

ILF

THE INTERNATIONAL LEGAL FOUNDATION



Measuring Justice

Defining and Evaluating Quality for
Criminal Legal Aid Providers

NOVEMBER 2016 THEILF.ORG

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The ILF received valuable guidance in the development of this publication from Roger Smith, a consultant and former director of JUSTICE in the UK, and Amy Crawford, Campbell Advising LLC.

The ILF is particularly grateful for the expert assistance that Jon Gould, Professor of Public Affairs and Law at American University, and Andrew Davies, Director of Research at the Office of Indigent Legal Services in New York, provided in the conceptualization of how to define and measure legal aid, and in the drafting of this publication.

Jennifer Smith, Nicole Taylor and ILF communications officer Liz Riegel edited the final text of the publication. Design and text layout by Ahmad Dowla.

Cover: An ILF-Afghanistan clinical legal education student delivers an argument for the defense at a mock trial.

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Published by:

The International Legal Foundation (ILF)
111 John St., #1040
New York, NY 10038
www.theilf.org

For more information, email press@theilf.org.



The **International Legal Foundation (ILF)** is a leading global advocate for the right to counsel for the poor, and a specialist in the provision of quality criminal defense services to poor and marginalized accused in post-conflict and transitioning countries. An integral part of the ILF's approach is its commitment to building the capacity of legal aid providers to provide quality and effective criminal defense services. To date, the ILF has represented more than 40,000 people and has trained and mentored hundreds of lawyers in Afghanistan, Nepal, Tunisia and the West Bank to provide effective legal aid services to poor and marginalized accused. The ILF also regularly provides advice and assistance to countries, legal aid providers and international organizations around the world. The ILF played a key role in drafting the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, the first international instrument on legal aid, and the Early Access to Legal Aid in Criminal Justice Processes: Handbook for Policymakers and Practitioners, published by UNDP and UNODC. In 2014, the ILF helped convene the world's first international criminal legal aid conference in South Africa, and in November 2016, the ILF will co-host the second such conference in Argentina.

The ILF is grateful to Open Society Foundations and the Oak Foundation, whose generous support of the ILF, and commitment to supporting the development of legal aid worldwide, has enabled us to draft this publication.

Measuring Justice

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Executive Summary

The right to a fair trial demands that those who are charged with a crime, and who cannot afford a lawyer, be provided with access to legal aid. But the mere presence of a lawyer in court is not enough to satisfy this requirement. A growing body of international norms requires that the indigent accused be provided with access to *quality* legal aid – well-trained, skilled, and experienced legal aid providers who follow best practices and thereby contribute to just outcomes.

This report is intended to contribute to an international consensus around best practices in defining and measuring quality in criminal legal aid services. It has three key points:

1. **Quality matters.** Quality is a key component of the right to legal aid and the human right to a fair trial. The right to legal representation for the criminally accused means little or nothing if it is not the right to quality legal representation.
2. **We can define quality legal representation.** We can clearly define quality legal representation with reference to a set of consensus international norms that, together, tell us what legal aid providers need to do in order to ensure fairness and maximize justice and liberty for their clients. Those norms can and should be distilled

down into a set of consensus performance standards for criminal legal aid providers.

3. **We can measure quality legal representation.** Measurement is critical to evaluation – the systematic determination of the quality of criminal legal aid services. Legal aid providers need measurement and evaluation to know whether they are living up to their obligation to provide quality legal aid for their clients.

Part I of the report shows how quality matters, reviewing case studies of legal aid evaluations to show that quality legal representation has been shown to make a real difference in both the fairness of the criminal justice process and the outcomes experienced by vulnerable people in the justice system.

For instance:

- Legal aid providers who meet with their clients early and often can increase both client satisfaction with their representation and trust in the fairness of the justice system.
- Legal aid providers who advocate for their client's release at detention hearings can increase pretrial liberty for their clients.

- Legal aid providers who prepare their defenses thoroughly and investigate their cases carefully can reduce conviction rates and lengths of sentences.

These examples, and a review of international norms around the right to legal assistance for the criminally accused, show that criminal legal aid is about both process and outcomes. In other words: legal aid is high-quality when legal aid provider activities track best practices in legal representation and contribute to just results. In order to promote the high-quality legal aid to which clients are entitled, the criminal legal aid community must dedicate itself to quality assurance – which means first defining quality with specificity, and then developing methods of measuring and evaluating the process and outcomes of legal aid services.

Part II makes the case for defining quality clearly by detailing the types of legal aid services that are considered best practices, and the essential components of quality legal aid.

The international community has already come a long way towards developing a consensus understanding of the norms that mandate fairness for accused people in criminal proceedings. Those norms guarantee essential rights for the criminally accused, like the right to freedom from unnecessary or arbitrary pretrial detention; the right to investigate independently the prosecution’s charges and to explore a defense case; the right to confront and cross-examine prosecution witnesses and evidence; and the right to appeal.

Those rights, in turn, give shape to legal aid providers’ duties or obligations – the legal aid services that they must perform in order to render quality representation. Those activities can be articulated in performance standards – written guidelines that

define with specificity the activities that criminal legal aid providers must or should perform in order to fulfill their duties to their clients. The global community of criminal legal aid providers should work together to define a consensus set of model performance standards that can be adapted by jurisdictions around the world. While an exhaustive set of standards is beyond the scale of the report, Part II proposes ten core practice principles that encapsulate the core obligations of criminal legal aid providers – that is, the building blocks of quality criminal legal aid processes:

1. **Provide Early Representation.** A legal aid provider should endeavor to meet with the client at or near the time of arrest or initial detention, and before any interrogation; and should interview clients within 24 hours of appointment or assignment to their case.
2. **Provide Client-Centered Advocacy.** A legal aid provider should counsel the client thoroughly and empower the client to make all of the important decisions in the case.
3. **Advocate for Pretrial Liberty.** A legal aid provider should advocate for the client’s release from pretrial custody at the earliest possible opportunity and throughout the case, as appropriate.
4. **Engage in Independent Fact Investigation.** A legal aid provider should conduct an independent fact investigation, including visiting the scene of the alleged offense and interviewing all potential witnesses in the case.
5. **Engage in Diligent Preparation.** A legal aid provider should develop coherent, creative,

and comprehensive case plans and strategies, and prepare carefully and thoroughly for every court hearing.

6. **Engage Expert Assistance.** A legal aid provider should consider engaging expert consultants and witnesses wherever appropriate.
7. **Engage in Pretrial Litigation.** A provider should timely file and argue all pretrial pleadings that may be advantageous for the client, applying the substantive and procedural law with skill and expertise.
8. **Defend the Client at Trial.** A legal aid provider should present clear, focused, forceful arguments that deploy both law and facts effectively in support of a compelling trial theory, and conduct skilled witness examinations.
9. **Engage in Sentence Mitigation.** A legal aid provider should argue for the least restrictive result at sentencing, presenting the court with creative alternatives to imprisonment wherever appropriate.
10. **File Appeals.** A legal aid provider should preserve a complete record for appeal and timely file appellate briefs that apply the law skillfully to raise every reasonable claim on the client's behalf.

Finally, **Part III** discusses measurement and evaluation of legal aid, explaining ways in which legal aid advocates can use this information to secure resources, reform systems, and continuously improve the quality of services to clients. Part III explores the three kinds of evaluations – process, impact, and cost-benefit – that providers can use to inquire into the quality and value of criminal legal aid services,

and gives examples of how some legal aid providers around the world have used evaluation. In structuring their evaluations, legal aid providers and administrators should select quality metrics that are:

- **Instrumental** – The selection of metrics should be driven by the evaluation needs;
- **Feasible** – The metrics should be relatively easy to collect;
- **Profound** – The metric should say something important about the subject of the evaluation; and
- **Intuitive** – It should be easy for a layperson to understand the relationship between the metric and the subject of the evaluation.

The report concludes with an illustration of an evaluation model for a criminal legal aid provider, demonstrating how the legal aid provider can move from 1) defining quality legal assistance through articulating clear practice principles to 2) selecting outcome and output metrics that will help the legal aid provider to measure the quality of its legal aid services.

Glossary

Legal aid services are the specific tasks that legal aid providers perform in the course of representing their clients. Examples include interviewing and advising the client, writing motions or applications to the court, investigating the case, and defending the client at trial. Legal aid services can be counted – that is, quantified – and can also be evaluated qualitatively. In theory, if the right legal aid services are provided in the right way, the legal representation will be more likely to result in the desired outcomes.¹

Evaluation is the systematic inquiry into the quality and/or value of criminal legal aid services in light of defined criteria.

Legal aid provider is the person—a lawyer, paralegal, law student or other professional—who directly provides legal aid services to people accused of criminal offenses.

Legal aid service provider is an organization or agency that employs or contracts with legal aid providers to provide legal aid services.

Outcomes are the changes in the real world that can result from the proper provision of legal aid services. Outcomes are not driven entirely by legal aid provider activities, but also respond to any number of external factors. For the purposes of this report, outcomes can be divided into two categories. **Case outcomes** occur at the case level and are measurable using objective and externally-verifiable data. Examples can include pretrial release, dismissals, convictions, and length of any sentence. **Perceptual outcomes** are measurable in terms of the changes in perception by clients and others. Examples can include client satisfaction with the representation, client agreement that the trial and outcome was fair, and increased community trust in the justice system. Perceptual outcomes and case outcomes can be related. For instance: A client who perceives that she was treated fairly and who therefore views the court as legitimate may be more likely to follow the judge’s probation orders and less likely to violate probation.² Other kinds of outcomes may be significant for criminal legal aid providers—for instance, life outcomes like obtaining a job or recidivism—but are beyond the scope of this report.

Outputs are the direct, quantifiable products of legal aid services. For example: If the legal aid service is “writing motions,” the output will be the written motion itself.

Performance Standards are written guidelines that define with specificity the activities that legal aid providers must or should perform in order to fulfill their duties to their clients.

Quality is a characteristic of legal aid services that describes the extent to which legal aid providers perform the intended legal aid services and increase the likelihood of achieving the intended results. There are two ways of measuring quality: In terms of process—providing the right legal aid services—and in terms of outcomes—obtaining the right results. Legal aid quality is not binary but instead exists on a spectrum, where higher-quality representation more frequently involves performing the intended activities and/or producing the intended outcomes.

Quality Assurance is the process of ensuring that legal aid services meet quality expectations.

Why Does Quality Matter?

- **Accused persons have a right to legal representation,** and the right to legal representation means the right to quality representation. Higher quality representation has been shown to make a real difference in both the fairness of the criminal justice process and the outcomes experienced by vulnerable people in the justice system.
- **Quality in criminal legal aid has two parts, process and outcomes.** Criminal legal aid is high-quality to the extent that it provides the intended services through application of best practices in legal representation (process) and increases the likelihood of producing the intended results (outcomes). Outcomes affected by quality representation can include increased pre-trial and post-conviction liberty and increased client satisfaction.
- **In order to promote the quality legal aid representation** to which clients are entitled, the criminal legal aid community must dedicate itself to quality assurance – which means first defining quality with specificity, and then developing methods of measuring and evaluating the processes and outcomes of legal aid services.



What are some of the things that make up high-quality representation? We interview clients at police stations. We get out in the street to investigate cases. We put together social files to argue for pretrial release. That helps to make the system fair for everyone. Our advocacy is changing the way that the judicial police and the public prosecutor act. The prosecutor just told me that he reads our pleadings to learn what the law is!

Hanane Fatahallah

Lawyer, International Legal Foundation – Tunisia

The Right to Legal Aid Means Quality Legal Aid

The right to free legal aid for every criminal defendant who is unable to afford a lawyer is a widely-accepted principle of law and an essential component of the right to a fair trial.³ The *United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems* call on States to “ensure that anyone who is detained, arrested, suspected of, or charged with a criminal offence punishable by a term of imprisonment or the death penalty is entitled to legal aid at all stages of the criminal justice process.”⁴ Consistent with the *UN Principles and Guidelines* and with article 14 of the *International Covenant on Civil and Political Rights*, most States guarantee the right to free legal representation for poor and vulnerable persons accused of crimes.⁵

But the rights to legal aid and to a fair trial depend on more than just “the mere presence of the applicant’s lawyer in the hearing room.”⁶ A growing body of international norms teaches that fairness for accused people requires *quality* legal aid representation – well-trained, skilled, and experienced providers who follow best practices and contribute to just outcomes.

Research that has been conducted on legal aid increasingly shows that quality matters.⁷ Legal aid providers who care about quality – performing all of the activities necessary to protect their clients’ rights – are more likely to achieve just results, including increased pretrial release; increased client satisfaction; and increased community-wide trust in the justice system. Of course, performing a given activity does not guarantee a given outcome. Many factors beyond a legal aid provider’s control – like the strength of the prosecution’s case, the underlying law, and the predispositions of the trier of fact – have an important impact on outcomes. But, over the run of many cases, quality representation does make a real and measurable difference:

- **Legal aid providers who meet with their clients early and often increase client satisfaction and trust in the fairness of the justice system.** Case outcomes—like not-guilty verdicts and avoiding imprisonment—are critically important to clients, but they are not the only kinds of outcomes that matter. Also important are perceptual outcomes – the ways in which perceptions change as a result of legal aid advocacy. These



ILF-West Bank lawyers discuss difficult and complex case strategies as a team

perceptual outcomes can include client perceptions of fairness in the justice system; the clients' sense of self-actualization from being empowered to make the important decisions; and community trust in the integrity of the justice system. And research indicates that some perceptual outcomes are influenced by client communication – an activity that, if carried out early, often, and in confidence, is a hallmark of quality advocacy. When a number of United States jurisdictions participated in a pilot project that increased staffing levels and emphasized early access to counsel and client communication, these perceptual outcomes improved: “A major theme across all the sites,” the evaluator concluded, “was that changes in public defender practices had increased client satisfaction, decreased client confusion and promoted greater trust in the court system as a whole.”⁸

- **Legal aid providers who advocate at detention hearings can dramatically increase pretrial liberty for their clients.** Prompt representation at all stages of a case is one of the mandates in the *UN Principles and Guidelines*.⁹ When le-

gal aid providers begin representation early by advocating for pretrial release at the first available opportunity, they can make a difference in fairness for their clients and enhance overall efficiency in the justice system. In one study, clients represented by lawyers at bail hearings in a large, urban jurisdiction in the United States won unconditional pretrial release for their clients at a rate 250% greater than unrepresented defendants. The study's authors concluded that “delaying representation until after the pretrial release determination was the single most important reason for lengthy pretrial incarceration of people charged with nonviolent crimes.”¹⁰ By promoting pretrial release, legal aid providers protect the human right to liberty and the presumption of innocence: If someone is not guilty under the law, they should not be in custody. And pretrial release means more than short-term liberty. For clients, it improves the long-term odds of receiving a less-restrictive sentence¹¹; for governments, it reduces jail populations and saves taxpayer dollars.

- **Legal aid providers who prepare thoroughly and investigate cases carefully can reduce conviction rates and sentences.** A 2013 study shows that legal aid providers who invest in preparation and investigation achieve significantly better results at the trial and sentencing phases than their colleagues who do not prepare or investigate adequately. After demonstrating that public defenders in the large, urban United States jurisdiction of Philadelphia are much more likely to conduct pretrial fact investigation than their appointed peers, the study concludes: “Compared to appointed counsel, public defenders in Philadelphia reduce their clients’ murder conviction rate by 19%. They reduce the probability that their clients receive a life sentence by 62%. Public defenders reduce overall expected time served in prison by 24%.”¹² A study in a relatively small, rural jurisdiction in Texas, in the United States, arrived at similar results, with public defender clients achieving much higher case dismissal rates than assigned counsel clients. The authors concluded that “[t]hese impressive results are largely attributable to the... staff investigators who gather evidence needed to strengthen the defense.”¹³

Quality Legal Aid = Process + Outcomes

By doing the right things – conducting fact investigations, being present to fight for clients’ liberty at critical detention hearings, and more – legal aid providers who provide quality legal aid services can increase the odds of favorable outcomes for their clients. In other words: Quality in legal aid varies with the extent to which legal aid providers perform the right legal aid services – like advocating for pretrial release and conducting fact investigation – and the extent to which legal aid providers secure the in-

tended outcomes.¹⁴ That understanding is reflected in our international norms around quality legal aid, beginning with the *UN Principles and Guidelines*:

27. States should ensure that effective legal aid is provided promptly at all stages of the criminal justice process.
28. Effective legal aid includes, but is not limited to, unhindered access to legal aid providers for detained persons, confidentiality of communications, access to case files and adequate time and facilities to prepare their defence....
37. States should put in place mechanisms to ensure that all legal aid providers possess education, training, skills and experience that are commensurate with the nature of their work....¹⁵

These principles distill down a set of expectations articulated in a series of international, regional, and national instruments that together guarantee every accused person, at a minimum, the right to a legal aid provider who:

- Has appropriate training and experience¹⁶;
- Has expertise in substantive and procedural law¹⁷;
- Prepares meaningfully¹⁸;
- Communicates in confidence with the accused¹⁹; and
- Advocates diligently and with conviction for the rights of the accused at every stage of the proceedings.²⁰

These norms require that legal aid providers be the *right people*—trained, experienced—who perform the *right legal aid services* at the *right times* to defend the accused. The Part II of this report spells out



I used to see lawyers take guilty pleas without talking to their clients. That's not the way we practice now. We go out in the field and talk to witnesses, take pictures, visit crime scenes. Our clients get better results, and they trust us more. They believe in us, and they believe in the fairness of the system. Our performance standards are the means that get us to good results for our clients and for the whole justice system.

Ghadanfar Kamanji

Legal Director, International Legal Foundation – West Bank

the international consensus around those activities that define quality representation.

But process is only one component of quality.²¹ The other component is the quality of outcomes. Here, too, the *UN Principles and Guidelines* resolution provides a good starting place, articulating many of the outcomes that quality legal aid should aim to produce. In addition to promoting “the right to a fair trial” and “ensur[ing] fundamental fairness and public trust in the criminal justice process,”²² quality criminal legal aid may:

“[R]educe the length of time suspects are held in police stations and detention centres, in addition to reducing the prison population, wrongful convictions, prison overcrowding and congestion in the courts, and reducing reoffending and revictimization. It may also protect and safeguard the rights of victims and witnesses in the criminal justice process. Legal aid can be utilized to contribute to the prevention of crime by increasing awareness of the law.”²³

When legal aid is properly provided, it can gener-

ate outcomes that matter both for the accused and for the entire justice system. It vindicates the human rights to a fair trial, life, and liberty; promotes fundamental fairness for individual defendants; and reinforces public perceptions of fairness and enhances trust in the justice system.

Quality Assurance

Quality assurance is the process of ensuring that legal aid services meet quality expectations. Like the quality mandate itself, “the importance of quality assurance”²⁴ is stressed by international instruments. Guideline 16 of the *UN Principles and Guidelines* calls upon governments to “set quality standards” for legal aid; “to establish monitoring and evaluation mechanisms to ensure the quality of legal aid services, in particular those provided at no cost”; and “[t]o work with all legal aid service providers to increase outreach, quality and impact...”²⁵

In Part II, this report will turn to the development of standards – detailed articulations of the legal aid services that together define quality in legal aid representation. Looking ahead, Part III will complete the discussion by laying out strategies and methods for measuring quality and evaluating legal aid services to promote quality representation.

Quality for Legal Aid Providers and Quality for Legal Aid Systems

Here, we use “legal aid providers” to mean the professionals – lawyers, paralegals, and others – who deliver criminal legal aid services on the front lines.

These legal aid providers do not work in a vacuum. Instead, individual legal aid providers are usually part of a larger legal aid system – a network of legal aid service providers that should be regulated and funded by government and that is intended to support the provision of criminal legal aid to all indigent accused people in the jurisdiction. It is important for each legal aid provider to aspire to quality, but difficult for individual legal aid providers to provide quality representation in the absence of a quality *system* of legal aid provision.

Consider just a few examples:

- A paralegal may adhere to best-practices standards by setting aside time every morning for prompt consultations with new detainees – but his employer may frustrate his effort by failing to obtain lists of arrested people for the paralegal to interview.
- A lawyer may seek to do the right thing by identifying an expert to perform a psychological examination of an impaired client – but the government may refuse to provide expert funding.
- An entire law office, led by a principled and capable director, may advocate with dedication for accused people – but the director may be removed by a municipality that refuses to grant the public defender’s office the political independence that is the prerequisite for high-quality practice.

For reasons of space and focus, this report is limited to discussing the importance of defining and measuring quality in legal aid service provision. In a future report, we hope to take up the important, linked question of assuring quality in legal aid delivery systems.²⁶

For further reading on the building blocks of a quality legal aid system, please see:

- American Bar Association, *Ten Principles of a Public Defense Delivery System* (2002)–A summary listing of the baseline criteria for quality in a criminal legal aid system, including political independence; engagement of both public defenders and the private bar; prompt appointment of counsel; provisions for confidential client communications; workload controls; attorney competency; continuous representation; resource parity with the prosecution; ongoing training; and supervision and quality control.
- National Legal Aid & Defender Association, *International Legal Aid & Defender System Development Manual* (2010) – A resource guide with detailed instructions on building strong criminal legal aid systems.
- United Nations Office on Drugs and Crime, *Model Law on Legal Aid in Criminal Justice Systems* (2016) – Model legislation that encodes a number of the baseline quality expectations for a high-functioning criminal legal aid system, including independence; equality with private counsel; and early access to counsel.

What is Quality?

- **International norms that shape legal practice can be** refined into performance standards – written guidelines that define with specificity the legal aid services that legal aid providers must or should perform in order to fulfill their duties to their clients.
- **Legal aid providers can use performance standards to** help measure the quality of criminal legal aid services and promote continuous improvement.
- **The global community of criminal legal aid providers** should work together to define a consensus set of model performance standards that can be adapted by jurisdictions around the world. Performance standards can serve as the basis for the measurement and evaluation that is essential to quality assurance.

Quality Starts with Clarity

Because one part of the definition of quality in legal aid representation is providing the right legal aid services in the right way, we need to be clear about the legal aid services that are constitutive of quality legal aid representation. Quality only matters if it means something specific and real. Otherwise, it cannot be planned for, measured, or rewarded.

Fortunately, the international community has already come a long way towards developing a consensus understanding of the norms that mandate justice and fairness for accused people in criminal proceedings. We can express those norms as performance standards that spell out the duties of legal aid providers who seek to provide quality legal representation.

The Rights that Shape Legal Aid

International norms guarantee a range of rights to every accused person, and legal aid is the mechanism by which those rights are enforced and realized for those who cannot afford counsel.²⁷ As the *UN Principles and Guidelines* explain, legal aid is “a foundation for the enjoyment of other rights, including the right to a fair trial... a precondition to exercising such rights and an important safeguard that ensures fundamental fairness and public trust in the criminal justice process.”²⁸ If protecting the rights of accused people is one of the baseline roles of legal aid providers, then it is possible to delineate many critical obligations of providers by reference to those rights.

To understand the relationship between legal aid providers’ obligations – the legal aid services that they must perform, in order to render quality representation – and fair trial rights, consider a partial list of the norms relating to fairness in the criminal justice system. These norms have been broadly,

and in many instances universally, embraced by the international community:

- The right to freedom from unnecessary and arbitrary pretrial detention.²⁹
- The right against self-incrimination.³⁰
- The right to a speedy trial.³¹
- The right to investigate independently the prosecution’s charges.³²
- The right to prepare fully and to present a complete defense.³³
- The right to compulsory process of defense witnesses.³⁴
- The right to confront and cross-examine prosecution witnesses and evidence.³⁵
- The right to appeal.³⁶

Given the complexity of contemporary justice systems, it is impossible to imagine enforcement of these universally-accepted norms without the assistance of a legal aid provider.³⁷ The job of prosecutors is to convict the accused; they cannot also be expected to defend the rights of the accused. “Fair trial, in terms of both process and outcome, without access to effective criminal defence, would require law enforcement agents and prosecutors to be completely neutral, and even-handed, and would require judicial authorities to take a proactive approach, taking nothing at face value. Experience and research evidence tells us that this is not possible...”³⁸ Further, by herself, a lay-person seized off the street and summarily detained will not ordinarily be able to explore and exploit, from her jail cell, the weaknesses in the prosecution’s case; the substantive and procedural rules regulating pretrial release; or the available alternatives to pretrial detention. There will be no remedy for the violation of her right against arbitrary detention – a right rooted in the equally universal right to the presumption of innocence.³⁹

By contrast, a criminal legal aid provider will, among other things, meet quickly with the client in confidence, and explain her rights – including her right against self-incrimination. The legal aid provider will file a pleading requesting release, and immediately begin fact investigation to prepare for an eventual trial. The quality legal aid provider will, in other words, begin a set of legal aid services dedicated to protecting the accused’s core rights.

From Client Rights to Legal Aid Performance Standards

As the example above suggests, articulating the rights of the individual does not, by itself, express the quality of criminal legal aid representation.

International norms guarantee every accused person the right against arbitrary detention and the right to the presumption of innocence. In most if not all jurisdictions, those rights can be protected at a hearing where an accused may win pretrial release. To know whether a legal aid provider has provided high-quality legal representation – either from the perspective of process or outcomes – we have to understand the legal aid provider’s specific obligations in demanding the hearing, preparing for it, and advocating before the court. Otherwise, we may be able to evaluate the fairness of the overall justice system, but we cannot evaluate the quality of the services rendered by one actor within that broader system – the legal aid provider. Articulating the importance of the right to the presumption of innocence says nothing about the quality of a legal aid provider’s work in holding the prosecution to its burden, just as articulating a right to be healthy tells us nothing about whether a doctor has done a good job in excising a tumor. If the patient is healthy, we may intuit, at some level, that the underlying right has been vindicated; but, without more information, we know nothing about *why*, *how*, and *how well* the right has been

vindicated. And those answers matter to the extent that we are not satisfied with the status quo.

The solution is performance standards – detailed, written guidelines that enumerate with specificity the activities that legal aid providers must or should perform in order to fulfill their duties to their clients. The UN Principles and Guidelines provide that “[s]tates should take measures... to set quality standards for legal aid services,”⁴⁰ and many jurisdictions have adopted standards as a means of clarifying – and thus, ultimately, measuring and evaluating – the specific obligations of defense counsel in vindicating clients’ rights.

When standards are well-crafted, they mandate activities that in turn produce outputs that are both measurable and predictable. Well-crafted standards should be both ambitious and realistic. Because they are specific and prescriptive, they are ideally suited to serve as the basis for legal aid provider training, ongoing consultation, and guidance.⁴¹ As the name indicates, standards are intended to *standardize* the process of providing legal aid services – they are, in that sense, as one State’s justice department has written, “the key to uniform quality... [U]niform application of standards at the state or national level is an important means of limiting arbitrary disparities in the quality of representation based solely on the location in which a prosecution is brought.”⁴²

Finally, standards should be authoritative – that is, while they should be adapted to the laws and procedures in each jurisdiction where they are used, performance standards should be rooted in international consensus. A comparison of legal aid performance standards that have been developed around the world reveals striking similarities.

Figure 2 illustrates how different performance standards converge around one key defense obligation – advocating for pretrial release of the client.

FIGURE 1

Performance Standards v. Codes of Conduct

Some jurisdictions have adopted codes of conduct in place of, or in addition to, performance standards. It is important to distinguish between the two. A Code of Conduct may be an element of a comprehensive set of performance standards, but it is not a replacement for those standards.

	Performance Standards	Codes of Conduct
Intended Audience	Focused directly on, and limited to, providers of legal aid.	Can be generally applicable to all legal aid practitioners, or even to all lawyers.
Level of Detail	Usually give detailed descriptions of mandated activities, promoting uniformity of practice across jurisdictions.	Usually broadly-framed in terms of ethical principles, relying on the discretion of practitioners for the details of practice. Focus on the what of ethical practice, not the how of day-to-day lawyering.
Jurisdictional Specificity	Because they are so detailed and prescriptive, standards must be adapted to the laws, procedures, and customs of each jurisdiction where they are used.	Because they speak to general principles that often apply across borders, codes of conduct may not need to be adapted to each jurisdiction in which they are used.
Amenability to Evaluation	Because they mandate specific, measurable activities, standards support a range of evaluation processes, including quantitatively-based process evaluations.	Because they do not mandate specific activities, codes of conduct often are limited to supporting more qualitative evaluations, like peer review, which depend on the discretion of expert reviewers to assess the exercise of discretion by practitioners.



The ILF's Executive Director Jennifer Smith (center) speaking to attendees of the 1st International Conference on Access to Legal Aid in Criminal Justice Systems, which brought together over 250 legal aid providers and experts from almost 70 countries to address common challenges and to discuss good practices

Developing Consensus International Performance Standards

The similarities among the relatively few existing sets of standards, and the existence of broadly-accepted norms that define fairness in criminal justice, point towards the possibility of promoting quality legal representation by generating model performance standards that are relevant to practitioners in jurisdictions around the world.

While a comprehensive body of standards would be too voluminous for this printed report, a complete and detailed set of illustrative criminal legal aid standards – synthesized from the most authoritative performance standard sources available – is available as a supplement at the International Legal Foundation's website: theilf.org.

For this report, we have summarized those detailed, illustrative standards in 10 proposed practice principles that enumerate the core obligations of criminal legal aid providers—that is, the building blocks of quality criminal legal aid processes. *Figure 3* lists these principles, showing how they grow out of a set of universally-embraced rights embedded in international norms.

FIGURE 2

Comparison of Performance Standards Across Jurisdictions

Source	Legal Aid Reformers' Network, <i>Model Practice Standards for Criminal Defense</i> (Model practice standards based on national standards in Ukraine, Moldova, and Georgia) ⁴³	National Legal Aid and Defenders Association, <i>Performance Guidelines for Criminal Defense Representation</i> (United States model practice standards) ⁴⁴	International Legal Foundation, <i>Minimum Performance Standards for Representation During Initial Criminal Proceedings</i> (used in ILF offices in Nepal, Tunisia, Afghanistan, and the West Bank) ⁴⁵
Standard	<p>2.2.1. The lawyer should be prepared to present to the appropriate judicial officer a statement of the factual circumstances and the legal criteria supporting release and, where appropriate, to make a proposal concerning conditions of release...</p> <p>2.2.7. The lawyer should strive to use the collected information to obtain the lightest preventive measure.</p>	<p>Guideline 2.1, General Obligations of Counsel Regarding Pretrial Release</p> <p>The attorney has an obligation to attempt to secure the pretrial release of the client under the conditions most favorable and acceptable to the client...</p> <p>Guideline 2.3, Pretrial Release Proceedings</p> <p>(a) Counsel should be prepared to present to the appropriate judicial officer a statement of the factual circumstances and the legal criteria supporting release and, where appropriate, to make a proposal concerning conditions of release.</p>	<p>P.2: Counsel has an obligation to vigorously attempt to secure the pretrial release of the client under conditions most desirable to the client. Counsel's argument to the court during the bail/detention hearing should include the client's ties to the community and other factors that support a conclusion that the client, if released, will return for future court appearances.</p>

FIGURE 3

Criminal Legal Aid Practice Principles

Selected Legal Norms	Practice Principles	Discussion
<ul style="list-style-type: none"> • The right to communicate freely and confidentially with counsel at all stages of the proceedings.⁴⁶ • The right against self-incrimination.⁴⁷ • The right to freedom from unnecessary or arbitrary pretrial detention.⁴⁸ • The right to a legal aid provider who advocates for the client’s expressed interests.⁴⁹ 	<ol style="list-style-type: none"> 1. Provide Early Representation - A legal aid provider should endeavor to meet with the client at or near the time of arrest or initial detention, and before any interrogation, and to interview clients within 24 hours of appointment or assignment to their case. 2. Provide Client-Centered Advocacy - A legal aid provider should counsel the client thoroughly and empower the client to make all of the important decisions in the case. 3. Advocate for Pretrial Liberty - A legal aid provider should advocate for the client’s release from pretrial custody at the earliest possible opportunity and throughout the case, as appropriate. 	<p>When legal aid providers begin representation as soon as possible after arrest and promptly conduct meaningful and confidential client interviews, they learn more about their clients’ goals, lives, and social histories, which better positions them to:</p> <ul style="list-style-type: none"> • Advocate against ongoing detention at the earliest possible opportunity, using clients’ social histories and verified community ties, as well as information about the facts of the case, to secure favorable conditions of release; • Advise clients of their rights, protecting clients against abuses in any ongoing police investigation, including interrogation. <p>This logic has led all existing performance standards to mandate both prompt client interviews and advocacy for pretrial release.⁵⁰ When attorneys begin representing their clients immediately and conduct the meaningful interviews that should precede detention hearings, clients are more likely to win the desired outcome of pretrial release. And clients who are released prior to trial are more likely to be able to assist in their own defense, to resist inappropriate pressure to plead guilty merely to obtain release, and ultimately to obtain better sentences.⁵¹</p> <p>Finally, within the constraints of laws and ethics, criminal legal aid providers should serve their clients through client-directed advocacy—advocacy that helps clients achieve goals that they determine after consultation with counsel. Otherwise, providers are not their clients’ agents. Existing performance standards therefore agree that criminal legal aid providers are obligated to counsel their clients thoroughly throughout the case, ensuring that clients understand their rights and their options, and to advocate for the interests and goals that clients determine for themselves.⁵²</p>
<ul style="list-style-type: none"> • The right to investigate independently the prosecution’s charges and to explore a defense case.⁵³ 	<ol style="list-style-type: none"> 4. Engage in Independent Fact Investigation - A legal aid provider should conduct an independent fact investigation, including visiting the scene of the alleged offense and interviewing all potential witnesses in the case. 	<p>Independent fact investigation is the prerequisite for adversarial defense advocacy on the question of guilt and innocence at trial. Without independent investigation to challenge the prosecution’s case and develop a robust defense theory, providers are entirely dependent on the version of the facts collected by law enforcement or the courts. The experience of providers in developed and developing countries that have embraced independent fact investigation, as well as the findings of researchers examining the impact of investigation, show that investigation can make a meaningful difference in the outcomes of cases.⁵⁴ The consensus of existing legal aid performance standards mandates independent defense investigation.⁵⁵</p>

FIGURE 3

Criminal Legal Aid Practice Principles, cont'd

Selected Legal Norms	Practice Principles	Discussion
<ul style="list-style-type: none"> • The right to prepare fully and to present a complete defense.⁵⁶ • The right to a full and fair determination of rights by a neutral tribunal.⁵⁷ 	<ol style="list-style-type: none"> 5. Engage in Diligent Preparation - A legal aid provider should develop coherent, creative, and comprehensive case plans and strategies, and prepare carefully and thoroughly for every court hearing. 6. Engage Expert Assistance - A legal aid provider should consider engaging expert consultants and witnesses wherever appropriate. 7. Engage in Pretrial Litigation - A provider should timely file and argue all pretrial pleadings that may be advantageous for the client, applying the substantive and procedural law with skill and expertise. 	<p>The norm requiring governments to grant accused people the time and resources to present a complete defense is meaningless unless criminal legal aid providers actually use that time and those resources to prepare thoroughly. Providers who develop comprehensive strategies, and who use court hearings and filings tactically to advance those strategies, position themselves optimally to advocate for fairness and achieve strong results for their clients. This proposition is broadly accepted among legal aid providers and encoded in all existing performance standards, as is the proposition that providers should take advantage of expert assistance – including mental health professionals – whenever appropriate to advance clients’ interests and protect clients’ rights.⁵⁸</p> <p>Similarly, existing performance standards mandate that legal aid providers take all appropriate steps to defend clients’ rights through motions practice, pleadings, and argument.⁵⁹ The obligation of providers to engage in legal issue litigation is the prerequisite for vindication of rights like the universally-embraced protections against ex-post-facto punishment and double jeopardy.⁶⁰</p>
<ul style="list-style-type: none"> • The right to confront and cross-examine prosecution witnesses and evidence.⁶¹ • The right to compulsory process of defense witnesses.⁶² 	<ol style="list-style-type: none"> 8. Defend the Client at Trial - A legal aid provider should present clear, focused, forceful arguments that deploy both law and facts effectively in support of a compelling trial theory, and conduct skilled witness examinations. 	<p>The production of defense witnesses and the cross-examination of state witnesses is the core of defense counsel’s trial function in an adversarial system, and an essential component of promoting fairness, protecting innocence, and holding the state to its burden of proving guilt. Every existing performance standard calls on legal aid providers to present opening and closing arguments, to present a defense, and to challenge the state’s case.</p>
<ul style="list-style-type: none"> • The right to personal liberty. • The right to freedom from cruel, inhuman, and degrading punishment.⁶³ • The right to seek relief from conviction and sentence from a higher court.⁶⁴ 	<ol style="list-style-type: none"> 9. Engage in Sentence Mitigation - A legal aid provider should argue for the least restrictive result at sentencing, presenting the court with creative alternatives to imprisonment wherever appropriate. 10. File Appeals - A legal aid provider should preserve a complete record for appeal and timely file appellate briefs that apply the law skillfully to raise every reasonable claim on the client’s behalf. 	<p>Criminal legal aid providers who advocate for the least restrictive alternative at sentencing protect their clients’ rights to liberty, ensure that clients are not deprived of their liberty without due process of law, and stand between their clients and any illegally cruel punishment. Perhaps because it is so closely tied to the right to liberty, sentencing advocacy is mandated by all legal aid performance standards.⁶⁵ The right to appeal is similarly universally acknowledged by international instruments, and performance standards are unanimous in encoding that right. When the record is skillfully preserved and complete appeals are timely filed, providers can fulfill their core function of vindicating clients’ rights, ensuring fairness, and working towards client liberty even when lower courts have erred.</p>

How Do We Measure Quality?

- **The criminal legal aid community can use measurement** and evaluation to secure resources, reform systems, and continuously improve the quality of services to clients.
- **Increasingly, criminal legal aid providers, legal aid service providers, and entire legal aid systems are building** and using process evaluations, impact evaluations, and cost-benefit evaluations that collect and analyze both quantitative and qualitative data.
- **The global legal aid community should come together to** develop a set of consensus metrics that can be adapted to the practices and needs of jurisdictions around the globe.

Towards Quality Assurance

After defining quality, the next step is deciding how to measure it. Measurement is critical to evaluation, which is broadly defined here as the systematic determination of the quality and/or value of criminal legal aid services in light of defined criteria. Without evaluation, legal aid providers cannot know whether they are living up to their obligation to provide quality legal aid representation for their clients. Evaluation allows legal aid providers to set benchmarks so that individual lawyers, offices, and entire systems can continuously improve. Finally, evaluation can be an indispensable tool in advocacy for increased resources for criminal legal aid.

Evaluation starts with measurement, and so this part of the report will begin with a discussion of the importance of measurement to the criminal legal aid community. It will then go on to explore how measurement is used in different kinds of evaluations that are relevant to criminal legal aid. Finally, it will consider how providers can select metrics – units of quality measurement – to meet their evaluation needs.

Why Measure?

Until relatively recently, criminal legal aid around the world has existed in what one researcher called an “evidence-free zone.”⁶⁶ “[T]here exists,” another researcher noted, “surprisingly little of what counts as evidence guiding decision-making in the indigent defense field.”⁶⁷ Instead, criminal legal aid leaders have tended to make decisions – about legal aid structures and systems, about the allocation of resources, and about practice expectations – through reference to received tradition, or “collective experience and observation.”⁶⁸ That tendency has not always been harmful, of course: there is a great deal of wisdom and experience in the criminal legal aid community. At the very least, the tendency has been

understandable, since the collection and analysis of data requires resources that criminal legal aid service providers often do not have.⁶⁹

But the struggles of criminal legal aid – at the systems level and at the level of individual practice – can also be traced at least in part to an embrace of collective experience to the exclusion of data, measurement, and empiricism. Consider the impact of the absence of data on some of the most pressing problems confronting criminal legal aid in countries around the world:

- **Funding** – or, more to the point, the absence of adequate funding – is a nearly-universal concern for the legal aid community. But, as one scholar has observed, the lack of adequate resources in many criminal legal aid systems is directly connected to the absence of meaningful measurement and evaluation: “While indigent defense is universally viewed as underfunded, the truth is the field lacks an objective means of quantifying how much money its services do or should cost, or what a reduction in the ability to provide particular services means from the standpoint of quality.”⁷⁰ A provider who cannot quantify what activities she performs and what difference those activities make for her clients – and, conversely, who cannot quantify the negative effects of cutting back on those activities for each client in the face of increasing caseloads – may have difficulty making a compelling case for the resources that she needs to keep workloads manageable and deliver high-quality services.
- **Structural reform** can mean everything from the establishment of full-time public defender offices, to the imposition of experience or training requirements for private attorneys who wish

to take be appointed in certain types of criminal legal aid cases. Advocates for structural reform almost always frame their arguments in terms of quality and cost-effectiveness, but those arguments are difficult to make in the absence of the ability to measure quality and quantify costs and benefits. One pair of scholars, after completing a seven-year study designed to develop performance measures and an evaluation plan for a large United States jurisdiction, explained that “[i]ndigent defense needs what other large scale systems, such as health care, have: the ability to collect and analyze indicators that measure whether indigent defense is achieving its goals... Every day we lack this type of evaluation leads to more missed opportunities for understanding, improving, and more effectively advocating for indigent defense needs and for system reform.”⁷¹

- **Quality improvement**, as this report has argued throughout, depends on being able to measure performance; to analyze data to understand where performance can be improved; and to set benchmarks for improvement and track progress towards those benchmarks. One pair of researchers analyzed the lessons that the criminal legal aid field can learn from other professions, like medicine and aviation, which have dramatically improved outcomes for clients by embracing data-driven quality assurance strategies: “[C]reating a data-driven culture of improvement requires that participants embrace data collection, error reporting, and an evidence-based feedback loop for outcome-improving reforms.” Criminal legal aid providers may fear that an emphasis on measurement necessarily means the valorization of quantitative data at the expense of professional judgement. But quantitative data – things

that can be counted, which are commonly found in places like court records and law offices’ case management systems – is just one of the two forms of data that can be the basis for measurement of critical activities, outputs, and outcomes in criminal legal aid. Qualitative data – which “describe the essential qualities or experience of a phenomenon” and whose “sources may include interviews, observations, and documents” – is critically important as a complement to hard numbers. “A focus on the qualitative side,” one legal aid research team has explained, “can help to describe aspects of a program that cannot easily be quantified, such as the manner in which attorneys relate to their clients. Such perspective can also help to contextualize the quantitative results of an evaluation.”⁷²

Criminal legal aid providers may fear that an emphasis on measurement necessarily means the valorization of quantitative data at the expense of professional judgement. But quantitative data – things that can be counted, which are commonly found in places like court records and law offices’ case management systems – is just one of the two forms of data that can be the basis for measurement of critical activities, outputs, and outcomes in criminal legal aid.⁷³ Qualitative data – which “describe the essential qualities or experience of a phenomenon” and whose “sources may include interviews, observations, and documents”⁷⁴ – is critically important too. “A focus on the qualitative side,” one legal aid research team has explained, “can help to describe aspects of a program that cannot easily be quantified, such as the manner in which attorneys relate to their clients. Such perspective can also help to contextualize the quantitative results of an evaluation.”⁷⁵



We started in 2003, with performance standards. We took international standards and adapted them to our practice and our laws in Afghanistan. The standards required in-depth interviewing, visiting detention centers, initiating defense investigation, cross-examining witnesses, and so much more.

Our office grew and developed, and along the way our practice reshaped the way that criminal defense happens in Afghanistan. Our own practice evolved too. Now, we have an internal Measurement and Evaluation division. They are responsible for evaluating the work of all of our lawyers. They use our case management system as an evaluation tool, which lets them track dozens of different metrics. How many cases does each lawyer have? Does the complexity of the caseload match the experience of the lawyer? What kinds of outputs is a lawyer producing, and what kinds of outcomes are his clients experiencing? We can track improvement of lawyers over time quantitatively, and we can compare lawyers to each other.

The Measurement and Evaluation team also gets out in the field. They travel to every regional office and review attorney case-files, using a checklist that is based on our standards. They go to court and interview judges, prosecutors, and clients to find out where lawyers are strong and where they need improvement. All of that information goes into evaluating lawyers, and it also goes to our training department, which can implement training to help lawyers develop in the areas where they need support. We can hold lawyers accountable. We can help them grow. And we are always getting better.

Abdul Qayum Ahmadzai

Data and Development Manager, International Legal Foundation – Afghanistan

Evaluating Criminal Legal Aid Programs

In response to the growing recognition that measurement and evaluation are critical to legal aid service quality, systemic improvement to the legal aid system, and securing adequate resources, many in the criminal legal aid community have begun to embrace the importance of measurement, evaluation, and a culture of data-driven quality assurance.

The criminal legal aid community has engaged in three basic forms of evaluation. The methods, data sources, and metrics associated with each evaluation form will vary depending on the nature of the evaluation and the purpose to which the evaluation is put.

- **Process evaluations** measure outputs – the direct products of criminal legal aid services. If,



Participants in a roundtable on guaranteeing early access to legal aid in the West Bank, hosted by ILF-West Bank

for example, the legal aid service is “writing motions,” the output will be the written motion itself. Process evaluations ask “whether the program succeeded in providing the intended services to the target population.”⁷⁶ A process evaluation of a criminal legal aid service provider explores whether the activities of the individual attorneys fully embodied the service provider’s performance standards. In lay terms: Is the provider doing the right things on behalf of her clients?

One example of a process evaluation is the United Kingdom’s system of using peer review audits to assess the quality of criminal legal aid providers in England, Wales, and Scotland.⁷⁷ The evaluation deploys trained experts who review attorney case files in light of a set of predetermined criteria. The data collected is qualitative – the peer reviewers draw upon their experience to characterize the legal aid services provided – rather than quantitative, and the evaluation is almost entirely focused on activities and outputs rather than case outcomes. Typical questions that evaluators consider include *How ap-*

propriate were the lawyer’s communication and client-handling skills? and How effective was the lawyer in seeking relevant information from the client? The evaluators have a model of what quality advocacy looks like, and they are seeking to determine the extent to which providers are faithful to that model.

- **Impact evaluations** measure outcomes – the specific changes in the real world that can be influenced by the activities of criminal legal aid providers. If, for example, the activity is *arguing for pretrial release*, the outcome may be release. Impact evaluations ask “whether the program activities produced the intended outcomes.”⁷⁸ In lay terms: Is the provider getting the right results for her clients? Is the work making a difference? Impact evaluations need to look beyond performance standards to the objectives of the representation itself. Objectives must be defined in advance, often in a mission statement, strategic plan, or other document that articulates the results that legal aid programs hope to achieve on behalf of their clients.

Impact evaluations can be difficult in the legal aid context, in part because “outcomes are beyond the direct control of program staff and may be heavily dependent upon external factors such as the court system.”⁷⁹ An attorney cannot, by herself, determine the results of her activities aimed at pretrial release: the outcome will be determined, in part, by the prosecutor, the client’s record and community ties, and of course the judge. The attorney’s activities will be, at most, a contributing factor. A strong impact evaluation will therefore control for factors beyond the provider’s activities.

Criminal legal aid activities can contribute to many different kinds of real-world outcomes, only some of which – like pretrial release, in the example given above – are empirically provable from data generally collected in justice systems. Providers structuring evaluations may find it useful to distinguish between case outcomes and perceptual outcomes. Case outcomes are the case-level results of provider activities, and are measurable using objective and externally-verifiable data. Examples can include dismissals, convictions, and sentence lengths. Perceptual outcomes are the results of provider activities that are measurable in terms of the changes in perception by clients and others. Examples can include client satisfaction with the representation, client agreement that the case outcome was fair, and community trust in the justice system.

An example of an impact evaluation that looked at both case outcomes and perceptual outcomes is the assessment of the quality of services delivered by a public defender pilot project – the Public Defense Solicitor’s Office – in Scotland at the turn of the millennium.⁸⁰ The evaluators gathered information on 2,600 cas-

es, comparing outcomes experienced by public defenders versus private legal aid providers. Among the outcomes considered were the rate of guilty pleas; the percentage of clients who were ultimately sentenced to serve time in prison; and the average sentence lengths imposed on imprisoned clients. The reviewers also looked at the clients’ opinions of their lawyers, conducting interviews to determine levels of client trust and satisfaction. Here, as opposed to in a process evaluation, the evaluators were less concerned with how the providers did their work and more concerned with the impact of the work on their clients: The question was not *did they render the intended services* but *did they achieve the intended results*.

- **Cost-benefit evaluations** also look at outcomes, but express those outcomes in terms of monetary costs and benefits. “Cost-benefit analysis translates the program impact into monetary terms and compares these benefits with the costs of operating the program.”⁸¹ In lay terms, these evaluations ask: was the result worth it?⁸²

An example of a cost-benefit evaluation is a study, released in 2012, that compared the costs of a full-time public defense office with the costs of assigned private counsel in Wichita County, Texas, in the United States. The study gathered quantitative data to examine outcomes including pretrial release rates, pretrial dismissal rates, percentage of clients sentenced to post-conviction imprisonment, and average sentence length of imprisoned clients. The study then monetized the outcomes, calculating the costs and savings to the county budget of using public defenders versus private counsel given differential outcome rates. For instance: Public defenders were found to generate more case dismissals, which



ILF-West Bank lawyers are preparing their defense in a criminal case, under the mentorship of ILF-West Bank Country Director Nael Ghannam, and an international fellow, an experienced criminal defense lawyer from the UK

meant savings to the county from reduced case processing costs, and savings to clients in terms of increased income as a result of spending fewer days in jail pretrial. After accounting for some offsetting costs, the study concluded: “In total the office generates a net benefit of \$204 to the county and \$160 in personal benefits for each client, yielding a total benefit of \$364 per case.”⁸³

What Should We Measure?

As the discussion above shows, criminal legal aid evaluations all have some characteristics in common. First: They begin with the articulation of clear benchmarks, whether performance standards or program objectives. Second: They collect and analyze data to determine whether those benchmarks have been achieved. It follows that the metrics selected by criminal legal aid providers will necessarily depend on the uses to which the resulting data will be put.

A very few legal aid systems have invested a great deal of time in developing exhaustive lists of metrics that respond to comprehensive evaluation plans looking at process, impact, and cost-effective-

ness.⁸⁴ Some of those systems have also deployed computerized case management systems that facilitate the easy entry, aggregation, and analysis of data to support evaluations. But, as a rule, criminal legal aid systems, service providers, and individual providers often lack the wherewithal, at this stage in the field’s evolving commitment to measurement and evaluation, to collect every conceivable data point in pursuit of an answer to every imaginable question about the nature, quality, costs, and benefits of legal aid services.

This report has urged the development of consensus performance standards that can be adapted and deployed by jurisdictions around the world. Those standards could be complemented with a recommended set of performance metrics that can be used – again, with appropriate local adaptations – as the basis of quality assurance programs across the globe.

Those metrics, at least at the outset, need not be comprehensive or support unworkably ambitious evaluation plans. Instead, the community might consider – just as individual providers and services providers who are considering launching programs of



How do we measure quality? We can't just consider results. Sometimes dedicated lawyers do a terrific job but lose. And sometimes lawyers do nothing at all but get good outcomes because the government's case was weak, not because of quality lawyering. So we look at both outcomes and outputs.

Ajay Shankar Jha

Country Director, International Legal Foundation – Nepal

measurement may wish to consider – selecting metrics in light of a set of relatively simple criteria. Metrics should be:

1. Instrumental – The selection of metrics should be driven by the evaluation needs;
2. Feasible – The metrics should be relatively easy to collect;
3. Profound – The metric should say something important about the subject of the evaluation; and
4. Intuitive – It should be easy for a layperson to understand the relationship between the metric and the subject of the evaluation.⁸⁵

To illustrate, consider *Figure 4* – a model evaluation plan for a jurisdiction that wishes to evaluate both process and impact, based on the practice principles set out in Part II, above. For each of those principles, the jurisdiction has selected just a few activities that it considers particularly important. It now wishes to measure outputs and outcomes related to each of those activities so that it can determine whether it is rendering the intended services (this is the process part of the evaluation) and achieving the intended outcomes (this is the impact part of the evaluation), which it has defined as maximizing both client liberty and client satisfaction. Here, too, it has not sought to be comprehensive,

but instead to select a small number of output and outcome metrics that are relatively easy to collect and which it considers both *profound* and *intuitive*.

This evaluation plan depicts the relationship between activities, outputs, perceptual outcomes, and case outcomes. It makes explicit – and thus opens up for interrogation and refinement – the assumptions that underlie the evaluation's hypothesis about why the planned activities should generate the projected outcomes. It puts the jurisdiction in position to explore the quality of its work in terms of fidelity to the performance standards that the jurisdiction has embraced as representing best practices derived from international norms. Over the run of many cases, it allows the jurisdiction to test whether and how best practices actually make a difference in the lives of clients. And it allows the jurisdiction to set performance benchmarks against which it can plan and measure quality improvement into the future.

FIGURE 4

A Plan Illustrating a Process and Impact Evaluation

PRACTICE PRINCIPLES

Criminal legal aid lawyers should be guided by the following principles, which can be broken down into individual activities and encoded in standards...

1. **Provide Early Representation** - A legal aid provider should endeavor to meet with the client at or near the time of arrest or initial detention, and before any interrogation; and should interview clients within 24 hours of appointment or assignment to their case.
2. **Provide Client-Centered Advocacy** - A legal aid provider should counsel the client thoroughly and empower the client to make all of the important decisions in the case.
3. **Advocate for Pretrial Liberty** - A legal aid provider should advocate for the client's release from pretrial custody at the earliest possible opportunity and throughout the case, as appropriate.

4. **Engage in Independent Fact Investigation** - A legal aid provider should conduct an independent fact investigation, including visiting the scene of the alleged offense and interviewing all potential witnesses in the case.

KEY ACTIVITIES

The practice principles, embodied in performance standards mandate that criminal legal aid lawyers conduct the following activities, organized by stage of the case...

- Perform an initial client interview within 24 hours of appointment
 - Perform a comprehensive client interview within 72 hours of appointment
 - Request a hearing to advocate for the client's pretrial release, if a hearing is not automatically granted as a right
 - Communicate with clients to prepare them in advance of every court hearing
 - Report every prosecution plea offer to the client and discuss it thoroughly
-
- Direct a complete fact investigation in every case
 - Attempt to interview every known witness
 - Visit the alleged crime scene and the scene of arrest

KEY OUTPUT MEASURES

If lawyers conduct these activities, they will produce the following evidence of service delivery, which can be used in a process evaluation of their work...

- % of cases in which the lawyer conducts an initial interview within 24 hours of appointment
- % of cases in which the lawyer conducts a comprehensive interview within 72 hours of appointment
- % of cases in which the client is detained pretrial and the lawyer files or orally makes a motion for pretrial release
- # of client communications (in-person meetings, phone calls, and written communications)/ case

- % of cases in which the file contains a written investigation plan
- % of cases in which at least one witness is interviewed outside of court
- % of cases in which the attorney and/or an investigator visits the alleged crime scene

KEY PERCEPTUAL OUTCOMES

If completed, the activities will lead to the following short-term changes in perceptions about advocacy, the justice system, and clients' own sense of self-actualization, if all other things are held equal...

- Increase in % of clients who report satisfaction with the amount of time that their attorney spends with them
- Increase in % of clients who report satisfaction with their attorney's advice
- Increase in % of clients who report that they trust their attorney
- Increase in % of clients who agree that they were empowered to make the important decisions in their case

- Increase in % of clients who are satisfied that their attorney is fighting for them

KEY CASE OUTCOMES

If completed, the activities will lead to the following short-term results in clients' cases, if all other things are held equal...

- Increase in % of clients who are free while awaiting trial
 - Increase in % of clients who are given a bail amount that they can afford
 - Increase in % of clients who complete terms of probation satisfactorily
-
- Increase in % of cases that result in pre-trial dismissal
 - Increase in % of cases that result in acquittal or a lesser-included verdict at trial
 - Increase in % of clients who receive a trial-stage outcome that is more favorable than guilty as charged

FIGURE 4

A Plan Illustrating a Process and Impact Evaluation, cont'd

PRACTICE PRINCIPLES

Criminal legal aid lawyers should be guided by the following principles, which can be broken down into individual activities and encoded in standards...

5. **Engage in Diligent Preparation** - A legal aid provider should develop coherent, creative, and comprehensive case plans and strategies, and prepare carefully and thoroughly for every court hearing.
6. **Engage Expert Assistance** - A legal aid provider should consider engaging expert consultants and witnesses wherever appropriate.
7. **Engage in Pretrial Litigation** - A provider should timely file and argue all pretrial pleadings that may be advantageous for the client, applying the substantive and procedural law with skill and expertise.
8. **Defend the Client at Trial** - A legal aid provider should present clear, focused, forceful arguments that deploy both law and facts effectively in support of a compelling trial theory, and should conduct skilled witness examinations.
9. **Engage in Sentence Mitigation** - A legal aid provider should argue for the least restrictive result at sentencing, presenting the court with creative alternatives to imprisonment wherever appropriate.
10. **File Appeals** - A legal aid provider should preserve a complete record for appeal and timely file appellate briefs that apply the law skillfully to raise every reasonable claim on the client's behalf.

KEY ACTIVITIES

The practice principles, embodied in performance standards mandate that criminal legal aid lawyers conduct the following activities, organized by stage of the case...

- Prepare written trial materials for every case
- Develop and document compelling theory for every trial case
- Consult with experts and other professionals whenever appropriate
- File a written suppression motion wherever there is a colorable claim for relief
- File a written motion to dismiss wherever there is a colorable claim for relief
- Present cross-examinations that elicit facts supportive of the defense theory
- Develop and present creative sentencing proposals
- Introduce a defense case at sentencing wherever appropriate
- Timely object and make a complete record wherever appropriate
- Timely file an appeal from every conviction

KEY OUTPUT MEASURES

If lawyers conduct these activities, they will produce the following evidence of service delivery, which can be used in a process evaluation of their work...

- % of cases in which the attorney prepares written trial materials including an opening statement, closing argument, and written witness examinations
- % of cases in which a defense expert is retained
- # of written motions filed per case, by motion type

KEY PERCEPTUAL OUTCOMES

If completed, the activities will lead to the following short-term changes in perceptions about advocacy, the justice system, and clients' own sense of self-actualization, if all other things are held equal...

- Increase in % of clients who report satisfaction with their attorney's preparation
- Increase in % of clients who report satisfaction with their attorney's courtroom performance
- Increase in % of clients who report satisfaction with the outcome of their case
- Increase in % of clients who agree that their attorney is an expert in the law

KEY CASE OUTCOMES

If completed, the activities will lead to the following short-term results in clients' cases, if all other things are held equal...

- Increase in % of cases in which evidence is suppressed or excluded
- Increase in % of cases that result in pre-trial dismissal
- Increase in % of cases that result in acquittal or a lesser-included verdict at trial
- Increase in % of clients who receive a trial-stage outcome that is more favorable than guilty as charged

- # of written sentencing plans prepared
- % of cases in which the defense calls one or more witnesses at sentencing

- Increase in % of clients who express satisfaction with the outcome of their case

- Increase in % convicted clients whose sentence does not include incarceration
- Reduction in average duration of sentence imposed on clients, as a fraction of the available maximum

- % of appellate claims that are deemed to be defaulted by court of appeals for failure to preserve the issue
- % of cases in which an appeal is filed

- Increase in % of clients who express satisfaction with the outcome of their case
- Increase in % of clients who are satisfied that their attorney is fighting for them
- Increase in % of clients who agree that their attorney is an expert in the law

- Increase in % of convictions that are reversed on appeal
- Increase in % of sentences that are reduced or vacated on appeal

Endnotes

1. For an introduction to these terms, see generally W.K. Kellogg Foundation, *Using Logic Models to Bring Together Planning, Evaluation, and Action 2* (2004), available at <http://www.smartgivers.org/uploads/logicmodelguidepdf.pdf>.
2. See generally Tom R. Tyler and Jonathan Jackson, *Popular Legitimacy and the Exercise of Legal Authority: Motivating Compliance, Cooperation, and Engagement*, 20 Psych. Pub. Pol. and L. 78 (2014).
3. See, e.g., Universal Declaration of Human Rights, Article 11(1); International Covenant on Civil and Political Rights, Article 14(3) (d).
4. United Nations Resolution 67/187, Annex, Paragraph 20.
5. An International Legal Foundation survey found that 153 out of 195 States surveyed grant the right to free legal aid to accused people in at least some cases. Survey on file with author.
6. *Aras v. Turkey* (No. 2), No. 15065/07, 18 November 2014, para. 40.
7. Researchers and the legal aid community have a great deal of work to do to measure quality and connect strong service provision to strong outcomes. Unfortunately, virtually all of the published research linking attorney activities to case outcomes appears to come from the United States and the United Kingdom. The need to spur research on quality defense processes and outcomes around the world is part of the reason for this report.
8. Bill Luchansky, *The Public Defense Pilot Projects: Washington State Office of Public Defense* 9 (2010), available at <http://www.ncids.org/systems%20evaluation%20project/caseoutcome/research/washingtonPD.pdf>.
9. United Nations Resolution 67/187, Annex, Paragraph 20.
10. Douglas L. Colbert et al., *Do Attorneys Really Matter? The Empirical and Legal Case for the Right of Counsel at Bail*, 23 *Cardozo L. Rev.* 1719, 1720 (2002).
11. See Christopher T. Lowenkamp et al., *Investigating the Impact of Pretrial Detention on Sentencing Outcomes* 3 (2013), available at http://www.arnoldfoundation.org/wp-content/uploads/2014/02/LJAF_Report_state-sentencing_FNL.pdf.
12. James Anderson and Paul Heaton, *How Much Difference Does the Lawyer Make? The Effect of Defense Counsel on Murder Cases*, 122 *Yale L.J.* 154, 159 (2013).
13. Dottie Carmichael and Miner P. Barchmanks III, *Wichita County Public Defender Office: An Evaluation of Case Processing, Client Outcomes, and Costs* iii (2012), available at <http://tidc.texas.gov/media/18620/wichitapdstudy101212.pdf>.
14. For a researcher's articulation of the definition of quality legal aid, see, e.g., Brian Ostrom, *The Meaning and Importance of Quality Legal Representation* (Lecture delivered October 29, 2015) available at <https://www.ils.ny.gov/files/videos/Quality%20Conference/Day%201%20Brian%20Ostrom.mp4>.
15. United Nations Resolution 67/187, Annex, Paragraphs 27-28, 37.
16. See United Nations Basic Principles on the Role of Lawyers, Principle 6.
17. See, e.g., International Criminal Court, *Rules of Procedure and Evidence*, Rule 22(1) ("A counsel for the defence shall have established competence in international or criminal law and procedure...").
18. See, e.g., United Nations Office on Drugs and Crime, *Early Access to Legal Aid in Criminal Justice Processes* 92-96 (2014) (detailing essential preparation steps for criminal legal aid counsel).
19. See, e.g., United Nations Resolution 43/173, Annex, Principle 18 (setting out principles protecting the right of accused people to communicate with counsel).
20. See European Union Agency for Fundamental Rights (FRA) et al., *Handbook on European Law Relating to Access to Justice* 4.2.2 (2016) ("The right to legal assistance is a right to effective assistance and representation. The presence of a lawyer who has no opportunity to intervene to ensure respect for the accused or suspected person's rights is of no benefit to the accused or suspected person."). And see, e.g., European Parliament, Directive 2013/48/EU, Article 3(3)(b) (requiring that counsel "be present and participate effectively."); United Nations Resolution 67/187, Annex, Paragraphs 27-28 (requiring legal aid "at all stages of the criminal justice process.").
21. See, e.g., Cynthia G. Lee et al., *The Measure of Good Lawyering: Evaluating Holistic Defense in Practice*, 78 *Albany L.J.* 1215, 1235-1236 (comparing evaluation of process with evaluation of outcomes in gauging the quality of public defense services).
22. United Nations Resolution 67/187, Annex, Paragraph 14.
23. *Id.* at paragraph 3.
24. United Nations Office on Drugs and Crime, *Early Access to Legal Aid in Criminal Justice Processes* 83 (2014).
25. United Nations Resolution 67/187, Annex, Paragraph 71.
26. As used in international instruments, *effectiveness* refers to the capacity of a justice system to protect the right of indigent accused people to counsel, and *quality* representation is a component part of effectiveness. See United Nations Resolution 67/187, Annex, Paragraphs 27-28 (calling on states to "ensure that effective legal aid is provided promptly at all stages of the criminal justice process.").
27. See, e.g., Ed Cape and Zaza Namoradze, *Effective Criminal Defence in Eastern Europe* 10-11 (2012) ("Fair trial, in terms of both process and outcome, without access to effective criminal defence, would require law enforcement agents and prosecutors to be completely neutral, and even-handed, and would require judicial authorities to take a proactive approach, taking nothing at face value. Experience and research evidence tells us that this is not possible, and even if it were, such a system would, at best, be paternalistic and undemocratic. Thus, fair trial requires suspects and defendants to have access to effective criminal defence.").
28. United Nations Resolution 67/187, Annex, Paragraph 1.
29. See, e.g., European Convention for the Protection of Human

- Rights and Fundamental Freedoms, Article 5(3)-(4); American Convention on Human Rights, Article 7(5)-(6); African Charter on Human and Peoples' Rights, Article 6..
30. See, e.g., International Covenant on Civil and Political Rights, Article 14(3)(g); American Convention on Human Rights, Article 8(3); Arab Charter on Human Rights, Article 16(6).
 31. See, e.g., International Covenant on Civil and Political Rights, Article 14(3)(c); African Charter on Human and Peoples' Rights, Article 7(1)(d).
 32. See, e.g., European Court of Human Rights, *Dayanan v. Turkey*, No. 7377/03, 13 October 2009, para. 32 (“[C]ounsel has to be able to secure without restriction the fundamental aspects of that person’s defence: discussion of the case, organisation of the defence, collection of evidence favourable to the accused, preparation for questioning, support of an accused in distress and checking of the conditions of detention.”); *Rompilla v. Beard*, 545 U.S. 374 (2005) (holding that counsel is ineffective for failing to conduct independent defense investigation).
 33. See, e.g., American Convention on Human Rights, Article 8 (guaranteeing every accused person “adequate time and means for the preparation of his defense”); European Convention for the Protection of Human Rights and Fundamental Freedoms, Article 6(3); ASEAN Human Rights Declaration, Paragraph 20.
 34. See, e.g., International Covenant on Civil and Political Rights Article 14(3)(e) (entitling an accused person to “obtain the attendance” of witnesses).
 35. See, e.g., Arab Charter on Human Rights, Article 16(5) (“The right to examine or have his lawyer examine the prosecution witnesses and to on defense according to the conditions applied to the prosecution witnesses.”); American Convention on Human Rights, Article 8(f) (“[T]he right of the defense to examine witnesses present in the court and to obtain the appearance, as witnesses, of experts or other persons who may throw light on the facts.”).
 36. See, e.g., Arab Charter on Human Rights, Article 16(7); African Charter on Human and Peoples' Rights, Article 7(1) (“Every individual shall have the right to have his cause heard. This comprises: (a) the right to an appeal to competent national organs against acts of violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force.”).
 37. The United States Supreme Court spoke directly to this point in its decision entrenching the right to counsel at state expense in felony cases. See *Gideon v. Wainwright*, 372 U.S. 335, 344-45 (1963) (“[A]ny person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him. This seems to us to be an obvious truth.... Even the intelligent and educated layman has small and sometimes no skill in the science of law. If charged with crime, he is incapable, generally, of determining for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence. Left without the aid of counsel, he may be put on trial without a proper charge, and convicted upon incompetent evidence, or evidence irrelevant to the issue or otherwise inadmissible. He lacks both the skill and knowledge adequately to prepare his defense, even though he have a perfect one.”).
 38. Ed Cape and Zaza Namoradze, *Effective Criminal Defence in Eastern Europe 10-11* (2012).
 39. See, e.g., ASEAN Human Rights Declaration, Paragraph 20(1) (“Every person charged with a criminal offense shall be presumed innocent...”).
 40. United Nations Resolution 67/187, Annex, Paragraph 71.
 41. For a study of the positive effects of standards on public defense in the United States, see Scott Wallace and David Carroll, *The Implementation and Impact of Indigent Defense Standards* (2003), available at <https://www.ncjrs.gov/pdffiles1/nij/grants/205023.pdf>.
 42. U.S. Department of Justice, Office of Justice Programs, *Redefining Leadership for Equal Justice: Final Report of National Symposium on Indigent Defense 14* (2000).
 43. Legal Aid Reformers’ Network, *Model Code of Conduct for Legal Aid Lawyers in Criminal Cases & Model Practice Standards for Criminal Defense* (2014).
 44. National Legal Aid and Defender Association, *Performance Guidelines for Criminal Defense Representation* (2010). Many individual jurisdictions and individual offices in the United States have crafted their own individualized performance standards in light of state laws and local practices. See, e.g., Louisiana Public Defender Board, *Trial Court Performance Standards* (2010), available at <http://lpdb.la.gov/Supporting%20Practitioners/Standards/txtfiles/pdfs/LPDB%20Trial%20Court%20Performance%20Standards.pdf>.
 45. Performance Standards for the International Legal Foundation’s public defender offices in the West Bank and Nepal are on file with the author.
 46. See, e.g., European Convention for the Protection of Human Rights and Fundamental Freedoms, Article 6(3)(c); African Charter on Human and Peoples' Rights, Article 7(1)(c); United Nations Basic Principles on the Role of Lawyers, Principles 8, 22.
 47. See, e.g., International Covenant on Civil and Political Rights, Article 14(3)(g); American Convention on Human Rights, Article 8(3); Arab Charter on Human Rights, Article 16(6).
 48. See, e.g., European Convention for the Protection of Human Rights and Fundamental Freedoms, Article 5(3)-(4); American Convention on Human Rights, Article 7(5)-(6); African Charter on Human and Peoples' Rights, Article 6.
 49. See, e.g., United Nations Basic Principles on the Role of Lawyers, Principle 15.
 50. See, e.g., International Legal Foundation, *Performance Standards for Nepal 2* (“Within 24 hours of appointment, defense counsel must consult with the client and advise the client of the charges filed against him/her, the information used by the prosecution to support the charges, the court procedures and his/her bail status... Within 72 hours after the first consultation, defense counsel should conduct a Comprehensive Client Interview.”); Legal Aid Reformers’ Network, *Model Code of Conduct for Legal Aid Lawyers in Criminal Cases & Model Practice Standards for Criminal Defense 1.3.1*; National Legal Aid and Defenders Association, *Performance Guidelines for Criminal Defense Representation 2.1*.
 51. See Christopher T. Lowenkamp et al., *Investigating the Impact of Pretrial Detention on Sentencing Outcomes 3* (2013) (finding that “detained defendants are over four times more likely to be sentenced to jail and over three times more likely to be sentenced to prison than defendants who are released at some point pending trial.”) available at http://www.arnoldfoundation.org/wp-content/uploads/2014/02/LJAF_Report_state-sentencing_FNL.pdf.
 52. See American Bar Association, *Standards for Criminal Justice: Prosecution and Defense Function*, 3d ed., 4.5.1, 4.5.2 (1993).
 53. See, e.g., European Court of Human Rights, *Dayanan v. Turkey*, No. 7377/03, 13 October 2009, para. 32; *Rompilla v. Beard*, 545 U.S. 374 (2005).
 54. See, e.g., Dottie Carmichael and Miner P. Barchmanks III, *Wichita County Public Defender Office: An Evaluation of Case Processing, Client Outcomes, and Costs iii* (2012). Ghadanfar Kamanji, the legal director at the International Legal Foundation’s public defender office in the West Bank, explained it this way: “Now that we have adopted performance standards, we perform field investigation in every case. We visit crime scenes, take pictures, and interview witnesses. We get more dismissals and acquittals now. Investigation makes a real, meaningful difference.” (Interview notes on file with author).
 55. National Legal Aid and Defenders Association, *Performance Guidelines for Criminal Defense Representation 4.1(a)*; International Legal Foundation, *Performance Standards for Nepal 2* (requiring providers to take investigation steps including “interviewing witnesses and police officers, visiting the scene of the incident, photographing the scene as well as any injuries to the client or damage to property, collecting evidence and viewing evidence in the possession of the government...”).

56. See, e.g., American Convention on Human Rights, Article 8; European Convention for the Protection of Human Rights and Fundamental Freedoms, Article 6(3); ASEAN Human Rights Declaration, Paragraph 20.
57. See, e.g., American Convention on Human Rights, Article 8(1) (guaranteeing every person the right to a hearing for the determination of his or her rights).
58. See Legal Aid Reformers' Network, *Model Practice Standards for Criminal Defense* 2.1.1. ("The lawyer should develop an active defence strategy for handling the case which s/he explains to the client at the earliest appropriate stage and which the client agrees."); 2.1.6 (suggesting that lawyers seek expert assistance as a source of learning about the case).
59. See, e.g., National Legal Aid and Defenders Association, *Performance Guidelines for Criminal Defense Representation* 5.1(a) ("Counsel should consider filing an appropriate motion whenever there exists a good-faith reason to believe that the applicable law may entitle the defendant to relief which the court has discretion to grant."); Legal Aid Reformers' Network, *Model Code of Conduct for Legal Aid Lawyers in Criminal Cases & Model Practice Standards for Criminal Defense* 2.4.5.
60. See, e.g., ASEAN Human Rights Declaration, Paragraph 20 ("No person shall be held guilty of any criminal offense... which did not constitute a criminal offense... at the time when it was committed"; "No person shall be liable to be tried or punished again for an offence for which he or she has already been finally convicted or acquitted...").
61. See Arab Charter on Human Rights, Article 16(5) ("The right to examine or have his lawyer examine the prosecution witnesses and to on defense according to the conditions applied to the prosecution witnesses.").
62. See, e.g., International Covenant on Civil and Political Rights Article 14(3)(e) (entitling an accused person to "obtain the attendance" of witnesses).
63. See, e.g., International Covenant on Civil and Political Rights Article 9 (right to liberty), Article 7 (right against cruel, inhuman, or degrading treatment);
64. See, e.g., International Covenant on Civil and Political Rights Article 14(5) ("Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law."); Arab Charter on Human Rights, Article 16(7).
65. See International Legal Foundation, *General Standards of Performance* 7.
66. Michael Tonry, *Evidence, Ideology, and Politics in the Making of American Criminal Justice Policy*, 42 *Crime and Justice* 1 (2013) (characterizing indigent defense systems as operating in an "evidence-free zone.").
67. Jennifer Laurin, *Gideon by the Numbers: The Emergence of Evidence-Based Practice in Indigent Defense*, 12 *Oh. State J. Crim. Law* 325, 334 (2015). And see, e.g., Cara H. Drinan, *Getting Real About Gideon: The Next Fifty Years of Enforcing the Right to Counsel*, 70 *Wash. & Lee L. Rev.* 1309, 1322 (2013) (describing the ways in which "defenders operated below the data radar") (internal quotation omitted); Marea Beeman, *Using Data to Sustain and Improve Public Defense Programs* 1 (2012) available at http://texaswcl.tamu.edu/reports/2012_JMI_Using_Data_in_Public_Defense.pdf ("Despite the value that data have for improving indigent defense, relatively little is known nationally about the types of data typically collected by defenders, how these data are managed and analyzed, and how best to use data.").
68. *Id.* at 336.
69. Jenny Roberts & Ronald F. Wright, *Training for Bargaining*, 57 *Wm. & Mary L. Rev.* 1445, 1489 (2016) (bemoaning the fact that "[i]ndigent defender offices – dealing with high workloads, low staffing, and constant underfunding – collect very little data.").
70. Jennifer Laurin, *Gideon by the Numbers: The Emergence of Evidence-Based Practice in Indigent Defense*, 12 *Oh. State J. Crim. Law* 325, 336 (2015).
71. Margaret Gressens and Daryl Atkinson, *The Challenge: Evaluating Indigent Defense: North Carolina Systems Evaluation Project Performance Measures Guide 1* (2012), available at http://www.ncids.org/Systems%20Evaluation%20Project/performance-measures/PM_guide.pdf.
72. Pamela Metzger and Andrew Guthrie Ferguson, *Defending Data*, 88 *S. Cal. L. Rev.* 1057, 1110 (2015).
73. See Cynthia G. Lee et al., *The Measure of Good Lawyering: Evaluating Holistic Defense in Practice*, 78 *Albany L.J.* 1215, 1234 (2015).
74. *Id.*
75. *Id.*
76. *Id.* at 1235.
77. See generally Avrom Sherr and Alan Paterson, *Professional Competence, Peer Review and Quality Assurance in England and Wales and in Scotland*, 45 *Alberta L. Rev.* 151 (2008).
78. See *supra* n. 73, p. 1236.
79. *Id.*
80. See generally Cyrus Tata et al., *Does Mode of Delivery Make a Difference to Criminal Case Outcomes and Clients' Satisfaction? The Public Defence Solicitor Experiment*, 2004 *Criminal Law Review* 120.
81. See *supra* n. 73, p. 1236.
82. It is important to distinguish between cost-benefit analysis, which monetizes all aspects of the equation and therefore leaves open the possibility of compromising critical goals in the name of cheapness, and cost-effectiveness analysis, which takes the goals of criminal legal aid – including the vindication of inalienable rights – to be fixed, and only seeks "to determine the least costly means of realizing those goals." Jennifer Laurin, *Gideon by the Numbers: The Emergence of Evidence-Based Practice in Indigent Defense*, 12 *Oh. State J. Crim. Law* 325, 364 (2015).
83. Dottie Carmichael and Miner P. Barchmanks III, *Wichita County Public Defender Office: An Evaluation of Case Processing, Client Outcomes, and Costs iii* (2012) available at <http://tidc.texas.gov/media/18620/wichitapdstudy101212.pdf>.
84. See, e.g., Margaret Gressens and Daryl Atkinson, *The Challenge: Evaluating Indigent Defense: North Carolina Systems Evaluation Project Performance Measures Guide 1* (2012), available at http://www.ncids.org/Systems%20Evaluation%20Project/performance-measures/PM_guide.pdf (charting the results of seven years of study and listing hundreds of metrics that support evaluation of progress towards dozens of objectives); Ziyad Hopkins, *The Committee for Public Counsel Services Answering Gideon's Call Project: Best Practices, Objectives, and Performance Indicators* (2014), available at <https://www.publiccounsel.net/cfo/wp-content/uploads/sites/8/2014/12/Best-Practices-Objectives-and-Performance-Indicators.pdf>; Marea Beeman, *Basic Data Every Defender Program Needs to Track* (2014), available at <http://www.nlada.org/sites/default/files/pictures/BASIC%20DATA%20TOOLKIT%2010-27-14%20Web.pdf>.
85. Three of these criteria – feasible, profound, and intuitive – were proposed by Andrew Davies, the Director of Research at the New York State (U.S.A.) Office of Indigent Legal Services. See Andrew Davies, *How Should the We Track Criminal Defense in the USA and Beyond?* (2016), blog post available at <https://www.ils.ny.gov/content/how-should-we-track-criminal-defense-usa-and-beyond-0>.

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