons of the United Kingdom. In Parliament she is a member of the Standards and Privileges Select Committee which oversees the work of the Parliamentary Commissioner for Standards and recommends any changes to the Code of Conduct or to the rules and punishment relating to the conduct of MPs. Prior to that, Heather Wheeler was also a qualified Associate of the Chartered Insurance Institute and worked for Lloyds Insurance Brokers for ten years between 1977 and 1987. She also has 19 years' experience in urban regeneration projects.