



**CENTRAL COMMITTEE
FOR
INTERNAL AFFAIRS**



**STUDY REPORT ON DEVELOPING
GUIDELINE OF CODE OF
CONDUCTS/ETHICS IN JUSTICE
SECTOR – A INTERNATIONAL
EXPERIENCE AND
RECOMMENDATIONS FOR VIET NAM**

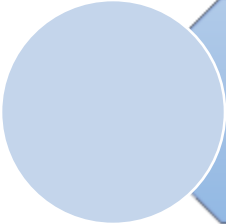
Lawyer Nguyen Hung Quang

Assoc. Prof, PhD. Tran Van Do

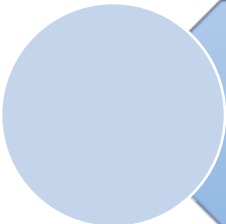
INTRODUCTION

- ❖ The orientation of **Resolution 49-NQ/TW**: Building a strong team of judicial staff and judicial support staff 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.
- ❖ The orientation of **Resolution 48-NQ/TW**: Developing professional ethical standards for each category of cadres and civil servants; Focusing on professional ethics education for judicial posts.
- ❖ The orientation of **the Political Report of the 12th Party Central Committee**: Focusing on building a contingent of cadres and civil servants with sufficient quality, capacity and prestige, serving the people and the development of the country.
- ❖ Outcomes of the **Report on Orientation of Improving Codes of Ethics and Conduct for Professionals in the Justice System to Meet the Requirements for Judicial Reform in Viet Nam** by Central Committee for Internal Affairs and UNDP in 2020: Analysis of international experiences in developing guidelines of CoECs in judicial sector.

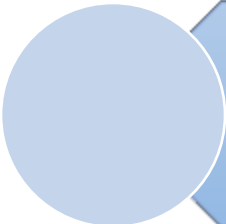
STRUCTURE OF THE STUDY



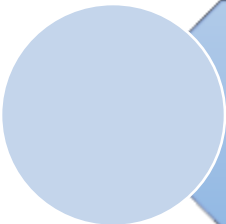
Part I – Current situation of instruction for codes of ethics and conduct in judicial activities in Viet Nam



Part II – Experiences of international and regional organizations in developing the guidelines of code of ethics and conducts in justice sector



Part III – International experiences of several countries in developing the guidelines of code of conducts in justice sector



Part IV – Conclusions and recommendations



PART I – CURRENT SITUATION OF GUIDELINES FOR CODES OF ETHICS AND CONDUCT IN JUDICIAL ACTIVITIES IN VIET NAM

REAL SITUATION OF GUIDELINES FOR CoECS IN JUDICIAL ACTIVITIES IN VIET NAM

The CoECs for Judges, Procurators and Lawyers in Viet Nam **has been neither official guiding document nor official explanatory mechanism.**

In fact, the interpretation of CoECs is **integrated into such activities as educating, training, and researching based on the characteristics of each title/occupation.**

The comments and explanation of the CoEs

- ❖ ***The CoEC for Judges 2018***: Published in the People's Court Journal and implemented through the training program of the People's Court system.
- ❖ ***The CoEC for Procurators***: There is not much information related to the interpretation and guidance.
- ❖ ***The CoEC for Lawyers 2019***: Interpreted through professional training sessions, seminars, articles by Lawyers.

SOME CoECS IN OTHER FIELDS IN VIET NAM

CoECs applied to other titles in judicial area (Notaries, Auctioneers, and Executors)

- There is neither official guidance documentation nor official explanatory mechanism.

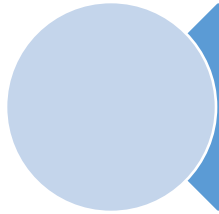
CoECs issued by specialized State management agencies (labor – war invalids and social affairs, transportation, social insurance, etc.)

- There is neither official documentation nor guideline.

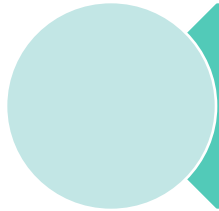
CoECs in some professional occupations

- A number of professional CoECs have been quite complete, specific **with the guidance**.
- For example: the ***Professional Ethical Standards for Accounting and Auditing*** and the ***Vietnamese Standards for Internal Auditing and principles of professional ethics for internal audit*** have quite specific guidelines, including various examples and illustrative situations.

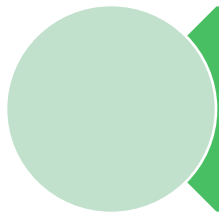
ADVANTAGES IN DEVELOPING GUIDELINES FOR CoECS IN JUDICIAL ACTIVITIES IN VIET NAM



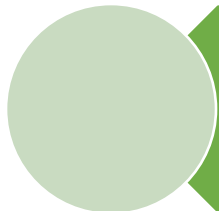
It is feasible to develop guidelines for CoECs of Judges, Prosecutors and Lawyers, and it is consistent with the meaning and important roles of these three professions to the society.



There will be certain advantages if the guidelines are developed at the present, especially in the context that the Party and State are determined to improve the quality of judicial activities.

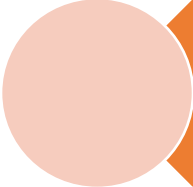


As the above CoECs have been issued recently (from 2017 to 2020), it will be convenient to synthesize the documents and information used in the drafting process.

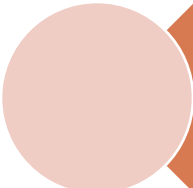


The development of guidelines will be quite convenient thanks to many available guidelines for CoECs in judicial sector on the international scale.

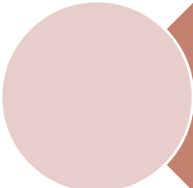
CHALLENGES IN DEVELOPING GUIDELINES FOR CoECS IN JUDICIAL ACTIVITIES IN VIET NAM



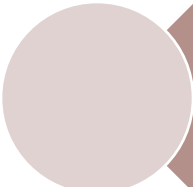
To draft the guidelines, it requires thorough study in many aspects, including not only international experience but also particular research, survey, and assessment on actual implementation in Viet Nam.



To have relevant and suitable illustrative examples of the behaviors described in CoECs, it is necessary to perform the synthesis, statistics, and analysis of both good practices and violations against CoECs which have already been handled.



The drafting process may require the coordination by various agencies and target groups to ensure that the guidelines are synchronous, presenting an objective and multi-dimensional view, and the perspective of different judicial/professional titles.



The guidelines convey correctly and appropriately the spirit, desire, the governing scope of the principles in the CoECs issued.

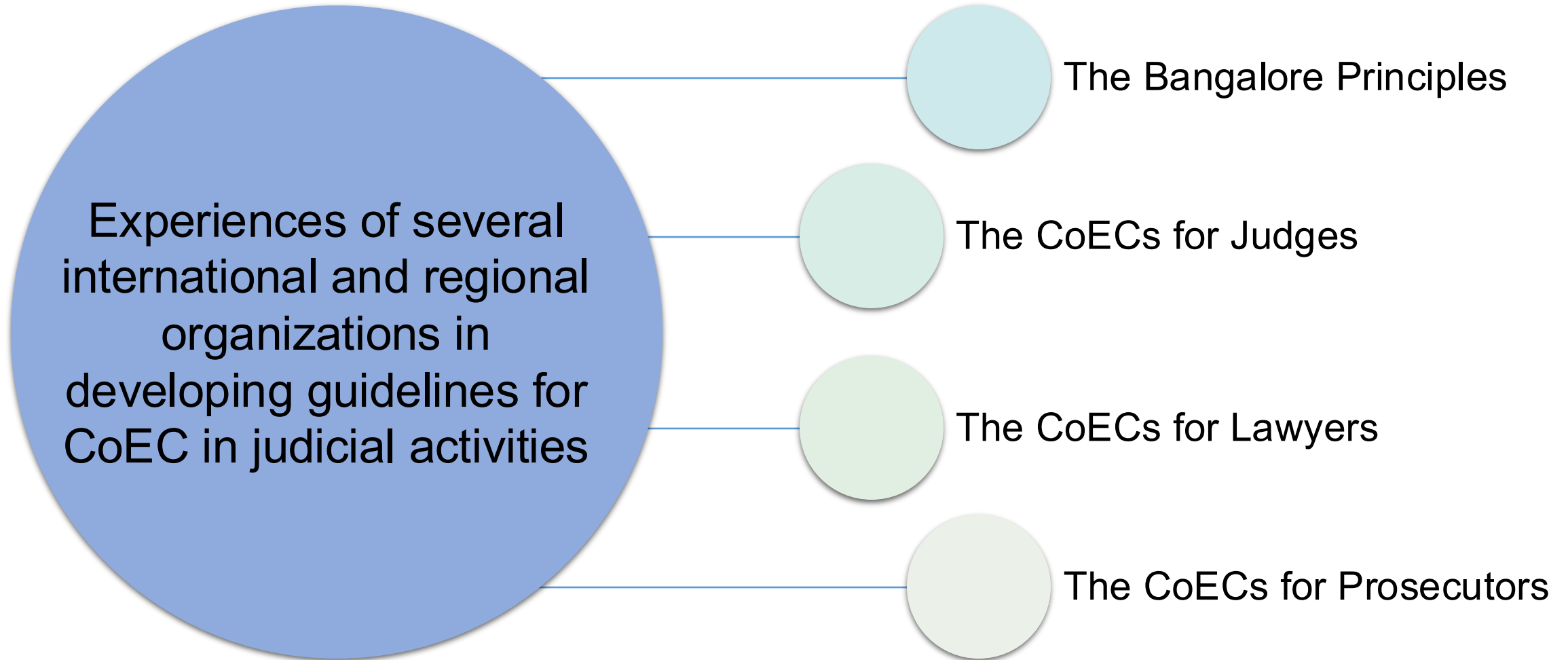


It requests to consider drafting the guidelines in the relationship with training, dissemination activities for the documents, as well as assessment of the need and feasibility to establish one/several Ethical Committees to be responsible for providing specific instructions and answers.

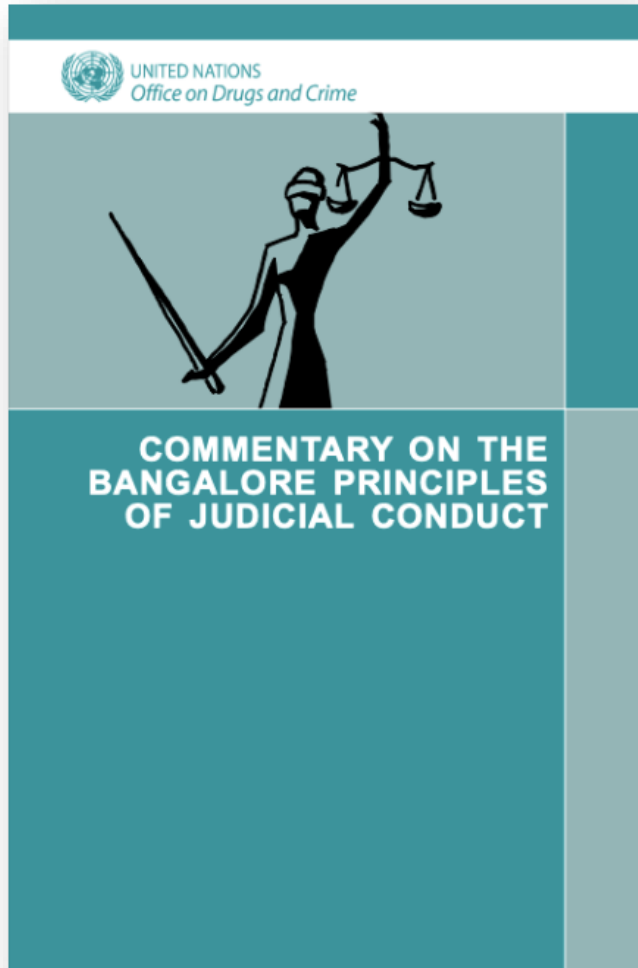


PART II – EXPERIENCES OF INTERNATIONAL AND REGIONAL ORGANIZATIONS IN DEVELOPING THE GUIDELINES OF CODE OF ETHICS AND CONDUCTS IN JUSTICE SECTOR

EXPERIENCES OF SEVERAL INTERNATIONAL AND REGIONAL ORGANIZATIONS



GUIDELINES OF THE BANGALORE PRINCIPLES (1)



*The cover of the Commentary
on Bangalore Principles*

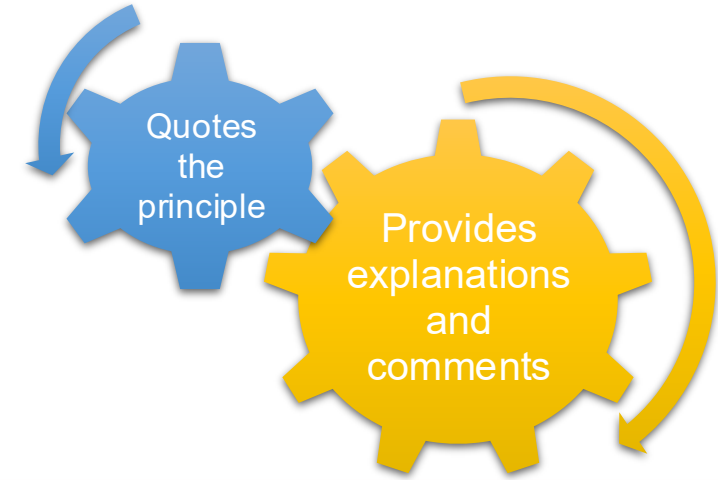
- ❖ Developed by judicial ethics experts from over 75 nations and from the United Nations and published by the International Judicial Integrity Group (JIG) in 2007.
- ❖ Provide detailed information on the process of drafting the Bangalore Principles of Judicial Conduct, list of references during the drafting process (including 24 national CoECs, 8 regional/international CoECs), etc.
- ❖ Become a collective international resource to provide a complete and universal explanation of the Canons and how they should be applied.
- ❖ Provide detailed commentary on each of the Canons in the Principles, from the Preamble to the 6 core Values of the Principles.

GUIDELINES OF THE BANGALORE PRINCIPLES (2)

For example: The general principle of Value 1 about “Independence”

The commentary first quotes the general principle verbatim.

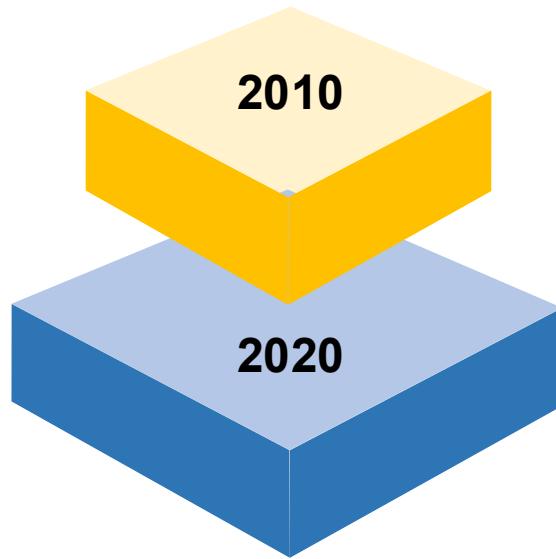
“Judicial independence is a pre-requisite to the rule of law and a fundamental guarantee of a fair trial. A judge shall therefore uphold and exemplify judicial independence in both its individual and institutional aspects”.



The commentary provides explanations and comments regarding:

- Judicial independence is not a privilege but a responsibility of Judges;
- Judicial independence is both a Judge’s state of mind and a set of institutional (independence from the executive and legislative branches);
- The concepts of “independence” and “impartiality” are separate and distinct;
- The conditions for judicial independence (security of tenure and financial security, etc.).

GUIDELINES OF THE BANGALORE PRINCIPLES (3)



❖ 2010

JIG also published an independent document to supplement the Commentary on the Bangalore Principles – ***Measures for the Effective Implementation of the Bangalore Principles***.

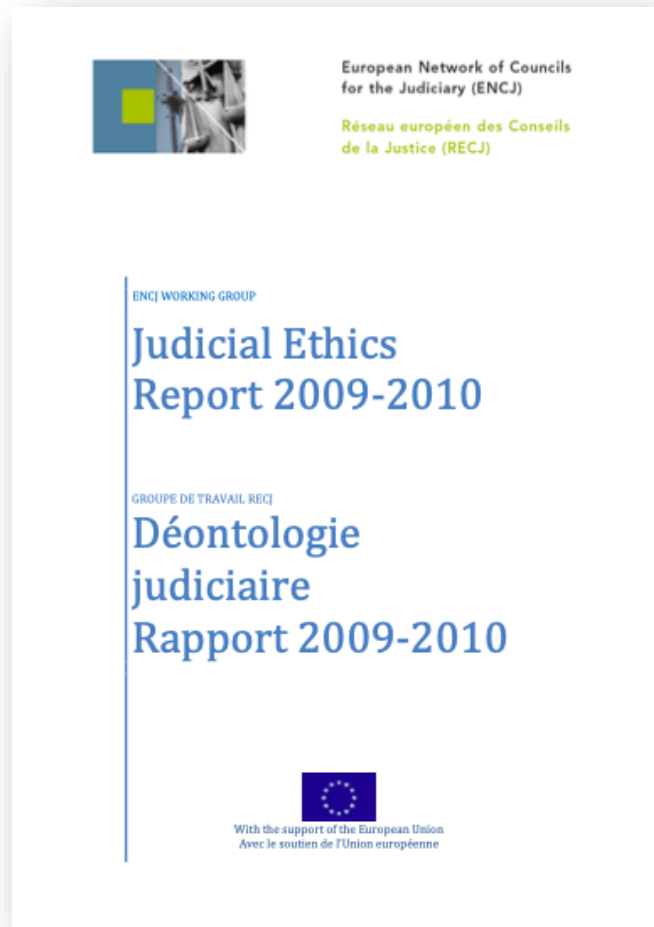
The document **recommends establishing a Judicial ethics advisory committee** of sitting or retired Judges to advise Judges on the propriety of their proposed future conduct.

❖ 2020

JIG issued an additional guideline on ***“How to Develop and Implement Codes of Judicial Conduct”***.

This guide offers advice on the procedural steps of developing a CoEC, the basic content, structure and scope of a CoEC, and developing enforcement mechanisms; **establishing a mechanism or procedure to advise Judges** on the correct application of the code of conduct, such as ethics committee, advisory bodies, commissions, etc.

OTHER GUIDELINES OF SEVERAL CoECS FOR JUDGES (1)

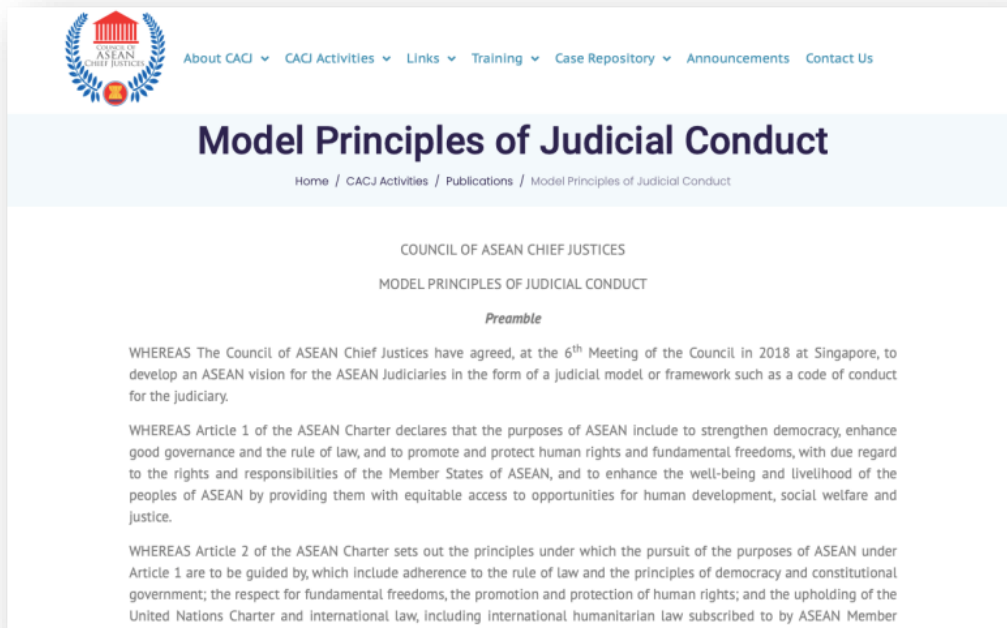


□ The Europe

- The Report “***Judicial Ethics – Principles, Values and Qualities***” was developed by the Working Group of the European Network of Judiciary Councils (ENCJ).
- The Report is an independent guide for the conduct of European judges, which is not a guideline for any specific CoECs and **not binding**.
- The Report analyzes the content of some qualities that a Judge should have. Some qualities are specifically analyzed by the behaviors that Judges should perform in some specific situations.

The cover of the Report “Judicial Ethics – Principles, Values and Qualities”

OTHER GUIDELINES OF SEVERAL CoECS FOR JUDGES (2)



The screenshot of the Model Principles of Judicial Conduct promulgated by the ASEAN Council of Chief Justices

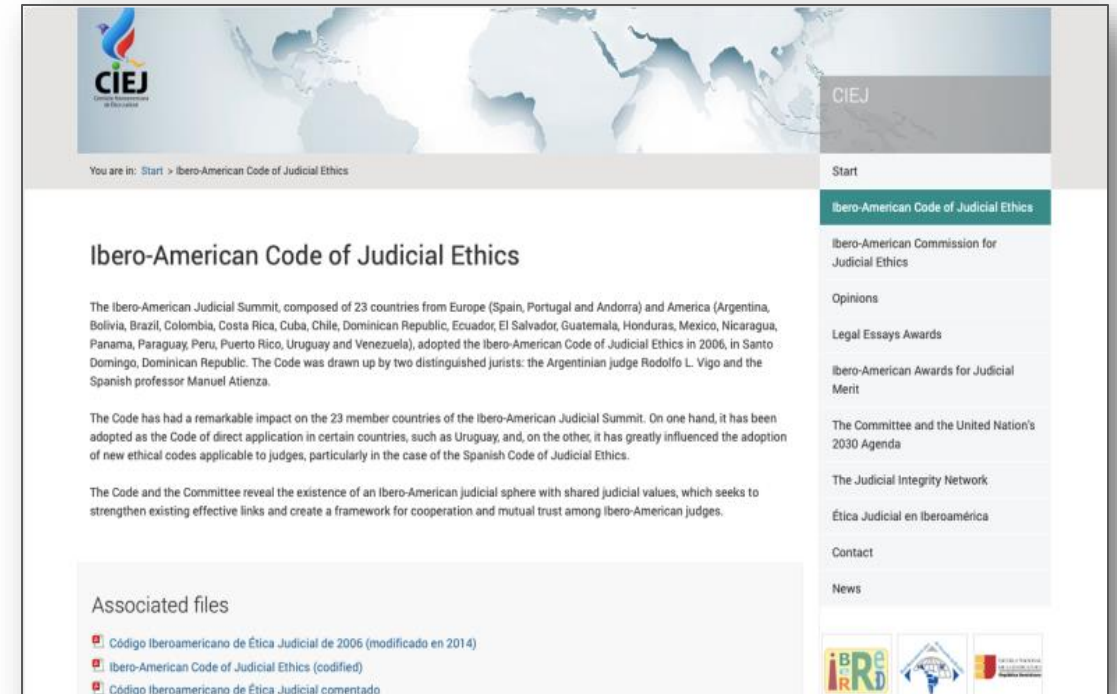
❑ The South-east Asia

- The ASEAN Council of Chief Justices has issued the ***Model principles of Judicial conduct*** .
- The Model Principles (i) establish the model standards of Judges' ethical conduct to guide Judges and the judicial agencies to regulate the conduct in judicial activities, (ii) assist members of the executive and the legislative branch, and lawyers and the public to better understand and support judicial activities.
- The Model Principles **do not have guidelines**, only stipulate 5 values that are the qualities that Judges need to maintain, including independence, integrity, propriety, and fairness and impartiality, competence and efficiency.

OTHER GUIDELINES OF SEVERAL CoECS FOR JUDGES (3)

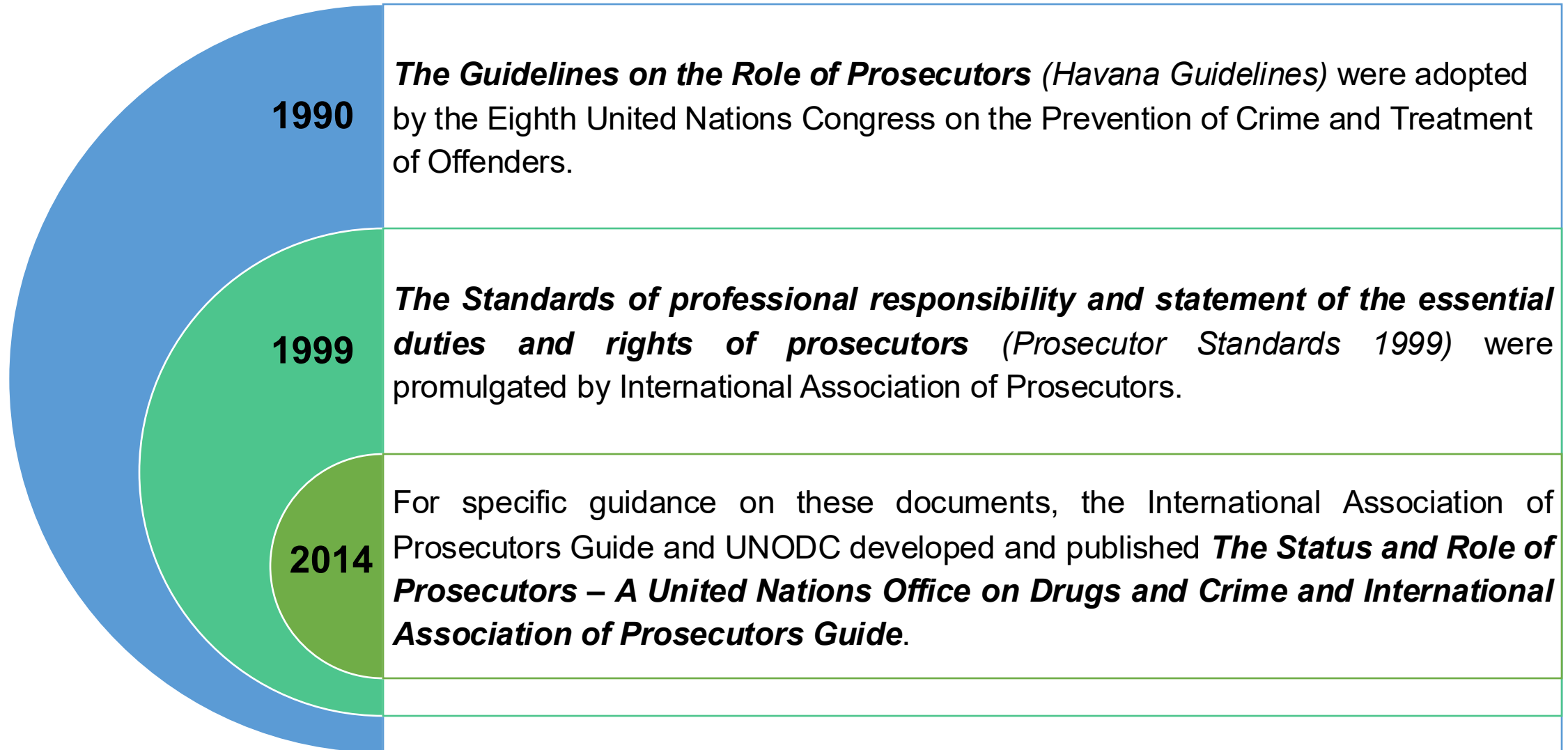
❑ The Americas region

- ***The Ibero-American Code of Judicial Ethics*** adopted by the Ibero-American Judicial Summit acts as a reference guide to professional ethics.
- In spite of **not having binding effect** on member states, the Ibero-American Code of Judicial Ethics has had a significant impact on 23 member states of the Ibero-American Judicial Summit.
- This Code of Judicial Ethics includes 95 articles, focusing on 2 main contents: (i) Judicial ethics principles; and (ii) Activities of the Ibero - American Commission of Judicial Ethics.
- This Code of Judicial Ethics also **does not have a guideline**.

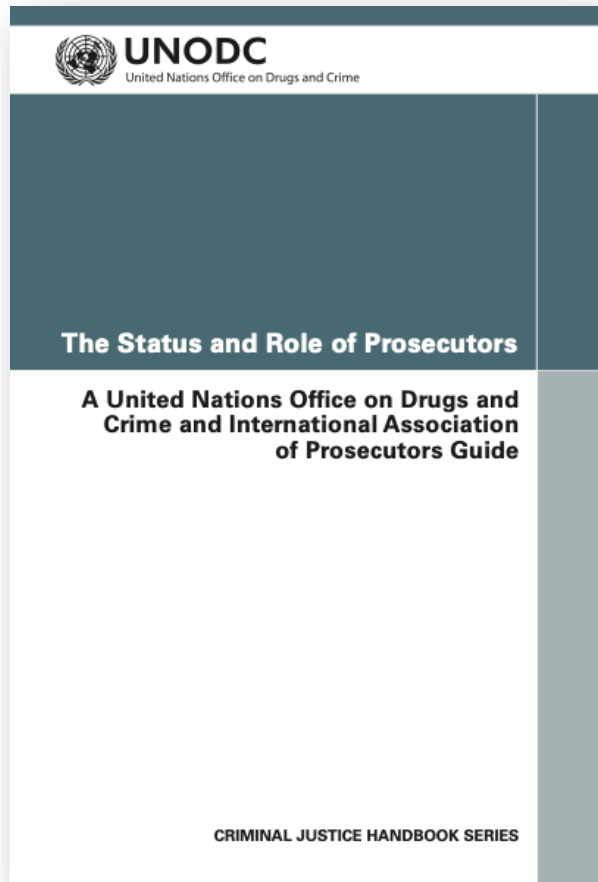


The screenshot of the website uploading the Ibero-American Judicial Code

OTHER GUIDELINES OF SEVERAL CoECS FOR PROSECUTORS (1)



OTHER GUIDELINES OF SEVERAL CoECS FOR PROSECUTORS (2)



The cover of The Status and Role of Prosecutors – A United Nations Office on Drugs and Crime and International Association of Prosecutors Guide

- The Guide of UNODC and the International Association of Prosecutors includes 2 main parts :

Part I – Status of Prosecutors

- Analyzes some of the prosecutor's ethical qualities;
- Provides guidance regarding the work organization, qualifications, selection and training, rights and obligations, and responsibilities and discipline of Prosecutors.

Part II – Role of Prosecutors in criminal proceedings

- The Prosecutor's role in the proceedings;
 - The Prosecutor's role in sentencing, asset restraint and forfeiture;
 - The guidance on relations with victims and witnesses, with vulnerable persons, with the media and the public, international cooperation, etc.
- In each section, the manual cites relevant content from the Havana Guidelines and the Prosecutor Standard 1999, providing analysis and interpretation of the cited content, including some examples, practices.

OTHER GUIDELINES OF SEVERAL CoECS FOR LAWYERS (1)

International Principles on Conduct for the Legal Profession – The International Bar Association (IBA)

- **The commentary attached to the Principles** is structured in the order of the 10 basic principles in the Principles.
- Comments on each principle include: (i) **A verbatim citation of the principle**; (ii) **The explanatory note** on the grounds and reasons for developing the principles as well as the understanding and application of the principles; and (iii) **The international implications** provide analysis on the application of some countries on the content of the rules, international cooperation of the lawyers in different countries, the provision of services across borders, or considerations for international law firms.
- The final section of the commentary on the International Principles on Conduct for the Legal Profession **includes definitions for some terms used in the document**.

OTHER GUIDELINES OF SEVERAL CoECS FOR LAWYERS (2)

Code of Conduct for European Lawyers	American Bar Association's Model Rules of Professional Conduct
• The commentary were published at the same time with the Code/Rules. • The attached comments are not binding or do not impose obligations on the subjects of application. • The commentary focuses on explaining the basis, origin, meaning and purpose of the principles, illustrating the issues that the principle aims to regulate, providing guidelines for convenient and precise application of the principles.	
The comment section is separated section of the Code.	The commentary is attached with each principle.

SUMMARIZE THE EXPERIENCES OF INTERNATIONAL AND REGIONAL ORGANIZATIONS (1)

- The development of manuals for CoECs is **a fairly common international practice**.
- Most of the CoECs analyzed have their own guidelines or have a guidance section/content attached to the CoECs.
- Most of the CoECs are drafted in a concise manner, most of which only list the main principles, so that the development of guiding documents for CoECs plays important role to promote compliance with CoECs.

- The guidelines can be **drafted and issued at the same time as the drafting of the CoEC or drafted and issued after the publish of the CoEC**.
- The guidelines can **include instructions, commentary for multiple CoECs and/or related documents**, for example the Status and Role of Prosecutors – A United Nations Office on Drugs and Crime and International Association of Prosecutors Guide include guidelines for both the Prosecutors Standards 1999 and the Havana Guidelines.

- The guidelines of the CoECs **are not binding**. This is evident in some cases where the CoEC itself is not binding (such as the Bangalore Principles or the International Principles on Conduct for the Legal Profession).
- In some other cases where the CoECs are binding (such as the Code of Conduct for European Lawyers), the guidelines are not binding.

SUMMARIZE THE EXPERIENCES OF INTERNATIONAL AND REGIONAL ORGANIZATIONS (2)

- The guidelines often focus on a few main contents such as the explanation of the basis (including the legal basis), reasons for the regulation of the principles, the explanation of some terms used in the principles, commenting on the practical application of the principles, including quoting relevant decisions and judgments, and giving examples of behavior or actions should be conducted or not in order to ensure the principles' compliance, etc.
- Guideline/commentary's content can be **attached with each principle or issued as a separated section/document from the CoECs.**

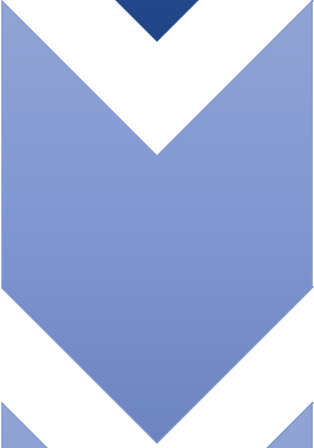
- The guidelines are often **issued by the same organizations issuing the CoECs.** This is reasonable to ensure the legitimacy of the guidelines, as well as to ensure that the contents of the instructions, comments reflect the will of the drafting committees of the CoECs, and do not exceed the scope of the CoECs.
- It should also be noted that the issuance of guidelines also needs to be **considered in relation to the establishment of a formal or informal interpretation mechanism of CoECs** in countries.
- Currently, many international and regional organizations recommends that countries **establish an ethics body/committee to advise on professional ethics issues.**

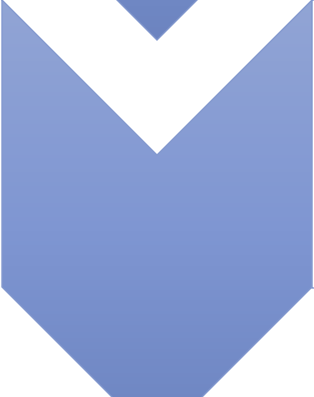
**PART IV –
CONCLUSIONS AND
RECOMMENDATIONS**



CONCLUSIONS AND RECOMMENDATIONS (1)

- 
- It is necessary for Viet Nam to **develop guidelines of the CoECs in justice sector**.
 - In particular, It is necessary for Viet Nam to develop the corresponding guidelines of the COECs for Judges, Procurators and Lawyers.

- 
- The development of guidelines will **contribute to uniform and effective implementation of the COECs**, bringing Viet Nam's ethical standards in justice sector **closer to international standards and best practices**.
 - These guidelines are also **important in training courses** for Judges, Procurators and Lawyers.

- 
- According to the analysis of relevant international experiences, **the issuance of guidelines after the issuance of the CoECs themselves** is also quite common.
 - **The issuance of a joint guideline for 2 CoECs with the same subject matter** (as in the case of 2 CoECs for Procurators in Viet Nam) has also been witnessed according to the analysis of international experiences in the Report.

CONCLUSIONS AND RECOMMENDATIONS (2)



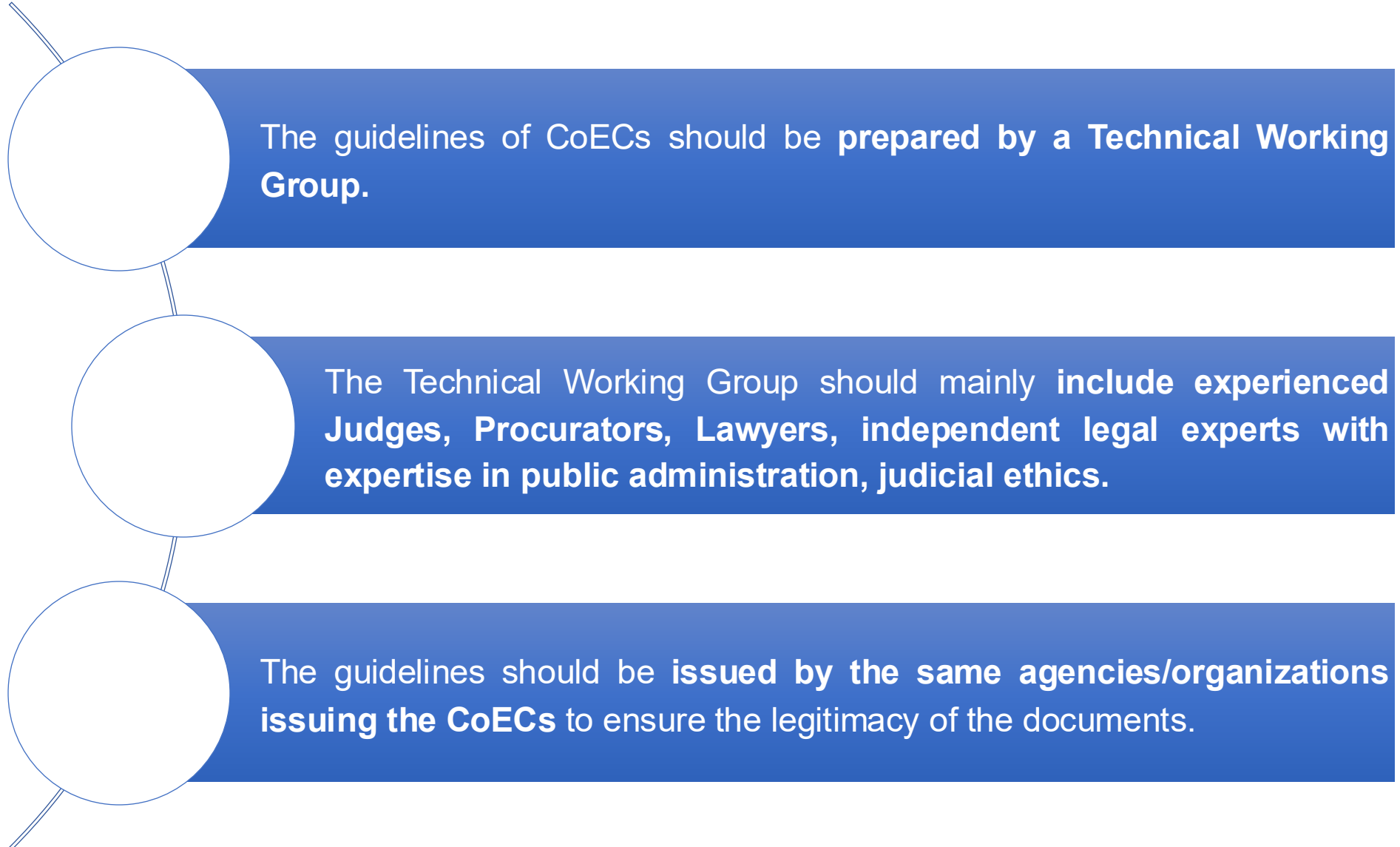
CONCLUSIONS AND RECOMMENDATIONS (3)

The main structure of the guidelines should include some of the following:

- Explanation of the basis for promulgating the principles;
- The reason, necessity, meaning of the regulation and enforcement of the principles;
- Explanation of some terms used in the principles;
- Comments on the practical application of the principles, including citing relevant decisions and judgments, giving real-life examples of behavior that should be taken or behaviors that should be avoided to ensure compliance with the principles, etc.

- ✓ The expert groups in charge of drafting guidelines should **conduct statistics, summary, and analysis of judgments and decisions to handle violations, the good practices in the implementation related to the CoECs** of Judges, Procurators, and Lawyers to illustrate.
- ✓ The main body of the guideline of each CoEC should **follow the structure of each CoEC**.
- ✓ The guideline should also **include some other sections** such as a general introduction to the purpose and process of developing the document, an introduction to the Technical Working Group members in charge of the guideline development, user guide, instructions for commenting on the guideline, as well as relevant appendices.

CONCLUSIONS AND RECOMMENDATIONS (4)



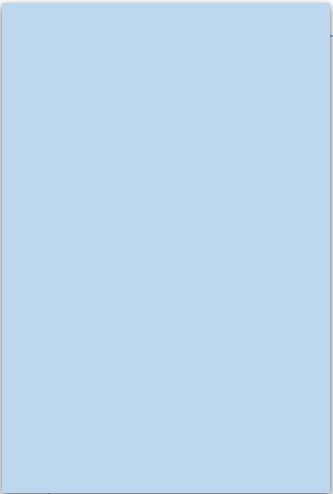
CONCLUSIONS AND RECOMMENDATIONS (5)

The development of guidelines is **inseparable from the training on judicial ethics** for Judges, Procurators and Lawyers.

The guideline is **the important and useful source of training in judicial ethics, as well as the training programs** for Judges, Procurators, and Lawyers.

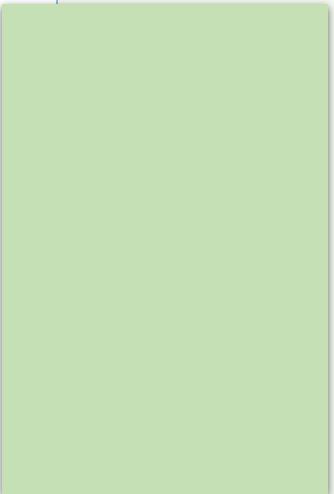
A good quality guideline will contribute to improving the quality of training on ethics, by combining it with the case-based training method in the curricula on judicial ethics.

CONCLUSIONS AND RECOMMENDATIONS (6)



The **establishment of an Ethics Committee** should also be considered as **a formal mechanism for interpreting the content of CoECs**.

- The consulting opinions/advice given by the Ethics Committee are not binding but have high persuasive value and can be aggregated as a reference source in amending and supplementing the guidelines in the future.
- The members of the Ethics Committees in many countries often include scholars, former Judges, retired lawyers and other experts (in addition to incumbents, if any).



- On the other hand, Viet Nam may consider **adding the function of “explaining, guiding and advising on the implementation of CoEC”** into the activities of the agencies in charge of monitoring/handling violations related to the implementation of the CoECs of Judges, Procurators and Lawyers, and consider **setting up sub-committees under these agencies**.

- Viet Nam can also **study and set up professional organizations** such as the Association of Judges and the Association of Procurators to **support and monitor the implementation of the CoECs**.

CONCLUSIONS AND RECOMMENDATIONS (7)

PROPOSAL ON STRUCTURE AND DETAILED OUTLINE OF THE GUIDELINES OF THE CoECs FOR JUDGES 2018

I. Introduction

A general introduction to some of the following content:

- An overview of the need and importance of developing a guideline for the effective implementation of the CoEC.
- The significance of CoEC for judicial activities in general and for Judges in particular.
- A general introduction to the 2018 CoECs for Judges, focusing on the advantages and disadvantages in the process of applying the Code of Conduct in practice.
- Summarization of the guideline drafting process, introduction to the members of Technical Working Group responsible for drafting the guideline.
- A clear explanation on the "no mandatory value" of the guideline.
- Introduction of the formal/informal consultation mechanism (if any) in case the Judges seek for advice, guidance, and answers to specific ethical situations.
- Instructions on how to use the guideline (structure of each regulation explanatory notes, instructions for submitting comments for the guideline).

II. Main content

This section follows the structure of the CoECs for Judges 2018 (according to each Article specified in the CoEC), in the instructions for each Article will include the following contents:

- The excerpt re-quotes the corresponding content in the CoECs for Judges 2018.
- Comments and explanations: This section states the reason, necessity and significance of the development and implementation of the principles; the basis for promulgating principles (including legal bases in the Vietnamese legal system and international laws); explains some specific terms used in the principles (if any); comments on the practical application of the principle, citing relevant decisions and judgments, and providing examples of behavior that should be taken or that should be avoided to ensure compliance of the principles, etc.
- The effect of the guideline.

III. Appendix

This section summarizes the documents that have been used as references in the process of developing the Guideline, including international and domestic legal regulations, referenced CoECs, articles/studies of experts, scholars, cited judgments, decisions, etc.

THANK YOU!

Kindly send the comments/opinions to
quang@nhquang.com

05/2022