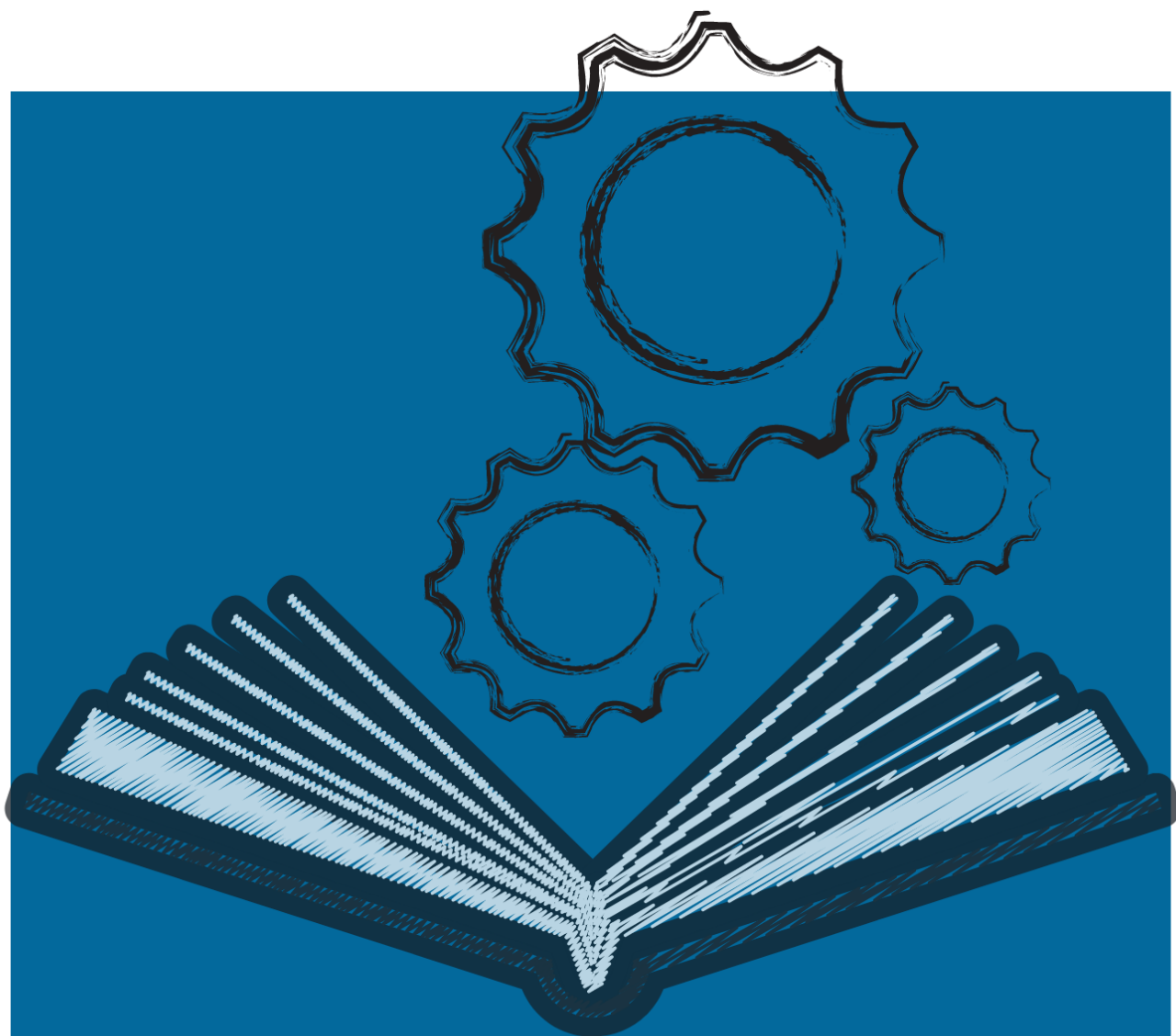


How to Develop and Implement Codes of Judicial Conduct

PRODUCED BY THE GLOBAL JUDICIAL INTEGRITY NETWORK





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GUIDE ON HOW TO DEVELOP AND IMPLEMENT CODES OF JUDICIAL CONDUCT



CONTENTS

ACKNOWLEDGMENTS	3
INTRODUCTION	4
1. WHY: THE IMPORTANCE OF CODES OF CONDUCT	5
2. HOW: THE PROCESS OF THE DEVELOPMENT OF A CODE OF CONDUCT.....	8
2.1 PRELIMINARY ISSUES.....	8
2.2 STAGES OF CODE ADOPTION	14
2.3 SAMPLE IMPLEMENTATION TIMELINE.....	19
3. WHAT: THE SUBSTANTIVE CONTENT OF A CODE OF CONDUCT.....	21
3.1 BANGALORE PRINCIPLES OF JUDICIAL CONDUCT	21
3.2 OTHER VALUES, VIRTUES AND ETHICAL DUTIES	24
3.3 REMAINING CONSIDERATIONS	27

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INTRODUCTION

The Global Judicial Integrity Network is a new initiative and a key outcome of the Judicial Integrity component of UNODC's [Global Programme for the Implementation of the Doha Declaration](#). Officially launched in April 2018 at a high-level event in Vienna, the Network aims to create networking opportunities for judges, facilitate information-sharing and dissemination of existing resources and to respond to existing and emerging challenges related to judicial integrity, for example through the development of various knowledge products. More information about the Global Judicial Integrity Network, its activities, services and events can be found at: www.unodc.org/ji.

During the launch event, a dedicated thematic breakout session took place titled "[Do's and Don'ts's When Drafting Codes of Judicial Conduct](#)." The session participants agreed that there is a need for the development of effective codes of conduct for judges and that it would be helpful to develop a guide on how to do so.

At the end of the launch event, the participants adopted the [Declaration on Judicial Integrity](#), in which they decided to "work together, as appropriate, to develop guidance materials and other knowledge products to help our judiciaries to address new challenges to judicial integrity and independence [...]."¹

Bearing in mind the *Declaration*, the [Advisory Board of the Global Judicial Integrity Network](#) developed the Network's 2018-2019 workplan and decided, among other priority areas, to use the potential of the Network to develop a practical guide on how to develop codes of judicial conduct.

The present guide is a result of these efforts.

¹ Paragraph 8 of the Declaration on Judicial Integrity. Available at: https://www.unodc.org/documents/ji/declaration/declaration_english.pdf

1. WHY: THE IMPORTANCE OF CODES OF CONDUCT

Judicial integrity is a cornerstone of strong judicial systems and a necessary prerequisite for the rule of law, the right to a fair trial and the public trust in the judiciary. Existing international standards and good practices provide a number of techniques that can be adopted to strengthen the integrity of the judiciary and prevent corruption in the justice sector. The practice promoted in this guide is the adoption of a code of judicial conduct.

The main international instrument promoting the adoption of codes of judicial conduct is the *United Nations Convention against Corruption (UNCAC)*. In its article 11, the *Convention* states that:

“Bearing in mind the independence of the judiciary and its crucial role in combating corruption, each State Party shall, in accordance with the fundamental principles of its legal system and without prejudice to judicial independence, take measures to strengthen integrity and to prevent opportunities for corruption among the members of the judiciary. Such measures may include rules with respect to the conduct of members of the judiciary”.

The fact that the adoption of rules with respect to judicial conduct is a measure explicitly promoted in the text of the *Convention* shows that States parties to the *Convention* considered it to be a crucial aspect of the efforts to strengthen judicial integrity and prevent opportunities for corruption.

Another key document at the international level that cannot be omitted when discussing codes of judicial conduct is the *Bangalore Principles of Judicial Conduct*. The *Bangalore Principles* represent the most comprehensive and well-known set of values and ethical principles to guide the life and work of judges. While the *Bangalore Principles* are not legally binding and do not aim to set out directly enforceable standards of behaviour, they offer valuable guidance to judges in the performance of their judicial duties and a framework to judiciaries for regulating judicial conduct. The *Bangalore Principles*, developed by the Judicial Integrity Group, underwent extensive consultations involving chief justices and senior judges from over 75 Member States and are the first-ever instrument not drafted by the representatives of governments to have been accepted and endorsed by the United Nations. In particular, in 2006, the United Nations Economic and Social Council “invited Member States, consistent with their domestic legal systems, to encourage their judiciaries to take into consideration the *Bangalore Principles of Judicial Conduct* when reviewing or developing rules with respect to the professional

and ethical conduct of members of the judiciary.”² The *Bangalore Principles* have since served as a source of inspiration for many codes of judicial conduct and continue to do so. Several other documents were later developed to supplement the *Bangalore Principles*, namely the detailed *Commentary on the Bangalore Principles* and the *Measures for the Effective Implementation of the Bangalore Principles*.

At the regional level, different regional codes of conduct or principles have been adopted over the past two decades, including the *Ibero-American Code on Judicial Ethics* (2006), the *London Declaration on Judicial Ethics* (2010), the *Code of Conduct of the Court of Justice of the European Union* (2007) and the *Resolution on Judicial Ethics approved by the European Court of Human Rights* (2008). Several regional bodies also provide guidance and opinions with regard to the adoption and application of codes of judicial conduct, including the Consultative Council of European Judges (CCJE), the European Network of Councils for the Judiciary (ENCJ), the Group of States against Corruption of the Council of Europe (GRECO) and the Ibero-American Commission on Judicial Ethics.

Importantly, there has recently been an increase in the number of codes of judicial conduct adopted at the national level. Even if infringements of ethical rules are covered by existing disciplinary programmes, there are important benefits of having a code of judicial conduct in place, such as helping judges to resolve questions of professional ethics, giving them autonomy in their decision-making, guaranteeing independence from other authorities or informing the public about the standards of conduct expected from judges and consequently contributing to building public trust.³

This guide intends to provide practical information on how to draft, approve, implement and enforce a code of conduct for the judiciary. Its purpose is twofold, namely: a) to offer advice on the procedural steps that could be considered when developing a code of conduct and developing mechanisms to enforce it (the ‘How’); and b) to provide guidance on the possible substantive content, based on the content of the *Bangalore Principles of Judicial Conduct* and relevant examples from other regional and national instruments, as well as on the possible structure and scope of the code (the ‘What’).

² Resolution of the Economic and Social Council 2006/23, operative paragraph 1. Available at: https://www.unodc.org/ji/resdb/data/2006/220/the_bangalore_principles_of_judicial_conduct_ecosoc_resolution_200623.html?lng=en

³ CCJE, “Opinion no. 3 on the ethics and liability of judges” (2007), para. 41, 44. Available at <https://rm.coe.int/16807475bb>.

European Network of Councils for the Judiciary, “Independence and Accountability of the Judiciary”, ENCJ Report 2013-2014 (2014) p. 1. Available at https://www.encj.eu/images/stories/pdf/workinggroups/independence/encj_report_independence_accountability_adoption_sept_2014.pdf.

It should be noted at the outset that it is not intended for this guide to be prescriptive as to the concrete procedural steps, terminology, legal nature, structure, scope and enforcement measures. This guide promotes the importance of adopting an instrument that establishes and clarifies standards of behaviour for judges and of setting up institutional mechanisms for enforcing the instrument. However, there are various approaches that can be taken with regard to its title (code, statement, rules, standards, principles, guide, etc.), legal nature (non-binding set of principles of ethics, binding and enforceable rules of discipline or both), substantive content and the level of detail of the prescribed behaviour. The overall purpose and enforceability of a code should depend on the needs of the implementing jurisdiction, and judiciaries should choose an approach that best fits their legal and cultural context. This guide raises several issues that should be considered and reflected upon when deciding on the most suitable approaches.

In addition, it is outside of the scope of the present guide to look into the differences in legal systems in terms of defining the roles of and relationships between judges, prosecutors and other members of the judiciary, and how the judiciary establishes the reach and applicability of the code of judicial conduct in this regard. The present guide focuses on judges in a narrow sense and the term ‘judges’ will be used to cover those members of judiciary who are appointed to decide cases in a law court (including magistrates, where applicable). However, it is important to recognize the need to have codes of conduct in place for all other members of the judiciary and judicial professionals, such as court personnel or members of judicial councils. These judicial professionals all play a crucial role in promoting judicial independence, integrity and impartiality through, for example, their interaction with court users and handling sensitive information.

While appreciating the complexity of the topic and the variety of possible approaches to terminology, for the sake of consistency, the present guide will use the phrase ‘code of conduct’ broadly as an expression of the values and characteristics guiding the operation of the judiciary and the behaviour of judges.

2. HOW: THE PROCESS OF THE DEVELOPMENT OF A CODE OF CONDUCT

The overarching goal of a code of conduct should be “the development and fostering of a true culture of judicial integrity.”⁴ In particular, a code of judicial conduct can achieve several objectives:

- establishing standards of ethical conduct for judges;
- providing guidance to judges on the performance of their judicial duties;
- affording the judiciary a framework for regulating judicial conduct;
- assisting members of the executive and the legislative branches (as well as lawyers and the public in general) to better understand the judicial role; and
- offering the community a standard by which to measure and evaluate the performance of the judicial sector.⁵

2.1 PRELIMINARY ISSUES

Drafting and approving a code of conduct for judges involves recognizing and resolving some preliminary issues. Each issue will be discussed in further detail below before turning to the mechanics of the drafting, implementation and substantive content of the code. These issues are: (a) the binding or non-binding nature of a code of conduct and understanding the possible relationship between ethical principles and disciplinary rules; (b) the need for an institutional mechanism for the application and enforcement of a code of conduct; and (c) the role to be played by judiciaries, judges and other stakeholders in adopting, approving and overseeing a code of conduct.

THE BINDING OR NON-BINDING NATURE OF A CODE OF CONDUCT AND THE RELATIONSHIP BETWEEN ETHICAL PRINCIPLES AND DISCIPLINARY RULES

It is important for drafters to recognize that different models exist for managing the relationship between ethical standards and disciplinary rules. Drafters may wish to reflect on which overall goals are served through the implementation of a code and what approach fits the jurisdiction’s legal system best. It may also be useful to reflect on

⁴ CCJE, “Opinion No. 21 preventing corruption among judges” (2018), para. 22. Available at <https://rm.coe.int/ccje-2018-3e-avis-21-ccje-2018-prevent-corruption-amongst-judges/native/16808fd8dd>.

⁵ UNODC, “United Nations Convention against Corruption Implementation Guide and Evaluative Framework for Article 11” (2015), para. 28. Available at https://www.unodc.org/documents/corruption/Publications/2014/Implementation_Guide_and_Evaluative_Framework_for_Article_11_-_English.pdf.

whether the code predictably sets out what behaviour is allowed and whether the code properly informs the general public of behaviour that is expected of the judiciary.

There are three main models for managing this relationship between ethics and discipline:

1. The code of conduct is of an aspirational nature and articulates principles of ethics, while a separate legal instrument(s) may contain a framework for discipline (dual model).
2. The code of conduct sets out ethical principles alongside some disciplinary rules - while not necessarily using these exact terms or marking a clear distinction between them (combined model).
3. The code of conduct takes the form of a binding instrument where violations may sometimes or always result in disciplinary sanctions (disciplinary model).

In 2015, the ENCJ reviewed the relationship between ethics and disciplinary rules in a project devising minimum standards for the judiciary. The ENCJ concluded that a distinction should be made between ethical codes and disciplinary codes. Regarding the issue of breach, the ENCJ said “a breach of an ethical code ought not ipso facto lead to disciplinary proceedings”, but that “there may be disciplinary proceedings if there is a persistent breach of ethics”.⁶

At the launch event of the Global Judicial Integrity Network, the participants of the session on “Do’s and Don’ts’s when drafting codes of judicial conduct” also concluded that it is important for each judiciary to understand and effectively address the distinction and linkages between ethical and disciplinary rules.

THE NEED FOR AN INSTITUTIONAL MECHANISM FOR THE APPLICATION AND ENFORCEMENT OF A CODE OF CONDUCT

Whether a code of conduct is of an aspirational or enforceable nature, it will do little to improve judicial performance and enhance public confidence in the judiciary if it is not implemented and applied.

The effectiveness of a code of conduct will always depend on the willingness of each judge to apply it in his or her everyday work. In its opinion from 2018, the CCJE stated

⁶ ENCJ, “Minimum Judicial Standards V: Disciplinary proceedings and liability of judges”, ENCJ Report 2014-2015 (2015), p. 21. Available at https://www.encj.eu/images/stories/pdf/GA/Hague/encj_report_minimum_standards_v_adopted_ga_june_2015.pdf.

that “each judge carries a personal responsibility, not only for his/her own conduct but also for that of the judiciary as a whole”.⁷

It is thus important to develop an institutional mechanism to raise awareness and understanding among judges of their ethical obligations and to ensure that the code of conduct is adhered to and applied in practice.

In this regard and to ensure the success of the code of conduct, three separate (but linked) considerations should be borne in mind:

1. The importance of establishing a mechanism or procedure, formal or informal, to advise judges on the correct application of the code of conduct and to be responsible for the interpretation and further development of the ethical principles, such as dedicated ethics committees, commissions, advisory bodies, etc.

The 2010 *Implementation Measures of the Bangalore Principles of Judicial Conduct* recommend “establishing a judicial ethics advisory committee of sitting and/or retired judges to advise its members on the propriety of their contemplated or proposed future conduct”.⁸

In 2006, for example, the Ibero-American Commission on Judicial Ethics was established to assist judiciaries in their efforts to implement the *Ibero-American Code of Judicial Ethics*, facilitate discussions and raise awareness about the importance of judicial ethics among Ibero-American judges. The Commission is comprised of nine members and an executive secretary elected for a period of four years. The members must be linked directly or indirectly to judicial work (members of the judiciary, lawyers or academics), sitting or retired. The Commission’s opinions are not binding.

At the European level, CCJE, ENCJ and GRECO all recommend setting up a body entrusted with ethics to advise judges on matters of professional ethics, which they are likely to be faced with throughout their career.⁹ Such a body should play a strong and proactive role and offer advice to the members of the judiciary. For example, in one of its evaluation reports, GRECO emphasized that “an environment that fosters lawful and

⁷ CCJE, “Opinion No. 21 preventing corruption among judges” (2018), p. 14.

⁸ Judicial Integrity Group, “The Measures for the Effective Implementation of the Bangalore Principles of Judicial Conduct” (2010), para. 2.1. Available at https://www.judicialintegritygroup.org/images/resources/documents/BP_Implementation%20Measure%20Engl.pdf.

⁹ CCJE, *Magna Carta of Judges* (2010), para. 13. Available at <https://rm.coe.int/16807482c6>. European Network of Councils for the Judiciary, “Minimum Judicial Standards V: Disciplinary proceedings and liability of judges”, ENCJ Report 2014-2015 (2015), p. 22. GRECO, “Evaluation Report Croatia: Corruption prevention in respect of members of parliament, judges and prosecutors” (2014), para. 106. Available at <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806c2e17>.

ethical behaviour is not sustainable if judges are unable to obtain advice on ethical concerns and questionable practices.”¹⁰

Ethics committees or advisory bodies should be in charge of adopting advisory opinions or developing more detailed guides or commentaries to support a true culture of ethical commitment among judges. They could also take part in organizing judicial conduct and ethics training for judges. Judges should be provided with practical guidance on how the ethical principles apply to everyday situations. Such an approach also recognizes the fact that values and challenges may evolve over time, and that there is a need to provide uniformity in the implementation and further development of the ethical rules.

2. The importance of establishing a mechanism or procedure to receive and review complaints regarding specific potential violations of the code of conduct. As practice shows, this can be the same or a separate body from the above. The *Implementation Measures of the Bangalore Principles of Judicial Conduct* suggest that a “credible, independent judicial ethics review committee should be established to receive, inquire into, resolve and decide upon complaints of unethical conduct of members of the judiciary, where no provision exists for the reference of such complaints to a court. The committee may consist of a majority of judges, but should preferably include sufficient lay representation to attract the confidence of the community.”¹¹

3. The importance of clarifying the relationship between the code of conduct and the disciplinary rules and establishing a mechanism responsible for the discipline and applying disciplinary sanctions. According to GRECO, in light of the distinction between ethical and disciplinary rules, the body charged with setting ethical standards and providing advice regarding their interpretation should not at the same time be responsible for judicial disciplinary proceedings.¹² However, as mentioned above, there are various approaches to this issue.

In some jurisdictions, the drafting and enforcement of a code of conduct falls within the duties of the judicial council as the body for management and administrative oversight of the judiciary. Council functions may also include the selection, training, evaluation, and promotion of judges, cooperation with other bodies at the national or international

¹⁰ GRECO, “Evaluation Report Azerbaijan: Corruption prevention in respect of members of parliament, judges and prosecutors” (2015), para. 67. Available at <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806c664f>.

¹¹ Judicial Integrity Group, “The Measures for the Effective Implementation of the Bangalore Principles of Judicial Conduct” (2010), para. 2.2.

¹² CCJE, “Opinion no. 10 on Council for the Judiciary in the service of society” (2007), para. 60.

levels and reporting on judicial activities to the public.¹³ Thus, the judicial council may need to establish sub-committees separately tasked with ethical and disciplinary concerns.¹⁴ Under the overall leadership of the council, specialized committees may provide advisory opinions or a commentary on the code's application, consisting of good practices, examples and case decisions, in order to support compliance efforts.¹⁵ A referral mechanism can be created to receive ethical questions from judges and courts.

A professional organization of judges may also play an important role in the application and further development of ethical standards, such as through the preparation of tools or guidelines and offering various advisory services, training, peer-to-peer support and opportunities for exchange and discussion.

In the Netherlands, the Integrity Programme, led by the Dutch Council for the Judiciary and a project coordinator for integrity in the judiciary, has been carried out. The programme aims at: a) enhancing the uniformity of the rules and policies governing the judiciary; b) categorizing and addressing any gaps; c) enhancing judges' and court personnel's awareness of integrity; and d) communicating these efforts to the public, in order to increase confidence in the judiciary. A comprehensive *Integrity Handbook*, with all relevant international and national texts, was published online in December 2012 and an interactive website was launched, where judges may discuss integrity dilemmas and raise questions.¹⁶

In Bosnia-Herzegovina, a Standing Committee on Judicial and Prosecutorial Ethics, Independence and Incompatibility of the High Judges and Prosecutors Council monitors the implementation of the Code of Judicial Ethics, as well as the *Code of Prosecutorial Ethics*, and advises the Council on issues of ethics.¹⁷ Judges and prosecutors may seek guidance about expected conduct from this committee, which informs the judiciary about its decisions. These decisions are communicated to the person who asked for guidance but are not made public.

¹³ CCJE, "Opinion no. 10 on Council for the Judiciary in the service of society" (2007), para. 8, 42. Available at <https://rm.coe.int/168074779b>.

¹⁴ CCJE, "Opinion no. 10 on Council for the Judiciary in the service of society" (2007), para. 43.

¹⁵ CCJE, "Opinion no. 10 on Council for the Judiciary in the service of society" (2007), para. 58-59.

¹⁶ GRECO, "Evaluation Report Netherlands: Corruption prevention in respect of members of parliament, judges and prosecutors" (2013), para. 91. Available at <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806c799a>.

¹⁷ GRECO, "Evaluation Report Bosnia and Herzegovina: Corruption prevention in respect of members of parliament, judges and prosecutors" (2016), para. 108. Available at <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806c4999>.

The German Association of Judges has developed several documents on ethical matters which include general principles as well as practical examples. In cooperation with the national judicial training academy, it has organized training activities, including discussions on ethical questions.¹⁸

In Spain, the Judicial Ethics Committee has between May 2018 and January 2019 settled 17 consultations (12 advisory opinions and 5 inadmissible decisions). The inadmissibility of the decisions was based upon hypothetical or generic questions. The opinions have dealt, among others, with impartiality, integrity and the compatibility of judicial duties with academic activities.¹⁹

In Lithuania, a guide (commentary) has been appended to the code of ethics that discusses each principle and gives practical examples and recommendations based on decisions of the Judicial Ethics and Discipline Commission, the Judicial Court of Honour, the Supreme Court and the *Bangalore Principles of Judicial Conduct*.²⁰

THE LEADING ROLE OF JUDGES IN ADOPTING, APPROVING AND OVERSEEING CODES OF CONDUCT

Judges should lead the adoption and enforcement of codes of judicial conduct. They may draw support from national or regional judicial organizations and may also benefit from the assistance and experience of retired judges.

This approach places judges in responsible positions and upholds the principle of judicial independence. If the judiciary fails or neglects to assume responsibility for ensuring that its members maintain the high standards of judicial conduct expected of them, public opinion and political expediency may lead the other two branches of government to intervene. As a consequence, the principle of judicial independence is likely to be undermined to some degree, in some cases perhaps seriously.²¹

¹⁸ GRECO, "Evaluation Report Germany: Corruption prevention in respect of members of parliament, judges and prosecutors" (2015), para. 147. Available at <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806c639b>.

¹⁹ Spanish Judicial Ethics Committee, Opinions (2019). Available at <http://www.poderjudicial.es/cgpi/es/Temas/Comision-de-Etica-Judicial/Dictamenes/>.

²⁰ GRECO, "Evaluation Report Lithuania: Corruption prevention in respect of members of parliament, judges and prosecutors" (2015), para. 134. Available at <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806c7660>.

²¹ UNODC, "United Nations Convention against Corruption Implementation Guide and Evaluative Framework for Article 11" (2015), para. 27.

In countries where a judicial council exists, the council is well placed to play an important role in drafting and approving the code of conduct and leading the adoption process. However, even in those instances, judges from all types of courts and of different levels of experience should be actively involved in drafting and approving the code (such as through the establishment of a dedicated working group) and the council should only adhere to the code or be informed of its adoption.

The role of judicial associations is also important in this process. They should be represented in the working groups or they could develop and approve the code themselves. In countries where several judicial associations exist, they should work together to agree on a common text applicable to all judges.

It is thus appropriate to propose that the initiative to develop a code of conduct should come from judges, judicial associations, judicial councils or courts with the highest authority. The decision-making process could be entrusted to a broad working group with representatives of judges and judicial associations. A small dedicated expert group could report on the drafting process and submit proposals to be adopted by the broad working group. The approval should be entrusted to the judiciary, to the highest court in the country and, in some particular cases, to all judges.

Other stakeholders who may legitimately contribute include court users, civil society and academia. Such an approach is consistent with the principle of judicial independence and separation of powers and can also be of great assistance in ensuring that the code provides meaningful and clear guidelines meeting the needs of those appearing before the courts.²² Their involvement can also mitigate criticisms of judicial self-interest and self-protection.²³

A body responsible for drafting the code should be different from the body with disciplinary functions.

2.2 STAGES OF CODE ADOPTION

The adoption process of a code of conduct may be divided into six stages: initiating the process, drafting, approving, disseminating, enforcing and, at a later stage, updating the code.

²² UNODC, "United Nations Convention against Corruption Implementation Guide and Evaluative Framework for Article 11" (2015), para. 26.

²³ CCJE, "Opinion no. 10 on Council for the Judiciary in the service of society" (2007), para. 61.

INITIATING THE PROCESS

Firstly, the initiating decision may be adopted by the highest court in the country, the council for the judiciary, other institutions governing the judges or the judges' professional association. The initiating organization could act as a secretariat, taking the lead in matters of administration and support, while a separate working group of experts focuses on researching and writing an initial draft.

DRAFTING

Substantial time should be dedicated to producing a draft code of conduct. To facilitate this process, a working group of experts to draft the code could be nominated by the body(ies) listed in the previous point.

Such a working group should include judges representing all relevant jurisdictions as well as different instances and experience levels. The scope of a code of judicial conduct - and the practical issues it is supposed to reflect upon - might be viewed differently from the perspective of a supreme court judge compared to that of a first instance judge, depending on their daily experiences. In addition, younger judges may be well placed to provide valuable contributions regarding new phenomena, including those related to emerging technologies or social media. The working group could also comprise judicial professional associations and non-judicial representatives (lawyers, academics, etc.). A small dedicated expert group could lead the drafting process and submit proposals to be adopted by the working group.

No matter the approach chosen, judges should be involved as much as possible in the drafting and approval process, since their ownership, buy-in and appreciation of the value of the code would be an important element of the code's effectiveness. The 'top to bottom' and 'bottom to top' approaches should go hand in hand, and judges should be encouraged to provide suggestions and recommendations throughout the drafting process. The consultation of all courts and judicial associations should be guaranteed during the drafting process.

In order for the resulting document to be effective and practical, the language used should be plain and not overly legal or technical, but concise and understandable to a broad audience beyond those to whom the code is applicable. As mentioned above, the code of conduct also assists the public to better understand the judicial role and offers the community a standard by which to measure and evaluate the performance of the judicial sector.

The structure of the code of conduct should be simple and easy to navigate through.

It is helpful if the code (e.g. in the preamble) contains references to the universal instruments of judicial ethics (i.e., the *Bangalore Principles of Judicial Conduct*) and, where appropriate, to regional documents.

The drafters should seek to describe the principles, values or ethical duties binding the members of the judiciary. To ensure successful implementation, and as described above in more detail, drafters should additionally devise an institutional mechanism for application and enforcement.

One way forward for the code of conduct is to state the overarching ethical principles, followed by more practical rules of conduct that apply those principles and guide judges in confronting particular situations. For each principle, it is helpful to clarify their concept and list the relevant professional standards and characteristic judicial qualities. One Network participant even suggested including specific indicators of compliance to help judges navigate through their ethical obligations and to assist them in the monitoring of the effectiveness of and compliance with the code.²⁴

Alternatively, the code of conduct could be kept concise, only list the key principles and not go into specifics, and an additional guidance could be provided through an associated commentary, definitions or advisory opinions. It can be argued that this approach allows for fewer technical defences and promotes aspirational compliance. A commentary to code provisions can be a useful place to recite specific factual scenarios. If a code itself tries to specifically list all factual situations that are considered ‘biased’, for example, there is a possibility that it will fail.

APPROVAL

The judiciary and, as much as possible, the judges themselves, should approve the code.

It can be considered a good practice to organize a validation workshop where various stakeholders are invited to and given an opportunity to provide feedback, comments or raise concerns regarding the newly drafted code.

It is important that the code of conduct is approved by all levels of the judiciary, particularly at the highest levels, and that the leadership of the judiciary leads by example and promotes the importance of the application of the code.

²⁴ An online consultation was conducted on the present guide in August-September 2019 through the Global Judicial Integrity Network’s website: www.unodc.org/ji.

INSTITUTIONAL MECHANISMS FOR ENFORCEMENT

It is advisable to set up an institutional mechanism for the application and enforcement of the code and include provisions on the mechanism in the code.

DISSEMINATION AND TRAINING

It is essential to disseminate the code of conduct as widely as possible to judges and to the general public.

Judges

The code of conduct should be disseminated to future judges, even prior to their official appointment. Judges should make an official attestation of their understanding of the code and their commitment to comply - such as by signature or by the terms of the oath of office.²⁵ Substitute judges and lay judges should be included, as they perform judicial functions and should be held to the same standards. The code of conduct should be published in both physical and electronic formats, along with any other commentaries or guidance documents which have been written. Disciplinary opinions analysing violations of the code of conduct should be publicly available.²⁶

Training is an important element for the dissemination of codes of conduct. Judicial training institutions should include the code of conduct as a permanent component of training for judges of all ranks, and not only as part of the initial training, but on a continuous basis. Apart from focusing on the specificities of the code, training should also explain the bigger picture and the importance of compliance with and enforcement of the code and the consequences of its breach on public perception of the judiciary, access to justice and the rule of law. The content of the training should be practice-oriented, interactive and based on real-life scenarios. Judiciaries may wish to select a method that suits their needs and local contexts best, however, the importance of in-person training to allow participants to share experiences and discuss ethical dilemmas

²⁵ GRECO, "Evaluation Report Belgium: Corruption prevention in respect of members of parliament, judges and prosecutors" (2014), para. 104. Available at <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806c2c40>.

GRECO, "Evaluation Report Turkey: Corruption prevention in respect of members of parliament, judges and prosecutors" (2016), para. 163. Available at <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806c9d29>.

²⁶ GRECO, "Evaluation Report France: Corruption prevention in respect of members of parliament, judges and prosecutors" (2014), para. 101. Available at <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806c5df9>.

with their peers should not be underestimated. The training should not be background noise that judges endure as a requirement.

The Global Judicial Integrity Network has developed, for example, a comprehensive and widely applicable package of *Judicial Conduct and Ethics Training Tools*, based on the *Bangalore Principles of Judicial Conduct* and taking into consideration some of the emerging challenges, such as social media or gender-related judicial integrity issues.²⁷

If the training includes the participation of lawyers and other legal professionals, it may help build a common understanding of the principles contained in the code.²⁸ Recognizing the role played by law schools in shaping future judges, as well as legal professionals coming before judges, the topic of ethics and conduct should be part of curricula for law students.

Confidential counselling services should also be offered to judges on individual situations, ethical obligations and ethical dilemmas they face. The establishment of bodies to provide such confidential advice should be considered important in this regard. This topic is discussed in more detail above.

Public

Public awareness of the code of conduct can improve the perception of the integrity and professionalism of the judiciary, and also provide the context and standards by which the public can hold the judiciary accountable. The code should be made available to the public by posting it on an official website or other freely accessible websites that collect legal resources. It may also be displayed within courthouse buildings as a poster or in other easily accessible formats.²⁹ The code should be published in all official languages of the jurisdiction.

One Network participant recommended the usefulness of developing and disseminating to the public a report explaining how the judiciary implements and works towards improving the professional conduct of judges. Such a report could help address the

²⁷ The Judicial Conduct and Ethics Training Tools can be accessed at:

https://www.unodc.org/ji/en/judicial_ethics.html

²⁸ GRECO, "Evaluation Report Italy: Corruption prevention in respect of members of parliament, judges and prosecutors" (2017), para. 136. Available at

<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806dce15>.

²⁹ GRECO, "Evaluation Report Serbia: Corruption prevention in respect of members of parliament, judges and prosecutors" (2015), para. 130. Available at

<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806ca35d>.

growing negative attitude towards the judiciary and the decreasing understanding of the importance of the separation of powers in some countries.³⁰

FEEDBACK AND REVISION

Finally, it is important to underscore that the code can and should be reviewed periodically, changed and updated. The 2011 UNODC Resource Guide on Strengthening Judicial Integrity and Capacity emphasizes that “the code should be considered as a living document and be reviewed from time to time in light of ethical challenges that have been emerging and the efficacy of the codes in addressing those challenges.”³¹

Therefore, through feedback, the code should be taken back to the drafting stage in order to be amended and revised. Periodic review can ensure that the code stays up-to-date as new integrity challenges arise. Bodies mandated to advise judges on the application of the code should have a seat at the table and contribute to the efforts to have a constant and forward-looking approach to tackling ethical challenges.

2.3 SAMPLE IMPLEMENTATION TIMELINE

Many options are possible at each stage, depending upon legal cultures and political traditions in each jurisdiction. Nevertheless, in all cases, a realistic timetable should be adopted. The following is only an indicative list of steps that judiciaries may wish to take into consideration when developing a code of judicial conduct.

Step	Institutions and Relevant Persons	Time Frame	Aims	Working Methods and Techniques	Expected Outcome / Results
1. Initial decision	National judiciary (council for the judiciary, highest court in the country, etc.) Judicial associations Judges International or supranational institutions	Two months	Institutional support of the project	Proposal to develop and draft the code of conduct	Decision to draft the code of conduct

³⁰ An online consultation was conducted on the present guide in August-September 2019 through the Global Judicial Integrity Network’s website: www.unodc.org/ji

³¹ UNODC, Resource Guide on Strengthening Judicial Integrity and Capacity, (2011), p. 134. Available at https://www.unodc.org/res/ji/import/guide/resource_guide/resource_guide_english.pdf.

Guide on How to Develop and Implement Codes of Judicial Conduct

2. Drafting	Working group + Expert group	Six months	Draft document	Instructions given by the working group Documents submitted by the expert group Consideration of the range of international examples and good practices	Draft of the code of conduct
3. Approval	National judiciary (judicial council, highest court in the country, etc.) Judicial associations Judges International or supranational institutions, as appropriate	Three months	The code of conduct for judges	Legal supervision	The code of conduct for judges
4. Institutional mechanisms for enforcement	Appointment/election of the committee's members by judges/by the judiciary	Six months	Committee for judicial ethics / Advisory body / Ethics commission	Appointment / Electronic election	Committee for judicial ethics / Advisory body / Ethics commission
5. Dissemination and training	Judiciaries Judges Committee for judicial ethics / Advisory body / Ethics commission	Unlimited	Publication Training Opinions Awareness about the code of conduct	Website Official journal In-person or other forms of training	Official publications Seminars Opinions
6. Feedback and revision	Committee for judicial ethics / Advisory body / Ethics commission Judicial associations Judges	Unlimited	Updating the code of conduct	Institutional mechanisms	Amendments of the code of conduct

3. WHAT: THE SUBSTANTIVE CONTENT OF A CODE OF CONDUCT

Numerous sources may serve as a basis for the principles in the code of conduct. A comparative analysis of the codes adopted around the world shows similarities among the main principles and values essential to the judicial branch of government: independence, impartiality and integrity. Nevertheless, each code should be adapted to the legal, cultural, and social context of the jurisdiction. In fact, a key feature of every code of conduct should be that it is tailored to the needs of a given judiciary and reflects the specific ethical challenges with which judges are confronted. Even in jurisdictions where the core principles have been codified and applied, there may be a need to further refine and update the code to reflect emerging challenges and changes in circumstances.

The following section provides a brief summary of the six values that underpin the *Bangalore Principles of Judicial Conduct* and that could be considered as a source of inspiration when developing a code of judicial conduct. The *Bangalore Principles* are considered a universally agreed set of ethical standards to guide judges and are widely applicable to countries across the world.

Additional principles that have been incorporated into other existing regional or national codes of conduct, and could be of relevance, are also mentioned.

3.1 BANGALORE PRINCIPLES OF JUDICIAL CONDUCT

INDEPENDENCE

Judicial independence “is a responsibility imposed on each judge that enables him or her to adjudicate a dispute honestly and impartially on the basis of the law and the evidence, without external pressure or influence and without fear of interference from anyone”.³² It is “both a state of mind and a set of institutional and operational arrangements. The former is concerned with the judge’s independence in fact; the latter with defining the relationships between the judiciary and others, particularly the other branches of government, so as to assure both the reality and the appearance of independence”.

“The guarantee of independence [i]s inherent in the task of adjudication”.³³ “A judge should not only be free from inappropriate connections with, and influence by, the

³² UNODC, “Commentary on the Bangalore Principles of Judicial Conduct” (2007), para. 22

³³ Court of Justice of the European Union, *Associação Sindical dos Juizes Portugueses v. Tribunal de Contas*, Case No. C-64/16, Judgment, 27 February 2018, para 42. Available at <http://curia.europa.eu/juris/document/document.jsf?text=&docid=199682&doclang=EN>.

executive and legislative branches of government, but must also appear to a reasonable observer to be free therefrom.”³⁴

IMPARTIALITY

Impartiality is the absence of prejudice or bias, which would predispose the judge towards a particular party or result. Impartiality has two components: subjective and objective. Subjective impartiality requires the judge to not hold personal prejudices or biases, while objective impartiality requires that the judge behave in a way to eliminate doubts that a reasonable observer may have concerning the judge’s impartiality. Judges must, therefore, “adopt an approach which both is and appears impartial” and “should refrain from any political activities which could compromise their independence and cause detriment to their image of impartiality”.³⁵

The perception that a judge is not impartial may arise in a number of ways, for instance through a perceived conflict of interest, the judge’s behaviour on the bench or the judge’s associations and activities outside the court. “Any judge who may legitimately be thought not to be impartial in a particular case must withdraw from its consideration.”³⁶

INTEGRITY

The principle of integrity requires judges to maintain honesty, judicial morality and a high standard of personal and professional behaviour, free from fraud, deceit and falsehood. The conduct expected of a judge is higher than that demanded from society as a whole. A Judge’s conduct should be professional, respectful and free of prejudice or improper influence - “virtually irreproachable.”³⁷

“A judge must maintain high standards in private as well as in public” and should not violate universally accepted community standards or engage in activities that clearly bring disrepute to the courts or the legal system.³⁸ “The personal qualities, conduct and image that a judge projects affects the judicial system as a whole and, consequently, the confidence that the public places in it.”³⁹

³⁴ UNODC, “Commentary on the Bangalore Principles of Judicial Conduct” (2007), para. 35. Available at https://www.unodc.org/res/ji/import/international_standards/commentary_on_the_bangalore_principles_of_judicial_conduct/bangalore_principles_english.pdf.

³⁵ CCJE, “Opinion no. 3 on the ethics and liability of judges” (2007), para. 49.

UNODC, “Commentary on the Bangalore Principles of Judicial Conduct” (2007), p. 8.

³⁶ UNODC, “Commentary on the Bangalore Principles of Judicial Conduct” (2007), para. 53.

³⁷ UNODC, “Commentary on the Bangalore Principles of Judicial Conduct” (2007), para. 101, 102, 109.

³⁸ UNODC, “Commentary on the Bangalore Principles of Judicial Conduct” (2007), para. 109.

³⁹ UNODC, “Commentary on the Bangalore Principles of Judicial Conduct” (2007), para. 109.

PROPRIETY

The value of propriety requires that judges behave in an exemplary manner, in order to create and maintain the perception that he or she can perform judicial functions fairly and competently.⁴⁰ Propriety can be described as a complementary value to integrity. While the principle of integrity calls on judges to maintain high standards of personal values and behaviour, the principle of propriety calls on judges to seriously consider the attitude of the public toward the judge's conduct.⁴¹

While judges retain the same rights as other citizens and do not need to cut off contact with the outside world, they may be required to abstain from conduct that would be legal and innocuous for an ordinary citizen.⁴² Judges should exercise discretion in places and situations where reasonable observers may question his or her sensitivity, self-control and temperament. For example, judges should consider the implications of social and romantic interactions with lawyers; public comments about controversies or political campaigns; visits to locations with questionable reputations, such as bars and gambling venues; and financial activities such as investments and donations.⁴³

EQUALITY

The value of equality calls for fair treatment of all who appear before the courts. The value derives from numerous international legal sources, including the *International Covenant on Civil and Political Rights* and conventions prohibiting discrimination based on ethnicity, religion, sex and minority status. "It is, therefore, the duty of a judge to discharge his or her judicial functions with due respect for the principle of equal treatment of parties by avoiding any bias or discrimination and by maintaining a balance between the parties and ensuring that each receives a fair hearing."⁴⁴

A judge should not, by speech, gestures or conduct, manifest gender bias or make improper and insulting remarks against litigants, witnesses or the convicted. Judicial remarks should always be tempered with caution, restraint and courtesy, as the judge must set the tone of the courtroom and create the necessary environment to conduct a fair trial.⁴⁵

⁴⁰ UNODC, "Commentary on the Bangalore Principles of Judicial Conduct" (2007), para. 111, 112, 115.

⁴¹ UNODC, "United Nations Convention against Corruption Implementation Guide and Evaluative Framework for Article 11" (2015), para. 21.

⁴² UNODC, "Commentary on the Bangalore Principles of Judicial Conduct" (2007), para. 114.

⁴³ UNODC, "Commentary on the Bangalore Principles of Judicial Conduct" (2007), para. 119-57.

⁴⁴ UNODC, "Commentary on the Bangalore Principles of Judicial Conduct" (2007), principle 6.5.

⁴⁵ UNODC, "United Nations Convention against Corruption Implementation Guide and Evaluative Framework for Article 11" (2015), para. 21.

COMPETENCE AND DILIGENCE

Competence in the performance of judicial duties requires legal knowledge, skill, thoroughness and preparation. Diligence requires that judges “perform all judicial duties [...] efficiently, fairly, and with reasonable promptness”.⁴⁶

The value of competence calls for judges to take reasonable steps to acquire, maintain and regularly enhance their professional ability through training opportunities. With the growing internationalization of societies and the increasing relevance of international law, a judge should stay informed about developments, including international conventions and other instruments establishing human rights norms.

The value of diligence calls for judges to ensure that judicial duties take precedence over all other activities. A judge should resist devoting excessive attention to activities that reduce the judge’s capacity to discharge the judicial office, particularly if those activities are compensated. In such situations, reasonable observers might suspect that the judge has accepted the other duties to enhance his or her own income. This puts the reputation of the judiciary at risk, as the position is considered a service to the community and not just another segment of the competitive market economy.⁴⁷

3.2 OTHER VALUES, VIRTUES AND ETHICAL DUTIES

Judges must embody many qualities in order to successfully perform their duties. These judicial values have been expressed in various forms since ancient times; numerous cultural and religious traditions possess codes or pronouncements describing the essential qualities of a judge.⁴⁸ While the *Bangalore Principles* provide a widely recognized and well-understood set of values, variations can be expected when jurisdictions draft codes of conduct adapted to their own legal and cultural context. Other sources, discussed briefly here, may provide useful examples.

The *Ibero-American Code of Judicial Ethics* covers 13 principles, namely independence, impartiality, motivation and grounds, knowledge and skills, justice and equity, institutional responsibility, courtesy, integrity, transparency, professional secrecy, prudence, diligence and professional honesty. In addition, it puts forward values such as: an obligation to provide justifications for decisions rooted in rigorously analysed facts

⁴⁶ UNODC, “Commentary on the Bangalore Principles of Judicial Conduct” (2007), para. 183.

⁴⁷ UNODC, “United Nations Convention against Corruption Implementation Guide and Evaluative Framework for Article 11” (2015), para. 21.

⁴⁸ UNODC, “Commentary on the Bangalore Principles of Judicial Conduct” (2007), p. 117-28.

and valid law (Chapter III); an obligation for judicial institutions to operate effectively (Chapter VI); professional secrecy (Chapter X); and cautious judgment (Chapter XI).

The structure applied in the *Ibero-American Code of Judicial Ethics*⁴⁹ is as follows:

1. The identification of the principles to be covered by the code through a comparative analysis of existing relevant codes of conduct. The selected principles include independence, impartiality, reasoning, knowledge and skills, justice and equality, institutional responsibility, prudence, courtesy and integrity.
2. The explanation of the goal of each principle. For instance, regarding the principle of independence, Article 1 of the *Ibero-American Code* says that it was chosen with a view to “preventing arbitrariness, realising constitutional values and safeguarding fundamental rights”.
3. The definition of each of the principles. For example, Article 19 defines the principle of reasoning as “expressing, in an ordered and clear manner, legally valid reasons, appropriate for justifying the decision”.
4. The inclusion of concrete professional standards. For example, Article 12 on impartiality states that: “The Judge should endeavour to avoid situations which directly or indirectly would justify his/her distancing from the case”.
5. The emphasis of certain judicial virtues. For instance, regarding propriety, Article 52 states that: “The judge should show a tolerant and respectful attitude towards any criticisms of his decisions and conduct”. Likewise, regarding prudence, Article 72 states that: “Prudent judgement requires that the judge should be comprehensive and endeavour to be objective.”

In the *London Declaration on Judicial Ethics*, there are two categories of principles. The first is “values or merits” (independence, integrity, impartiality, reserve and discretion, diligence, respect and ability to listen, equality of treatment, competence and transparency). The second is “the abilities or virtues of the judge” (wisdom, loyalty, humanity, courage, seriousness and prudence, work and listening and communication).

The *Spanish Principles of Judicial Ethics* contain four values: independence, impartiality, integrity and, as one combined principle: courtesy, diligence and transparency.

⁴⁹ Manuel Atienza Rodríguez, “Un Código model(ic)o”, *Jueces para la democracia*, No. 57 (2006).

The *German Association of Judges* identifies independence, impartiality and lack of bias, integrity, a sense of responsibility, moderation and restraint, humanity, courage, diligence and transparency as key aspects of judicial ethics.⁵⁰

The 2019 *Code of Conduct of Benin* includes numerous principles, among others concern for others, competence, tactfulness, dignity, diligence, discretion, honour, impartiality, independence, integrity, loyalty, restraint and respect of legality.⁵¹

One Network participant, coming from a background where judges are elected, suggested for codes to also cover the issue of campaign activity, including the limits that judges have on being involved in elections for the other branches of government or the issue of applying or lobbying for their appointment to judicial office.⁵²

Two issues at which the Global Judicial Integrity Network has been looking and could be considered as possible topics of inclusion in the codes of conduct are the use of social media by judges and gender-related judicial integrity issues.

THE USE OF SOCIAL MEDIA BY JUDGES

Although judges, like other citizens, are entitled to freedom of expression, belief, association and assembly, they should always conduct themselves in such a manner as to preserve the dignity of their office and the impartiality and independence of the judiciary. The way an individual judge uses social media may have an impact on the public perception of all judges and confidence in judicial systems generally. To this end, the Global Judicial Integrity Network developed *Non-binding Guidelines on the Use of Social Media by Judges*.⁵³ The *Guidelines* address issues such as risks and opportunities in judges' awareness and use of social media, their identification and behaviour on social media, the content they post, their friendships and relationships online and social media training. The *Guidelines* can serve as inspiration for the incorporation of language related to social media use into codes of conduct.

⁵⁰ More information can be accessed at: https://www.drb.de/fileadmin/DRB/pdf/Ethik/1901_DRB-Broschuere_Richterethik_EN_Judicial_Ethics.pdf

⁵¹ As per the comments received in response to the online consultation on the website of the Global Judicial Integrity Network, Supreme Court of Benin, September 2019.

⁵² An online consultation was conducted on the present guide in August-September 2019 through the Global Judicial Integrity Network's website: www.unodc.org/ji.

⁵³ Non-binding Guidelines on the Use of Social Media by Judges
https://www.unodc.org/res/ji/import/international_standards/social_media_guidelines/social_media_guidelines_final.pdf

GENDER-RELATED JUDICIAL INTEGRITY ISSUES

The Global Judicial Integrity Network has been addressing gender-related judicial integrity issues, such as sextortion, sexual harassment, discrimination on the basis of gender, gender stereotyping, gender bias and sexual impropriety. The Network has developed a dedicated paper on the topic with the aim of identifying existing challenges and good practices and to make recommendations on how to develop regional and national standards (including codes of conduct) to address gender-related judicial integrity issues.⁵⁴

3.3 REMAINING CONSIDERATIONS

When drafting a code of conduct, judiciaries may also wish to discuss the following two issues. Answers to them will depend on each jurisdiction and its legal traditions and culture:

- the extent to which the code should cover the private life of judges (freedom of speech, freedom of association, outside activities, the use of social media by judges), bearing in mind the impact of some of the private actions of judges on the perception of their impartiality and independence; and
- the applicability of the code to other judicial professionals, such as lay judges, substitute judges, court staff, or members of the judicial council or the development of separate codes of conduct for these categories of professionals, taking into account the crucial need to expect ethical behaviour from all of those who work in a judicial office.

⁵⁴ Paper on Gender-related Judicial Integrity Issues



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