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REPORT

ORIENTATION OF IMPROVING CODES OF ETHICS AND CONDUCTS FOR PROFESSIONALS IN THE JUSTICE SYSTEM TO MEET REQUIREMENTS OF JUDICIAL REFORM IN VIET NAM



EU JULE

Học để làm việc,
làm người
làm cán bộ.
Học để phục sự Đoàn thể
" " tại cấp và nhân dân,
" " bộ quốc và nhân loại.
Muốn đạt mục đích, thì phải
cần, kiên, liêm, chính,
chí công, vô tư.

9.49

Hồ Chí Minh



REPORT

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The findings and views expressed in the Report are those of the authors and do not necessarily represent those of the Central Committee for Internal Affairs, the Ministry of Justice, or any other state agencies of Viet Nam, the European Union and UNDP.

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ABBREVIATIONS

Bangalore Principles of Judicial Conduct 2002	Bangalore Principles
Bar Association	BA
Central Committee for Internal Affairs	CCIA
Code of Conduct for cadres, civil servants, public employees, and employees of the Procuracies in accordance with Decision No. 08/QD-VKSTC	CoEC for the Procuracies 2020
Code of Conduct for cadres, civil servants, public employees of the Procuracies attached to the Decision No. 296/2008/QD-VKSTC	CoEC for the Procuracies 2008
Code of Conduct for Members and former Members of the Court of Justice of the European Union 2016	EU Rules
Code of Conduct for Procurators when performing the right of prosecution and judicial activity supervision at Court trials and meetings included in Decision No. 46/QD-VKSTC promulgated by the Supreme People’s Procuracy	CoEC for Procurators 2017
Code of Ethics and Conduct for Lawyer Profession attached to the Decision No. 68/QD-HDLSTQ dated July 20, 2011	CoEC for Lawyers 2011
Code(s) of Conduct	CoC(s)
Code(s) of Ethics	CoE(s)
Code(s) of Ethics and Conduct	CoEC(s)
Codes of Ethics and Conduct for Judges attached to the Decision No. 78/QD-HDTC dated July 4, 2018	CoEC for Judges 2018
Codes of Ethics and Conduct for Vietnamese Lawyer attached to the Decision No. 201/QD-HDLSTQ promulgated by the National Lawyers' Council dated December 19, 2019	CoEC for Lawyers 2019
Conclusion 84-KL/TW dated July 29, 2020 of Politburo on conclusion of 15 years of implementation of Resolution 49-NQ/TW of the Politburo of Session IX on Judicial Reform Strategy towards 2020	Conclusion 84
Decision No. 120/QD-TAND dated 2017 regulating on the handling accountabilities of the judicial holder in the People's Court issued by the Supreme People’s Court	Decision 120

Decision No. 192/QD-VKSTC in 2019 on the Regulation of organization and operation of the People's Procuracy Inspectorate	Decision 192
Decision No. 26/QD-VKSTC in 2020 on regulating the criteria for leadership positions, management positions and titles in the procuracy system	Decision 26
Decision No. 2721/QD-BNV dated December 28, 2018 promulgated by the Minister of Home Affairs on the Specialist-rank training document	Decision 2721
Decision No. 68/QD-BTVLDLSVN dated October 5, 2012 promulgated by the on issuing the Regulation on disciplining lawyers	Decision 68
Decision No. 918/2015/QD-TANDTC on the organizational structure, missions, and rights of the units in the assisting agencies of the SPC	Decision 918
Decree No. 34/2011/ND-CP stipulating disciplinary actions for civil servants	Decree 34
European guidelines on ethics and conduct for public prosecutors 2005	European Prosecutor Guidelines 2005
Incorporated document No. 3/VBHN-VPQH 2015 incorporating Laws on Lawyers	Law on Lawyers
International Bar Association	IBA
Law on Organization of People's Procuracies 2014	LOPP 2014
Law on Organization of People's Courts 2014	LOPC 2014
Model principles of Judicial conduct of Council of ASEAN Chief Justices	ASEAN Code of Conduct
National Council for selection and supervision of Judges	NCSSJ
Regulation No. 213-QD/TW on responsibilities of incumbent Party members for closely liaising with party organizations and the People at the current residential area	Regulation 213
Regulation No. 76-QD/TW of the Politburo in 2000 on Party members who have been working at agencies, enterprises, and non-business units to liaise with sub-committees, grassroots party committees and exemplify the fulfillment of citizen obligations at residence area	Regulation 76
Resolution No. 49/NQ/TW dated June 2, 2005 of the Politburo on the Judicial Reform Strategy	Resolution 49
Resolution No. 929/2015/UBTVQH13 in 2015 on Operation Regulations of the NCSSJ	Resolution 929

Standards of professional responsibility and statement of the essential duties and rights of prosecutors 1999	Prosecutor Standards 1999
Supreme People's Court	SPC
Supreme People's Procuracy	SPP
The Code of Conduct of cadres and civil servants in the court system attached to the Decision No. 1253/2008/QD-TANDTC dated September 18, 2008 promulgated by the Supreme People's Court	CoC for the Courts 2008
The Strategy on Development of the Lawyer's Profession by 2020 promulgated by the Government Minister attached to the Decision No. 1072/QD-TTg in 2011	Strategy on Development of the Lawyer's Profession
The Universal Charter of the Judge	UCJ
Viet Nam Bar Federation	VBF

EXECUTIVE SUMMARY

One of the orientations in the Judicial Reform Strategy under Resolution 49 and the Conclusion 84-KT/TW of Politburo on conclusion of 15 years of implementation of Resolution 49 is to build a strong team of judicial and judicial support staff, especially officials holding judicial posts, by enhancing their legal responsibility and authority, setting higher standards for political, ethical and professional qualities, as well as the standards of social knowledge and experience for each category of staff. The Report on *Orientation of Improving Codes of Ethics and Conduct for Professionals in the Justice System to Meet the Requirements of Judicial Reform in Viet Nam* was implemented in the context where there have been several separate professional CoECs for only some judicial and judicial support posts in Viet Nam. Such codes, however, only focus on the typical nature of each judicial position, each field not systematically connected with each other. As a result, this Report was implemented with the aim of supporting the Central Committee for Internal Affairs in advising the implementation of the Judicial Reform tasks in accordance with Resolution 49 and Conclusion 84, and providing recommendations for the efficient development, improvement and implementation of the codes of conduct for professionals in the justice activities to meet requirements of judicial reform in Viet Nam. The scope of the Report focuses on the CoECs for the three following subjects: Judges (adjudicators), Procurators (parties accusing and representing public interests) and Lawyers (parties defending and protecting the interests of litigants under law or contract). These are groups of people who perform key functions in the judicial activities.

The Research shows that while the compliance obligation of Judges and Lawyers with the CoECs is regulated by the specialized legal documents on the operations of the Courts and Lawyers (LOPC 2014 and Law on Lawyers), the obligation of Procurators is not specifically regulated in the specialized law document of the Procuracies (LOPP 2014). Particularly in Viet Nam, Judges and Procurators are cadres and civil servants. Therefore, these subjects must comply with the regulations of the CoECs simultaneously with the general rules and regulations that apply to cadres and civil servants. In addition, most of the Judges and Procurators, and some lawyers, are Party members, so an examination of the Party's regulations and rules on ethics and conducts is necessary to further define the relationship between the Party's guidelines in judicial activities, and the undertaking of independence and quality of such activities. Each regulation has its own general and specific requirements for ethical values, conduct and its own enforcement mechanism. The Research also indicates that the CoECs for Judges, Procurators and Lawyers are quite independent from each other and have not yet been systematically connected, even though their scope covers judicial activities. Nor are the methods and mechanisms to explain the rules and contents clear or specific in each case. Documents of the Courts, the Procuracies and Lawyers all have regulations on regular and active supervision and disciplinary regulations in the event of CoEC violation. Yet those disciplinary regulations do not really conform with the characteristics of the profession, principles, organization, and judicial activities, and do not specifically and explicitly refer to the CoECs of other systems.

The practice of CoEC implementation in Viet Nam shows that the education, training and dissemination of the CoECs for Judges, Procurators and Lawyers take place during source training of Judges, Procurators and Lawyers. Further training is to be implemented for Judges, Procurators and Lawyers while in practice. The mechanism of CoEC implementation supervision of Judges and Procurators shall be implemented regularly or irregularly according to the personnel management of the managing agencies. Meanwhile, the supervision of Lawyer compliance with the CoEC is mainly implemented by their clients. The prevention mechanism by publication or declaration of income and assets is currently applied only to Judges and Procurators, not to Lawyers. In particular, the activities of publication or declaration of income and assets of Judges and Procurators (control on the income's output) are still formalistic, while control on the income's input (via bank accounts) has not been implemented appropriately. The mechanism of handling violations has significant differences among the three groups of subjects. While Judges and Lawyers have their own specialized mechanisms for discipline or management of irresponsible behaviors, Procurators comply with only one disciplinary process under the provisions of the Law on Cadres and Civil Servants 2008 (amended, supplemented in 2019).

The comparison between the Viet Nam CoECs and international practices shows that the content of the CoECs for Judges, Procurators and Lawyers in Viet Nam is generally in conformance with international standards, especially the CoEC for Judges 2018. In the Procuracies, however, the process of exercising the right to prosecute and control judicial activities (including investigations, supervision of investigations, and evidence handling and selection, along with trial

supervision) is not integrated into one CoEC. This is in contrast with the integration of these activities shown in the international CoECs. There are also differences in regulatory structure between the International CoECs and Vietnamese ones. Each structure has certain advantages and disadvantages. The CoECs for Judges, Procurators and Lawyers in Viet Nam do not have provisions or documents explaining and guiding the application of the CoECs as do some international ones. International experience indicates that it is necessary to have a formal explanation mechanism for the contents of the CoECs (such as the model of the Committee of Judicial Ethics Advisory, or the promulgation of explanatory and commentary materials attached with the CoECs) to enhance the efficiency of implementing the CoECs.

The mechanisms of training, dissemination and supervision enforcement of the CoEC of Viet Nam are, on the other hand, quite close to the good practices gathered from international experience. The establishment of a mechanism of handling violations which is transparent, confidential, and fair is an essential element to guarantee the enforcement of the CoECs. Moreover, it is essential to maintain a reasonable standard of remuneration and safety for judicial officials to promote their dedication and consistency with the ethical values and codes of conduct set forth.

Along with the improvement of institutions and the quality of judicial activity and state management, the ethical standards for judicial and judicial support positions are also important to the mission of protecting justice and human rights. The development and application of CoEs, CoCs and CoECs in justice activities would help strengthen ethical standards and create a culture of integrity in the activities of Judges,

Procurators and Lawyers and other judicial support positions, such as People's Assessors, Examiners, Bailiffs and Insolvency Administrators, Notaries, Mediators at courts and other Mediators. This is particularly crucial in the context of Viet Nam implementing judicial reforms and building a rule-of-law State. Based on the above conclusions, some recommendations are herein proposed as follows:

✓ Viet Nam needs to improve the judicial system and judicial governance mechanism as well as the leadership of the Communist Party of Viet Nam on the organization and operation of judicial agencies. Accordingly, the organization and administration of the judicial system should follow the principle that the Court plays the key role, trial conduct is the key activity, and Judges will actively exercise their duties, improve their independence and take responsibility before the law for their own actions and judicial decisions. The Procuracies should solely exercise the power of prosecuting and supervising judicial activities. Lawyers should perform the function of defending and protecting the rights and interests of the involved parties in cases in and outside the Court. The laws should guarantee equality between Procurators (accusing parties) and Lawyers (defending parties), so that these two subjects can contribute to protecting justice together. Ethical institutions for judicial positions should be strengthened with legal ones to raise the awareness of people performing and participating in procedural activities, thereby improving the quality of judicial activities;

✓ Given the characteristic of the cadre management in Viet Nam, which is the inseparability between the Communist Party Members' rules on ethics, public service ethics, and professional ethics, Viet Nam should issue an orientation document on

implementing the CoECs in the justice system to meet this requirement. This orientation document would operate to strengthen the professionalism and integrity of judicial activities and their quality. Moreover, the mechanism of CoEC enforcement supervision should be consistently consolidated by enhancing the connection of the behaviors that Party members are not allowed to engage in, ethical rules of cadres and civil servants, and CoECs for positions administrated by the State (Judges, Procurators). In detail, this consolidation would include consolidating internal supervision and people's supervision of ethical values and conduct standards, strengthening the mechanism of handling complaints and denunciation in order to set the line between legal violations and ethical rule violations, and improving the emulation - commendation mechanism associated with the appointment and reappointment mechanism.

✓ In addition to CoECs for Judges, Procurators and Lawyers in the field of justice, there should be CoECs for other titles such as People's Assessors, Examiners, Bailiffs and Insolvency Administrators, Notaries, Mediators at courts and other Mediators. The CoECs in the justice system should be consistently developed with three main components: (i) ethical values; (ii) codes of professional conduct; and (iii) explanations, guidance on the implementation of such values and code of conduct. President Ho Chi Minh's Ideology on ethics and conduct of judicial officials (Judges, Prosecutors, or other judicial officials) should be defined and explained clearly and thoroughly in the CoECs. The CoEC for each system may have specific features fitting with its own characteristics. The development of CoEC for judicial positions with characteristics in core values and structure would assist both judicial and judicial supportive officials, and other

non-judicial officials and officials of other public service sectors, to be well aware of and respect others in the protection of justice and rule of law. Moreover, the public's understanding of the role and value of the CoECs will help to increase the role of public supervision on judicial activities.

✓ The CoECs in the justice system should be constantly taught, disseminated, and included in training programs for law students in general, as well as in the vocational training programs for judicial positions and judicial support positions. The regular dissemination or training in CoECs would help improve the quality of the judicial positions and judicial support positions as well as CoEC implementation. Additionally, there should be activities of general dissemination (not only education and dissemination of CoECs within each system, but also implementation of cross-system education and dissemination) of the CoECs for professionals in the justice system so that judicial and judicial supportive officials can obtain a better understanding of the responsibilities, duties, and ethical requirements of other systems.

✓ CoECs should be published online. The explanation, annotations, and commentaries of CoECs should be regularly updated and published to provide

professionals and the public with essential knowledge of requirements and regulations of the CoECs. Online publication would also facilitate the public's exercise of its supervisory role toward the activities of the judicial posts and judicial support positions.

✓ It is necessary to strengthen enforcement mechanisms for CoECs, including mechanisms for dissemination and training; mechanisms for explaining and updating rules applied in each situation or new context; mechanisms for supervising and handling violations in activities of complaint and denunciation, as well as mechanisms for encouraging CoEC compliance by activities of emulation and commendation. Establishing the mechanism of violation handling or emulation and commendation must guarantee transparency, information confidentiality, and fairness to ensure the effectiveness of CoEC enforcement.

✓ Finally, it is extremely necessary to take appropriate measures to guarantee political, social, and legal stability, and the appropriate remuneration for personnel working in judicial activities. Such measures would promote their dedication and their consistent compliance with the ethical values and codes of conduct set forth./.

PART I – INTRODUCTION

1.1. Background

One of the orientations in the Judicial Reform Strategy under Resolution 49-NQ/TW of the Politburo of Session IX on Judicial Reform Strategy towards 2020 (**Resolution 49**) and the Conclusion 84-KL/TW of Politburo on conclusion of 15 years of implementation of Resolution 49-NQ/TW (**Conclusion 84**) is to build a strong team of judicial staff and judicial support staff, especially officials holding judicial posts, by enhancing their legal responsibility and authority, setting higher standards for political, ethical and professional qualities as well as standards of social knowledge and experience for each staff category.¹ Specifically, Resolution 49 presents the basic duties of judicial officials including: (i) constantly updating knowledge on politics, law, economy, and society; (ii) having professional skills and practical knowledge; (iii) maintaining integrity; (iv) courageously fighting for justice; (v) and protecting socialist legislation.² In addition, Resolution 49 states that *“judicial reform must [...] selectively acquire international experiences in accordance with country's circumstances and meet the requirement of proactive international integration and the development trend of society in the future”*.³ Over the past 15 years of implementing Resolution 49, many lessons have been summarized as a basis for proposing new policies and solutions to improve the efficiency and quality of judicial activities. Conclusion 84 recommends the establishment of a contingent of

judicial officials who are of high integrity, fair, and professional; have strong political spirit; master laws and the Party's policies; and meet the requirements of quality, capacity, and prestige to complete missions in the new era⁴.

The Constitution 2013 has set operating principles for all state agencies, cadres, civil servants and public employees in general, and judicial agencies in particular, in which judicial officials are required to *“respect and devotedly serve the People, maintain close links with them, listen to their opinions and be under their supervision; and resolutely combat corruption, waste, and all manifestations of bureaucratization, arrogance and arbitrariness”*⁵. The Constitution also addresses the mission of the judicial agencies exercising judicial rights – that is protecting justice and human rights; and requests for assuring the independence of activities of courts.⁶

The CCIA is assigned the task of *“leading or coordinating with relevant agencies to research and advise the Politburo, the Secretariat, the Central Steering Committee on Anti-corruption and the Central Committee on Judicial Reform to lead, direct the amendment, supplementation, and overcoming of loopholes and shortcomings in policy, mechanisms, and laws in the field of internal affairs, anti-corruption and judicial reform,”* and *“summarize practice, scientific research, and contribute to formulating theories for internal affairs, anti-corruption and judicial reform”*⁷. The CCIA has been assigned by the Politburo to be the

¹ Resolution 49, Section II.1.3

² Resolution 49, Section II.2.4 (Paragraph 1)

³ Resolution 49, Section I.2.4

⁴ Conclusion 84, Section 2.4

⁵ Constitution 2013, Article 8, clause 2

⁶ Constitution 2013, Article 102, Article 103

⁷ Decision No. 216-QD/TW of the Central Committee of Communist Party dated Jan 2, 2020 on function, mandate, authorization, and organizational structure of the CCIA, Article 2

focal point to monitor the implementation of Conclusion 84.

The Report on Orientation of Improving Codes of Ethics and Conduct for Professionals in the Justice System to Meet the Requirements of Judicial Reform in Viet Nam was implemented in the context of several codes of conduct that are separate for some judicial posts in Viet Nam. Although such codes all govern professionals in the justice system, they mainly govern the typical nature of each judicial position without being systematically connected or adequately referring to the international experience in the drafting process. So far, not many in-depth studies on codes of conduct in justice systems have been conducted. There are just separate studies focusing on each judicial position such as Judges, Lawyers, Notaries, and Insolvency Administrators.

1.2. Objectives and Scope of research

The Report on Orientation of Improving Codes of Ethics and Conduct for Professionals in the Justice System to Meet the Requirements of Judicial Reform in Viet Nam was produced with the aim of supporting the CCIA in advising the implementation of the Judicial Reform Strategy (Resolution 49 and Conclusion 84), providing recommendations for the efficient development, improvement and implementation of codes of conduct for professionals in the justice system to meet requirements of judicial reform in Viet Nam. The Report reviews and assesses the policies and legal framework, and status of implementation of current codes of conduct in the justice system in Viet Nam, with reference to international standards and best practices on codes of conduct in the justice systems of other countries. The Report also identifies difficulties and challenges arising from the laws and the

implementation of codes of conduct in justice system and determines causes and proposes solutions to overcome those difficulties, challenges and improve codes of conduct in Viet Nam.

The scope of research of the Report focuses on the codes of conduct of the three following subjects: Judges (adjudicators), Procurators (parties accusing and representing public interests) and Lawyers (parties defending and protecting interests of litigants under laws or contract). These are groups of people who perform key functions in judicial activities.

1.3. Research methodology

The Report uses two main research methods namely, on-desk studies and in-depth interviews. Accordingly, on-desk studies are applied to review and study the following:

- ✓ Current Vietnamese policies and legal framework on codes of conduct in the justice system, including codes of conduct for Judges, Procurators and Lawyers;
- ✓ Materials relating to the implementation of codes of conduct, especially difficulties and challenges of implementation of such codes of conduct;
- ✓ International standards of codes of conduct in justice systems, such as UNODC's Commentary on the Bangalore Principles of Judicial Conduct 2002, the Universal Charter of the Judge, Model Principles of Judicial Conduct of Council of ASEAN Chief Justices and experience in enforcing codes of conduct in the justice system in some countries.

To supplement research obtained from on-desk studies, the Research Team conducted in-depth interviews with two experts who are researchers and academics in justice systems and integrity; and eight

professionals in judicial activities who fall into three subject areas (*Judges, Prosecutors, Lawyers, officials of the Supreme People's Court, administrative officials of the Supreme People's Procuracy or provincial People's*

Procuracy, and Committee of Award and Discipline of the local Bar Associations). The interviewees are anonymously referred to in this Report to ensure the objectiveness of the Research.

PART II – LEGAL FRAMEWORK AND CHALLENGES DURING THE IMPLEMENTATION OF CODES OF CONDUCT IN JUDICIAL ACTIVITIES WITH REFERENCE TO INTERNATIONAL STANDARDS

2.1. Theories on codes of conduct in justice systems

2.1.1. The necessity of codes of conduct for professionals in the justice system

Ideologies of developing ethical standards in the operation of either the public system in general or professional sectors in particular all conclude that the development of ethical standards aims to partially establish the value system of society or such industry.⁸ In Viet Nam, from the very beginning of the Government's formation, this ideology was affirmed by President Ho Chi Minh that *"ethics are the root of revolutionary officials"* and shared his ideological views on the basic value of *"revolutionary ethics"* such as: *"diligence, thrift, integrity, public-spiritedness and maintenance of equality"* as well as *"humanity, righteousness, intellect, courage, and honesty"*. Ho Chi Minh's Ideology also states that the ethical values of cadres working in the public administration sector must cover both *"virtue"* and *"talent,"* and the categories that are never separated.⁹ Following this Ideology, *"public duties"* are also considered professional activities. Therefore, officials performing public duties must maintain common ethical

standards and values, comply with principles for performance of public duties, and ensure the harmony among the constitutional, legal, and reasonable nature of public duty activities¹⁰. These ideologies have been legalized in the Law on Cadres and Civil Servants 2008 (amended, supplemented in 2019), relevant legal documents, and the Party's documents related to public duty, ethics and workplace behavior.¹¹

In judicial activities, particularly in the Courts, President Ho Chi Minh has stated that values that include *"dedicatedly serve justice, only obey the law, maintain equality and integrity in trial"* and *"be close to the People, understand the People, help the People, learn from the People"* are essential to ethical conduct of court officials.¹² This Ideology has been applied throughout the construction and development of Vietnamese courts and played a key role in the CoEC for Vietnamese Judges¹³. Pertaining to the Procuracies, President Ho Chi Minh addresses *"Fairness, integrity, objectivity, caution, and modesty"* as essential virtues of Procurators¹⁴. This ideology has been specified in the 2 (two) *"CoCs"* of the Procuracies.

As mentioned above, Resolution 49 aims to *"set higher standards for political, ethical and professional qualities*

⁸ Decision 2721, Symposium 4, section II.1.b; The United Nations, *Professionalism and Ethics in the Public Service: Issues and in the Public Service: Issues and Practices in Selected Regions*, pages 1, 4, 5

⁹ Decision 2721, Symposium 4, section I.2

¹⁰ Decision 2721, Symposium 4, section II.1.a

¹¹ Including the Law on Anti-Corruption 2018 and the 4th Central Resolution session XI of the Central Committee.

¹² In a message sent to the national Judicial Conference (February 1948), President Ho Chi Minh wrote: *"... You are the ones in charge of law enforcement.*

As a result, you need to set an example of dedicatedly serving justice, only obeying the law, and maintaining equality and integrity in trial for the People to follow..." (The Appeals of President Ho – Book I, Truth Publishing House, 1958, page 235)

¹³ CoEC for Judges, 2018, Foreword.

¹⁴ SPP, The Guide of the SPP of Viet Nam on the Final Report on emulation and commendation works and evaluation of commendation proposal 2019, Section I.2.1.

as well as the standards of social knowledge and experience for each category of staff; and materialize such standards”¹⁵ while Conclusion 84 addresses the orientation of establishing a contingent of judicial officials who are truly of high integrity, fair, and professional; have strong political spirit; master laws and the Party’s policies; and meet the requirements of quality, capacity, and prestige to complete missions in the new era.¹⁶ Along with the requirement to “selectively acquire international experiences in accordance with our country’s circumstances and meet the requirement of proactive international integration and the development trend of the society in the future”,¹⁷ these directions and requirements would facilitate the study of domestic ideologies, policies, regulations, practices, and international good practices, to develop standards and CoEC for judicial officials in Viet Nam.

By studying the documents related to the CoEC in the justice system in some countries and Viet Nam, three typical types¹⁸ have been found, including (i) “codes of conduct” and “codes of ethics” in general; (ii) “codes of conduct for professionals” and “codes of ethics for professionals”; and (iii) codes of ethics and conduct for public duties (in the public administration sector) to determine the connotation of CoECs as follows:

¹⁵ Resolution 49, Section II.1.3

¹⁶ Conclusion 84, Section 2.4

¹⁷ Resolution 49, Section I.2.4

¹⁸ For example, several typical types are demonstrated as the principles in the following reference documents:

James J. Alfini, Steven Lubet, Jeffrey M. (2013), *Judicial Conduct and Ethics* – 5th edition, Chapter 1, section §1.01

Access the link https://www.unodc.org/documents/ji/training/self_directed_ebook2.pdf on March 12, 2020

Access the link https://www.icc-cpi.int/NR/rdonlyres/A62EBC0F-D534-438F-A128-D3AC4CFDD644/140141/ICCBD020105_En.pdf on March 12, 2020

Access the link https://www.americanbar.org/groups/professional_responsibility/publications/model_code_of_judicial_conduct/ on March 12, 2020

Firstly, CoCs and CoEs are quite common in documents about ethics. Despite many similarities,¹⁹ these two types also have some differences such as²⁰:

✓ CoC is a typical tool of a *rule-based comprehensive management approach*. Accordingly, CoCs will describe as specific and clear as possible which behavior is expected. CoC will also establish strict sequences to enforce the code through systematic supervising and sanctions on violators.

✓ CoE originates from a value-based approach. This kind of code focuses on general values rather than specific guidelines for behavior. This code provides its members with a framework that identifies general values, as well as support and training for the application of these values in daily real-life situations.

As such, it can be seen that while CoEs are oriented codes with the rules on required general values, CoCs are “clearer and more practical [by] stipulating commands and standards of performance which are guaranteed the enforceability by means of sanctions”.²¹

Secondly, regarding CoCs for professionals and CoEs for professionals²² by reviewing international research documents, it is shown that:

Access the link https://www.jud.ct.gov/Publications/PracticeBook/Judicial_Conduct.pdf on March 12, 2020

Access the link <http://legisquebec.gouv.qc.ca/en/ShowDoc/cr/T-16,%20r.%201/> on March 12, 2020

¹⁹ Riccardo Pelizzo, Frederick Stapenhurst (2011), *Corruption and Legislatures*, page 75

²⁰Public Administration Committee of the Public Administration and Territorial Development Directorate (2009), *Towards a Sound Integrity Framework: Instruments, Processes, Structures and Conditions for Implementation*, page 34

²¹ Willa Bruce (1996), *Codes of Ethics and Codes of Conduct: Perceived Contribution to the Practice of Ethics in Local Government*, Public Integrity Annual vol. 17, page 24

²² Anca C. Yallop (2012), *The Use and Effectiveness of Codes of Ethics – A Literature Review*, page 505.

Access the link

✓ CoC for professionals “provides standards of practice by describing what is expected or prohibited practice by association members”²³

✓ CoE for professionals is a “statement of principles that describes desirable professional conduct and guides individuals in resolving ethical problems”.²⁴

An author describes that a code of ethics for professionals “as both a foundation and guide for professional conduct in the face of morally ambiguous situations”²⁵.

Thirdly, regarding CoC and CoE in public administration sector, the development and application of CoC and CoE in the field of public administration have been used by many countries around the world in recent years to guide the behavior of public employees to fight corruption.²⁶ Most governments are currently adopting a hybrid model of CoC and CoE²⁷. The Transparency International, an international organization conducting various anti-corruption activities on a global scale,²⁸ also regards CoC as a “Statement of principles and values that establishes a set of expectations and standards for how

an organization, government body, company, affiliated group or individual will behave, including minimal levels of compliance and disciplinary actions for the organization, its staff and volunteers.”²⁹ This opinion shows that CoCs include both values and standards of conduct, which means including both the characteristics of CoC and CoE as analyzed above. It seems that the CoEC in Viet Nam has a similar approach. The development of a hybrid code as above will ensure both consistency in structure (from general values to specific conduct standards) as well as feasibility of the code (including enforcement supervision mechanisms and disciplinary sanctions).

In Viet Nam, CoECs for cadres, civil servants and public employees, as well as a number of business lines and sectors, are legalized to force civil servants to comply with, such as the Law on Cadres and Civil Servants 2008 (amended, supplemented in 2019), Law on Public Employees 2010, and Law on Anti-Corruption 2018 with provisions on from ethics to specific conduct, such as office culture, dress code, communication and conduct, ethical standards of industry, system.³⁰ This is

https://www.academia.edu/29196268/The_Use_and_Effectiveness_of_Codes_of_Ethics_A_Literature_Review on March 12, 2020

²³ Robert W. Kolb (2008), *Encyclopedia of Business Ethics and Society*, vol. 1, page 329

²⁴ Grundstein-Amado, R., (2001), *A strategy for formulation and implementation of codes of ethics in public service organizations*, *International Journal of Public Administration*, 24 (5), page 462

²⁵ Frankel, M.S., (1989), *Professional codes: Why, how, and with what impact?*, *Journal of Business Ethics*, 8(2), page 109

²⁶ OECD (2013), *OECD Integrity Review of Italy: Reinforcing Public Sector Integrity, Restoring Trust for Sustainable Growth, OECD Public Governance Reviews*, page 64; Asian Development Bank/OECD (2006), *Anti-Corruption Policy in Asia and Pacific: Progress in Legal and Institutional Reform in 25 Countries*, page 24-25; E-Kojo Sakyi and Justice Nyigmah Bawole (2009), *Challenges in implementing code of conduct within the public sector in Anglophone West African countries: Perspectives from public managers*, *Journal of public administration and policy research Vol. 1(4) August*, page 68

²⁷ Stuart C. Gilman, Ph.D. (2005), *Ethics codes and codes of conduct as tools for promoting an ethical and professional public service: Comparative Successes and Lessons*, pages 19-20. Access the link <https://www.oecd.org/mena/governance/35521418.pdf> on March 12, 2020

²⁸ International Transparency, *Mission, Vision, Values*. Access the link

https://www.transparency.org/whoweare/organisation/mission_vision_and_values/0 on March 12, 2020

²⁹ International Transparency, *The Anti-corruption Plain Language Guide*, page 8. Access the link

https://www.transparency.org/whatwedo/publication/the_anti_corruption_plain_language_guide, on March 12, 2020

³⁰ Law on Cadres and Civil Servants 2008 (amended, supplemented in 2019), Articles 15 - 20; Law on Public Employees 2010, Article 3; Law on Anti-Corruption 2018, Article 20; Regulations of Office culture, included in Decision No. 129/2007/QĐ-TTg, Article 5, Articles 8 to 11. For example:

- CoC: CoC for People’s public security, CoC for Procurators when exercising the rights of prosecution, supervising judicial activities at Court hearings, Court meetings, CoC for civil servants, public employees, employees working at healthcare facilities, etc.

- Standard of Ethics: Standard of professional ethics of judicial cadres, civil servants, public employees, Standard of ethics of cadres, Party members, civil servants, public employees in Inspection agencies, Standard of ethics of cadres, civil servants, public employees, employees in resources and environment sector, etc.

also consistent with the provisions of the United Nations Convention against Corruption of which Viet Nam is a member. Article 8 of the Convention determines that in order to fight corruption, each State Party shall promote, inter alia, integrity, honesty and responsibility among its public officials, in accordance with the fundamental principles of its legal system.

Regarding private sectors (such as enterprises, lawyers), CoECs for professionals or CoEs for business are defined in the Law on Anti-Corruption 2018 as *"standards of conduct of practitioners and businesspeople which match their professional characteristics, stipulated in order to maintain integrity in their industries"*³¹. Or regarding professional activities including both public and private sector employees, such as notarization, CoEs shall *"prescribe ethical standards, conduct of notaries in notarization practice, being the basis for notaries to self-train, self-improve, ethics in practice and social life, aiming to enhance the awareness of notaries professional duty, enhance prestige of notaries, and contribute to honoring the notarization profession in society"*³².

Together with the legalized CoECs for cadres, civil servants and public employees working in the public or private sector, as Party members, must also comply with the regulations on ethical values and conduct of Party members promulgated by the Central Committee of the Communist Party of Viet Nam or by the Politburo through each period. Since 2011, the Communist Party of Viet Nam has issued four

important regulations on ethics of cadres and Party members, including: Regulation No. 47-QD/TW dated November 1, 2011 of the Party Central Committee on behaviors that Communist Party members are not allowed to engage; Regulation No. 101-QD/TW dated June 7, 2012, of the Secretariat on exemplary responsibilities of cadres and Party members, especially key leaders at all levels; Decision No. 55-QD/TW dated December 19, 2016 of the Politburo on a number of urgent actions to strengthen exemplary responsibilities of cadres and Party members; and Regulation No. 08-QD/TW dated October 25, 2018 of the Party Central Committee on the exemplary responsibilities of cadres and Party members. Although the Party members' ethics and conduct are of the political category, they clearly have a direct influence on the ethics of public duties and professionals in the public sector,³³ including the justice system.³⁴ It could therefore be concluded that Communist Party Members' ethics and public service ethics are inseparable, and all the requirements for Party members, cadres and civil servants aim to guarantee ethical qualities and professional responsibilities in light of the responsibility of *"preserving political qualities, revolutionary morality, exemplary pioneering of the Party members"*³⁵. Ensuring the implementation of the Party's rules of ethics and conduct as well as behavior which are not allowed to be engaged in for Party members, cadres and civil servants, will enhance the quality of judicial activities and strengthen the independence of Judges,

- CoE on notarization practice is promulgated in accordance with the Circular No. 11/2012/TT-BTP of the Minister of Justice

³¹ Law on Anti-Corruption 2018, Article 78, clause 1

³² CoE on notarization practice (promulgated in accordance with the Circular No. 11/2012/TT-BTP), Foreword. This definition is similar to the definition of the CoE for professionals of Auctioneers (promulgated in accordance with the Circular No. 14/2018/TT-BTP).

³³ Decision 2721, Section II.2.b

³⁴ Penelope (Pip) Nicholson and Nguyen Hung Quang, *The Vietnamese Judiciary: the politics of appointment and promotion*, Washington University, No. 1 – vol. 14, 2005.

³⁵ Decision No. 47-QD/TW, Preface.

Procurators and judicial officials, as well as lawyers in such activities.

To summarize, the definitions of CoCs or CoEs are rather diverse and have many approaches based on the types listed above. From our analysis and comparison of some approaches on CoCs, CoEs, CoECs for professionals, and CoECs in public administration sector, this Report perceives a CoEC in the justice system as *“the specific ethical principles and conduct standards issued by competent agencies and organizations in judicial activities in order to ensure the integrity, responsibility and ethics of individuals and organizations involved in justice and judicial support activities, including measures to ensure the feasibility of these principles and standards”*.

2.1.2. Role and functions of codes of conduct in the justice system

As mentioned in the above analysis, CoCs, CoEs, CoECs, including those in the justice system, all have the same purpose of adjusting the behavior of the subject group of CoECs to develop and maintain ethical values. Research on the role and function of CoECs in general also often focus on assessing their impact on the behavior of compliance subjects.³⁶ Commonly, a CoEC will adjust behavior two directions: (i) orientation of behavior toward certain standards, and (ii) prediction and prevention of some types of standard behavior deviation, as follows:

Firstly, regarding the role to orient behavior toward certain standards: This function is often expressed through regulating principles, values, and standards, as well as the encouraged and required behaviors that the promulgating agencies and organizations expect the applicable subject group to comply with. Commonly, the principles, values, standards, and behavior that are encouraged or compulsory will also reflect the objectives and tasks of the compliance subject that are systematically and transparently defined in a particular period.

The process of studying documents related to CoE, CoC, CoEC reveals that the awareness of the compliance subject group plays an enormous role in the implementation of the codes. In order to achieve effective implementation, international experience shows that encouragement and guidance mechanisms to enhance the awareness of compliance are expressed through commendation, sanctions, education and training mechanisms of CoEs, CoCs, CoECs,³⁷ and instructions on how to handle difficult or unclear situations.³⁸ Discussions and practical studies reveal that Viet Nam also has various activities in legal dissemination and education in which CoEs, CoCs, CoECs are the legal norms, and other activities to foster the Party members' ethics.³⁹

Secondly, regarding the prediction and prevention of some standard-behavior deviation, such as behaviors that lead to such situations as conflicts of interest,

³⁶ Stuart C. Gilman, Ph.D. (2005), *ibid.*, page 6

³⁷ United Nations, *Professionalism and Ethics in the Public Service: Issues and Practices in Selected Regions*, page 12

³⁸ UNODC (2007), *Commentary on The Bangalore Principles of Judicial Conduct*, page 9 – 21. Access the link

https://www.unodc.org/documents/nigeria/publications/Otherpublications/Commentry_on_the_Bangalore_principles_of_Judicial_Conduct.pdf on March 12, 2020

American Bar Association, Model Rules of Professional Conduct.

Access the link

https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/model_rules_of_professional_conduct_table_of_contents/ on March 12, 2020

UNODC, *Resource Guide on Strengthening Judicial Integrity and Capacity - “Developing and training Philippines court personnel on a new code of conduct”*, 2011, page 32 and 33

³⁹ Decision 2721, Section II.1.b, Section III

bribes and other inappropriate behaviors,⁴⁰ these behaviors are prevented by the stipulation of no permission for such behaviors. As a result, some countries, including Viet Nam, have legalized many CoECs, especially in the public administration sector, to form good awareness of compliance.⁴¹ The legalization of CoECs has helped to ensure better compliance. The competent state agencies or organizations issuing the codes can regard this as a basis for consideration, evaluation, or discipline to limit the deviant behaviors of the compliance subjects.⁴²

CoECs in the justice system have the same role and functions as CoECs in general. Moreover, with the characteristics of the applicable subjects, including judicial and judicial support posts, CoECs in the justice

system are particularly important in ensuring the efficiency of justice activities; protecting justice and human rights and civil rights; and contributing to the development of transparent, strong, democratic and strict justice, especially in the context of judicial reform and the establishment of a rule-of-law state. The current CoECs for Vietnamese Judges, Procurators and Lawyers are highly oriented, mostly by mandatory application, and have strong supervising and enforcing mechanisms, especially the CoECs for Judges and Procurators (specific analysis below), which assist these justice posts to achieve fairness, integrity and transparency, as well as the target of *“dedicatedly serving justice, only obeying the law, maintaining equality and integrity in trial”*⁴³.

⁴⁰ Stuart C. Gilman, Ph.D. (2005), *ibid.*, page 16

⁴¹ Decision 2721, Section II.1.c

⁴² United Nations, *Professionalism and Ethics in the Public Service: Issues and Practices in Selected Regions*, page 6

⁴³ Message to the national Judicial Conference (February 1948), *ibid.*, page 235

Summary 1:

- ✓ Ethical standards in public sector in general, or ethics in the operation of professional sectors in particular, all contribute to establish the value system of the society or the relevant professional sectors.
- ✓ The models of CoCs or CoEs are rather diverse. There are three typical types: (i) "CoCs" and "CoEs"; (ii) "CoCs for professionals" and "CoEs for professionals"; and (iii) CoECs in the public administration sector. In our opinion, the hybrid model of a CoC and CoE as a CoEC is the most suitable form to ensure the efficiency of enforcement and supervision mechanism.
- ✓ This Report perceives CoECs in the justice system as *"the specific ethical principles and conduct standards issued by competent agencies and organizations in judicial activities in order to ensure the integrity, responsibility and ethics of individuals and organizations involved in justice and judicial support activities, including measures to ensure the feasibility of these principles and standards"*.
- ✓ CoEs, CoCs, and CoECs have the role of orienting behavior toward certain standards and predicting and preventing some types of deviant standard behavior. The current CoECs for Vietnamese Judges, Procurators and Lawyers are highly oriented, mostly mandatory in application, and have strong supervising and enforcement mechanisms, especially those for Judges and Procurators.
- ✓ The applicable subjects of CoECs in the justice system are judicial and judicial support posts; thus, the CoECs in the justice system are particularly important in ensuring effective justice activities; protecting justice and human rights and civil rights; and contributing to the development of transparent, strong, democratic and strict justice, especially in the context of judicial reform and the establishment of a rule-of-law state.
- ✓ In Viet Nam, cadres and civil servants of the justice system, including Judges and Procurators in particular, and cadres and civil servants in general, are Party members and must comply with two systems of CoECs, namely the legalized system of CoECs, and the regulations and rules of ethics and conduct for Party members. These systems are inseparable. These two systems are currently contributing to improving the quality of judicial activities and further guaranteeing the independence of Judges, Procurators, and other judicial officials and lawyers in professional practice.

2.2. Current policies and legal framework of CoECs for professionals in the justice system in Viet Nam

2.2.1. Current policies and legal framework of a CoEC for Judges in Viet Nam

a. Content of the CoEC

Ethical values of Judges are regulated in many normative documents from time to time which govern the operation of courts and judges, such as the LOPC 2014 and the Ordinance on Judges and Assessors of

the People's Courts. In 2008, the SPC issued the CoC for the Courts 2008 in the light of the Resolution 49. Generally, subjects under regulation of this CoC are cadres and civil servants in the Courts. This document specifies the conducts for the cadres and civil servants in the Courts such as the CoC in case of adjudication; citizen reception, handling of complaints and denunciations; the CoC to be applied while in agencies or residential areas; and the CoC while communicating

with mass media that legal documents have requested.⁴⁴

The LOPC 2014 requires Judges to be "*Independent, impartial, objective and responsible for justice protection while trial; and abide by the CoEC for Judges, preserving the reputation of the Court*"⁴⁵. This necessitates highly practical and specific guiding documents about CoECs for Judges in order to continue implementing the judicial reform policy of Resolution 49, and detailing the Central Resolution No. 4 issued by the 12th-tenured Central Committee of the Communist Party of Viet Nam⁴⁶ as well as Resolution No. 02-NQ/BCS dated May 14, 2018 of the SPC Personnel Committee on strengthening leadership and direction of organization and personnel⁴⁷ In view of the documents mentioned above, in 2018, the NCSSJ issued the CoEC for Judges 2018.

Unlike the broad governing scope of the CoC for the Courts 2008, the governed subjects of the CoEC for Judges 2018 include only Judges, namely the Judges working at the People's Court, and Military Court at all levels. This CoEC is also encouraged to be applied to Judges who have retired or transferred to another job.⁴⁸ The CoEC for Judges 2018 contains: (i) Judges' ethical values such as independence, integrity, impartiality, and (ii) guidelines for the conduct in specific activities of Judges, such as conduct while performing duties, when being at the workplace, or when communicating with the mass media. Contents

in point (ii), listed above, regarding the guidelines for conduct of Judges, are quite similar to the rules prescribed in the CoC for the Courts 2008.

The CoEC for Judges 2018 is not only based on the requirements of the LOPC 2014, but also the legal documents on legal proceedings (Civil Procedure Code 2015, Criminal Procedure Code 2015, and the Law on Administrative Procedure 2015), and other documents such as the Law on Anti-Corruption 2018; Law on Cadres and Civil Servants 2008 (amended, supplemented in 2019); Directive No. 05/2008/CT-TTg on improving the efficiency of using working time of cadres, civil servants and public employees; Regulation on office culture at state administrative agencies issued under the Prime Minister's Decision No. 129/2007/QĐ-TTg of August 2, 2007, and the Party's documents on ethic and lifestyle of cadres and civil servants.

b. Mechanism of Explanation

The CoEC for Judges 2018 only sets out the rules without official documents explaining the rules. The dissemination, commenting and explanation of these CoEC rules are published in the People's Court Journal⁴⁹ and implemented through training programs of the People's Court, as well as the professional exchange activities related to the annual emulation and commendation in courts.

c. Mechanism of Enforcement

⁴⁴ Penelope (Pip) Nicholson and Nguyen Hung Quang, *The Vietnamese Judiciary: The Politics of Appointment and Promotion*, Pacific Rim Law & Policy Journal, University of Washington, Number 1 - Volume 14, 2005.

⁴⁵ LOPC 2014, Article 76, clause 3

⁴⁶ The brief report of the Court's work from the beginning of the term hitherto and 2018; and the focal mission in the next time, The e-Portal of SPC, January 14, 2019. Access the link <https://www.toaan.gov.vn/webcenter/portal/tatc/chi-tiet-chi-dao-dieu-hanh?dDocName=TAND058690> on March 12, 2020

⁴⁷ Chief Justice of the SPC Nguyen Hoa Binh, *Developing the CoE for Judges and strengthening judicial integrity*, The e-Portal of the Chief Justice of the SPC, October 21, 2018. Access the link <https://www.toaan.gov.vn/webcenter/portal/ca/chi-tiet?dDocName=TAND047393> on March 12, 2020

⁴⁸ CoEC for Judges 2018, Article 1.2

⁴⁹ The People's Court Journal, Special Edition on the CoEC for Judges, September 2018.

Mechanism of Enforcement supervision

The NCSSJ would take charge of supervising the CoEC implementation.⁵⁰ The NCSSJ would decide on the supervision program which could be quarterly, annual, or irregular at the request of its members or at the request of competent agencies or persons. Supervising activities include: (i) reviewing the Judges' report; (ii) reviewing the report of the Chief Justice of the People's Court where the Judges work; (iii) requesting the competent persons who settle complaints and denunciations against Judges to provide documents on such settlement; and (iv) organizing the Supervisory Delegation.⁵¹ The supervisory results of the Council would continue to be reported to the National Assembly, the President, and the Standing Committee of the National Assembly through the mechanism of annual reports, and thematic and extraordinary reports.⁵² The assisting apparatus for the NCSSJ is the SPC Inspection Committee.⁵³

In addition to the supervision of the NCSSJ, the Courts also has a mechanism for supervising a Judge's ethics through other internal supervising systems under specific functional units,⁵⁴ including the Department of Organization and Personnel,⁵⁵ Department of Emulation and Commendation,⁵⁶ SPC People's Committee,⁵⁷ and Executive Committee of the SPC Party Committee. In Superior People's Courts, the

internal supervision of a Judge's morality is assigned to the agencies in charge of personnel organization, emulation, commendation and inspection.⁵⁸ At the provincial People's Courts, the Division of Organization - Personnel, Inspectorate, Emulation and Commendation is responsible for supervising judges at the provincial and the affiliated district People's Courts.⁵⁹

Furthermore, under the current regulations, Judges are always under the supervision of the People⁶⁰ and Judges' behavior violating ethical values and conduct may be the subject of complaints and issue denunciations by the People. This is an external supervising mechanism for Judges' ethics and conduct. According to the provisions of the Civil Procedure Code 2015, the Criminal Procedure Code 2015, and the Law on Denunciations 2018, agencies, organizations, and individuals have the right to lodge complaints and issue denunciations about the decisions and acts in civil proceedings of persons and agencies conducting legal proceedings, when there are grounds to believe that such decisions and acts are illegal or infringe upon their lawful rights and interests.⁶¹

Mechanism of Violation Handling

⁵⁰ LOPC 2014, Article 70 and Article 71, clause 3; Resolution 929, Article 20, clause 2

⁵¹ Resolution 929, Article 22

⁵² Resolution 929, Article 7

⁵³ Decision 918, Article 8

⁵⁴ Decision 120, Article 5, clause 6

⁵⁵ Decision 918, Article 9

⁵⁶ Decision 918, Article 12

⁵⁷ Law on Inspection 2010, Article 72; Decree No. 159/2016/ND-CP dated November 29, 2016 detailing and prescribing measures for implementing a number of articles of the Law on Inspection regarding the organization and operation of People's Inspection Boards

⁵⁸ Decision No. 986/2015/QĐ-TANDTC on the organizational structure, missions and rights of the units in assisting agencies of a Superior People's Court in Hanoi; Decision No. 987/2015/QĐ-TANDTC on the organizational structure, missions and rights of the units in assisting agencies of a Superior People's Court in Da Nang; Decision No. 988/2015/QĐ-TANDTC on the organizational structure, missions and rights of the units in assisting agencies of a Superior People's Court in Ho Chi Minh City

⁵⁹ Decision No. 345/2016/QĐ-CA on the organizational structure, missions, and rights of the units in assisting agencies provincial People's Court and district-level People's Courts

⁶⁰ LOPC 2014, Article 76, clause 2

⁶¹ Civil Procedure Code 2015, Article 499 and Article 470; Criminal Procedure Code 2015, Article 469; Law on Denunciation 2018, Article 2, clause 3

Beside the disciplinary mechanism for Judges under the laws on cadres and civil servants, the Courts has a separate mechanism for handling the irresponsible behavior of judicial position holders in the People's Court, in case of violations of Decision No. 120. Accordingly, the mechanism for handling irresponsible behavior would be applied to violations based on irresponsibility⁶² or violations during the performance of assigned tasks. Types of acts considered as violations, such as delaying application processing, delaying the acceptance of case settlement, going beyond the time limit for trial preparation, delaying the issuance of judgments, or failing to ensure the quality of trial, and violating procedures, are expressed through the ratio of sentences and decisions canceled due to subjective errors, and decisions and judgments that are released or amended in contravention of regulations.

There are five forms of handling accountability under Decision 120, including: (i) self-criticism before agencies and units; (ii) halting assigned tasks; (iii) arranging other jobs; (iv) delaying a request for Judge reappointment; and (v) refusing a request for Judge reappointment. Regularly, the authority to handle accountability would belong to the head of the agency or unit who directly supervises the Judge committing an infringement.⁶³ Vietnamese Judges are not appointed for life or until retirement (see international research below). Except for the SPC Chairman, Vietnamese Judges in other level are appointed in the

⁶² "Lack of responsibility is determined when the judicial position holders inadequately undertake the assigned tasks/mission in the People's Courts; fail to perform or improperly perform the principles, regimes, procedures, processes, rules, standards, conditions or time limits prescribed by laws and other regulations of the People's Court on such specific tasks/missions" (Decision 120, Article 2, clause 5)

⁶³ Decision 120, Article 5

first tenure for five years, and the next tenure for ten years⁶⁴. Therefore, a strong measure to ensure the compliance of the Judges with the CoEC is the delay, or even the cancellation of reappointment when the appointment time is due.⁶⁵

In addition to disciplining judicial position holders in the Courts under Decision 120, Judges and other judicial position holders in the SPC may also be disciplined for violations of the CoC for cadres and civil servants in accordance with the Law on Cadres and Civil Servants 2008 (amended, supplemented in 2019), and Decree 34. Disciplinary sanctions for civil servants not holding managerial positions include (i) reprimand; (ii) caution; (iii) salary reduction; and (iv) removal from office.

From interviewing experts and Judges, it appears that the handling of violations under Regulation 120 are too strict yet does not show the professional characteristics, the independence of Judges, and not in coordination with other laws, thus limit the effective implementation of the CoEC for Judges and their professional activities.

Mechanism of Encouraging CoEC Compliance

As analyzed above, the CoEC for Judges 2018 is the specific regulations for legal requirements on "ethical values" and "conduct" of Judges. Regulations aiming to encourage Judges to maintain virtue are prescribed in documents on emulation and commendation by the Court in particular⁶⁶ and for cadres, civil servants, and

Particularly for liability handling by the form of delaying/cancelling the request for reappointment, the Chief Justice of the SPC shall have the handling authority

⁶⁴ LOPC 2014, Article 74

⁶⁵ Decision 120, Article 5

⁶⁶ Decision No. 223/QĐ-TA-TĐKT of the SPC dated December 26, 2013 on issuing regulations of handing over title of "Outstanding Judge", "Distinguished Judge", and "Exemplary Judge"

public employees in general.⁶⁷ These regulations indirectly encourage the implementation of the CoEC for Judges 2018.

2.2.2. Current policies and legal framework on CoEC for Procurators in Viet Nam

a. Contents of the CoEC

The Procuracies focuses on professional training and fostering, ethical education, awareness of law, and discipline observance, communication norms and basically meets the working requirements⁶⁸ to fulfill the task of developing the Procuracies workforce as stipulated in the Justice Reform Strategy of Resolution 49.⁶⁹ On June 18, 2008, the SPP issued the CoEC for the Procuracies 2008 in accordance with Decision No. 296/2008/QD-VKSTC. After 11 years of application, on January 16, 2020, the SPP issued the CoEC for the Procuracies 2020 in accordance with Decision No. 08/QD-VKSTC,⁷⁰ which replaces the CoEC for the Procuracies 2008, to meet practice requirements as well as the development orientation of the Procuracies in the new period.

The target subjects of CoEC for the Procuracies 2020 are cadres, civil servants, public employees, and employees of the Procuracies (excluding Military Procuracies at all levels). Cadres, civil servants, public employees, and employees that are retired or transferred to another job are also encouraged to comply with this CoC.⁷¹ The CoEC for the Procuracies 2020 sets out general rules of conduct and rules in specific activities of cadres, civil servants, public

employees and employees in the Procuracies. These include, for example, rules in performing duties and public duties, rules in agencies and units, rules in public places, and rules when answering media agencies.

Additionally, in order to maintain and improve the effectiveness of performing the right of prosecution and judicial activity supervision which are the leading functions and duties of the People's Procuracies and Procurators,⁷² on February 20, 2017, the SPP issued the CoEC for Procurators 2017 in accordance with Decision No. 46/QD-VKSTC. The promulgation and application of the CoEC for Procurators 2017 aim to develop and improve the quality of the workforce for the implementation of sustainable development in the spirit of the Socio-Economic Development Strategy in the period of 2011 – 2020.⁷³ Contrary to the CoEC for the Procuracies 2020, the target subjects of CoEC for Procurators 2017 include Procurators only. This CoC sets out the Procurators' standards of conduct in performing the prosecution right and judicial supervision at Court trials and meetings.

In contrasts to Judges, the obligation to comply with the CoECs and the values of Procurators is not specifically recognized in the LOPP.⁷⁴ On the other hand, both rules of the CoEC for Procuracies 2020 and the CoEC for Procurators 2017 specialize in the provisions of the Law on Cadres and Civil Servants 2008 (amended, supplemented in 2019), and the Law on Anti-Corruption 2018 which includes provisions related to conflict of interest, misuse of official posts for

⁶⁷ Incorporated Document No. 16/VBHN-VPQH 2013 on Emulation and Commendation Laws

⁶⁸ Workforce Development Plan of the Procuracies in the period of 2011 - 2020 (included in Decision No. 90/QD-VKSTC-V9 dated March 12, 2013), Part One, Section III.1

⁶⁹ Resolution 49, Section II.1.3

⁷⁰ Access the link <https://vksndtc.gov.vn/khac-1344> on March 12, 2020

⁷¹ CoEC for the Procuracies 2020, Article 2.1

⁷² LOPP 2014, Article 2, clause 1; Article 79

⁷³ Decision No. 432/QD-TTg approving the Socio-Economic Sustainable Development Strategy of in the period of 2011 - 2020 dated April 4, 12, 2012, Article 1, Section II.6

⁷⁴ LOPP 2014, Article 84, clause 1 and Article 89, clause 2, point c

personal benefits, discrimination; dress code, and communication culture,⁷⁵ along with requirements for Communist Party members.⁷⁶

b. Mechanism of Explanation

Similar to the CoECs for Judges described above, there has not been any formal explanation mechanism for the CoECs of Procurators.

c. Mechanism of Enforcement

Mechanism of Enforcement supervision

In the Procuracies, the supervision of CoEC observance is one of the tasks of public discipline and internal order compliance, implemented by the Inspection Committee of the Procuracies at all levels.⁷⁷ Inspection activities may be conducted in accordance with the plans approved by the Chief Procurator of the same level, or conducted unexpectedly when detecting that the inspection subject is showing signs of law violation or People's Procuracies regulation violation or in compliance with a requirement for inspection in the complaint, denunciation or anti-corruption case process, or upon the request of the Chief Procurator of the same level.⁷⁸ Directive No. 05/CT-VKSTC-TTr in 2014 on strengthening public discipline and internal order of the Procuracies also sets out the requirement to strictly follow the CoEC for the Procuracies 2008, and requires the Heads of units under SPP, Chief Procurators of provincial People's Procuracies to annually and semiannually report to the General

Procurator of SPP (via Inspectors of SPP) on the implementation of this Directive.⁷⁹ These requirements shall indirectly supervise the Procurators' implementation of the CoECs.

In addition, the operation of the People's Procuracies in general, which also includes personnel management tasks, would be subject to supervision by the National Assembly, National Assembly agencies, National Assembly delegates, National Assembly Delegation Associations, People's Councils, People's Council delegates, Viet Nam Fatherland Front Committees and Front member organizations.⁸⁰ The LOPP 2014 also recognizes the supervision of all relevant agencies, organizations, and individuals with the People's Procuracies in exercising the right to propose, complain, and denounce illegal acts and decisions of the People's Procuracies.⁸¹ It can be seen that this activity is similar to the supervision of complaints and denunciations of the People against the Judges.

Regarding the preventive mechanism by the requirement of income declaration, the CoEC for the Procuracies 2020 and CoEC for Procurators 2017 do not mention this as a requirement as does the CoEC for Judges 2018. However, as official servants, Procurators are still subject to the general provisions on asset and income declaration as prescribed in the Law on Anti-Corruption 2018⁸².

⁷⁵ LOPP 2014, Article 84, Article 97; Law on Cadres and Civil Servants 2008 (amended, supplemented in 2019), Article 15 – Article 20; Law on Anti-Corruption 2018, Article 20, clause 3

⁷⁶ Regulation No. 47-QD/TW dated November 1, 2011 of the Party Central Committee on behaviors that Communist Party members are not allowed to engage, Regulation No. 101-QD/TW dated June 7, 2012 of the Secretariat on exemplary responsibilities of cadres and Party members, especially key leaders at all levels, the Decision No. 55-QD/TW dated December 19, 2016 of the Politburo on a number of urgent actions to strengthen exemplary responsibilities of cadres and Party members and Regulation No. 08-QD/TW

dated October 25, 2018 of the Party Central Committee on the exemplary responsibilities of cadres and Party members

⁷⁷ Decision 192, Article 9, clause 3; Article 19, clause 3; Article 21, clause 3; Article 26, clause 1, point b

⁷⁸ Decision 192, Article 26, clause 2

⁷⁹ Directive No. 5/CT-VKSTC-TTr, Section 1, point a; Section 2, point c; Section 3

⁸⁰ LOPP 2014, Article 10

⁸¹ LOPP 2014, Article 9, clause 1

⁸² Law on Anti-Corruption 2018, Article 34

Mechanism of Violation Handling

Compliance with CoEC regulations is not only a criterion for evaluating emulation and commendation, but it is also recognized as one of the bases for handling violations against Procurators.⁸³ However, the current legal documents on specific disciplinary action against Procurators only mention the violation of the CoEC for the Procuracies 2008, and have not been updated with the contents of the CoEC for Procuracies 2020, and the CoEC for Procurators 2017.⁸⁴ Unlike the process for handling irresponsible behavior of Judges, the Procuracies does not have a particular mechanism for handling irresponsible behavior of Procurators, but merely stipulate that Procurators must comply with the general discipline policy for civil servants as prescribed in the Law on Cadres and Civil Servants 2008 (as amended, supplemented in 2019) and Decree 34, which are similar to the disciplinary handling mechanism applied to Judge as analyzed above.

Mechanism of Encouraging CoEC Compliance

Similar to Courts, the Procuracies also has its own internal emulation activities under the provisions of the Law on Emulation and Commendation, such as the Campaign to establish a team of Procurators to be "strongly political-spirited, professionally proficient, law adept, impartial and brave, disciplined and responsible," and the Movement of "cadres, civil servants and public employees in the Procuracies to emulate and implement

⁸³ CoEC for the Procuracies 2020, Article 3, clause 4; Article 16, clause 2; CoEC for Procurators 2017, Article 8

⁸⁴ Article 17, Regulations on disciplining in People's Procurator sector (included in Decision No. 183/QĐ-VKSTC-T1 dated April 4, 2016 of the General Procurator of SPP) regulate the disciplinary measures for violations against internal affairs of the office and the People's Procuracy CoC and there are regulations on the disciplinary measures for behaviors removed in the Rule of the CoEC for the Procuracies 2020, namely alcohol, beer drinking.

⁸⁵ Plan No. 123/KH-VKSTC of SPP on organizing the Movement of "cadres, civil servants and public employees in the Procuracies emulate to implement office

office culture in the period of 2019 - 2025".⁸⁵ These emulation mechanisms only indirectly encourage the implementation of the CoECs. The emulation and commendation titles applied in these activities of the Procuracies are completely in common with the titles for cadres, civil servants and public employees applied according to the Law on Emulation and Commendation. There is no specific title in the Procuracies for Procurators who fully comply with the CoEC for Procurators.

2.2.3. Current policies and legal framework on CoEC for Lawyers in Viet Nam

a. Contents of the CoEC

In order to meet society's requirement for lawyers with good ethical values, a number of resolutions and directives of the Politburo and the Party Central Committee Secretariat require the development of lawyers having capacity, ethical values, and integrity in professional ethics.⁸⁶

To solidify the above requirements, the Government has promulgated the Strategy on Lawyer Development by 2020. One of the goals set out by this Strategy is to "qualitatively and quantitatively develop a team of lawyers with strong political spirit and integrity in professional ethics to meet the requirements of judicial reform and society, and effectively implement the 11th

culture" in the period of 2019 - 2025; Instruction No. 35/HD-VKSTC dated November 12, 2019 of SPP on Summarizing the emulation, commendation task and consideration of reward proposal in 2019, Section I.2

⁸⁶ Resolution No. 08-NQ/TW dated 2002 promulgated by the Politburo on some key tasks of judicial work in the coming time, Part II, Section B.3, Resolution 49, Part II, Section 2.3; Directive No. 33-CT/TW promulgated by the Party Central Committee's Secretariat dated March 30, 2009 on strengthening the Party's leadership over the organization and operations of lawyers

Party Congress's Resolution and the Judicial Reform Strategy, etc."⁸⁷ and "promulgating the CoEC for Lawyers"⁸⁸.

The CoEC for Lawyers 2011 is the first code of ethics and professional conduct promulgated by the VBF in accordance with the Decision No. 68/QD-HDLSTQ dated July 20, 2011, and consistently applied at all local BA.⁸⁹ After eight years of implementing the CoEC for Lawyers 2011, the VBF issued a new CoEC for Vietnamese Lawyers – the CoEC for Lawyers 2019.⁹⁰ The CoEC for Lawyers 2019 sets out rules relating to Lawyers' conduct in relations with: colleagues; law-practicing organizations; social - professional organizations of lawyers; relations with state agencies; proceeding participants and other organizations; and conduct in social media.

Similar to the regulations for Judges, the obligation to comply with the CoEC for Lawyers is also recognized in the legal documents on the activities of Lawyers.⁹¹ The CoEC for Lawyers 2019 provides in detail legal requirements such as the Law on Lawyers and the Law on Legal Aid 2017, and for the activities of Lawyers, such as the rules on keeping confidential information, and prohibited behaviors in relationship with clients or in trials, and responsibility to participate in community activities.

b. Mechanism of Explanation

⁸⁷ The Strategy on Development of the Lawyer's Profession promulgated by the Government Minister with the Decision No. 1072/QD-TTg in 2011, Part II, Section 1.a

⁸⁸ Strategy on the Development of the Lawyer Profession, Part III, Section 2.a

⁸⁹ In 2002, the Ministry of Justice issued the Model Code of Professional ethics for Lawyers included in the Decision No. 356b/ 2002/QD-BT dated August 5, 2002. However, because this is a Model Rule, the content applied between BAs may be inconsistent (Article 1 of this Rule: "Based on this Model Rule, BAs in

The CoEC for Lawyers 2019 has just recently been issued (in December 2019), so there is not much information about the difficulties and obstacles in implementing the Code. In fact, the implementation of the CoEC for Lawyers 2011 or the CoEC for Lawyers 2019 is difficult because Lawyers or relevant parties do not fully understand the contents of the rules, while the VBF does not provide any official explanation mechanism for the CoEC for Lawyers 2011 or the CoEC for Lawyers 2019, except for explaining the CoEC in professional training sessions. This issue is similar to the implementation of the CoECs for Judges and Procurators.

c. Mechanism of Enforcement

Mechanism of enforcement supervision

To ensure the implementation and compliance with the CoEC for Lawyers, and also to help the VBF to grasp the situation of the CoEC compliance of Lawyers and Trainee Lawyers, the National Lawyers' Council issued the Regulation on supervising the organization and operation of Lawyers, attached to Decision 28/QD-HDLSTQ dated February 4, 2016 of the National Lawyers' Council. Accordingly, the agency responsible for supervision at the Federation level is the Standing Committee of the VBF via the Supervisory Committee, and at the local level, the Board of Management, possibly via the Council of Commendation and Discipline.⁹² Supervision is carried out according to

provinces, centrally-run cities promulgate their Codes of Professional ethics for Lawyers").

⁹⁰ Decision No. 201/QD-HDLSTQ of the VBF on promulgating the CoECs for Vietnamese Lawyers dated December 19, 2019

⁹¹ Incorporated document No. 3/VBHN-VPQH 2015 incorporating Laws on Lawyers (**Law on Lawyers**), Article 5, clause 2

⁹² Regulation on supervising the organization and operation of Lawyers, Article 4, Article 5

plans such as tenure plans and annual plans, or *ad hoc*, by setting up Supervision teams, collecting information from the discussions, recommendations, reports on the results of inspection, examination, supervision of state agencies, the Viet Nam Fatherland Front, socio-political organizations, reports of the mass media on Lawyers, trainee lawyers, law-practicing organizations, examination reports, documents and letters of law-practicing organizations, lawyers and trainee lawyers.⁹³ After the supervision process, the Standing Committee of VBF and the Board of Management of the BA will review, handle, or propose competent agencies to consider and handle the violations by individuals and organizations.⁹⁴

Mechanism of Violation Handling

In order to ensure the effectiveness of implementation of the CoEC for Lawyers, the Law on Lawyers has provided a chapter on disciplining Lawyers. Sanctionable violations include violations of the provisions of the CoEC for Vietnamese Lawyers.⁹⁵ This is the difference between the mechanism of handling violations between Lawyers, Judges, and Procurators. The Standing Committee of the VBF issued the Regulation on disciplining lawyers, attached to the Decision 68, to support the provisions of the Law on

Lawyers. According to Decision 68, the Board of Management of the BA is the agency competent to decide the discipline of Lawyers, while the Council of Commendation and Discipline of the BA has authority to investigate, consider, conclude and make proposals to the Board of Management to decide the discipline of Lawyers.⁹⁶ There are four forms of disciplinary action applied to a lawyer, including: (i) reprimand; (ii) warning; (iii) suspension of membership in the BA from six months to twenty-four months; and (iv) removal of the name of Lawyers from the BA list.⁹⁷

Mechanism of Encouraging CoEC Compliance

Unlike the encouragement mechanisms for the implementation of the CoEC for Judges and the CoEC for Procurators, the mechanism to encourage lawyers to implement and comply with the CoEC for Lawyers through honor and reward activities has not been regulated in legal documents. In fact, lawyer's rewarding activities are determined under many criteria of the VBF or the BAs. Although state agencies require the VBF to issue the CoEC for Lawyers, there is no mechanism for honoring and rewarding lawyers for good performance of the CoEC for Lawyers.

⁹³ Regulation on supervising the organization and operation of Lawyers, Article 7, Article 8

⁹⁴ Regulation on supervising the organization and operation of Lawyers, Article 9, Article 10

⁹⁵ Law on Lawyers, Chapter VIII

⁹⁶ Decision 68, Article 3

⁹⁷ Decision 68, Article 11

Summary 2:

- ✓ While the obligation of Judges and Lawyers to comply with the CoECs is regulated in the specialized legal documents on the operations of the Courts and Lawyers (LOPC 2014 and Law on Lawyers), the obligation to comply with the CoEC for Procurators is not specifically regulated in the specialized law document of the People's Procuracies (LOPP 2014).
- ✓ The CoECs for Judges, Procurators and Lawyers specify the legal requirements of ethical values and codes of conduct for each judicial post.
- ✓ In Viet Nam in particular, Judges and Procurators are cadres and civil servants, and most of them are Communist Party members. Therefore, these subjects must comply with the regulations of the CoECs simultaneously with the general rules and regulations of cadres, civil servants, and Communist Party members. Each regulation has its own general and specific requirements for ethical values, conduct, and its own enforcement mechanism. The handling of violations in accordance with a three-rule system (CoEC for professionals, general rules of cadres and civil servants and general rules of Party members) also reinforces the quality of judicial activities and limits the factionalism of agencies and systems.
- ✓ The CoECs for Judges, Procurators and Lawyers are quite independent from each other, and have not yet been systematically linked, even though they all govern the professionals in the judicial field.
- ✓ The CoECs for Judges, Procurators and Lawyers do not have the methods and mechanisms to explain the rules and contents in a clear way or provide detailed guidance in practical cases.
- ✓ Documents of the Courts, the Procuracies and Lawyers all have provisions on regular and active supervision. Especially with the Courts and the Procuracies, supervision is carried out through the management of cadres, civil servants, and Communist Party members, simultaneously with the emulation and commendation activities.
- ✓ The legal documents of the Courts, the Procuracies and Lawyers all contain disciplinary regulations but do not really conform with the characteristics of the professions, principles, organization, and judicial activities. In addition, these documents have not specifically and explicitly referred to the CoECs of the corresponding systems.

2.3. The practices, difficulties, and challenges of the implementation of CoECs in the justice system

2.3.1. The practices, difficulties, and challenges of the implementation of CoECs for Judges

a. Mechanism of Training and Dissemination

The contents of the CoC for People's Court 2008 have been taught in the Joint Training Program of Judges, Procurators, and Lawyers of the Judicial Academy,⁹⁸ the Periodical basic training program for Judges of the Court Academy,⁹⁹ and currently, the CoEC for Judges 2018 is being taught at the Court Academy.

The People's Court Journal has also published a number of thematic and special editions, in which experts and scientists provide certain articles explaining and disseminating the rules of the CoEC for Judges. Such articles target disseminating CoEC rules to the public in general and to court officials at all levels in particular.¹⁰⁰

Since the end of 2018, the SPC has increasingly held the training programs to thoroughly orient or guide and disseminate the implementation of the CoEC for Judges 2018, including nationwide online training and direct training in some localities.¹⁰¹ In addition to the

training programs organized by the SPC, the provincial People's Court has also actively developed plans and organized professional training courses for judges, civil servants, and affiliated People's Assessors as well as designating cadres and civil servants to participate in training courses of advanced political theory and state management in their localities¹⁰².

b. Mechanism of Explanation

The CoEC for Judges 2018 has filled in the gaps of laws related to requirements on ethical values for Judges. In other words, this CoEC has specified the law's requirements mentioned above. However, there is still a lack of documents guiding and explaining the scenarios that may arise during the implementation of the CoEC. Therefore, target subjects (Judges as well as persons who have the right to supervise CoEC implementation, such as the People) have not really proactively applied the rules in the CoEC. For instance, the rule about "Judges' independence" currently prescribed in Article 3 of the CoEC for Judges 2018, focuses on the requirement to maintain professional skills and avoid being influenced by internal and external factors of the Court. Meanwhile, there is an opinion ascertaining that independent trial also means

⁹⁸ Joint Training Program of Judges, Procurators, and Lawyers, the Judicial Academy. Access the link <http://hocvientuphap.edu.vn/daotao/Pages/chuong-trinh-dao-tao.aspx?itemID=2> on March 12, 2020

⁹⁹ Periodical basic training program for Judges, the Court Academy. Access the link http://hvta.toaan.gov.vn/portal/page/portal/hvta/27676677/27982384?tailieu_=252 on March 12, 2020

¹⁰⁰ People's Court Journal, Special Edition of the CoEC for Judges, September 2018.

¹⁰¹ Trang Chi, *The SPC provides legal training law and dissemination of the CoEC for Judges*, The Justice e-News, December 25, 2018. Access the link <http://tv.congly.vn/tandtc-tap-huan-phap-luat-va-tuyen-truyen-bo-quy-tac-dao-duc-va-ung-xu-cua-tham-phan-d5493.html> on March 12, 2020

Hue Duong, *The Judicial Academy and the Court Academy held training program on the CoEC for Judges*, September 17, 2019, the Website of Judicial Academy. Access the link http://hvta.toaan.gov.vn/portal/page/portal/hvta/27676662/27676768?p_pa

ge_id=27676768&pers_id=27676164&folder_id=&item_id=274553324&p_details=1 on March 12, 2020

Hoang Anh, *Improving the enforcement of CoEC for Judges*, News of Justice for Society, December 12, 2019.

Access the link <https://conglyxahoi.net.vn/toa-an/nang-cao-thi-hanh-bo-quy-tac-dao-duc-va-ung-xu-cua-tham-phan-31099.html> on March 12, 2020

Mai Dinh, *Training Program of "Improving the implementation of CoEC for Judges"*, Justice e-News, December 11, 2019. Access the link <https://congly.vn/hoat-dong-toa-an/nghep-vu/tap-huan-nang-cao-viec-thi-hanh-cac-quy-dinh-cua-bo-quy-tac-dao-duc-va-ung-xu-cua-tham-phan-324462.html> on March 12, 2020

¹⁰² Report No. 28/BC-TA on the implementation of the National Assembly's Resolution on thematic supervision and interrogation from the beginning of the term until the end of the 4th Session of the XIV National Assembly, August 13, 2018

that a Judge makes his or her own judgment, completely based on his or her professional knowledge or sense of justice, especially when the law provides vague regulations. Also, Judges should avoid mechanical trials and avoid being influenced by colleagues and superiors in the Court.¹⁰³ The rules of "integrity", "impartiality and objectivity" and "fairness and equality" are still considered not to be providing clear and detailed guidance about ethical values and codes of conduct.¹⁰⁴ The absence of a formal explanation mechanism can make it difficult to enforce the rules, especially in cases where current regulations or ethical categories do not provide specific guidelines.

c. Mechanism of Enforcement

Mechanism of Enforcing Supervision

As stated in the section regarding Policies and Legal Framework, the mechanism of enforcement supervision applied to the CoEC for Judges 2018 is operated through a number of existing tasks and activities in the Court system, such as regular internal assessment tasks and activities for cadre management, emulation and commendation, evaluation of Party members, Judges' evaluation when considering re-appointment, and asset declaration.

Furthermore, the Court also has the mechanism of supervision based on the irregular supervision of the National Assembly Delegation, the local People's Council, the complaints and denunciations of the People, and petitions of state agencies, which are all concerned with the ethics and conduct of Judges, as

well as the activities of the Courts in general and the legal proceedings in each specific case. The CoEC for Judges 2018 was also sent to the National Assembly Delegations and provincial level and district-level People's Councils to support the coordination of implementation in supervising Judges.

As analyzed, Judges are Party members; thus, they are under the public supervision of the People through the mechanism of complaint and denunciation as well as "dual supervision" – one is the supervision mechanism for Party members at their offices, and the other is supervision at the current residential area in accordance with Regulation 76, and Regulation 213.¹⁰⁵

Additionally, one of the elements of the enforcement supervision mechanism, the current task of Judge's income declaration, is perceived as remaining formalistic. This mechanism has not provided detailed guidelines especially regarding the supervision mechanism for the people. This has led to the fact that this task is merely an activity of asset declaration and supervision within the Court.

Mechanism of Violation Handling

As opined above, some rules in the CoEC for Judges 2018 could be equivalently referred to rules in the Decision 120 but others could not, such as the rules of publicly stating Judges' views on case resolution before issuing a final judgment or decision, and bringing related-case files or documents out of agencies without being assigned to do so or without the consent of the competent authority. The fairly strict

¹⁰³ UNDP-Ministry of Justice, *The survey report of current situation of local People's Court management in Viet Nam* (2014), pages 71-72; Pham Duy Nghia, *Some comments for drafting the CoEC for Judges*, page 3

¹⁰⁴ Tran Van Do, *Some Comments on the Draft of the CoEC for Judges*, Section 2.2

¹⁰⁵ Regulation No. 76-QD/TW of the Politburo in 2000 on Party members who have been working at agencies, enterprises and non-business units to liaise

with sub-committees, grassroots party committees and exemplify the fulfillment of citizen obligations at residence areas; and Regulation No. 213-QD/TW on responsibilities of incumbent Party members for closely liaising with party organizations and the People at the current residential area. Regulation No. 213-QD/TW replaces Regulation No. 76-QD/TW

mechanism of violation handling may cause Judges to have a feeling of insecurity while undertaking their tasks.

Together with the handling of irresponsible behavior, Judges might also be disciplined as cadres and civil servants under Decree 34, if the rules in the CoEC for Judges 2018 are similar to the ethical values and codes of conduct of cadres and public servants. Finally, if a Judge violates the CoEC for Judges 2018, he or she would be temporarily delayed in reappointment to a Judge position as mentioned above. Through research and actual interviews, it is acknowledged that the appointment mechanism would put the Judge under considerable pressure during his career¹⁰⁶.

Mechanism of Encouraging CoEC Compliance

The mechanism of encouraging CoEC compliance is now integrated into the court's emulation and commendation activities and tasks, including the common titles prescribed by the Law on Emulation and Commendation along with the reward and the private title of the Courts, including: "Outstanding Judge", "Distinguished Judge", and "Exemplary Judge". Emulation and commendation activities are conducted annually and considered a great encouragement for Judges to comply with the CoEC. The practical problem that should be taken into account is that such activities need to be strictly implemented to ensure the quality of the implementation, thereby avoiding the formalistic and

mechanical application, which would create an "invisible" pressure affecting Judges' independence.

2.3.2. Practices, difficulties, and challenges of the implementation of the code of conduct for Procurators

a. Mechanism of Training and Dissemination

Professional ethics of Procurators is one of the mandatory contents of Procuratorate training modules at the Judicial Academy and Ha Noi Procuracy University¹⁰⁷.

As being mentioned at the Mechanism of Training and Dissemination – section 2.2.2(c), the Procuracies is implementing many emulation movements under the Law on Emulation and Commendation. The evaluation of ethical qualities and the supervision of the Procurators' conduct rules according to the CoECs for Procurators shall be integrated into these movements in each People's Procuracy.

b. Mechanism of Explanation

As being stated at Mechanism of Explanation – section 2.2.2(b), the absence of a formal mechanism of explanation for the Procurators' CoEC regulations creates obstacles in voluntary implementation as well as the supervision and evaluation of the compliance with these CoECs.

c. Mechanism of Enforcement

Mechanism of Enforcement Supervision

As mentioned above, the enforcement supervision mechanism of CoECs for Procurators is integrated into

¹⁰⁶ UNDP-Ministry of Justice, The survey report of current situation of local People's Court management in Viet Nam (2014), page 45.

¹⁰⁷ Judicial Academy, Detailed source training programs for the Judges, Lawyers, Procurators, Section 5.2.2, Compulsory Knowledge, Law careers and Law career ethics, Law career and Practice Environment. Access the link

<http://hocvientuphap.edu.vn/daotao/Pages/chuong-trinh-daotao.aspx?ItemID=2> on March 12, 2020

Ha Noi Procuracy University, Schedule of Procuracy major training Class 29 - Part I: General issues, Lesson 2: Professional ethics of Procurators. Access the link <http://www.tks.edu.vn/bai-viet/chi-tiet/60/2722/lich-giang-day-dao-tao-nghiep-vu-kiem-sat-khoa-29-phan-i-nhung-van-de-chung> on March 12, 2020

the regular and irregular inspection-examination activities of the Procuracies and the evaluation for cadres and civil servants who are members of the Communist Party committee in the Procuracies, in accordance with rules analyzed above.¹⁰⁸ Additionally, Procurators are also subject to the People's supervision through the complaint and denunciation mechanism for violations in legal proceedings committed by agencies, and persons conducting legal proceedings under the regulations of the Criminal Procedure Code 2015,¹⁰⁹ Civil Procedure Code 2015.¹¹⁰ Similar to the Courts, the Procuracies does not have a separate enforcement supervision mechanism of Procurator CoECs yet only have general mechanism of supervising behaviors, practices, and ethical standards of State officials and Communist Party Members in general and of the Procuracies in particular, such as the "dual supervision" at their offices and current residential area according to the superseded Regulation 76 and the applicable provisions of Regulation 213. Similar to the Courts, the Procuracies does not have a separate enforcement supervision mechanism of Procurator CoECs. One of the difficulties in supervising the implementation of the CoECs for Procurators is that the legal documents guiding the emulation and commendation, personnel management, or disciplinary activities in the Procuracies do not have specific guidance on the application these CoECs. Nor do the criteria for appointment of leadership, managerial positions, and judicial titles in the Procuracies promulgated in accordance with Decision 26 refer to the criteria and regulations in the Procurator

¹⁰⁸ Instruction No. 39/HD-VKSTC dated December 30, 2019 of the SPP on Implementation of Personnel Management in 2020

¹⁰⁹ Criminal Procedure Code 2015, Article 32

¹¹⁰ Civil Procedure Code 2015, Article 25

¹¹¹ Decision 26, Article 4.

CoECs, set out in different ethical criteria and virtues of Procurators.¹¹¹ This practice has led to an overlap in application.

Mechanism of Violation Handling

Disciplinary proceedings in the Procuracies are implemented in accordance with Decision No. 183/QĐ-VKSND-T1 as mentioned above. These procedures are similar to those used against cadres and civil servants, which are different from the separate mechanism for Judges.

Mechanism of Encouraging CoEC Compliance

As analyzed above, the emulation and commendation activities of the Procuracies are similar to those of the state administrative agencies, which are under the provisions of the Law on Emulation and Commendation. In fact, these activities are activities to evaluate various issues of Procurators, but do not focus on the encouragement of Procurators' CoEC observance. Nor is there any specific guidance for application of CoECs in the emulation and commendation activity evaluation.

2.3.3. Practices, difficulties, and challenges during implementation of the CoEC for Lawyers

a. Mechanism of Training and Dissemination

In order to increase lawyer awareness in complying with the CoEC for Lawyers, the content of the introduction and research of the CoEC for Lawyers has been included in the Lawyer training program at the Judicial Academy.¹¹² Specifically, in the module on Lawyers and the Lawyer profession, students are

¹¹² Introduction to the Lawyer Training Department, the e-Portal of the Judicial Academy. Access the link

<http://hocvientuphap.edu.vn/khoaluatsu/Pages/gioi-thieu.aspx?ItemID=28> on March 12, 2020

introduced to contents of the CoEC for Lawyers, research, and apply rules to solve real-life situations. In the Bar exam, the contents of the CoEC for Lawyers are the mandatory test for trainee Lawyers¹¹³ to assess the knowledge level of candidates and their ability to apply rules while practicing.

The CoEC for Lawyers is also one of the mandatory contents in the regular professional training for Lawyers¹¹⁴.

b. Mechanism of Explanation

As mentioned above, the CoEC for Lawyers 2011 and the CoEC for Lawyers 2019 need an official explanation mechanism to apply the rules in practice more easily and effectively, instead of solely explaining them in the compulsory professional training on CoEC for Lawyers as is currently implemented. In fact, many provisions of the CoEC for Lawyers 2019 need to be explained more clearly for better application, such as the time limit for keeping customer information confidential, resolving conflicts of interest between new and old customers, and others.

c. Mechanism of Enforcement

Mechanism of Enforcement Supervision

Supervision activities are scheduled under the periodic plans (tenure plans, annual plans)¹¹⁵ which are rarely carried out by the VBF or the BAs. The reason for this is that although the VBF or BAs have the authority to supervise compliance with the CoEC for Lawyers, these organizations do not want to interfere with the Lawyers' practice.

However, pertaining to Lawyers, the supervision mechanism of clients or society is important. Lawyers do not want to be complained of or denounced by their clients about their violations against the CoEC for Lawyers because it will make their practice more difficult, even leading to bankruptcy. Pressure to comply with the CoEC is great for commercial lawyers when their clients often set up strict supervision mechanisms for lawyers, especially the supervision of multinational companies.

To become a Lawyer, all trainee Lawyers must pass an exam on the CoEC for Lawyers as well as the professional exam.¹¹⁶ This mechanism is very useful for Lawyers to understand the contents of the CoEC.

Regarding Lawyers who are Party members, they must also be subject to the "dual-supervision" mechanism – one is the mechanism for Party members implemented at their offices, and the other is the mechanism implemented in their current residential area according to the supersede Regulation 76 and the applicable terms of Regulation 213. However, there are not many Party cells in law-practicing organizations. These Lawyers are not subject to the Party's supervision at the workplace. Instead, they will be subject to the supervision of the Party cell of the local BAs where the Party cells are located, or the ones of the Departments of Justice. In general, the supervision of ethics and behavior for Lawyers as Party members is not as strict as for Judges and Procurators.

Mechanism for Handling Violations

¹¹³ Circular No. 19/2013/TT-BTP guiding on law practicing of trainee lawyers, Article 22, clause 1, point d

¹¹⁴ Circular No. 2/2019/TT-BTP regulating the obligation of lawyers on participating in the compulsory professional training, Article 3, clause 1, point a

¹¹⁵ Regulation on supervising the organization and operation of Lawyers, Article 9, Article 10

¹¹⁶ Circular No. 19/2013/TT-BTP guiding on the law practicing of trainee lawyers, Article 22

As stated above, the Board of Management of the BA is competent to decide the discipline for Lawyers based on the proposal of the Council of Commendation and Discipline of the BA. This violation handling is mainly passive based on complaints and denunciations from

the People, or a written request from the competent state agencies on lawyer discipline sent to the BAs¹¹⁷.

¹¹⁷ VBF, The report on Assessing the current situation of protecting the lawful rights and interests of lawyers at local Bar Associations, 2009, page 53-54. This

is also the opinion of the lawyers involved in the activities of local BAs that are referenced in the implementation of the Report.

Summary 3:

- ✓ The training and dissemination on the CoECs for Judges, Procurators and Lawyers are carried out for those who have the intention of becoming Judges, Procurators and Lawyers, and for those who are or were undertaking the position of Judges, Procurators and Lawyers through regular training. In order to become Lawyers, all trainee lawyers must pass the exam on the CoEC for Lawyers as well as the professional exam. Training on the CoEC for Lawyers is a mandatory content in the annual professional training for Lawyers. This mechanism is very useful for lawyers to grasp the contents of the CoEC for Lawyers.
- ✓ All the CoECs for the Judges, Procurators and Lawyers lack an official mechanism of explanation on rules regulated in such CoECs.
- ✓ The prevention mechanism via publication or declaration of income and asset is currently applied only to Judges and Procurators, not to Lawyers. In particular, the activities of publication or declaration of income and asset of Judges (control on the income's output) are still formalistic; control on the income's input (control via bank accounts) has not been implemented appropriately.
- ✓ The mechanism of implementation supervision of the CoECs for Judges and Procurators would be implemented regular or irregularly according to the personnel management of the managing agencies. Meanwhile, the supervision of Lawyer compliance with the CoEC for Lawyers mainly rests with their clients.
- ✓ The mechanism of encouraging Judges and Procurators to comply with the CoECs is regularly undertaken through emulation and commendation activities.
- ✓ The mechanism of handling violations has significant differences among three groups of subjects. While Judges and Lawyers have their own specialized mechanisms for discipline and handling irresponsible behavior, Procurators must comply with only one disciplinary process under the provisions of the Law on Cadres and Civil Servants 2008 as amended and supplemented in 2019.

2.4. International standards, best practices and experiences of CoECs in the justice system from other countries

2.4.1. CoEC(s) in the justice system of Viet Nam compared with international standards

a. CoEC for Judges of Viet Nam in comparison with international standards

During the process of developing the CoEC for Judges 2018, the Drafting Team selectively referred to international standards in the rules, including (i) The Bangalore Principles of Judicial Conduct 2002 (**Bangalore Principles**); (ii) The Universal Charter of the Judge (**UCJ**); (iii) Model Principles of Judicial Conduct of Council of ASEAN Chief Justices (**ASEAN Code of Conduct**); (iv) Code of Conduct for Members and Former Members of the Court of Justice of the European Union 2016 (**EU Rules**).¹¹⁸

In terms of structure, the CoEC for Judges 2018 is relatively different from the above-mentioned international standards. Specifically, the CoEC for Judges 2018 is divided into two main parts: (i) the ethical standards for the Judges; and (iii) the codes of conduct for Judges which list what Judges must and must not do. As per the above statement, the CoEC for Judges 2018 does not have detailed instructions for each rule. In contrast, the *Bangalore Principles* provide stipulations under each ethical value, in which are

¹¹⁸ Thai Vu, *Consulting on the CoEC for Judges*, People's Court e-Journal, April 17, /2018.

Access the link <https://tapchitoaan.vn/bai-viet/tap-chi-giay/lay-y-kien-ve-quy-tac-ung-xu-dao-duc-nghe-nghiep-tham-phan> on March 12, 2020

Hoang Anh, *Improving the enforcement of CoEC for Judges*, Special Page of Justice e-News, December 13, 2019. Access the link <https://conglyxahoi.net.vn/toa-an/nang-cao-thi-hanh-bo-quy-tac-dao-duc-va-ung-xu-cua-tham-phan-31099.html> on March 12, 2020

¹¹⁹ The Bangalore Principles of Judicial Conduct.

Access the link https://www.unodc.org/res/ji/import/international_standards/bangalore_principles/bangaloreprinciples.pdf

integrated detailed instructions on what Judges must and must not do.¹¹⁹ The ASEAN Code of Conduct has a structure which is quite similar to the Bangalore Principles but provides less guidance on the codes of conduct.¹²⁰ The UCJ has a wide range of governing scope which not only includes codes of conduct, but also includes other Judge-related contents such as recruitment, training, appointment, salary rate, and security assurance. Ethical principles for Judges in the UCJ is mostly regulated in Article 6. This Article only delivers general provisions that in every circumstance, judges must be guided by ethical principles. Such principles must be part of their training and should be laid down in writing.¹²¹ EU rules also include two main content groups which are ethical standards and codes of conduct, but are not divided into two clear sections as in the CoEC for Judges of Viet Nam. Instead, they are structured with alternating regulations of ethical standards and codes of conduct¹²².

In terms of content, the rules in the CoEC for Judges 2018 are relatively close to international standards. Most of such rules have an intersection point or similarity, or include the contents specified in the Bangalore Principles, UCJ, the ASEAN Code of Conduct and the EU Code. Certain rules in the CoEC for Judges 2018 are stipulated in more detail than international standards, to conform with the domestic legal framework. For example, regarding the ethical value of

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¹²⁰ Model principles of Judicial conduct of Council of ASEAN Chief Justices. Access the link

<https://cacj-ajp.org/web/guest/model-principles-of-judicial-conduct> on March 12, 2020

¹²¹ The Universal charter of the Judge. Access the link <https://www.iaj-uim.org/universal-charter-of-the-judge-2017/> on March 12, 2020

¹²² Code of Conduct for Members and former Members of the Court of Justice of the European Union. Access the link <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C:2016:483:FULL&from=FR> on March 12, 2020

"integrity", international standards tend to consider integrity as an iconic virtue that Judges need to obtain, because the Judge is considered to be one of the images representing justice. The current rules of the CoEC for Judges 2018 are more detailed, such as constraining the Judge's misuse of official positions for personal benefits, or adding the content on personal income disclosure to be consistent with Law on Anti-Corruption 2008.

In addition, the CoEC for Judges 2018 also sets rules that promote the propriety and humanity in Judges' conduct. At the same time, "propriety" under international standards also includes content on bias and inequity limitation, information security, integrity, and self-interest prevention, for example.

It is apparent that the CoEC for Judges 2018 has incorporated a great number of international standards on ethics and conduct for Judges, especially ones of the Bangalore Principles. Some international standards are interpreted under Vietnamese but the interpretation fails to fully disclose the connotation of international standards. For example, the Bangalore Principles emphasizes the effectiveness,¹²³ prudence and diligence¹²⁴ of the Judge in settling a case, while the CoEC for Judges 2018 underlines the requirement of "leaving work when completing the workload, not leaving work on time" (làm hết việc, không làm hết giờ)¹²⁵. It seems that international standards focus on the nature of work while Vietnamese standards focus on workload. This issue in the CoEC for Judges 2018 needs to be explained more specifically.

¹²³ Article 6.5, the Bangalore Principles regulates that "A Judge shall perform all judicial duties, including the delivery of reserved decisions, efficiently, fairly and with reasonable promptness"

¹²⁴ Bangalore Principles, Article 6

¹²⁵ The CoEC for Judges 2018, Article 9, clause 3

b. CoECs for Procurators of Viet Nam in comparison with international standards

The Report finds that there are a number of international CoECs applied to Prosecutors - the group that has many similarities in functions and tasks with Vietnamese Procurators exercising right of prosecution. Accordingly, the Report selects two international CoECs to compare with the CoECs for Procurator in Viet Nam, including (i) Prosecutor Standards 1999¹²⁶, and (ii) European Prosecutor Guidelines 2005.¹²⁷

In terms of structure, both the structure of Vietnamese and international CoECs can be divided into two main groups of content, including CoCs when being in charge generally, and CoCs in the process of actual prosecution. However, while these contents are specified in two separate CoECs in Viet Nam, the trend in the studied international CoECs is to integrate these contents into one.

The structure of two CoECs for Procurators also has its own characteristics. Specifically, the behaviors prescribed in the CoEC for Procurators 2017 are basically classified into "must-do" and "must-not-do" behaviors. Meanwhile, behaviors prescribed in CoEC for the Procuracies 2020 are also classified as mentioned above, but they are also classified according to specific contexts, for example: in performing tasks and public duties; at agencies and units; in the collaborative agencies, organizations and individuals.¹²⁸ This structure is quite similar to the rules

¹²⁶ Access the link <https://www.iap-association.org/getattachment/Resources-Dokumentation/IAP-Standards> on March 12, 2020

¹²⁷ Access the link <https://rm.coe.int/conference-of-prosecutors-general-of-europe> on March 12, 2020

¹²⁸ CoEC for the Procuracies 2020, Article 5, Article 6, Article 7

on standards of conduct of Judges in the CoEC for Judge 2018.

In terms of content, all Vietnamese and international CoECs recognize some of the core principles of conduct related to maintaining the honor and dignity of their profession,¹²⁹ professional manner,¹³⁰ transparency, impartiality, and not pursuing self-interest.¹³¹ However, based on the level of responsibility, the CoEC for the Procuracies 2020 regulates rules that are specifically applied to the leadership posts, primarily focusing on supervision of compliance with the CoEC, and not abusing the managerial posts for personal benefit. In addition, the Prosecutor Standards 1999 contains a number of elements that are not available in the CoECs of Viet Nam, such as the rule on the empowerment of Prosecutors. For example, the Prosecutors are entitled to perform their professional functions without improper interference, to be physically protected together with their families, and to be guaranteed salary benefits, benefits, tenure, retirement age, among others.¹³²

While the CoEC for Procurators 2017 focuses on the rules that the Procurator must follow *at trial*, the international CoECs tend to stipulate the Prosecutors' rights and obligations in *the whole process of exercising the right of prosecution*, including investigation, supervision of investigations, and handling and

selection of evidence, which are beyond the scope of merely the trial.¹³³

The CoEC for Procurators 2017 focuses on stipulating specific behaviors related to *manners, attitude and words*,¹³⁴ while international CoECs focus on general, *professional obligations*, such as considering the views and legitimate interests of the parties, examining proposed evidence to ascertain if it has been lawfully or constitutionally obtained, and refusing to use evidence reasonably believed to have been obtained through recourse to unlawful methods.¹³⁵ It could be said that international CoECs have a relatively broad scope of application in the international or European scope, which is why they focus only on generally recognized obligations in prosecution practices and give autonomy in promulgating detailed obligations to each nation. It should also be noted that the professional obligations of Vietnamese Procurators are provided for in other documents such as the LOPP 2014, Regulations on the exercise of the right of prosecution, and supervision over criminal case trials (included in with Decision No. 505/QD-VKSTC in 2017), Regulation on the supervision over the settlement of civil cases (included in Decision 364/QD-VKSTC in 2017), and the Regulation on the supervision over the settlement of administrative cases (included in Decision 282/QD-VKSTC 2017).

¹²⁹ CoEC for the Procuracies 2020, Article 5, clause 1.1, point b; Prosecutor Standards 1999, Article 1, clause 1.1; European Prosecutor Guidelines 2005, Section II, point a

¹³⁰ CoEC for the Procuracies 2020, Article 5, clause 1.1, point a, point c; clause 2.1, point g; Prosecutor Standards 1999, Article 1, clause 1.2; European Prosecutor Guidelines 2005, Section II, point b

¹³¹ CoEC for the Procuracies 2020, Article 5, clause 2.1, point h; clause 2.2, point a; Prosecutor Standards 1999, Article 1, clause 1.5; Article 3, clause 3.2; European Prosecutor Guidelines 2005, Section I, bullet point no. 2; Section II, point h

¹³² Prosecutor Standards 1999, Article 6

¹³³ Prosecutor Standards 1999, Article 4

¹³⁴ For example, being present at the trial, the meeting before the opening time; using regulated uniform of the Procuracies; addressing appropriate gestures, acts, words, postures, manners, attitudes, expressions (CoEC for Procurators 2017, Article 4, clause 2, clause 3, clause 6; Article 5, clause 3)

¹³⁵ Prosecutor Standards 1999, Article 4, clause 4.3, point b, point d, point e, point f; European Prosecutor Guidelines 2005, Section III, point f, point i, point j

c. The CoEC for Lawyers of Viet Nam in comparison with international standards

Regarding the international CoECs for Lawyers, there are currently three CoECs being applied in different fields and scope, including: (i) Basic Principles on the Role of Lawyers adopted by the General Assembly of the United Nations in 1990,¹³⁶ (ii) International Principles on Social Media Conduct for the Legal Profession,¹³⁷ and (iii) International Principles on Conduct for the Legal Profession¹³⁸ promulgated by the International Bar Association (IBA). Accordingly, document (i) focuses on the rights of Lawyers and the responsibilities of governments of member countries, organizations and individuals in ensuring the lawful rights and interests of Lawyers are not infringed upon; document number (ii) applies to Lawyers' social media usage, and document (iii) is applied in all situations, stipulating that Lawyers should maintain dignity when practicing such as maintaining independence, transparency and fairness of Lawyers, and the obligation to keep client information confidential. In general, the International Principle on Conduct for the Legal Profession, document number (iii), is the most comprehensive and is therefore selected by the Report to compare with the CoEC for Lawyers 2019.

In terms of structure, the International Principles on Conduct for the Legal Profession is presented in two main parts: (i) the 10 principles of Lawyers' conduct and (ii) explanation of those principles. Accordingly, part (i) is presented briefly in about two pages, and part

(ii) is written in more detail in about 20 pages. The content of the explanation states the reasoning why Lawyers must abide by the principles and what to do to ensure compliance.

Plainly, the structure of the CoEC for Lawyers 2019 is noticeably different from the structure of International Principles on Conduct for the Legal Profession. Specifically, the main content of the CoEC for Lawyers 2019 does not focus on each principle or ethical value. Rather, it focuses on regulating lawyers' behavior in three key relationships in which lawyers engage in their law practice, including (i) clients, (ii) colleagues and (iii) state agencies. Specifically, in the relationship with clients, the CoEC for Lawyers 2019 regulates the principles in the order of the stages of case handling, from receiving the case, to implementing the case, and through finishing the case.

In terms of content, the rules in the CoEC for Lawyers 2019 have many similarities and intersections with those of the International Principles on Conduct for the Legal Profession. However, in order to suit the specific conditions and characteristics in the process of development and operation of the Lawyer profession in Viet Nam, there are some differences between contents of the CoEC for Lawyers 2019 and those of the International Principles on Conduct for the Legal Profession. For example, the CoEC for Lawyers 2019 focuses on three key relationships in a Lawyer's practice: (i) clients, (ii) colleagues and (iii) state agencies, while the International Principles on Conduct

¹³⁶ Basic Principles on the Role of Lawyers.

Access the link <https://www.ohchr.org/en/professionalinterest/pages/roleoflawyers.aspx> on March 12, 2020

¹³⁷ International Bar Association, IBA adopts international social media principles for the legal profession on May 24, 2014. Access the link

<https://www.ibanet.org/Article/NewDetail.aspx?ArticleUid=4f410090-8de0-438d-b81e-f4a21d31501f> on March 12, 2020

¹³⁸ International Bar Association, IBA publishes new code of conduct for the global legal profession, adopting on May 25, 2019. Access the link <https://www.ibanet.org/Article/NewDetail.aspx?ArticleUid=BC99FD2C-D253-4BFE-A3B9-C13F196D9E60> on March 12, 2020

for the Legal Profession only focuses on the relationship between lawyers and clients. The relationships between Lawyers and other subjects such as colleagues or the Court are only prescribed in a number of principles such as the principle of independence, honesty, responsibility and fairness.

The Report finds that the only significant difference between the International Principles on Conduct for the Legal Profession and the CoEC for Lawyers 2019 is the principle of conflicts of interest. Accordingly, the International Principles on Conduct for the Legal Profession allows an exception in case reception in which the interests of the new client are conflict with an existing client's interests. For example, A is a retainer customer of Lawyer X. A is in a dispute with B in a commercial case. B wants Lawyer X to represent him in that dispute also. According to the CoEC for Lawyers 2019, Lawyer X must refuse the case in this situation.¹³⁹ However, International Principles on Conduct for the Legal Profession allows Lawyer X to represent B if A does not choose Lawyer X in the dispute but chooses another Lawyer. It should be noted that in this case, Lawyer X still has to follow the general principles, especially the rules of confidentiality, professional secrecy and independence.¹⁴⁰

2.4.2. A sampling of practices of countries in enforcing codes of conduct in the justice system

The Report team has researched the implementation of CoECs in several countries, namely China, the United

States (California), the Russian Federation, the Philippines, Canada and Australia,¹⁴¹ as well as a number of guidelines on the implementation of international CoECs to identify advantages in the implementation of CIMs that Viet Nam can refer to and learn from. Accordingly, some notable findings are as follows:

a. Mechanisms of Training and Dissemination

The mechanism of Training and Dissemination for CoEC(s) of studied countries are basically implemented via models incorporating several means including formal publication and *ad hoc* exchanges among the Courts and Judges.

First of all, in respect to training mechanism, similar to Vietnam, the majority of the studied countries have training programs exclusively for Judges, undertaken by specialized agencies, such as National Judges College (China), Center for Judicial Education and Research (California, USA), Judicial Academy (Philippines), National Judicial Institute Justice in collaboration with the Institute for the Administration of Justice (Canada).¹⁴² The content of ethical values and conduct standards for Judges is one of the compulsory modules in these training programs. In addition, as in China, this training is also conducted through *ad hoc* seminars and press conferences.

The ethical and conduct training for the Judges in the above countries is conducted regularly and periodically, every three years in California, and

¹³⁹ CoEC for Lawyers 2019, Rule No. 15.3.2

¹⁴⁰ International Principles on Conduct for the Legal Profession, Principle No. 3

¹⁴¹ Out of the six studied countries, Canada and Australia are two countries that do not have an official CoEC for Judges. In Canada, "Ethical Principles for Judges" is not a CoEC but has the same characteristics as a CoEC. In Australia, there is no CoECs for Judges, only a document on "Guide to Judicial Conduct" - a collaborative work of the Australian Institute of Judicial Administration, Inc., and the Council of Chief Justice of Australia and New Zealand. Given the roles and purposes of the two above documents to enhance the ethics and conduct

of the Judges in Canada and Australia, further analysis of this Report should be made by considering these documents to be the temporary CoECs of Australia and Canada.

¹⁴² Of the six studied countries, regarding the Russian Federation, there is little public information in English about the training of ethics and conduct for Judges. In addition, unlike other countries, Australia does not have a specialized training program for Judges but a general training program for court officials.

annually in Canada. Training sessions are usually taken in the form of in-person training, especially in California, and available online training. In comparison with Vietnam, it could be seen that most of the training activities on CoEC for Vietnamese Judges, Procurators, and Lawyers are also mainly sessions in the form of in-person training. Particularly for Judges, there are some online training sessions. In terms of training content, the Philippines is a country having good practices with training programs specially tailored to fit specific groups of Judges, including newly admitted Judges and tenured Judges. The design of such separate programs will help increase the practicality of understanding and applying ethical codes in practice.

Pertaining to the mechanism of disseminating CoECs, most of the studied countries have made the CoECs for Judges or CoECs for public servants in judicial activities available online to widely introduce such CoECs to the people. This sort of publication is also the basis for Judges and public servants to access these documents. This mechanism is similar to the current dissemination mechanism that applies to the CoECs for Judges, Procurators, and Lawyers in Viet Nam.

b. Mechanisms of Explanation

As mentioned in above sections, the structure of the Bangalore Principles is comprised of standards and conduct rules. In addition, in order to effectively enforce these Principles, the UNODC has developed and gathered a set of Bangalore Principles guidelines for convenient application, such as the Commentary on the Bangalore Principles of Judicial Conduct which provide detailed information on the drafting process of the Principles, from the introduction concept of the

Principles, through to the consultation process, revisions, arguments during the revision process, and relevant seminars, a list of references in the drafting process (including 24 national CoECs, and eight regional and international CFMUs),¹⁴³ and Measures for the Effective Implementation of the Bangalore Principles of Judicial Conduct. According to the Measures for the Effective Implementation of the Bangalore Principles of Judicial Conduct, the establishment of a Committee of judicial ethics advisory is one of the proposed measures to ensure the enforcement of CoECs. In particular, Article 2.1 (Part I) of this document recommends that the justice system of countries establish judicial ethics advisory committees comprised of in-position and retired Judges to advise Judges on the appropriateness of judgments or behaviors expected to be performed. In countries where such a committee has been established, Judges may seek advice on the appropriateness of their behavior. It should be noted that the behaviors expected to be performed are not ones that have been or are being performed, but are those related to behaviors to be performed in the future. The committee cites regulations, cases and other documents that serve as bases for conclusion, and cites the CoECs. The original copy of the consultation document is sent to the requesting Judges, while an edited version of the consultation document (the information about the Judge, the Court, the venue and other information which can verify the identity of the requester will be omitted) is sent to the bar associations and university libraries.

¹⁴³ UNODC (2007), *Commentary on The Bangalore Principles of Judicial Conduct*, pages 9 – 21. Access the link <https://www.unodc.org/documents/nigeria/publications/Otherpublications/>

[Commentry on the Bangalore principles of Judicial Conduct.pdf](#) on March 12, 2020

None of these opinions are mandatory, but compliance with them is considered evidence of good faith.

More specifically, the Commentary on The Bangalore Principles of Judicial Conduct provides detailed comments on each rule in the Principles, from the Preamble to the six core Values of the Principles with detailed comments of each rule of the Values. For example, with the General principle of Value 1 on "Independence" – *"Judicial independence is a prerequisite to the rule of law and a fundamental guarantee of a fair trial. A judge shall therefore uphold and exemplify judicial independence in both its individual and institutional aspects"* – the commentary provides explanations and comments regarding (i) judicial independence is not a privilege but a responsibility of Judges, (ii) judicial independence is both a Judge's state of mind and a set of institutional and operational arrangements independent from the executive and legislative branches, (iii) the concepts of "independence" and "impartiality" are separate and distinct, and (iv) the conditions for judicial independence such as security of tenure and financial security.¹⁴⁴

In addition, the research results on international experience show that the interpretation mechanism for CoECs of countries is quite diverse. Countries with the best practice of interpretation mechanisms are the United States (California), Philippines, Canada, and Australia.¹⁴⁵ In these countries, the CoEC itself includes explanations or commentaries through appendices and illustrations to provide the reader a better

understanding of the CoEC's contents as well as methods to comply and implement CoECs.

More specifically, in The United States, California's CoEC consists of six groups of Canons and each Canon is broken down into sub-Canons. Each and every Canon and sub-Canon is elaborated by a very substantial "Advisory Committee Commentary" which realizes the rule in true-to-life circumstances, frequently giving examples. Moreover, the California Commission on Judicial Performance also publishes online the fully articulated decisions on disciplined Judges and makes available and has prepared compilations of private and public discipline cases for different types of judicial misconduct over the years for educational purposes.

In the Philippines, the Philippine Judicial Academy, the American Bar Association – Rule of Law Initiative, the U.P. Law Center-Institute of Judicial Administration, and the Supreme Court have jointly written annotations to the CoEC for Judges. This publication discusses and provides commentary and annotations to the new Philippine CoEC, based upon the Bangalore principles and prior Philippine CoECs.¹⁴⁶

In Canada, the Ethical Principles for Judges is interpreted with a Commentary which gives a sense of the purpose of the particular ethical topic, its historical background, and examples of how it should be applied at the behavioral level.

Finally, although the Australian Guide to Judicial Conduct is said not to be a code, regarding the contents and structure, it nevertheless sets out in great detail an explanation mechanism. Accordingly, this

¹⁴⁴ UNODC (2007), *ibid*, pages 39 – 41

¹⁴⁵ As for China and the Russian Federation, there is currently no information on the official interpretation mechanisms for the CoECs of these two countries.

¹⁴⁶ The New Code of Judicial Conduct for the Philippine Judiciary (Annotated), 02/2007. Access the link http://www.deontologie-judiciaire.umontreal.ca/fr/codes%20enonces%20deonto/documents/CODE_PHILIPPINES.pdf on March 12, 2020

Guide is attached with an explanatory text much like a reference textbook, which advises what a judge should and should not do in specific circumstances.

c. Mechanisms of Enforcement

Mechanisms of Enforcement Supervision

Mechanisms for the administrative supervision of CoEC implementation vary among the international examples but alternate between two distinct administrative methods: Internal administration within the Courts under a court-driven method, and independent commissions and councils under an administration-driven method. In comparison with Viet Nam, it could be acknowledged that the supervision mechanism of Viet Nam applies both mechanisms. Specifically, regarding the court-driven method, Viet Nam implements under the activities of evaluating emulation and commendation in agencies. The administration-driven method in Viet Nam appears in the activities of the NCSSJ, an agency which operates independently from the Courts, and is specialized in selecting appointments, considering proposals for relief from duty or dismissal, and supervising Judges.¹⁴⁷ This combination indicates that the enforcement supervision of the CoEC receives noticeable concerns, and is considered an essential part of implementing the CoEC in Vietnam.

With a more detailed analysis, it can be seen that, except for China which uses a hybrid of these administrative alternatives (similar to Viet Nam), the

Philippines and Australia are the only two countries that apply the court-driven method. Accordingly, especially in Australia, only the Supreme Court has the power to handle violations in the CoEC implementation. The Chief Justice of the Supreme Court is responsible for managing and supervising all disciplinary actions against judges from the initiation of a complaint through enforcement of any disciplinary orders. On the other hand, the Russian Federation, the United States (California) and Canada are the only countries that follow the administrative-driven method.

Furthermore, there is a common characteristic between in the mechanism of enforcement supervision in Viet Nam and in other countries: the application of community supervision through the mechanism of complaints and denunciation.

Mechanisms of Handling Violations

The experience of the countries studied (the United States of America, China, the Russian Federation, Australia, Canada and the Philippines) shows that the common ground between these justice systems is that there is a transparent complaint process publicized so the public are fully aware of the complaint process against a Judge. The difference among the justice systems is that some countries will appoint a permanent administrative agency to handle disciplinary actions (the United States of America (California), Canada, the Russian Federation), while other countries clearly require that all complaints be

¹⁴⁷ Under the LOPC 2014, Article 70:

"The National Council for Selection and Supervision of Judges shall be composed of the Chief Justice of the Supreme People's Court, one Deputy Chief Justice of the Supreme People's Court, the Chief Justice of the Central Military Court, judges of superior people's courts, representatives of the leaderships of the Central Committee of the Vietnam Fatherland Front, the President's Office, the Ministry of Justice, the Ministry of National Defense, the Central Committee of the Vietnam Lawyers' Association, and one representative from each agency or organization."

Resolution No. 929/2015/UBTVQH13 in 2015 regarding the Regulation of Operation of the NCSSJ promulgated by the Standing Committee of National Assembly.

Accessing the link

http://vbpl.vn/FileData/TW/Lists/vbpg/Attachments/77776/VanBanGoc_929_2015.NQ.UBTVQH13.pdf on March 12, 2020

handled by the Court system (China, the Philippines, Australia), similar to the practice in Viet Nam.

Common among all countries is the confidentiality of the disciplinary process. Accordingly, all jurisdictions maintain confidentiality from the complaint phase through final determination and publication of the final decision. However, disciplinary documents in Vietnamese judicial activities do not regulate the principle of confidentiality in the process of investigating and handling violations or publicizing the final result. This includes Decision 120 on handling irresponsible behavior of officials holding judicial posts in the People's Court, Decision 68 on disciplining lawyers, and Decrees 34 on disciplining civil servants.

Another commonality among the experience of other countries is the appointment of retired or current judges on both standing and *ad hoc* committees that investigate and hear disciplinary charges against judges. In some cases, such as those in the Russian Federation or the United States of American (California), representatives from lay public sectors are involved in the committees. In the People Republic of China, the committee includes congressional representatives, political party members, legal scholars, and lawyers. This is different from Viet Nam. Decision 120 on handling irresponsible behavior of officials holding judicial posts in the People's Courts does not specifically regulate the establishment of committees to handle violations. It merely defines the process of organizing a critical meeting with individuals working in the Courts, and the submission of the dossier of requests for handling Judges' irresponsible behavior to the National Council of

Judges' supervision and selection, via the Inspectorate, to verify the handling of irresponsible behavior by suspending or refusing the consideration of a proposal of reappointment of Judges.¹⁴⁸

Decree 34 on disciplining civil servants does not specify the investigation mechanism to identify violations by members of the Disciplinary Council who are only representatives of the Court, and representatives of political organizations and socio-political organizations where the accused civil servants work. They have the right to express opinions and propose disciplinary sanctions, but are not allowed to vote on disciplinary sanctions.¹⁴⁹

For Lawyers, Decision 68 on disciplining Lawyers is the document clearly regulating the process of verifying violations of Lawyers by the Council of Commendation and Discipline of the BAs. It also regulates inviting representatives of political and socio-political organizations to attend the hearing.¹⁵⁰

Most of the studied countries have a diverse set of disciplinary sanctions against Judges, allowing the imposition of the most appropriate form of disciplinary sanction for each situation, similar to Viet Nam. All countries, including Viet Nam, allow the highest disciplinary form is to dismiss the accused Judges, but only in extreme violations, to ensure judicial independence and help Judges feel secure to dedicate themselves to work.

In order to ensure consistency in handling violations, one good practice of international experience is to publicize recommendation documents drawn from the handling of violations, similar to case law or learning experience, for prevention or future

¹⁴⁸ Decision 120, Article 17

¹⁴⁹ Decree 34, Article 18; Article 19, clause 1, point b

¹⁵⁰ Decision 68 on disciplining Lawyers, Article 18; Article 19, clause 6

application. The Disciplinary Authority may also publish guideline documents on handling violations in special situations, such as “Special explanations for cases of violating the principle on Conflict of Interest”.

c. Other Mechanism of Enforcement

In order to ensure self-compliance with the CoECs for the applicable subjects, it is necessary to have other positive mechanisms to enforce implementation in addition to deterrent regulations such as violation handling. This includes assuring that Judges and Procurators receive reasonable compensation such as

salary, bonuses and tenure. Such a mechanism works to protect Judges, Procurators and their family members so that they feel secure, are dedicated to their work, and remain constant with the values of ethical standards. These kinds of implementation enforcement are mentioned in Measures for the Effective Implementation of the Bangalore Principles of Judicial Conduct,¹⁵¹ and the international standards of CoEC for Procurators as analyzed in section 2.4.1(b) above. Vietnamese CoECs have no regulations on enforcement mechanisms.

¹⁵¹ Measures for the Effective Implementation of the Bangalore Principles of Judicial Conduct, Article 13, Article 14

Summary 4:

- ✓ The content of the CoECs for Judges, Procurators and Lawyers in Viet Nam is generally in conformance with international standards, especially the CoEC for Judges 2018. The CoC for Procurators focuses on rules that Procurators must comply with in trial, but does not regulate conduct in the overall process of exercising the power to prosecute and supervise judicial activities, including investigation, supervision of investigation, and the handling and selection of evidence, and supervising trial proceedings, as in the international CoECs.
- ✓ There are differences in regulatory structure between the International and Vietnamese CoECs. Each structure has certain advantages and disadvantages. The CoECs for Judges, Procurators and Lawyers in Viet Nam do not have provisions or documents explaining and guiding the application of the CoECs as do some international CoECs.
- ✓ The mechanisms of training, dissemination and enforcement supervision for the CoEC of Viet Nam are quite close to the good practices gathered from international experiences.
- ✓ International experience indicates that it is necessary to have a formal explanation mechanism for the contents of the CoECs, such as the model of the Committee of Judicial Ethics Advisory Committee, or the promulgation of explanatory and commentary materials on CoECs that accompany each CoEC, to enhance efficiency in implementing the CoECs.
- ✓ Establishing a mechanism of handling violations which is transparent, confidential, and fair is an essential element to ensure the enforcement of CoECs. Finally, it is essential to ensure a reasonable standard of compensation and protection for judicial officials so they feel secured to fully dedicate themselves to their work and are able to be consistent with ethical standards.

PART III – CONCLUSIONS AND RECOMMENDATIONS

3.1. Conclusions

The draft Political Report of the Party Central Committee XII at the XIII National Congress of the Communist Party of Viet Nam (**Draft Political Report of Congress XIII**) sets out the direction for the construction and completion of the Rule-of-Law of the Socialist State of Viet Nam, which is "continuing to build a justice system of professionalism, fairness, and strictness, and integrity to serve the country and the People". The improvement of institutions, the quality of state management of judicial activities, and the awareness-raising of judicial positions on judicial activities must be focused on to implement this direction.

The development of ethical standards for people working in judicial activities is also important for the mission of protecting justice and human rights, and guaranteeing the professionalism and integrity of each judicial position. The establishment and application of CoEs, CoC and CoEC in the justice system would help strengthen ethical standards and create a culture of integrity in the judicial activities of the Courts, Procuracies, Lawyers and other judicial positions, such as People's Assessors, Court Clerks, Civil and Criminal Investigators, as well as judicial support positions such as Examiners, Bailiffs, Insolvency Administrators, Notaries, and Court Mediators as well as other Mediators.

Ethical standards in the field of public administration and in the field of professional activities have all contributed to establishing the value system of society and the administrative and professional fields themselves. Each society has its own good ethical values and code of conduct that need to be promoted

and underlined in the CoEs, CoCs or CoECs of each system and each professional area. Judicial activity is a special field because the ethical values and codes of conduct of judicial posts directly and strongly influence the codes of conduct in society, the image and quality of justice, and the professionalism of judicial positions, as well as the nation's ability to guarantee human rights along with the strictness of the laws.

Currently, the CoEs, CoCs or CoECs in judicial activities (including Judges, Procurators and Lawyers) play the role of orienting behavior according to certain standards by anticipating and preventing a number of standard deviant behaviors. The CoECs for Judges, Procurators, and Lawyers of Viet Nam are currently very highly oriented, mostly compulsory for governed subjects. In addition to such CoECs, there are many ethical values and codes of conduct for these titles that are codified in many documents, along with Party's regulations and rules applying to Party members. The mechanism of enforcement supervision of the CoECs for Judges and Procurators is implemented by the state agencies (governing agency) along with society's evaluation mechanism. Meanwhile, the CoEC for Lawyers focuses on society's evaluation mechanism from the clients. This issue needs to be studied to improve in accordance with: (i) the requirements of the Constitution – "*respect for the People, devotedly serve them, maintain close links with them, listen to their opinions and submit themselves to their supervision*" (ii) President Ho Chi Minh's teachings for Judges, including: "*dedicatedly serve justice, only obey the law, maintain equality and integrity in trial*" and remain "*close to the people, understand the people, help the people and learn from the people*", and (iii) the teachings

for Procurators – “Fairness, integrity, objectivity, caution and humility”.

The supervision and evaluation mechanism for compliance with the CoECs for Judges and Procurators is integrated into the assessment activities applied to cadres, civil servants and public employees, and the regulations and rules on ethics and conducts for Party members. This may help to supervise and evaluate compliance to be more thorough, but this “multi-layer” mechanism may lead to placing the supervision and evaluation agencies in each level out of coordination and mechanically unworkable. Meanwhile, the mechanism of people's supervision is not remarkably effective because dissemination and education about the CoEC in the justice system is neither widespread nor effective.

The content as well as the structure of the Vietnamese CoECs, differ from the international CoECs in many ways, such as: (i) Vietnamese Judges and Procurators are also cadres and civil servants; (ii) Procurators not only exercise prosecution rights but also have the function of supervising judicial activities; (iii) the organizational structure of the Vietnamese judicial system differs from many other countries, such as the administrative and procedural relationships among state agencies and the relationship between the administrative management of judicial activities in the Court, and the Procuracy system.

Currently, the CoECs for Judges, Procurators, and Lawyers are independent of each other and do not have a systematic connection, even though they are part of judicial activities. This practice restricts the reciprocal effects of professional activities, and restricts the protection of ethical standards and professional conduct requirements for judicial titles.

The mechanism of enforcement supervision of the CoECs for Judges and Procurators is mainly through activities of emulation and commendation, while this supervision for Lawyers is implemented through client supervision. The documents of the Courts, Procuracies, and lawyers all have regulations on discipline, but such regulations are not truly in line with professional characteristics and judicial principles, organization, and activities. Those documents have not specifically and explicitly referred to the relevant CoECs for the respective branches. This practice has reduced the enforceability of the CoECs and has no positive impact on the professionalism of each judicial position.

Finally, there has not been any formal guidance or explanation mechanism for the CoECs for Judges, Procurators, and Lawyers, while international experience shows that this mechanism is truly necessary to reinforce the implementation of CoECs.

3.2. Recommendations

a. General recommendations

Based on the conclusions of this Research, some recommendations orientated toward the improvement of codes of ethics and conduct for professionals in the justice system to meet the requirements of judicial reform in Viet Nam are hereby proposed as follows:

- *Improving the justice system and the administration of the justice system*

Viet Nam needs to improve the administration of the justice system, as well as the leadership of the Communist Party of Viet Nam over the organization and operation of judicial agencies. Accordingly, the organization and administration of the justice system should follow certain principles, including: (i) Court

plays the key role, with the conducting of trials as the key activity, the organization and administration of justice focus on establishing professionalism, fairness, strictness, and integrity to serve the Fatherland and the People, while Judges actively exercise their duties, improve their independence, and take responsibility before the law for their own actions and judicial decisions; (ii) the Procuracies solely exercise the power of prosecuting and supervising judicial activities; (iii) Lawyers perform the function of pleading and protecting the rights and interests of the involved parties in cases in and outside Court. Moreover, the law should ensure equality between Procurators (accusing parties) and Lawyers (defending parties) so that these two positions can practice professionally to protect justice. Ethics institutions for these judicial titles should be strengthened and improved within the legal framework, to raise the awareness of people participating in judicial activities, thereby enhancing the quality of judicial activities and raising awareness of serving the People and the Fatherland.

- *Improving the effectiveness of CoEC enforcement in judicial activities*

✓ Given the nature of cadre management in Viet Nam that is the inseparability from Party Members' ethics, public service ethics, and professional ethics, Viet Nam needs to have orientational guidance on developing and implementing the CoEC in the field of justice to guarantee the direction of judicial activities stipulated in the Draft Political Report of Congress XIII. This guidance is required to establish a mechanism of enforcement supervision of the CoECs which is consistently consolidated in connection with (i) the ethical rules of behavior that Party members are not allowed to engage in, (ii) ethical rules of public service applied to cadres and civil servants, and (iii) CoECs of

judicial staff, such as Judges and Prosecutors. In detail, this consolidation would include: consolidating internal supervision and people's supervision for ethical values and conduct standards, strengthening the mechanism of handling complaints and denunciation in relation to the CoECs in order to draw the line between legal violations and violations of ethical rules, and improving the emulation - commendation mechanism associated with the appointment and reappointment mechanism, to avoid an overlap of each system to ensure the implementation of the CoECs.

✓ It is necessary to strengthen enforcement mechanisms for CoECs, including mechanisms for dissemination and education; mechanisms for explaining and updating rules in accordance with new contexts; mechanisms for supervising and handling violations under the activities of complaint and denunciation, as well as mechanisms for encouraging CoEC compliance in conjunction with activities of emulation and commendation. The establishment of the mechanism to deal with violations and conducting activities of emulation and commendation must assure transparency, information confidentiality and fairness, thus plays essential elements to ensure the enforcement of CoECs.

✓ It is necessary to apply measures to ensure political, social, and legal safety, as well as the appropriate standards of remuneration for people implementing judicial activities, so that they can work and adhere to moral the standards and codes of conduct set out.

- *It is necessary for the CoECs in judicial activities to maintain a consistent and harmonized core content and ensure interaction and support among judicial positions*

✓ In addition to the CoECs for Judges, Procurators and Lawyers, it is necessary to promulgate CoECs for other judicial positions, such as People's Assessors, Court Clerks, Civil and Criminal Investigators, and judicial support positions such as Examiners, Bailiffs, Insolvency Administrators, Notaries, and Court Mediators at courts and other Mediators. CoECs need to be structurally consistent in combining CoEs and CoCs with some core principles that are in line with general international standards.

✓ CoECs in the field of justice should be consistently developed into three main components: (i) ethical values; (ii) codes of professional conduct; and (iii) explanations and guidance on the implementation of such values and codes of conduct. The CoEC for each system may have its own characteristics, but should generally share some of the following key contents to ensure the interference among CoECs for professionals in the justice system:

Part 1 - Ethical values should include at least common standards: "Protection of justice", "Protection of the rule-of-law State", "Independence", "Fairness", "Equality", "Integrity", "Impartiality", "Propriety", "Diligence", and "Confidentiality". Ho Chi Minh's Ideology on ethical qualities and codes of conduct of judicial staff including Judges, Procurators and other judicial officials, should be established in this section, such as to *"dedicatedly serve justice, only obey the law, maintain equality and integrity in trial, be close to the People, understand the People, help the People, learn from the People, hold the values of fairness, integrity, objectivity, prudence, humility, respect the People, and accept the People's supervision."*

Part 2 - Codes of conduct should include behavior that is both encouraged and discouraged depending on the specific characteristics of each judicial position,

and the relationships among the persons conducting legal proceedings, the participants in the proceedings, and the relevant subjects;

Part 3 - Explanation and implementation guidelines should include: specific implementation guidance and the applicable circumstances for Part 1 and Part 2. The guidelines should help the readers to realize the consistency of the ethical standards and codes of conduct of judicial professions with the rules and regulations of ethics and conducts of Party members, cadres, and civil servants and others. This section should be updated regularly from time to time, based on practical circumstances, and explain clearly the responsibility and mechanism for the Party members, cadres, and civil servants and non-Party members, non-cadres, and non-civil servants for engaging judicial activities to preserve the political qualities, revolutionary morality and pioneering values of judicial officials in accordance with Ho Chi Minh's Ideologies, political requirements for judicial reform, and judicial quality improvement. This section should also be constantly updated and published to the public and internal state agencies to ensure the comprehensive implementation of the CoECs.

The consistency of the core contents and the structure of the CoECs should provide the judicial positions and judicial support positions a better understanding of each other's duties in the justice field so that such posts will have a better attitude toward each other in the tasks of collaboration and improve professionalism in judicial activities. This consistency also plays an important role by delivering to the public a better understanding of the values and the role of CoECs, and ethical regulations and rules for the Party members, cadres, and civil servants, other judicial posts and State

managing posts, to have mutual respect for fulfilling their missions and obligations.

- *Enhancing the application of CoECs to promote the sense of professionalism and integrity of judicial positions*

✓ CoECs in the field of justice should be constantly disseminated and further included in the source training program for law students in general, and the professional training programs, for judicial officials and other judicial support officials in particular. The frequent dissemination and education about CoECs will help improve the quality of judicial officials and judicial support officials. In particular, the application of CoECs also helps to improve the professionalism, integrity and attitude of serving the Fatherland, and serving the judicial and judicial support positions. Additionally, there should be activities of general dissemination and propaganda on CoECs for professionals in the justice system so that people can obtain a better understanding of the responsibilities, duties, and ethical requirements of such professionals.

✓ To enhance their application, the CoECs should be published online. Explanations, annotations and commentaries for the CoECs should be regularly updated and published to provide the governed subjects and public with essential knowledge of the requirements and regulations of CoECs updated, developed and applied in each period. Online publication also facilitates the public's exercise of its supervisor role toward the activities of the judicial posts and judicial support positions.

b. Specific recommendations

Based on the above General recommendations, the following is recommended for the CCIA in the task of improving the CoECs of judicial activities to meet the judicial reform requirements of Viet Nam:

Advise and submit to competent authorities for promulgation, documents guiding judicial agencies and judicial support managing agencies on the improvement and the effective application of the CoECs in judicial activities, to meet the judicial reform requirements of Viet Nam. The guiding documents should focus on:

(i) Reviewing the current CoECs, and amending contents which are not suitable with the practice; developing, and consistently and effectively applying CoECs for judicial and judicial support positions, such as People's Assessors, Court Clerks, Civil Investigators, Examiners, Bailiffs and Insolvency Administrators, Notaries, and Court Mediators and other Mediators.

(ii) Focusing on the effectiveness improvement of CoEC application in judicial activities, evaluating and supervising the application, strictly handling violations, and timely rewarding people and sectors that have effectively applied CoECs in judicial activities.

(iii) Advising that the CoECs in judicial activities are required to unify and harmonize the core contents, and ensure interaction and support among judicial positions. The judicial and judicial support agencies should be required to enhance the application of CoECs to promote self-awareness, professionalism and the integrity of judicial positions. The implementation of CoECs should be professional, fair, strict, and done with integrity to serve the Fatherland and serve the People./.

PART IV – ANNEXES

ANNEX 1 – LIST OF REFERNECES AND THE CODES OF ETHICS AND CONDUCT

A – Legislations

1. United Nations Convention against Corruption;
2. Constitution (2013);
3. Resolution No. 08-NQ/TW dated 2002 promulgated by the Politburo on some key tasks of judicial work in the coming time;
4. Resolution No. 49/NQ/TW dated June 2, 2005 of the Politburo on the Judicial Reform Strategy;
5. Central Resolution No. 4 issued by the 12th-tenured Central Committee of the Communist Party of Viet Nam
6. Directive No. 33-CT/TW promulgated by the Party Central Committee's Secretariat dated March 30, 2009 on strengthening the Party's leadership over the organization and operations of lawyers;
7. Civil Procedure Code(2015);
8. Criminal Procedure Code (2015);
9. Incorporated document No. 3/VBHN-VPQH 2015 incorporating Laws on Lawyers;
10. Law on Administrative Procedures (2015);
11. Law on Anti-Corruption (2018);
12. Law on Cadres and Civil Servants (,2008, amended, supplemented in 2019);
13. Law on Denunciation (2018);
14. Law on Inspection (2010);
15. Law on Legal Aid (2017);
16. Law on Organization of People’s Procuracies (2014);
17. Law on Organization of People's Courts (2014);
18. Law on Public Employees (2010);
19. Directive No. 05/2008/CT-TTg on improving the efficiency of using working time of cadres, civil servants, and public employees;
20. Conclusion 84-KL/TW dated July 29, 2020 of Politburo on conclusion of 15 years of implementation of Resolution 49-NQ/TW of the Politburo of Session IX on Judicial Reform Strategy towards 2020;

21. Decision No. 216-QD/TW of the Central Committee of Communist Party dated Jan 2, 2020 on function, mandate, authorization, and organizational structure of the Central Committee for Internal Affairs;
22. Directive No. 05/CT-VKSTC-TTr in 2014 on strengthening public discipline and internal order of the procuracy system;
23. Resolution No. 929/2015/UBTVQH13 in 2015 on Operation Regulations of the National Council for selection and supervision of Judges;
24. Resolution No. 02-NQ/BCS dated May 14, 2018 of the SPC Personnel Committee on strengthening leadership and direction of organization and personnel;
25. Decree No. 34/2011/ND-CP stipulating disciplinary actions for civil servants;
26. Decree No. 159/2016/ND-CP dated November 29, 2016 detailing and prescribing measures for implementing a number of articles of the Law on Inspection regarding the organization and operation of People's Inspection Boards;
27. Decision No. 129/2007/QD-TTg promulgated by the Prime Minister dated August 2, 2007 on the Regulation on office culture at state administrative agencies;
28. Decision No. 1072/QD-TTg in 2011 promulgated by the Government Minister on approving the Strategy on Development of the Lawyer's Profession by 2020;
29. Decision No. 432/QD-TTg approving the Socio-Economic Sustainable Development Strategy of in the period of 2011 – 2020 dated April 4, 12, 2012;
30. Circular No. 11/2012/TT-BTP of the Minister of Justice on the Code of Ethics on notarization practice;
31. Circular No. 19/2013/TT-BTP guiding on law practicing of trainee lawyers;
32. Circular No. 14/2018/TT-BTP on the Code of Ethics for professionals of Auctioneers;
33. Circular No. 2/2019/TT-BTP regulating the obligation of lawyers on participating in the compulsory professional training;
34. Instruction No. 35/HD-VKSTC dated November 12, 2019 of SPP on Summarizing the emulation, commendation task and consideration of reward proposal in 2019;
35. Instruction No. 39/HD-VKSTC dated December 30, 2019 of the SPP on Implementation of Personnel Management in 2020;
36. Plan No. 123/KH-VKSTC of the Supreme People's Procuracy on organizing the Movement of "cadres, civil servants and public employees in procuracy system emulate to implement office culture" in the period of 2019 - 2025;

37. Regulation No. 101-QD/TW dated June 7, 2012 of the Secretariat on exemplary responsibilities of cadres and Party members, especially key leaders at all levels;
38. Regulation No. 47-QD/TW dated November 1, 2011 of the Party Central Committee on behaviors that Communist Party members are not allowed to engage;
39. Decision No. 55-QD/TW dated December 19, 2016 of the Politburo on a number of urgent actions to strengthen exemplary responsibilities of cadres and Party members;
40. Regulation No. 08-QD/TW dated October 25, 2018 of the Party Central Committee on the exemplary responsibilities of cadres and Party members;
41. Decision No. 918/2015/QD-TANDTC on the organizational structure, missions, and rights of the units in the assisting agencies of the Supreme People's Court;
42. Decision No. 986/2015/QD-TANDTC on the organizational structure, missions, and rights of the units in assisting agencies of the Superior People's Court in Hanoi;
43. Decision No. 987/2015/QD-TANDTC on the organizational structure, missions, and rights of the units in assisting agencies of the Superior People's Court in Da Nang;
44. Decision No. 988/2015/QD-TANDTC on the organizational structure, missions, and rights of the units in assisting agencies of the Superior People's Court in Ho Chi Minh City;
45. Decision No. 183/QD-VKSTC-T1 dated April 4, 2016 of the General Procurator of Supreme People's Procuracy issuing the Regulations on disciplining in the Procuracy system;
46. Decision No. 345/2016/QD-CA on the organizational structure, missions, and rights of the units in assisting agencies of provincial People's Courts and district-level People's Courts;
47. Decision No. 120/QD-TAND dated 2017 regulating on the handling accountabilities of the judicial holder in the People's Court issued by the Supreme People's Court;
48. Decision No. 26/QD-VKSTC in 2020 on regulating the criteria for leadership positions, management positions and titles in the procuracy system;
49. Decision No. 2721/QD-BNV dated December 28, 2018 of the Ministry of Home Affairs on the Specialist-rank training document;
50. Decision No. 192/QD-VKSTC in 2019 on the Regulation of organization and operation of the People's Procuracy Inspectorate;
51. Decision No. 28/QD-HDLSTQ dated February 4, 2016 of the National Lawyers' Council on issuing the Regulation on supervising the organization and operation of Lawyers;
52. Decision No. 68/QD-BTVLDSVN dated October 5, 2012 promulgated by the of the Standing Committee of the Vietnam Bar Association on issuing the Regulation on disciplining lawyers

53. Decision No. 90/QD-VKSTC-V9 dated March 12, 2013 issuing the Workforce Development Plan of the procuracy system in the period of 2011 – 2020.

B – Codes of ethics and conduct

1. Bangalore Principles of Judicial Conduct 2002;
2. Basic Principles on the Role of Lawyers adopted by the General Assembly of the United Nations in 1990;
3. Code of Conduct for cadres, civil servants, public employees, and employees of the Procuracies in accordance with Decision No. 08/QD-VKSTC dated January 16, 2020 issued by the SPP;
4. Code of Conduct for cadres, civil servants, public employees of the Procuracies attached to the Decision No. 296/2008/QD-VKSTC;
5. Code of Conduct for Members and former Members of the Court of Justice of the European Union 2016;
6. Code of Conduct for Procurators when performing the right of prosecution and judicial activity supervision at Court trials and meetings included in Decision No. 46/QD-VKSTC dated February 20, 2017 promulgated by the SPP;
7. Code of Ethics and Conduct for Lawyer Profession attached to the Decision No. 68/QD-HDLSTQ dated July 20, 2011 promulgated by the National Lawyers' Council;
8. Code of Judicial Conduct issued by the Connecticut Secretary of the State;
9. Code of Judicial Ethics issued by International Criminal Court (2005);
10. Codes of Ethics and Conduct for Judges attached to the Decision No. 78/QD-HDTC dated July 4, 2018;
11. Codes of Ethics and Conduct for Vietnamese Lawyer attached to the Decision No. 201/QD-HDLSTQ promulgated by the National Lawyers' Council dated December 19, 2019;
12. European guidelines on ethics and conduct for public prosecutors 2005;
13. International Principles on Conduct for the Legal Profession adopted by the International Bar Association on May 25, 2014;
14. International Principles on Social Media Conduct for the Legal Profession adopted by the International Bar Association on May 24, 2014;
15. Judicial code of ethics in the Courts of Justice Act, issued by the Courts of Québec, Canada;
16. Model Code of Judicial Conduct adopted by the American Bar Association;
17. Model Code of Professional ethics for Lawyers included in the Decision No. 356b/ 2002/QD-BT dated August 5, 2002 issued by the Minister of Justice;
18. Model principles of Judicial conduct of Council of ASEAN Chief Justices;

19. Standards of professional responsibility and statement of the essential duties and rights of prosecutors 1999;
20. The Code of Conduct of cadres and civil servants in the court system attached to the Decision No. 1253/2008/QĐ-TANDTC dated September 18, 2008 promulgated by the Supreme People's Court;
21. The Universal Charter of the Judge.

ANNEX 2 – REFERENCES

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ANNEX 3 – QUESTIONNAIRES FOR IN-DEPTH SURVEY

RESEARCH ON A NUMBER OF CODES OF ETHIC AND CONDUCT IN JUDICIAL ACTIVITIES

A. FOR JUDGES/COURT CADRES/COURT RESEARCHERS

1. Comment on the practice of applying the codes of ethic for cadres, Party members or the codes of conduct at workplaces for officials, civil servants, and the CoEC for Judges:
 - How CoECs relate to the activities of Judges? List the details of those CoECs
 - Which CoEC(s) is most often paid attention during the Judges' practicing?
 - How is the CoEC(s) for Judges applied in the activities related to the supervision of cadres' work or the activities of emulation and commendation in the Courts? In fact, in addition to the CoEC(s) for Judges, which regulation (legal regulations for cadres and civil servants; rules for Party members; annual emulation criteria) that is also being applied in such activities?
2. Comment of the interviewee on the methods of introducing the CoEC for Judges in the Courts generally and in the Court that the interviewees are serving work particularly (methods of introducing such as through educating, training for future Judges, periodical meeting for disseminating legal knowledge and judicial experience of courts)?
3. Comment of the interviewee on the intelligibility and the feasibility of the CoEC for Judges. Does it need a formal explanation mechanism?
4. Comment of the interviewee on the implementation mechanism for handling Judges violating the CoEC for Judges (*determine the implementation basis of the mechanism - for example Decision 120/QĐ-TANDTC or other documents, etc.; and the agency in charge if implementing that mechanism - for example, the NCSSJ or the Court Leader, etc.*) Are there any official statistics on the number of cases in which Judges are disciplined for violating the CoEC?
5. Comments of the interviewee on whether exist any cases that the people/relevant subjects lodge a complaint/denunciation about the Judge's conducts based on the CoEC for Judges?
6. Comments of the interviewee on the ideas, theories, documents, and standards that are used or integrated into the process of developing the CoEC for Judges (if known)?
7. Has the interviewee ever known about any international ethical standards and rules for the Judges? Provide some comments when comparing such international rules with the CoEC for Judges of Vietnam?
8. Proposals and recommendations of the interviewee about improving the feasibility of the CoEC for Judges.

B. FOR PROCURATORS/PROCURACY CADRES/PROCURACY RESEARCHERS

1. Comment on the practice of applying the codes of ethic for cadres, Party members or the codes of conduct at workplaces for officials, civil servants and the CoEC for Procurators (including the CoEC 2017 and the CoEC 2020 – hereinafter called as “CoEC for Procurators”) :
 - How CoECs relate to the activities of Procurators? List the details of those CoECs
 - Which CoEC(s) is most often paid attention during the Procurators’ practicing?
 - How is the CoEC(s) for Procurators applied in the activities related to the supervision of cadres' work or the activities of emulation and commendation in the Courts? In fact, in addition to the CoEC(s) for Procurators, which regulation (legal regulations for cadres and civil servants; rules for Party members; annual emulation criteria) that is also being applied in such activities?
2. Comment on the methods of introducing the CoEC for Procurators in the Courts generally and in the Court that the interviewees are serving work particularly (methods of introducing such as through educating, training for future Judges, periodical meeting for disseminating legal knowledge and practical experience in procuracy)?
3. Comment on the intelligibility and the feasibility of the CoEC for Procurators. Does it need a formal explanation mechanism?
4. The implementation mechanism for handling Judges violating the CoEC for Procurators (*determine the implementation basis of the mechanism and the agency in charge if implementing that mechanism*) Are there any official statistics on the number of cases in which Procurators are disciplined for violating the CoEC?
5. Comments of the interviewees on whether exist any cases that the people /relevant subjects lodge a complaint/denunciation about the Procurators' conducts based on the CoEC for Procurators?
6. Comments of the interviewees on the ideas, theories, documents, and standards that are used or integrated into the process of developing the CoEC for Procurators (if known)?
7. Has the interviewee ever known about any international ethical standards and rules for the Procurators? Provide some comments when comparing such international rules with the CoEC for Procurators of Vietnam?
8. Proposals and recommendations of the interviewee about improving the feasibility of the CoEC for Procurators. From the interviewee's point of view, is it necessary to build two separate sets of rules or integrate them into a single set of rules?

C. FOR LAWYERS

1. Comment on the practice of applying the CoEC for Lawyers previously (the CoEC 2011) and currently (the CoEC 2019)
2. Comment on the methods of introducing the CoEC for Lawyers previously and currently. Regarding Lawyers who recently have obtained the practicing certificate, ask for the opinion of evaluating the teaching process of the CoEC for Lawyers at the Judicial Academy; and comment on the exam content on the CoEC for Lawyers to be granted a practicing certificate.
3. Comment on the intelligibility and the feasibility of the CoEC for Lawyers. Does it need a formal explanation mechanism?
4. The implementation mechanism for handling Lawyers violating the CoEC for Lawyers at the local Bar Association or the Vietnam Bar Federation (if known). Are there any official statistics on the number of cases in which Lawyers are disciplined for violating the CoEC?
5. The mechanisms to encourage the compliance with the CoEC for Lawyers are applied at the Local Bar Association, or the Viet Nam Bar Federation (if known). Comment on the efficiency of these mechanisms.
6. Has the interviewee ever known about any international ethical standards and rules for the Lawyers? Provide some comments when comparing such international rules with the CoEC for Lawyers of Vietnam?
7. Comment of the interviewee about the possibility that the people/relevant subjects lodge the complaint or denunciation the lawyer's conduct based on the content of the CoEC for Lawyers.
8. Comments of the interviewees on whether exist any cases that the people/relevant subjects lodge a complaint or denunciation about the Lawyers' conducts based on the CoEC for Lawyers and the practice of handling such cases?
9. Comments of the interviewees on the ideas, theories, documents, and standards that are used or integrated into the process of developing the CoEC for Lawyers (if known)?
10. Proposals and recommendations of the interviewee about improving the feasibility of the CoEC for Lawyers.

ANNEX 4 – INTERNATIONAL STANDARDS AND BEST PRACTICES FOR CODES OF CONDUCT FOR JUSTICE PROFESSIONALS

Shelley M. liberto, JD, MA

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Executive Summary

This assessment provides an overview of international standards and practices on the form and nature of judicial inspectorates, an international model for conducting judicial inspections, an analysis of codes of conduct for justice professionals, and examples of codes of conduct from the jurisdictions of The Philippines, the US State of California, Romania, and the United States.¹⁵² A time-consuming and thorough effort was made to locate an actual published code of conduct specifically for judicial inspectors, but none was found, likely due to the extremely narrow and precise nature of the document sought. Within these constraints, however, it is hoped that the information in this assessment is adequate to formulate a draft Code of Conduct for Judicial Inspectors for Vietnam using the international standards and examples provided herein, while applying principal terms of the Law on Inspection of Vietnam.

Scope of Inquiry

The Terms of Reference call for a brief containing an assessment of international standards and best practices for justice professionals, especially inspectors, with examples of three codes of conduct specifically for judicial inspectors. The contracted work aims to assist UNDP Vietnam in its support of the Inspectorate Department of the Ministry of Justice (the MOJ Inspectorate) to develop a Code of Conduct for Judicial Inspectors within the framework of the EU Justice and Legal Empowerment Programme in Vietnam (EU JULE). In pursuit of these objectives, the contractor conducted a time-consuming and extensive research on the very narrow topic of codes of conduct that was both very broad on an international scale that examined both: (1) codes of conduct, and (2) specific to judicial inspectors.

Although no results were found of published codes of conduct specifically for judicial inspectors, the research did produce illuminating information on best international standards and practices as to the manner, conduct and administrative authority of justice professionals, and the role of judicial inspectors in conducting them. This information, combined with a view to codes and laws that define the duties of inspectors generally, is hoped to serve the needs of the team in the face of constraints in the lack of availability of published examples of codes of conduct for the judicial inspectors themselves. It is noteworthy that a paradox is revealed when one attempts to "inspect the inspectors" for breach of the inspectors' code of conduct, while they themselves are engaged in the activity of examining a breach of codes of conduct by other justice professionals. Indeed, the two activities and standards may be seen to be identical, although applied to two different groups of justice personnel, with only slightly nuanced differences.

Form and Nature of Judicial Inspectorates

Generally

The prevailing international view is that Inspectorates of justice monitor the Justice and Security domain by strengthening the learning ability of the organizations they supervise, with a view to improving the quality of performing tasks. In this sense, the purpose of a judicial Inspectorate is not punishment, but correction of anomalies of administration to inform administrative behavior going forward. In most international jurisdictions, supervisory mechanisms over the work of courts also entails inspections, accounts and financial controls, and auditing. The mechanisms aim to guarantee an internal check of the legality of specific areas of court activities as well as the way courts use funds received by the state.

Regular checks by judicial inspectorates thereby control the correct functioning of courts and support regular improvements in the administration of justice. As a specialized unit of either the Supreme Court or the Ministry of Justice, inspectorates work as specialized units under the governance body of the judiciary. The *types* of

¹⁵² Inquiries remain outstanding as of this time with the Peoples Republic of China whose sources reported the topic as "sensitive".

judicial inspectorates and their role in the government is defined by whether they are operating in a common law jurisdiction, or a civil law European-style jurisdiction

Types of Judicial Inspectorates and Investigations - Some Examples

In the case of complaints and disciplinary proceedings against judges, the most popular type of mechanism that exists in both common law and civil law systems is the "judicial council" of the Judiciary. This narrow function, however, is distinguished from civil law countries such as Vietnam who use an inspectorate under the Ministry of Justice of the executive branch. The criticism of an inspectorate system of the Ministry of Justice is that it may allow for interference by the executive branch of government into the affairs of the Judiciary. Supporters of this system, however, argue that an inspectorate under a Ministry of Justice of the executive branch of the government may operate as a check and balance against the activities of the judiciary.¹⁵³ Additionally, many countries use the office of an "ombudsman" who supervises the administrative activities of the courts where they interface with the public at large. The ombudsman acts as an independent prosecutor on behalf of the people against administrative incompetence or wrongdoing.

With regard to the investigation activities of judicial inspectorates, international standards follow a two-pronged administrative purpose when an inspectorate conducts its work: (1) Thematic Investigations, and (2) Incidents Investigations.

Thematic Investigations. Thematic Investigations focus on specific aspects of the professional practices of administrators, and the administrative performance of an agency or organization. These investigations would therefore collect data on the efficiency of administrative work product, results of the agency as expressed in data, and processes and procedures that may be inconsistent with regulations or may stand to be improved. Thematic Investigations that follow best practices assess administrative processes from the viewpoint of the user public.

Incident Investigations. Incident Investigations are in execution of the incident-sensitive nature of the Justice Sector. These investigations not only respond to specific complaints against individual judicial or non-judicial personnel, but also events that have a broad impact on the public at large. These "incident investigations" may seek to find error or fault for an accident, disaster or crisis. Alternatively, they may seek to make recommendations for improvement of laws, and recommendations to avoid such incidents in the future similar to the objective of Thematic Investigations. Incident Investigations may involve several investigating authorities and are frequently conducted on an urgent basis.

Country Examples of the Role and Function of Judicial Inspectorates

Jordan. The Jordanian Ministry of Justice has carried out judicial inspections through an Inspection Directorate since 1994. To protect judicial independence from the executive branch, the inspectors are selected from a pool of senior judges working in different courts, jurisdictions, departments and divisions. To further a guarantee of independence, reports regarding judicial personnel are submitted not only to the Ministry of Justice, but also to the Chief Justice of the Court of Cassation, thereby bridging the branch-of-government divide between the executive and judicial branches of government.

The Inspectorate evaluates the performance of all judicial personnel by considering indicators of both legal and managerial performance. The Inspectorate evaluates 40 closed cases per year chosen at random, evaluates the files with a list of factors, and averages the scores of the cases for a final grade. Each judicial employee is evaluated by two different inspectors who then meet to reconcile their findings. Judicial personnel are rated on a 100-point scale. Evaluations are carried out once a year.

¹⁵³ The judicial Inspectorate is the overwhelming preference of civil law countries in Europe, and is used in Spain, England and Wales, Italy, Bulgaria, France, Belgium, Poland, Italy, and Romania.

England and Wales. Her Majesty's Inspectorate of Court Administration (HMICA) is an independent body created by law to inspect and report to the Lord Chancellor on the system that supports the carrying on of the business of the courts and the services provided for the courts. As many other Justice inspectorates in the international arena, this Inspectorate has the goal of assuring the governance bodies and the public of the safe and proper delivery of services provided by the courts, and to improve those services.

Evaluations focus not only on administrative or accounting irregularities, but also on administrative *results* from the perspective of public users, with the inspection process serving as a learning experience for judicial administrators. Inspections involve on-site interviews, observations and document collection, as well as self-assessments of the judicial and non-judicial personnel. Annual reports of the inspections address administrative performance, financing and accountability.

Australia. In Australia, the purpose of the Australian National Audit Office (ANAO) is to provide Parliament with an independent assessment of selected areas of public administration, and assurances about financial reporting and accountability. The ANAO publishes written reports on the economy, efficiency and effect of the courts' client-service relationships, and the effectiveness of their coordination mechanisms and administrative issues. The objective is to improve judicial service and performance with recommendations to which the courts may respond with remarks on issues, performance and steps taken to alleviate problems for improvement and also highlight existing good practices.

A Model for Procedures for Conducting Judicial Inspections – The Netherlands

Although published codes of conduct for judicial inspectors are not directly available, the Netherlands has published a required protocol to be used in conducting judicial inspections which, by analogy, may be used to formulate a code of conduct for judicial inspectors; i.e., how to "inspect an inspector." In The Netherlands, the Inspectorate of Justice and Security works in accordance with a standard operating procedure that is flexible depending upon the circumstances of the particular inspection. The Inspectorate operates under the responsibility of the Minister of Justice through the office of the Inspector General. The procedure is a multistep process.

Preparation of the Inspection. Each inspection begins with an orientation and action plan which contains:

- reason for inspection
- definition of the problem
- investigation questions
- quality assurance methods
- time schedule
- human resources capacity needed to conduct the inspection

The Inspectorate uses an *Assessment Framework* for each of its inspections which states what components of the Inspectorate will be used in the inspection, on which criteria it will be based, and the standards in which the criteria have been operationalized in the past. This serves as the outline for the final opinion formulated by the Inspectorate.

Conducting the Investigation. The inspection usually involves studying and analyzing written material and carrying out activities such as interviews, and examining documentation and records, which may be conducted on-site or off-site by visiting officers concerned. Surveys and interviews of the members of the public may be used. A report is drawn up for each interview which is shared with discussion partners to check for factual inaccuracies.

➤ See **Annex 1**, Interview Protocol.

Analysis and Formulation of the Opinion. Based on the information gathered, the Inspectorate formulates an opinion based on the inspection team's data, practice of the organization inspected, and/or reports from its officers. The Inspectorate then formulates its findings, conclusions and recommendations to be compiled in a report.

Reporting. A draft report that describes the inspection design, findings, analysis, conclusions and recommendations is prepared and verified against the criteria in the Assessment Framework.

NOTE: The quality of the work conducted by the inspectors is assessed within the Inspectorate according to a fixed procedure. The inspectors of the inspector's report within the Inspectorate, known as the *Internal Review Team*, assess the quality of the report to assure that the facts and data in the report are traceable, soundly substantiated, and whether the correct method has been applied. The Internal Review Team, whose purpose is to assure the quality of the work of the inspectors and adherence to procedures and protocol, may be expanded to include external experts. This step may be viewed as a review of the conduct and performance of the inspectors, although no "code of conduct" of the inspectors is used.

The draft report, once approved by the Internal Review Team, is submitted to the responsible parties in the organizations inspected, and/or the officers under investigation. The parties are requested to provide their response in the form of a specific table to which the Inspectorate adds its response.

➤ See **Annex 2**, Table for Responses, attached.

Publication of Report. The report of the Inspectorate is published on the Inspectorate's website. Parties who are concerned with privacy issues may object, to which the Inspectorate will render a decision as to whether to formally publish the report. Following the publication decision, the Inspectorate's report is presented to the Ministry of Justice by the Inspector General. The Ministry of Justice may choose to publish a policy response which will be published with the report. The policy response must be submitted within six weeks of submission of the report to the Ministry. The Inspectorate may give special notice of the contents of the report prior to its publication to victims and the surviving relatives of inspections involving incidents.

➤ See **Annex 3**, Mission Statement of the Inspectorate of Justice and Security of The Netherlands.

Codes of Conduct and Accountability of Justice Professionals

Codes of conduct and the accountability of justice professionals, including judges and administrative staff, are relevant to the formulation of codes of conduct for inspectors. This is so because inspectors are subsumed within the category of "justice professionals." Understanding this, these codes of conduct are helpful as guidelines, in light of the fact that published codes of conduct specifically for judicial inspectors are not readily available as models.

Ethical standards for justice professionals such as inspectors are equally as important to the administration of justice as ethical standards for judges. The importance of ethical non-judicial staff is recognized by the Bangalore Principles of Judicial Conduct. A separate code of conduct for inspectors will unify standards spread across various laws and rules that are otherwise applicable to government employees which are likewise applicable to all justice professionals such as inspectors.

The ultimate goal of a code of conduct for justice professionals is not simply the creation of new rules, but rather the formation of an ethical judiciary staff that supports the efficient and impartial administration of justice. This is best achieved by appropriate means of enforcement with a mechanism to receive complaints against justice professionals that may lead to review by a disciplinary panel. However, less extreme enforcement mechanisms, from simple administrative reprimands for minor infractions to discharge of an employee who repeatedly violates a code of conduct, may be adequate.

An established code of conduct allows justice professionals to remain aware of their ethical obligations and lends to an understanding of how to apply the code, even if the code is merely used as guidance rather than law.

Accordingly, *training* of justice professionals in the application of a code of conduct is a necessary companion to enforcement.

Considerations for ethical standards found in codes of conduct for justice professionals include:

- impartiality
- discrimination
- impropriety and appearance of impropriety
- conflicts of interest
- confidentiality
- personal integrity
- diligent performance of official duties
- protection of judicial property and resources
- protection of judicial independence
- political activities

Risk factors for failing to enforce ethical these standards:

Impartiality: Loss of public confidence in the fairness of the justice system

Discrimination: Resentment and alienation of members of the public of different backgrounds; public criticism and political activism against the justice system and/or its members

Impropriety and appearance of impropriety. Actual corruption or the appearance of corruption that enriches justice professionals or their families; reluctance of the public to use the justice system to resolve its disputes

Conflicts of interest. Corruption

Confidentiality. Harm or embarrassment to subjects of disclosed confidential information; refusal of the public to disclose confidential information to trusted persons and institutions; unfair advantage to those who are exclusively aware of confidential information

Personal integrity: Lack of respect for the justice system and justice professionals; alienation of members of the public

Diligent performance of professional duties. Incompetent, inefficient and time consuming operation of justice processes; institutional stress; overconsumption of institutional resources; lack of public confidence that the justice system can achieve meaningful results for its users

Protection of judicial property and resources. Corruption; budgetary stress on judicial resources

Protection of judicial independence. Distraction of justice professions from full concentration on their official duties; inability to be impartial

Political activities. Loss of judicial independence; alienation of segments of the public in opposition to political positions; alienation of co-workers; public perception of favoritism and a lack of impartiality; corruption

Country Examples of Codes of Conduct for Justice Professionals

While published examples of codes of conduct for judicial inspectors are not readily available, several country models of codes of conduct for *justice professionals* are. Submitted for the consideration of the team in formulation of its code of Code of Conduct for Judicial Inspectors of Vietnam are codes from: The Philippines, the US State of California, Romania, and the USA.

The Philippines. The Code of Conduct for Court Personnel of The Philippines (the Filipino Code) sets out "Cannons" which apply to non-judicial personnel. In other words, it is not a "code of conduct for judges." The Code addresses

almost all of the elements of international ethical standards for judicial Personnel set out in the prior section of this writing in some manner or another.

The Filipino Code addresses the issue of impropriety regarding obtaining unethical benefits, privileges or exemptions from others by virtue of an official office in its first Canon entitled "Fidelity to Duty." These include the acceptance of gifts based on even unspoken understandings of a favor or benefit to outsiders. Canon I also bars discrimination from dispensing special favors to anyone.

As a second policy priority, Canon II addresses confidentiality of information that is acquired while employed by the Judiciary. It bars disclosure of all information not yet made a matter of public record relating to pending cases and the work of any judge or justice. While this Canon goes into great detail of the kinds of information to which it applies, there is no reference to electronic data referred to in the Code of Ethics for Court Employees of the State of California (the California Code).

Conflicts of Interests are dealt with in Canon III. This Code gives the best set of definition and examples of conflicts of interest based on factual circumstances among the other codes examined. It does not, however, define exactly what to do in the event a conflict arises as does the US Code of Conduct for Judicial Employees (the US Code). In addressing conflicts of interest, the Filipino Code defines "immediate family" by designation of specific family relations who are barred from financial gain from an official act of court personnel. It also designates a failure to perform official duties properly, and with diligence, as a violation of the Code. This is done to a lesser extent in the other codes examined.

Canon IV addresses the performance of official duties which includes the exercise of a courteous personal manner toward the user public. Canon IV gives passing mention to a duty not to discriminate based on race, religion, national or ethnic origin, gender or political affiliation without further detail.

With regard to the efficiency of work by court personnel, Canon IV simply states that personnel shall at all times perform official duties properly and with diligence, and commit themselves exclusively to the business and responsibilities of their office during working hours, and expeditiously enforce rules and implement orders of the court within the limits of their authority.

The Filipino Code incorporates by reference other Civil Service rules and orders from the Supreme Court that generally govern or regulate the conduct of public officers and employees applicable to the Judiciary.

➤ See **Annex 4**, Code of Conduct for Court Personnel, Supreme Court of the Republic of the Philippines.

The US State of California. The US state of California is the largest state in the US and the sixth largest economy in the world. Accordingly, its judicial system and its Code of Ethics for the Court Employees of California deserves a close examination. The Code lists 12 "Tenents" which are analogous to Cannons or Rules. Because this Code only deals with non-justice professionals such as court employees, it may be the most appropriate of example for application to Judicial Inspectors in Vietnam. Most notably, the Code includes Guidelines which are intended to clarify and provide direction for the application of the Tenents of the Code. The Guidelines speak in terms of how to treat members of the public, and how to execute the duties of court employees for the benefit of the citizens of the State of California.

Tenent One states as a priority *impartial and evenhanded treatment of all persons*. The Guidelines explain that this Tenent emphasizes impartiality in dealing with all persons coming to the Judiciary for assistance regardless of their personal behavior or legal situation. The Guidelines note that Court users are often suffering from disputes which may cause them to be angry, confused, and deceitful, but who deserve the same treatment given to users who are pleasant and appreciative. Court employees do not have the right to take sides in a legal dispute or interject themselves into the legal decision-making process.

Tenent Two requires *personal integrity and honesty* on the part of judicial employees. The Guidelines state that "honesty is paramount," including when using the court's resources such as telephone, facsimile, copying machine, e-mail or Internet access. Employees must not abuse their privileges.

Tenent Three emphasizes a business like *personal behavior* in exercising duties by instilling trust in the public in a judicial employee's professional knowledge and competency. This Tenent requires judicial employees to behave with "respect, courtesy, patience and responsiveness to promote public esteem in the court system." The Guidelines admonish judicial employees to "never criticize a co-worker in public nor denigrate a court user at any time."

Tenent Four addresses duties of *confidentiality* of information, both written and oral, unless disclosure is authorized by the court. It also requires judicial employees to abstain at all times from public comment about pending proceedings. The Guidelines counsel judicial employees to be careful of *unintentional disclosure* of official court records through *innocent or casual remarks* about pending or closed cases, participants in litigation, or juries, any of which could give attorneys, litigants and the media confidential information.

Tenent Five requires judicial employees to refrain from any *actual impropriety* such as receiving gifts or favors related to court employment, recommending private attorneys to the public while on the job, using their position to benefit themselves or relatives, or using the judicial system for personal gain or to avoid personal legal consequences. The Guidelines give many examples of improper behaviors that are worth noting, including seeking special consideration for traffic and parking violations.

Tenent Six requires judicial employees to *avoid any appearance of impropriety*. The Guidelines make clear that employee must not only refrain from engaging in improper conduct, but also from *merely appearing to be engaging in improper conduct*. This Tenent is based on *perception*, and not actual improper conduct. Public perception is paramount.

Tenent Seven *forbids judicial employees from giving legal advice* and confining the information that they give to the public to the scope of their job duties. According to the Guidelines, they must not cross the line which separates court employees from lawyers practicing law in the community. They should direct litigants to nonprofit legal services and certified lawyer referral services for legal assistance, but not provide legal assistance themselves.

Tenent Eight requires judicial employees to provide responsible and accountable *use of judicial property and resources* such as staff time, equipment, facilities, information systems, and money allocated to the court. They must use proper accountability tools in a transparent manner to the public. Resources may not be expended for the direct benefit of employees or judicial officers.

Tenent Nine requires judicial employees to provide *diligent performance and competency in the services that they provide*. Information they provide must be easily understandable and avoid legal language whenever possible. Judicial employees are required to participate in educational programs to remain current of changes to improve their personal and professional skills over time.

Tenent 10 requires judicial employees to refrain from, and actively repudiate any act of *discrimination* based on race, religion, color, national origin, ancestry, physical or mental disability, medical condition, marital status, sex, age, or sexual orientation. The Guidelines point out that judicial employees regularly assist members of the public of many such backgrounds. They may deal with all sorts of members of the public who may be accused criminals, persons engaged in marital dissolutions, or who are grieving from injury or loss of a loved one. Judicial employees must treat all users of judicial services equally and with compassion.

Tenent 11 requires all judicial employees to *treat all persons with dignity and respect* regardless of their background, physical or mental disability, ancestry, national origin, medical condition, marital status, or other personal characteristic even if the treatment does not rise to the level of harassment. This Tenent addresses how judicial employees treat persons on a personal level.

Tenent 12 requires judicial employees to *protect and safeguard technological property of the court*. This includes the protection of electronic systems and the monitoring of electronic information to assure its accuracy and confidentiality. Judicial employees must take care in the transmission of electronic data and communications so as not to embarrass the court or the sender if the information is read by an unintended recipient. Judicial employees are forbidden from installing personal software or equipment without prior approval, or using judicially owned copyrighted software for personal use.

➤ See **Annex 5**, Code of Ethics for the Court Employees of California.

Romania. The Deontological Code for Judges and Prosecutors of Romania emphasizes independence of the judiciary, supremacy of the rule of law, and impartiality with a heavy emphasis on the exercise of professional duties, but without much definition or detail regarding these topics. The thrust of the Code seems to be management and *control of political activities* of judges and prosecutors.

Chapter I sets out the scope of the Code which establishes the standards for the conduct of judges and prosecutors "according to the honor and dignity of their profession."

Chapter II emphasizes the *independence of justice*, Calling for impartiality without attention to exterior pressure and influence of any kind. It emphasizes that "judges and prosecutors *shall not be influenced by political doctrines*." This Chapter further emphasizes the issue of politics as an element of an judicial independence by stating that justice professionals may not favor persons adhering to a particular political party, and must not participate and fund raising for political parties. Furthermore, justice professionals may not support a candidate for a political public function. Nor may justice professionals participate in political meetings or publish articles or studies with regard to "political subjects."

Chapter III calls for promotion of the supremacy of law to defend the fundamental rights and liberties of citizens. It *forbids discriminatory judicial treatment*, and calls for respect and the defense of dignity, physical and moral integrity of all persons during the course of judicial procedures.

Chapter IV emphasizes *impartiality* in the exercise of duties, and *independence of the judiciary* to make objective decisions free from any influences. This Chapter also addresses *conflicts of interest* and forbids justice professionals from using their status to influence the outcome of cases. They must also avoid the appearance of impropriety and a lack of impartiality when making decisions. Justice professionals are forbidden from handling cases that involve their own personal interest, or those of family members.

Chapter V requires justice professionals to *fulfill their professional duties with competence, diligence and honesty*. It emphasizes the speed with which cases must be processed, as well as *personal integrity* by adopting a respectable and civilized attitude towards users of the judicial system. It also requires judicial professionals to honor the *confidentiality* of information and documents. Judicial professionals must also prioritize support to organizing the activities of staff and materials with maximum efficiency.

Chapter VI emphasizes the *personal integrity* of judicial professionals, requiring them to refrain from any actions that compromise the dignity of their profession in the eyes of society. They must be fair and express respect in good faith regardless of their own personal position. Justice professionals may not express their opinion regarding the moral or professional integrity of any colleagues.

Chapter VII restates issue of *conflicts of interest* by forbidding judicial professionals from participating in financial schemes for profit such as pyramid scheme games, games of fortune (gambling), or investment systems that are not transparent as required by law.

➤ See **Annex 6**, Superior Council of Magistracy of Romania, Deontological Code for Judges and Prosecutors.

The United States of America. The Code of Conduct for Judicial Employees of the US Courts sets out five Canons which operate as general areas of regulated conduct including integrity and independence of the judiciary, avoidance of impropriety and the appearance of impropriety, performance of duties, engaging in outside of activities that may conflict, and inappropriate political activity. The Code also cites criminal laws and statutes that generally govern all US government employees in the performance of their duties. It also defines in detail the family relationships that apply to a bar conflicts of interest. This Code may be overly elaborate and detailed for the purposes of formulating a Code of Conduct for Judicial Inspectors for Vietnam, but it is noteworthy that it contains all the basic elements of codes of ethical conduct recognized internationally and that are included in the other country examples. Most notably, this Code forbids judicial professionals from participating in inappropriate political activity. The main thrust of this Code appears in its Canon 3.

Canon 1: This Canon requires judicial professionals to uphold the *integrity and independence of the judiciary*, stating without specific definition that an "independent and honorable Judiciary is indispensable to justice in our society." It encourages judicial employees to observe *high standards of conduct* so that the integrity and independence of the Judiciary are preserved in a way that reflects a devotion to serving the public. It also requires judicial professionals to apply the Code to personnel under their direction and control.

Canon 2: This Canon encourages judicial professionals to *avoid both actual impropriety and the mere appearance of impropriety* in all activities. Examples are given that warn judicial professionals not to allow family, social or other relationships to influence judicial conduct in a general sense. Judicial professionals should not use the position of their office to advance, or to appear to advance their own private interests or the private interests of others. They may not use their public office for private gain.

Canon 3: This Canon sets out the main framework of the Code which addresses the bulk of ethical standards recognized internationally. With regard to *personal integrity*, it calls for judicial professionals to be "patient, dignified, respectful and courteous" to all persons including the general public. Subsection F of the Code addresses *conflicts of interest* with a clear definition of circumstances that would give rise to a question of whether a judicial professional is exercising *impartiality*. It gives specific examples of how conflicts of interest may arise. Most importantly, Subsection F tells a justice professional *what to do* if a conflict of interest arises. This entails mainly disclosing the circumstances of the possibility of a conflict to a supervisor.

Canon 4: This Canon sets out a list of "outside activities" that judicial professionals should avoid for risk of a *conflict of interest, or the appearance of impropriety*. These include the solicitation of funds, outside financial and business dealings, acceptance of gifts, the acceptance of outside employment during judicial employment, and outside compensation and reimbursement.

Canon 5: This Canon calls for judicial professionals to refrain from *partisan political activity*. A judicial professional should not act as a leader or hold any office in a partisan political organization, should not make speeches for partisan political organizations, should not solicit funds, and should not become a candidate for political office. They should also refrain from campaigning or publicly endorsing or imposing nonpartisan political candidates while on at work duty or in the workplace. Government resources may not be used in connection with any such politically related activity.

➤ See **Appendix 7**, Guide to Judiciary Policy, Chapter 3: Code of Conduct for Judicial Employees

A Matrix of International Standards Used as in the Country Examples

The following table is a matrix of the four country examples as they pertain to international standards and best practices of ethical conduct for justice professionals that appear in their respective codes:

Element of Standard	Philippines	California	Romania	USA
Impartiality		✓	✓	✓
Discrimination	✓	✓	✓	✓
Impropriety and appearance of impropriety	✓	✓	✓	✓
Conflicts of interests	✓ (best definition, Canon III)	✓	✓	✓ (gives advice on what to do when conflicts arise, C. 3F(3))
Confidentiality	✓	✓	✓	✓
Personal integrity		✓	✓	
Diligent performance of official duties	✓		✓	✓
Protection of judicial property and resources	✓	✓		✓
Protection of judicial independence			✓	✓
Political activities	✓		✓ (thorough treatment of banned activities)	✓

Conclusion: Formulating a Code of Conduct for Judicial Inspectors in Vietnam

Based on a thorough research of available published information and the constraints encountered, it would seem that the task of the national team for this project will be to formulate a Code of Conduct for Judicial Inspectors from two basic resources: (1) international standards and examples of codes of conduct for justice professionals generally, and (2) the Law on Inspection of Vietnam. The merger of these two resources will result in an original product that is customized to the specific needs of the Vietnamese Ministry of Justice. Following this methodology, the final document would take into consideration all of the elements of ethical conduct cited in this work, and the relevant provisions of the Law on Inspection, most notably Articles 40-42 regarding the handling of inspections and the consequences of failing to comply with the Law.

ANNEX 5 – INTERNATIONAL STANDARDS AND BEST PRACTICES to ENFORCE JUDICIAL CODES OF CONDUCT

Supervision and monitoring mechanisms

SHELLEY M. LIBERTO, JD, MA

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Executive Summary - Context of This Supplement

This Supplement to the first report on International Standards and Best Practices to Enforce Judicial Codes of Ethics and Conduct (CoEC) is intended to provide an overview of available information on the implementation of the five pillars of administration defined in Draft No. 2 of the Report, submitted by the project team in March 2020. To the extent available, this Supplement presents further information on the country experiences of the People's Republic of China (PRC), the US State of California, the Russian Federation, the Republic of the Philippines, Canada, and Australia examined in the first Report on International Standards.¹⁵⁴ It follows the structure of Draft No. 2 of the Report by addressing:

1. Training and dissemination of CoECs
2. Interpretation of CoECs
3. Supervision of CoEC implementation
4. Enforcement of disciplinary orders
5. Encouraging CoEC compliance

NOTE: This overview reflects the availability of online information specific to the countries on what is a very narrow scope of a specific inquiry regarding the administration of CoECs. A thorough search has been done on these topics on all countries of interest. The search has included online research as well as direct e-mail communication with justice experts in the PRC via their online presence. This notwithstanding, the narrow scope and language barriers encountered yielded mixed data results, some of which are quite rich, and others very sparse.

Training and Dissemination of CoECs

The focus on the administration of the CoECs has two prongs: (1) How training of the judicial sector on the CoEC is accomplished, and (2) how CoECs are disseminated and circulated among judges. Currently, the CoEC for judges in Viet Nam is disseminated in the People's Court Journal. Training on the CoEC is carried out by the People's Court, supplemented with professional exchanges in the court sector. Similarly, training and dissemination of CoECs in the international models incorporates several means in addition to their formal publication and *ad hoc* exchanges among the courts and judges.

Peoples' Republic of China

In the PRC, the Supreme People's Court (SPC) carries the ultimate responsibility for judicial discipline. Accordingly, the SPC is the source of formal opinions on judicial conduct that are published and disseminated through 14 Judicial Disciplinary Committees established in the High People's Court of each of the 14 provinces. The Judicial

¹⁵⁴ This Supplement used the US State of California as representative of the US courts over the Federal system, as it is much more elaborate and sophisticated in terms of judicial discipline due to the fact that Federal judges are politically appointed by the President of the US and removed only by an Act of Congress, rendering administrative monitoring and supervision and monitoring almost nil.

Disciplinary Committees in turn publicize to the local judicial sector various opinions and statements reflective of the state of judicial discipline and cases of note at the provincial level.¹⁵⁵ The SPC also holds press conferences through its Political Department wherein it makes announcements as to the state of the CoEC and responds to questions from the media and representatives of interested parties.

With regard to training, the Political Department of the Supreme People's Court oversees and guides the training of judges on the CoEC which is delivered by the National Judges College (NJC). The subject matter of the CoEC is integrated within an overall training program of the NJC which is delivered in coordination with the High People's Court. Less formally, the CoEC is also frequently the subject of *ad hoc* seminars and conferences sponsored by any of the many organs of the judicial sector at large such as the National People's Congress representatives, the Chinese People's Political Consultative Conference and its members, legal scholars, lawyer representatives, judges and procure a tour representatives.

NOTE: The consultant was able to confirm this and other information on the PRC by direct e-mail exchanges with judicial experts in Beijing. Attached hereto as **Annex 1** for the Team's edification are documents in Standard Chinese Mandarin received from these sources that are reported to reflect the CoECs and CoEC related procedures of the PRC. **Annex 1.1** is a version of the same document translated into English by the consultant using an open source translator.

The US State of California

Although all country models centralize the control of dissemination and training of CoECs, some require self-administered accountability for continued education on the CoEC under penalty of discipline. The clearest model is that of the US in the State of California. In the State of California, judges are either appointed or elected. There are no prerequisites for training or an understanding of the CoEC for appointment. Nevertheless, the CoEC for judges in the State of California is notoriously available online and becomes the focus of judicial service once a judge is appointed.

Once appointed, judicial officers at all levels are required by the California Rules of Court to participate in, and keep verifiable records of, participation in a minimum of 30 hours of Continuing Judicial Education, with a minimum of 3 hours of ethics, every three years for their entire tenure on the bench. The Judicial Council of California, a constitutionally mandated organ of the California Supreme Court, regulates training through the Center for Judicial Education and Research (CJER). Courses are delivered by officially "Approved Providers for Continuing Education for the California Judicial Branch," of which there are 33 at this time. They are comprised of various legal and judicial education organizations such as specific courts, law schools and government agencies. The courses may take the form of in-person training sessions or online courses. Judicial officers must verify to the Judicial Council, every three years, that they have completed the courses including those in ethics and the CoEC. These verifications are subject to unannounced audits.

¹⁵⁵ As indicated in the original report on international standards and best practices, the Judicial Disciplinary Committees also operate as the tribunal that hears and enforces the CoEC.

The Russian Federation

In the Russian Federation, the Federal Law on Bodies of the Judiciary defines the roles and duties of the various organs of the judiciary. The All-Russia Congress of Judges is the supreme body of the judiciary. The Council of Judges, formed by the All-Russia Congress of Judges, oversees the Disciplinary Judicial Presence which receives and processes disciplinary complaints. Disciplinary orders from the Disciplinary Judicial Presence are transmitted to the Qualification Collegium of Judges and the High Qualification Collegium of Judges for enforcement.

The Council of Judges publishes not only disciplinary rulings, but also communiqués regarding ethics and discipline. The Council of Judges disseminates and elaborates on recommendations regarding the Code of Judicial Ethics. The Code is openly available to the judiciary and the public on the website of the Supreme Court of the Russian Federation. Information on the training of judges specifically in the Russian Code of Judicial Ethics, a subject of very narrow scope, appears to be unavailable online, likely due to the language barrier between English and Russian.

The Philippines

In the Philippines, the Supreme Court adopted a new code of conduct in 2004 based on the Bangalore Principles of Judicial Conduct. It is notoriously available from many resources including online. Rules governing grounds and procedures for the administration of complaints against judges are set out in the Rules of Court, Rule 140, available to all judges.

Training in the judiciary is the responsibility of the Philippine Judicial Academy headed by a Board of Trustees which is chaired by the Chief Justice of the Supreme Court. It has a rich content of courses on many specific items, including ethics and the Code of Conduct, specifically tailored to newly admitted and tenured judges. Additionally, the Supreme Court distributes bench books and manuals to court judges on ethics and disseminates updates, along with Internet access to the court's online E-library.

Canada

The Canadian Judicial Council (CJC) is responsible for maintaining the integrity of judicial officers, and recommending and enforcing discipline against judges. It has adopted a creative approach to dictating the paradigm for proper judicial conduct by promulgating its guidelines entitled Ethical Principles for Judges (EPJ). The EPJ is not a code itself but contains code-like features. The EPJ is the backbone of government-defined judicial conduct sanctioned by the Supreme Court. It sets out a structure for judicial behavior in three parts: Statements, Principles and Commentary.

The EPJ presents five main areas of conduct denominated as "Statements": Judicial Independence, Integrity, Diligence, Equality, and Impartiality. Each Statement is then broken down into specifically prescribed classes of behavior which most resemble an enforceable code, denominated "Principles." These Principles enumerate what a judge must and must not do. Finally, the document elaborates on each Statement and its Principles with a "Commentary." The EPJ is widely disseminated online and made a primary component of all judicial training on the subject of judicial ethics and conduct.

The CJC oversees the National Judicial Institute which trains newly-admitted judges in collaboration with the Canadian Institute for the Administration of Justice. It also offers training and coursework for the continuing education of judges. In its guidelines for professional development, the CJC imposes an enforceable obligation for all judges to develop their own "Professional Development Plan" which requires them to commit to at least 10 days of professional development per year through programs approved by the Chief Justice of the Supreme Court. A failure to do so will trigger a report by the CJC to the Supreme Court of the failure of the judge to comply. The CJC emphasizes the interplay between ethics and professional development in its professional development programming. Judges' Professional Development Plans must include an ethics component consistent with the EPJ.

Australia

Australia has no judicial CoEC. The index for proper judicial behavior in Australia is the "Guide to Judicial Conduct" which is a collaborative work created by the Australasian Institute of Judicial Administration, Inc., and the Council of Chief Justices of Australia and New Zealand. The Guide provides principled and practical guidance to judges "as to what may be an appropriate course of conduct, or matters to be considered in determining a course of conduct." The Guide states explicitly: "This publication does not purport to be a code in any sense of that word or to lay down rules. It purposely avoids using the expression 'judicial ethics' or describing conduct as 'unethical'."

Nevertheless, the Guide treats three basic principles against which judicial conduct should be tested: impartiality, judicial independence, and integrity and personal behavior. It includes guidance on family issues that may bear on professional conduct. The Guide uses narrative and anecdotes to illustrate how a judge should and should not behave in day to day circumstances including activities both inside and outside the courtroom. The Guide is readily available online, and is the standard used for ongoing professional development programs for sitting judges, which is the primary tool for training judges in Australia.

The majority of judges and magistrates in Australia are appointed from among the ranks of very experienced legal practitioners, commonly after 20 to 30 years of experience practicing law. Accordingly, they have no specific judicial training targeted for service as a judge. All of Australia's judicial training, therefore, takes place in the form of professional development programs instituted while the judge is on the bench.

Until recently, most professional development programs for judicial officers in Australia were developed and delivered by committees of judges or magistrates in Australian courts. The National Judicial College of Australia (NJCA) was created in 2002 to provide judicial development programs to all judicial officers. It has created, and made available online, a National Curriculum for professional development for Australian officers. One of the 8 modules of the curriculum, Module Four, is dedicated to Judicial Conduct. The National Curriculum was created by drawing from examples from the jurisdictions of England and Wales, Canada, New Zealand, and the US State of California.

Interpretation of CoECs

Guidance in the interpretation of CoECs among the country experiences ranges from substantial advisory support to nil. The consultant has confirmed by direct communications with judicial scholars in Peking that the *PRC*

has no mechanism for interpretation of the CoEC promulgated by the Supreme People's Court which is enforced by the court where a judge serves. This notwithstanding, Article 95 of the PRC Code of Conduct for Judges states explicitly that the Supreme People's Court shall be responsible for interpreting the Code. Likewise, the *Philippines* has no mechanism for interpreting the Philippines Code of Judicial Conduct. The CoEC of the *Russian Federation* offers no direct interpretation of its CoEC, but the CoEC itself is very elaborate in explanation and text which defines in relative detail what a judge may and may not do. The best examples of elaborate interpretation tools originating with the judicial disciplinary body are in the CoECs of the US State of *California, Canada and Australia*. In these cases, the CoECs themselves contain text with narrative commentary and annotations to guide their understanding, compliance and enforcement. By way of demonstration, annexes are included as examples of how this is done among these three jurisdictions on the subject of Impartiality.

The *California* Code of Judicial Conduct sets out 6 Canons. These are then broken down into sub-Canons which instruct what a judge must and must not do. Each and every Canon and sub-Canon is elaborated by a very substantial "Advisory Committee Commentary" which realizes the rule in true-to-life circumstances, frequently giving examples. See **Annex 2**, California Code of Judicial Conduct, Canon 3. Additionally, the California Commission on Judicial Performance publishes online the fully articulated decisions on disciplined judges, and makes available and has prepared *compilations of private and public discipline for different types of judicial misconduct over the years for educational purposes*.

Likewise, the Ethical Principles for Judges of *Canada* lists 6 major components of the ethical structure for judges, each with its own broad "Statement" of the overall objective of the particular topic; e.g., Impartiality. Each Statement is then broken down into many "Principles" which describe in detail what a judge must and must not do in certain circumstances. These are followed with a Commentary which gives a sense of the purpose of the particular ethics topic, its historical background, and examples of how it should be applied at the behavioral level. See **Annex 3**, Canadian Ethical Principles for Judges, 6 Impartiality.

Finally, although the *Australian* Guide to Judicial Conduct is said not to be a code, it defines three major "Guiding Principles" and then sets out in greatly defined detail an explanatory text, much like a reference textbook, what a judge should and should not do in specific circumstances. See **Exhibit 4**, Australian Guide to Judicial Conduct, Chapter 3, Impartiality.

Based on the examples from the country experiences, the team may wish to resolve the issue of interpreting rules that have no official documents, such as the CoEC for Judges 2018, by including in the new CoEC something similar to the Advisory Committee Commentaries of California, and comments in the Canadian model. It may elect to include even more elaborate detail as in the Australian model.

Supervision of CoEC Implementation

Mechanisms for the administrative supervision of CoEC implementation vary among the international examples, but alternate between *two distinct administrative methods: Internal administration within the courts, and*

independent commissions and councils. The PRC uses a hybrid of these administrative alternatives, borrowing from the administrative capacities of both the court where the accused judge serves, and the Provincial Judicial Disciplinary Committee (PJDC). There is no direct supervision of the implementation of the PRCs CoEC at the national level. The court where the accused judge serves initiates and processes complaints through its own Adjudication Supervision Departments (ASD). Serious matters that merit a review for violation and discipline are then referred by the relevant ASD to the PJDC for formal inquiry, hearing and adjudication. The PJDC then returns the matter to the originating court ASD for execution of disciplinary orders by that court. The PJDC keeps records of its disciplinary actions while the originating court monitors the ongoing conduct of the accused judge.

Similarly, the *Philippines* uses a court-driven method of implementing its CoEC. In the *Philippines*, the Supreme Court through its Office of the Court Administrator is the

focus of the initiation of complaints and carries the disciplinary process all the way through the hearing and enforcement process. The disciplined judge may be referred back to his or her originating court of service for continued work. However, it is the Office of the Court Administrator of the Supreme Court which supervises the process and monitors the judge's professional status and behavior henceforth.

Likewise, the implementation of the *Australian "Guide to Judicial Conduct"* is handled exclusively by the Australian Supreme Court. In *Australia*, the Chief Justice of the Supreme Court is responsible for managing and supervising all disciplinary actions against judges from the initiation of a complaint through enforcement of any disciplinary orders. The Chief Justice (CJ) may act in cooperation with the Attorney General if preliminary facts and the nature of the accusation indicate that a crime may have been committed. Once the office of the CJ concludes from a preliminary investigation that the accusations may merit discipline, the CJ appoints an internal *ad hoc* Conduct Committee to handle the entirety of the disciplinary process in-house, from inquiry through hearing and recommendation for discipline. The CJ undertakes to enforce any discipline recommended by the Conduct Committee.

These international examples of court-based implementation of CoECs is contrasted with the jurisdictions of the *US State of California*, the *Russian Federation*, and *Canada* which use independent specialized commissions and committees.

The *US State of California* uses a permanent constitutionally mandated independent agency, the California Commission on Judicial Performance (CCJP), to supervise all aspects of the implementation of its CoEC. The CCJP is a very large and well-funded government agency which manages all aspects of issues of judicial competence including from the initial complaint, through disciplinary hearings and enforcement. It has the power to issue and enforce orders

of judicial discipline including removal of a judge from office. The only interplay between the CCJP and the court system involves the accused judge's right of appeal to the California Supreme Court.

The *Russian Federation* likewise uses its Council of Judges as the primary manager of its CoEC, although it is embedded in a rather complex administrative environment that requires interaction and reporting to several government agencies. In the *Russian Federation*, the Judicial Disciplinary Presence (DJP), a panel of six high-level judges, is the ultimate administrative authority for judicial discipline. Although authority rests with the DJP, it is the Qualification Collegium of Judges (QCJ), a 21 member panel including representatives of the public, who determines who may and may not sit as a judge in the Russian Federation. The QCJ's duties include managing the entire disciplinary process which may result in the removal or "disqualification" of a judge. The 29-member High Qualification Colloquium of Judges (HQCJ) oversees the QCJ, and is the body to whom accused judges may appeal decisions of the QCJ. No court is involved in the process.

Canada also uses an administration-driven method of implementing and supervising the judicial disciplinary process under its Ethical Principles for Judges (EPJ). In *Canada*, the Canadian Judicial Council (CJC) of 41 members supervises the entire process for implementation of the EPJ. It manages claims against judges from the initial complaint phase all the way through to final recommendation which may terminate in resignation or a recommendation to Parliament for removal from office. The CJC delegates the disciplinary proceedings internally to its Judicial Conduct Committee for investigation who in turn refers the matter, if necessary, to the CJC Review Panel for hearing. No court is involved in the process.

Enforcement of Disciplinary Orders

Once a disciplinary body has determined that there has been a violation, the recommendation or order for punishment must be executed. This is handled principally in one of two ways among the country examples, by: (1) administrative order, or (2) court order. In the former case, the disciplinary body makes findings and recommendations, and is inherently empowered to determine the professional fate of the judge. In the latter case, a formal order is issued from a court that is then executed in the same manner as any court order would be executed. The studied jurisdictions are split in their methodology.

Agency Driven Discipline Enforcement

The three jurisdictions following the administrative approach are the *US State of California*, the *Russian Federation*, and *Canada*. In California, the California Council on Judicial Performance (CCJP), a constitutionally empowered body, is the same body that both makes findings of judicial misconduct, and issues orders of consequence

that are effective immediately against the guilty judge. These consequences are wide-ranging from mere private reapproval through removal from the bench. The only role any court has in the process is by appeal to the Supreme Court. Likewise, the *Russian Federation* uses the same agency originally empowered to qualified judges to disqualify them.

In the *Russian Federation*, the Qualification Collegium of Judges (QJC) determines both whether a judge is guilty of a violation calling for discipline including removal, and whether judges are qualified to sit on the bench in the first place. Hence the term "Qualification" in the name of the entity. Inasmuch as there are only two penalties available in the Russian system of discipline against judges, any warning and removal, the QJC executes and enforces both types of penalties simply by issuing a warning or *disqualifying* the judge from further service. The *Canadian* model likewise makes use of its Judicial Conduct Committee to manage the entire disciplinary process through execution.

In *Canada*, the Judicial Conduct Committee (JCC) handles the entire disciplinary process through recommendation and execution of its own recommendation as it may order. In addition to punitive recommendations, the JCC also determines whether the accused judge is liable for wrongdoing or, alternatively, incapacitated. In the case of incapacitation, the JCC summarily disqualifies the judge. In the event the findings indicate wrongdoing that is so egregious to call for removal, the matter is referred to the Canadian Parliament through the Ministry of Justice for the final order to remove the judge from service. No disciplinary proceeding in Canada has ever resulted in the necessity of a referral to Parliament for removal inasmuch as judges who have preceded that far in the process have all voluntarily resigned.

Court Ordered Discipline

In the *PRC*, the Judicial Disciplinary Committee (JDC) of each High People's Court in the 14 provinces handles the entirety of the disciplinary process against judges from inception, through to a detailed finding of culpability after hearing. *The court where the judge serves is responsible for issuing an order of punishment* based on the findings of the JDC and seeing to its execution. See **Annex 1**, pp 40-58, **Annex 1.1** pp 44-49.

In the *Philippines*, the Supreme Court manages all disciplinary proceedings from inception to findings of culpability through its Office of the Court Administrator (OCA). The OAC, by order of the Supreme Court, thereby executes the penalties reflected in the OCA's findings.¹⁵⁶ likewise, the Supreme Court of *Australia* manages the execution of disciplinary punishment against judges.

¹⁵⁶ It is noteworthy that in addition to its disciplinary role, the Supreme Court of the Philippines also uses positive incentives to improve judicial performance such as issuing judicial excellence awards which may lead to promotion.

In *Australia*, the Supreme Court manages the entirety of the discipline process from inception through execution, using an *ad hoc* Conduct Committee for matters serious enough for investigation and a fact-finding hearing. The Conduct Committee serves the Supreme Court much in the way the Filipino Office of the Court Administrator serves the Supreme Court of the Philippines. The Conduct Committee makes findings of discipline as well as whether the accused judge is physically or mentally unfit to serve. The Conduct Committee then makes a recommendation to the Supreme Court which issues an executable order setting out the punishment recommended by the Conduct Committee, or adjusts it accordingly. If the conduct is egregious enough to warrant removal, the Supreme Court refers the removal question to the Australian Parliament who has the sole power and authority to remove a judge from office.

Encouraging CoEC Compliance

Evidence of policies and regulations among the countries examples that encourage judges to comply with their respective CoECs is sparse, and in most cases nil. Viet Nam may indeed be the most advanced nation in this regard by virtue of its Law on Emulation and Commendation which accords excellence awards and private titles such as Outstanding Judge, Distinguished Judge, and Exemplary Judge. No other such law, system or policy appears in the examples studied. The only country that acknowledges good judicial behavior through direct encouragement is the Philippines, whose Supreme Court issues annual judicial excellence awards to outstanding judges. These may be cited when considering a judge for promotion and professional advancement.



EU JULE

Towards a legal and
justice system for all