



THE INTERNATIONAL
LEGAL FOUNDATION

**Practice Principles to Ensure
Quality Legal Aid:
Towards a Global Consensus**

**A Comparative Study of Laws and Standards
Around the World**

- Summary Report -

**Developed for the Third International Conference on
Access to Legal Aid in Criminal Justice Systems**

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Introduction

The right to counsel for persons accused of crime, and the right to legal aid for poor and vulnerable accused, is well-established in international, regional, and domestic laws and policies around the world. The Universal Declaration of Human Rights (1948) enshrines the fundamental human right to a fair trial,¹ and the International Covenant on Civil and Political Rights (1966) details the fundamental components of the right to fair trial, including the right to counsel for indigent accused.² The United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems goes further, articulating the responsibility of States to “ensure that effective legal aid is provided promptly at all stages of the criminal justice process.”³ At the domestic level, most State constitutions and criminal laws guarantee the right to counsel and legal aid either explicitly or implicitly.

Despite clear laws on the right to legal aid, there is a global crisis in access to quality, effective legal aid services. As a result, millions of poor and vulnerable persons around the world have no meaningful access to justice. In 2016, the United Nations Development Programme and the United Nations Office on Drugs and Crime published the first Global Study on Legal Aid: Global Report,⁴ which established a baseline understanding of how the right to legal aid has been defined and how legal aid services have been provided in countries across different contexts worldwide. In the study, enhancing the quality of legal aid was highlighted by both Member States and national experts as the most pressing concern. This prioritization of enhancing quality is in line with experts’ assessment that people’s lack of confidence in the quality of legal aid services is one of the three most significant challenges faced by poor and vulnerable groups in accessing legal aid services.

There is, however, a growing consensus among existing sets of international and regional standards (including the African Commission on Human and Peoples’ Rights “Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa” and European Court of Human Rights jurisprudence), and the existence of broadly-accepted norms that define fairness in criminal justice. This points towards the possibility of promoting quality legal representation by generating model performance standards that are relevant to legal aid providers in diverse jurisdictions around the world.

¹ UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), Article 10, available at: <http://www.un.org/en/universal-declaration-human-rights/>.

² UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, *Treaty Series*, vol. 999, p. 171, Article 14(3), available at: <https://treaties.un.org/doc/publication/unts/volume%20999/volume-999-i-14668-english.pdf>.

³ UN General Assembly, *United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems : resolution / adopted by the General Assembly, 28 March 2013, A/RES/67/187, Principle 7*, available at: https://www.unodc.org/documents/justice-and-prison-reform/UN_principles_and_guidelines_on_access_to_legal_aid.pdf.

⁴ Available online at: http://www.undp.org/content/undp/en/home/librarypage/democratic-governance/access_to_justiceandruloflaw/global-study-on-legal-aid.html.

The ILF laid the foundations for identifying such model performance standards in its 2016 publication, *Measuring Justice: Defining and Evaluating Quality for Legal Aid Providers*, which articulated ten criminal legal aid practice principles based on research and experience building legal aid systems in diverse post-conflict and transitioning countries. These principles are designed to ensure that legal aid providers offer quality, effective criminal defense services to the poor.

Having developed these ten principles, we then set out to examine to what extent support for them already exists in domestic law and practice around the world. The purpose of this inquiry was to examine the thesis that a degree of international consensus already exists concerning best practices in quality legal aid delivery, and to consider how different countries have approached these concerns. Below, you will find information and analysis of the domestic laws, policies, and practices of 19 countries as they relate to each of the ILF's proposed Ten Criminal Legal Aid Practice Principles.

Methodology

The International Legal Foundation consulted with researchers and specialists to provide an in-depth comparative study of its Ten Criminal Legal Aid Practice Principles and their presence in legal systems across the globe. Based on this research, this report provides a detailed summary of how legal aid protections align with the align with the Ten Practice Principles, across a varied sample set of 19 countries: Australia, Czech Republic, Fiji, Finland, India, Iraq, Japan, Kazakhstan, New Zealand, Northern Ireland, Papua New Guinea, Russia, Scotland, South Africa, Sweden, Taiwan, Thailand, Turkey, and the United Kingdom. These varied countries were selected to provide a representative view of the state of legal aid protections worldwide.

This summary report is based on an initial, in-depth inquiry conducted by researchers at White and Case, LLP, which included an intensive document review of codified protections for those in contact with the law. The ILF shared these findings for expert review during the Third Annual International Legal Aid Conference (ILAC) held in Tbilisi, Georgia in November of 2018. This gave legal aid specialists, government officials, and international experts from more than 60 countries the opportunity to provide comment on the initial findings. This discussion further enriched our understanding, and sparked a valuable discussion that reinforced the importance of sharing practice principles that can assist in building consensus defining, measuring, and promoting quality legal aid around the world.

The report presented here includes an in-depth discussion of each of the International Legal Foundation's Ten Universal Practice Principles, as well as a brief review of how each principle is incorporated into various legal systems around the world.

Universal Practice Principles: 10 Keys to Ensure Quality Legal Aid

- 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.
- 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.

Practice Principles: A Global Review

Practice Principle #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.

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:

- 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.

This logic has led all existing performance standards to mandate prompt client interviews.⁵ 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.⁶

⁵ 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*.

⁶ 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.

Principle #1 in Review:

Early Representation Across the Globe

Australia	Australia's territories have varying policies, but all provide early access in some way, including one or more of the following: practice standards requiring providers to meet with clients "as early in the process as possible," requiring client contact within certain time limits, providing legal assistance over the phone, and duty lawyer stations at police stations and court houses.
Czech Republic	The Criminal Procedure Code requires access to counsel, and specifically states "counsel is entitled to take part in all proceedings to which the accused may participate," including during questioning.
Fiji	There is a clear right to legal aid in the Legal Aid Act of 1996, and there is a Duty Lawyer Scheme "for those who require assistance instantaneously in court for bails, or mitigations." However, there are no clear guidelines on legal aid practices.
Finland	The Criminal Procedure Act states "An attorney shall as soon as possible confer with his or her client and begin preparations to assist him or her".
India	Under the Legal Services Authority Act of 1987, a person is entitled to receive legal aid at the first point of contact with the criminal justice system, including at the time of arrest and initial detention.
Iraq	Chapter 1, Article 19(4) of the Constitution of Iraq states that a person's "... right to defense [sic] shall be sacred and guaranteed in all phases of investigation and at trial...".
Japan	The Constitution provides that "At all times the accused shall have the assistance of competent counsel who shall, if the accused is unable to secure the same by his own efforts, be assigned to his use by the State." Duty lawyers are available on a daily schedule, and according to the Duty Lawyers Manual should endeavor to meet with an arrested person on the day they are assigned to the case by the Bar Association; the Duty Lawyer's first meeting must be prioritized over interrogation.
Kazakhstan	Detainees must be interrogated within 24 hours of arrest, but only if their right to have a private and confidential legal aid provider before the first interrogation is observed.
New Zealand	The police have a list of legal aid lawyers who can be contacted by phone from the police station when a person is being questioned, detained, or arrested, but the person must request the list. Duty lawyers are provided for those without

	representation at the District Court, and provide services until the person can officially apply for legal aid.
Northern Ireland	The accused has a right to consult a solicitor anytime they are in custody, and they must be permitted to consult a solicitor within 36 hours of arrival at the police station; anyone who requests legal advice cannot be interviewed before receiving it; anyone who has consulted with a solicitor can request to have the solicitor present when they are interrogated; the Code of Practice prescribes that the role of solicitors at the police station is to protect and advance the rights of the client.
Papua New Guinea	The accused have the right to counsel from the time of arrest, and police must proactively inform them of the right “promptly.” The Supreme Court has excluded evidence obtained in interrogation after the accused requested, and was not provided, access to a lawyer.
Russia	The right to counsel attaches from the moment of arrest; the Criminal Procedure Code provides that suspects have the right to a private and confidential meeting with counsel before the first interrogation (which must happen within 24 hours of arrest). The Constitutional Court of the Russian Federation has held that it was unconstitutional for the court to allow trial testimony about statements and confessions made in the absence of a lawyer by an individual while he was in pretrial detention.
Scotland	By statute, the accused has the right to have a solicitor informed that he is in custody and requires representation, the solicitor must be contacted as soon as reasonably practicable, and if the accused requests the presence of a solicitor the police interview cannot commence until counsel is present; the solicitor must not be denied access to the accused at any time during the interview.
South Africa	By statute, the right to counsel attached from the time of arrest. Legal Aid South Africa provides legal aid at the first court appearance by use of a duty lawyer at each court; Courts have emphasized that the obligation of providing competent legal representation to clients commences upon appointment of a legal practitioner; Legal Aid South Africa’s Standard Operating Procedures require that, as soon as the lawyer is appointed (preferably at the first court appearance), the lawyer must meet the client, explain court processes, consult on bail, and begin preliminary consultation on the facts of the case.
Sweden	The Code of Judicial Procedure states that the defendant is entitled to meet with the legal aid provider without exceptions prior to any interrogation; the Code of Conduct from the bar association says “An advocate must carry out a mandate with care, accuracy and due timeliness.”

Taiwan	There is a statutory right to counsel, but it is unclear when it attaches; the Legal Aid Foundation provides legal aid at interrogation for accused meeting certain requirements.
Thailand	The Criminal Procedure Code provides the accused the right to meet with a lawyer upon detention and prior to interrogation; however, if the lawyer is unable to attend, urgent questioning can go forward without their presence.
Turkey	Under the Criminal Procedure Code and the Regulation on Arrest, Custody and Interrogation, the suspect or the accused must be notified of his/her right to appoint a defense counsel upon arrest or apprehension, must be provided legal aid (in certain circumstances), and must have the right to privately meet with the lawyer at any point. The Directive on Legal Aid requires the legal aid provider to reach out to the client as soon as possible.
United Kingdom	The Police and Criminal Evidence Act holds that a person in custody is entitled to a solicitor at any time upon request, and must be permitted to consult a solicitor as soon as practicable.

Practice Principle #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.

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.⁷

Principle #2 in Review:

Client-Centered Advocacy Across the Globe

Australia	All but one of the territories has practice standards/conduct rules stipulating, e.g. that attorneys must keep clients informed, promptly respond to client requests, and communicate with clients in a way they can understand and to an extent that allows them to make informed decisions
Czech Republic	The Attorney Act states ““The attorney is obliged to protect and enforce the rights and legitimate interests of the client and to follow his instructions.”
Fiji	There is a clear right to legal aid in the Legal Aid Act of 1996, and there is a Duty Lawyer Scheme “for those who require assistance instantaneously in court for bails, or mitigations.” However, there are no clear guidelines on legal aid practices.
Finland	The Code of Conduct for Lawyers requires attorneys to keep clients informed of case progress, and to “must submit all important measures concerning the interests of the client for approval by the same, unless prevented by the urgency of the matter or by other compelling reasons.”
India	The performance standards set by NALSA provide that an appointed legal aid lawyer should interact with their client to better understand their case and keep the client informed; the Supreme Court has directed all Legal Services Authorities/Committees to extend videoconferencing “to facilitate dialogue between the counsel and his client would further the cause of justice and make legal aid meaningful.”

⁷ See American Bar Association, *Standards for Criminal Justice: Prosecution and Defense Function*, 3d ed., 4.5.1, 4.5.2 (1993).

Iraq	The Attorneys Code requires lawyers to represent their clients with due care and holds the lawyers responsible (i) for any gross negligence / wrongful act or (ii) in the event that such lawyers have acted outside the scope of their authority/representation.
Japan	The Lawyers' Duties Basic Rules provide that lawyers should explain the right to defense, including right to remain silence, to their clients appropriately, and should counsel the client thoroughly, empowering the client to make all the important decisions in the case.
Kazakhstan	The law stipulates that legal aid providers shall not take any actions against the interest of the client, and shall explain to the client the potential results and consequences of legal assistance, including the nature and amount of financial costs.
New Zealand	Practice Standards require that the legal aid lawyer gives timely, appropriate and sufficiently detailed advice and explanations to the client to enable him/her to make an informed decision about the matter, should advise the client as to relevant defenses, and discuss the prosecution's brief with the client. The Rules require that the lawyer should give the client clear advice and discuss with the client his/her objectives and how they should best be achieved.
Northern Ireland	Under the International Code of Ethics, solicitors must act in the best interest of the client, and must give the client candid opinions of their case; the Code of Practice prescribes that the role of solicitors at the police station is to protect and advance the rights of the client; the Bar's Code of Conduct requires Barristers to explain procedures, and the case's strengths and weaknesses, in language the client can understand.
Papua New Guinea	Rules of Professional Conduct require lawyers to treat clients fairly and in good faith, with frankness, and providing advice so that the client can make informed decisions. The Supreme Court has ruled in favor of accused who were committed to bad outcomes after their legal aid lawyer failed to properly communicate with them and understand their wishes.
Russia	By statute, legal aid lawyers are not permitted to "take a position in a case that runs contrary to a client's will."
Scotland	The Scottish Faculty of Advocates' Guide to Professional Conduct of Advocates" requires defense counsel to advise and represent clients in accordance with the European Code of Conduct; they should provide the necessary information for the client to make informed decisions regarding their defense.

South Africa	Legal Aid South Africa’s Standard Operating Procedures set clear parameters for consultations with clients, and the Supreme Court of Appeal has emphasized the necessity of client consultation and effective representation.
Sweden	The bar association’s Code of Conduct holds “The principal responsibility of an Advocate is to show fidelity and loyalty towards the client. As an independent adviser, the Advocate is obliged to represent and act in the client’s best interests within the established framework of the law and good professional conduct... The main obligation of an advocate is to protect his or her client’s interests in the best way possible and to the best of his or her ability, meaning that he or she shall be loyal and truthful to the client.”
Taiwan	The bar association’s Code of Ethics states “A lawyer shall, with regard to a matter he/she has accepted, inform the client frankly of his/her legal opinion, and he/she may not intentionally distort the interpretation of a law or decree, or provide the client with deceptive information, thereby misleading the client to entertain wrong expectations or make wrong judgment.”
Thailand	There are not specific provisions regarding the lawyer’s obligation to provide client-centered advocacy.
Turkey	The Turkish Attorneyship Code states “The defense counsel appointed within the scope of the selected or obligatory defense counseling is under the obligation to carry out the defense duty with care, accuracy and integrity in a matter to comply with the sacredness of his profession; to act in compliance with the respectability and trustworthiness required by the profession and to comply with the professional rules set...”.
United Kingdom	The Legal Aid Agency’s quality standards state “advice and/or action to be taken must be tailored to the client’s needs; issues must be explained to the client and general progress must be confirmed in writing to them at appropriate stages.

Practice Principle #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.

Illegally imposed and extended pre-trial detention is one of the most common, significant, and widespread abuses by criminal justice systems around the world, and is directly connected with lack of early access to quality legal aid services. Pre-trial detention should only be imposed in a narrow set of cases, and yet it is often instead the default for those arrested even for minor offenses. It is crucial that lawyers advocate strongly for pretrial release; 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.⁸

Principle #3 in Review:

Advocacy for Pre-Trial Liberty Across the Globe

Australia	In most territories, practice standards and/or local laws require legal aid providers to communicate with their clients regarding bail and to apply wherever appropriate.
Czech Republic	Counsel is permitted to request pre-trial release, but is not required to do so.
Fiji	There is a clear right to legal aid in the Legal Aid Act of 1996, and there is a Duty Lawyer Scheme “for those who require assistance instantaneously in court for bails, or mitigations.” However, there are no clear guidelines on legal aid practices.
Finland	While there is no specific standard requiring advocacy for pre-trial liberty, the Code of Conduct for lawyers states “An attorney has an obligation to pursue the client’s interests to the best of the attorney’s ability in accordance with the law and proper professional conduct” and “An attorney shall conscientiously and in accordance with good advocacy practice protect the rights and interests of his or her client and for this purpose promote the resolution of the case.”
India	NALSA’s performance standards require legal aid lawyers to notify the Secretary of the District Legal Services when a bail application should be filed, preferably at the earliest possible opportunity.

⁸ 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.

Iraq	While there is no express obligation for defense lawyers to advocate for pretrial liberty, the Constitution and Criminal Procedure Code provide a clear right against arbitrary detention, and the Attorneys Code requires attorneys to represent their clients with “due care.”
Japan	According to the Lawyers’ Rules, “Lawyers should endeavor to...release an arrested suspect or indicted defendant,” including by filing relevant motions and appeals.
Kazakhstan	The law does not impose on a legal aid provider an obligation to advocate for pretrial liberty.
New Zealand	Practice Standards require legal aid providers to consider making a bail application in a timely fashion; they may only advocate for release with the consent of the client.
Northern Ireland	Police must decide on release/charging within 24 hours of arrest, and the solicitor has a general duty to advocate for the best interest of the client, so in effect they are required to advocate for the release of the client at the police stage.
Papua New Guinea	The accused has the right to bail; the Professional Conduct Rules require lawyers to take legal action to protect and advance the client’s interest, and to conduct each case in a manner that is most advantageous to the client.
Russia	No one may be held in custody without formal charges for more than 48 hours; the Constitutional Court has ruled that requiring permission from prosecutors for defense lawyers to meet with clients in pretrial detention violated the Constitution.
Scotland	The police may detail the accused for up to 24 hours if certain criteria are met; the solicitor is expected to inquire as to the criteria and make representations as to whether continued detention is necessary or whether bail should be granted.
South Africa	Statutes clearly set the procedures for defense counsel to advocate for bail from the first hearing; Legal Aid South Africa’s Standard Operating Procedures require the lawyer appointed at the first hearing to consult with the client in order to obtain instructions on bringing a bail application, and sets comprehensive guidelines for making bail requests.
Sweden	National law holds that an arrested person and his defense counsel shall be afforded the opportunity to be heard regarding detention.

Taiwan	The 2014 Habeas Corpus Act clarifies the right to challenge pretrial detention.
Thailand	The Criminal Procedure Code allows the accused or their lawyer to submit habeas corpus petitions, which must be ruled on “without delay.”
Turkey	The law protects the right to motion for pretrial release, but does not address a lawyer’s obligation to do so.
United Kingdom	No information provided.

Practice Principle #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.

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.⁹ The consensus of existing legal aid performance standards mandates independent defense investigation.¹⁰

Principle #4 in Review: Independent Fact Investigation Across the Globe

Australia	About half of the territories have practice standards that require a level of detail regarding statements of fact and forensic analysis that can only be fulfilled by reasonable investigation; the other half of territories do not address the matter.
Czech Republic	The Criminal Procedure Code provides that counsel is entitled to investigate, including visiting the scene and interviewing witnesses, and inspecting the police file.
Fiji	There is a clear right to legal aid in the Legal Aid Act of 1996, and there is a Duty Lawyer Scheme “for those who require assistance instantaneously in court for bails, or mitigations.” However, there are no clear guidelines on legal aid practices.

⁹ 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).

¹⁰ 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...”).

Finland	The Commentary of the Code of Conduct for Lawyers makes clear that an attorney has the right and obligation to interview potential witnesses and experts before trial, and that they must carry out assignments with “due care” that includes adequate examination of the facts and the law.
India	There is no formal requirement for this, but it reasonably falls under the general duty of diligence and competence in NALSA’s performance standards and multiple court decisions.
Iraq	The Criminal Procedure Code provides a clear right for the accused to attend an investigation; however, there are no requirements beyond “due care” for attorneys to engage in investigation.
Japan	The Judicial Research and Training Institute (“JRTI”)’s Criminal Defense Practices textbook suggests lawyers conducting an independent fact investigation, including interviewing potential witnesses and visiting relevant site (P36). Note that it is required to take trainings at the JRTI to become a Japanese qualified lawyer, and the JFTI textbook is one of the most prominent standards for Japanese lawyers.
Kazakhstan	The law requires attorneys to take any actions not prohibited by law in order to establish factual circumstances aimed at ensuring the rights, freedom, and legitimate interests of the client, and grants a legal aid provider the right to obtain information necessary for defending his/her client and/or representing the latter’s interests by, inter alia, interviewing potential witnesses (upon their consent).
New Zealand	Legal aid lawyers appear to have the right, but not the obligation, to review evidence, interview witnesses, identify legal and factual issues, obtain and view reports, and visit the scene of the alleged offense.
Northern Ireland	The general practice is for solicitors to conduct investigation from an early stage so that they can prepare a defense; they are entitled to call witnesses and produce witness evidence.
Papua New Guinea	There are no specific provisions regarding independent defense investigation; the Professional Conduct Rules require lawyers to take legal action to protect and advance the client’s interest, and to conduct each case in a manner that is most advantageous to the client.
Russia	Criminal defense counsel is entitled to “collect data necessary for the rendering of legal aid, including to request state power bodies ... to provide [documents]” and to interview people, collect physical evidence, recruit experts, and meet privately with their client (including when in detention).

Scotland	The Criminal Justice (Scotland) Act provides a framework for legal aid providers to conduct factual investigation from an early stage; the Solicitor’s Code of Conduct prescribes that solicitors must take all reasonable steps to obtain potential evidence in a case directly from witnesses and should judge whether that witness’ evidence is relevant to the particular case.
South Africa	There is a constitutional right to “adduce and challenge evidence;” Legal Aid South Africa’s Standard Operating Procedures require appointed lawyers to arrange and conduct consultations with potential defense witnesses, consider whether defense experts will be required and procure them, and carry out any necessary pre-trial inspection.
Sweden	The Code of Judicial Procedures sets parameters for defense counsel to be informed of the investigation, and to state what inquiries they consider necessary. The bar association’s Code of Conduct sets that the advocate is free to contact witnesses and obtain testimony, even when the witness is called by the prosecutor, and actively seeking evidence is generally included in an advocate’s duty of care.
Taiwan	The bar association’s Code of Ethics states that a lawyer must collect evidence faithfully, investigate the case, and interrogate witnesses. The Attorney Regulation Act states that an attorney should diligently uncover facts and evidence to support the client’s case. The Code of Criminal Procedure gives the defense attorney the right to examine the case file and exhibits.
Thailand	There are no specific provisions requiring investigation, but legal aid providers are entitled to have their expenses reimbursed, which suggests support for investigation activities.
Turkey	Defense counsel has the right to be present for investigation activities, and review the full investigation file; the Directive on Legal Aid states that the legal aid provider must act independently by protecting the client’s benefits, and by contributing to the revelation of material facts.
United Kingdom	Scotland’s Code of Practice for Criminal Legal Assistance require solicitors to record evidence and cite necessary witnesses in sufficient time prior to trial.

Practice Principle #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.

The norm requiring governments to grant accused persons 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.

Principle #5 in Review: Diligent Preparation Across the Globe

Australia	Most territories have practice standards requiring analysis of facts and evidence, obtaining defense witness statements, developing of a theory of the case, drafting of a thorough brief, and consultation with the client on the above.
Czech Republic	The Criminal Procedure Code sets minimum amounts of time the defendant and his counsel must be given to prepare for trial, and the Attorney Act is clear that attorneys must “protect and enforce the rights and legitimate interests of the client.”
Fiji	There is a clear right to legal aid in the Legal Aid Act of 1996, and there is a Duty Lawyer Scheme “for those who require assistance instantaneously in court for bails, or mitigations.” However, there are no clear guidelines on legal aid practices.
Finland	The Code of Conduct for Lawyers states “All assignments shall be carried out with due care, accuracy and adequate promptness” and “An attorney shall conscientiously and in accordance with good advocacy practice protect the rights and interests of his or her client and for this purpose promote the resolution of the case.”
India	There is no formal requirement for this, but it reasonably falls under the general duty of diligence and competence in NALSA’s performance standards and multiple court decisions.
Iraq	The Attorneys Code requires attorneys to represent clients with “due care,” but does not specifically reference preparation.

Japan	The Lawyers' Rules provide that all lawyers should endeavor the best defense activities to protect a suspect/criminal defendant; the JFTI textbook suggests that a criminal defense lawyer should take active defense activities, including submitting their own evidence, and/or requesting a witness/expert testimony; it also noted that a criminal defense lawyer should do this even for a case where a defendant admits the indicted fact.
Kazakhstan	The law imposes a more general obligation on a legal aid provider to duly perform his/her professional obligations considering necessary measures for preventing harm to the client's interests; further, the law states that an attorney shall take any actions, not prohibited by law, in order to establish factual circumstances aimed at ensuring the rights, freedom, and legitimate interests of the client.
New Zealand	Practice Standards require legal aid providers to advise the client as to relevant defenses and discuss the prosecution's brief with the client.
Northern Ireland	The regulatory standards to which legal aid providers in Northern Ireland are subject require that legal aid providers develop case plans and strategies and also prepare thoroughly for court hearings.
Papua New Guinea	The accused has the right to adequate time and facilities to prepare their defense; the Professional Conduct Rules require lawyers to take legal action to protect and advance the client's interest, to conduct each case in a manner that is most advantageous to the client, and to endeavor to complete any work on behalf of the client; the Supreme Court has chastised a lawyer for failure to adequately prepare a case (he met the client, accused of murder, only the day before the trial), stating that his failure prejudiced the client and breached his duty to the client and the Court.
Russia	Criminal defense counsel has the authority to visit the suspect, to collect and present evidence, to involve specialist assistance, to be present when their client is formally charged, and to participate in the interrogation of their client, among other things.
Scotland	The Solicitor's Code of Conduct requires solicitors to prepare criminal cases by carrying out work that is reasonably necessary, to use their best endeavors to discover all relevant information and evidence, and to ensure the case is properly prepared so that there is no prejudice to the client.
South Africa	Legal Aid South Africa's Standard Operating Procedures set out clear checklists for diligent preparation of each case.

Sweden	The Code of Judicial Procedure requires defense counsel to “protect the rights of the suspect with zeal and care” and ensure matters at issue are properly elucidated; the bar association’s Code of Conduct holds “An Advocate must carry out a mandate with care, accuracy and due timeliness.”
Taiwan	The bar association’s Code of Ethics states “When attending to a legal matter entrusted by a client, a lawyer shall endeavor to enrich himself/herself with the legal knowledge required for accepting the said matter and make appropriate preparation. He/She shall, in accordance with the laws and decrees and lawful proceedings, exert utmost effort to safeguard the client’s legitimate rights; he/she may not delay in dealing with the accepted matter without cause, and he/she shall inform the client in time of important developments in the matter.” The Attorney Regulation Act requires defense attorneys to “diligently and competently handle the case.”
Thailand	No information available.
Turkey	The Turkish Attorneyship Code states that legal aid providers must carry out their duty with care, accuracy, and integrity; the bar association has disciplined attorneys for failure to meet this standard.
United Kingdom	The Legal Aid Agency’s quality standards state “Steps must be taken to ensure that work is not conducted for clients where it falls beyond an individual’s competence or where, for any reason, the case would not be conducted with diligence.” The Scottish Code of Practice for Criminal Legal Assistance requires solicitors to actively engage with the prosecution pre-trial, and to take note of anything that may reasonably be necessary for preparation and conduct of the client’s case.

Practice Principle #6: Engage Expert Assistance

A legal aid provider should consider engaging expert consultants and witnesses wherever appropriate.

An integral part of preparing and bringing a robust defense is the use of expert assistance to provide the court with any key context and information they would otherwise lack, whenever appropriate to advance clients' interests and protect clients' rights.¹¹ This includes, for example, mental health professionals, addiction specialists, forensic experts, and others.

Principle #6 in Review:

Expert Assistance Across the Globe

Australia	Engagement of experts is contemplated by the practice standards of most territories, particularly mental health and disability experts, and expert in cultural sensitivities around serving aboriginal and other marginalized communities.
Czech Republic	The criminal procedure code states ““Anything that can contribute to the clarification of the case, in particular the testimony of the accused and the witnesses, expert opinions, matters and documents relevant to criminal proceedings and investigation, can serve as evidence.” Further, where the legal aid provider would like to engage an expert, they may propose that the court engage that expert.
Fiji	There is a clear right to legal aid in the Legal Aid Act of 1996, and there is a Duty Lawyer Scheme “for those who require assistance instantaneously in court for bails, or mitigations.” However, there are no clear guidelines on legal aid practices.
Finland	The Commentary of the Code of Conduct for Lawyers states “An attorney has the right and obligation to interview potential witnesses and experts before trial.”
India	There is no formal requirement for this, but it reasonably falls under the general duty of diligence and competence in NALSA’s performance standards and multiple court decisions.
Iraq	The Attorneys Code requires attorneys to represent clients with “due care,” but does not specifically reference engaging experts; however, the Attorneys Code provides that legal aid providers can expense costs to the Bar Association, so there is room for provision of services that require an outlay of expenses, such as engaging experts.

¹¹ See *Legal Aid Reformers’ Network, Model Practice Standards for Criminal Defense 2.1.1*. (“The lawyer should develop an active defense 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).

Japan	The JFTI textbook suggests that a criminal defense lawyer should take active defense activities in a case where a defendant denies the indicted fact, including requesting expert testimony.
Kazakhstan	An attorney is entitled to (i) obtain opinions of experts/specialists and seek admission thereof as evidence, (ii) ask for an expert examination, and/or (iii) ask to summon a witness.
New Zealand	Practice Standard require legal aid providers to consider the need for expert evidence and, if necessary, apply for funding to engage experts in a timely manner.
Northern Ireland	The statutory framework in Northern Ireland provides for the engagement of expert consultants and witnesses to assist with the defense to a criminal prosecution. Legal aid providers are permitted to engage expert consultants and witnesses to provide evidence for a trial, provided that they abide by the provisions of Crown Court Rules.
Papua New Guinea	There are no specific provisions regarding expert assistance; the Professional Conduct Rules require lawyers to take legal action to protect and advance the client's interest, and to conduct each case in a manner that is most advantageous to the client.
Russia	Defense counsel is entitled to "recruit under a contract, specialists for the purpose of clarifying issues relating to the provision of legal assistance." The accused has the right to put questions to the court-appointed expert and to review the expert's conclusions.
Scotland	Legislation permits legal aid providers to instruct expert witnesses and to present expert opinion evidence where the case requires.
South Africa	By statute, legal aid may be provided for obtaining specialist or expert opinion; Legal Aid South Africa's Standard Operating Procedures require assigned counsel to determine early whether an expert is needed, consult with their supervisor, and obtain the expert opinion as necessary.
Sweden	By statute, witnesses called by the defense can be compensated by the State; under the Code of Judicial Procedure defense counsel is obligated to "ensure matters at issue are properly elucidated."
Taiwan	The Code of Criminal Procedure allows for examination of expert witnesses, and prohibits the judge from restricting examination of an expert.

Thailand	The Criminal Procedure Code is clear that experts are permitted to testify; there are no provisions regarding defense counsel’s obligation to engage such experts.
Turkey	The Criminal Procedure Code allows for examination of expert witnesses, whether brought by the defense, prosecutor, or court.
United Kingdom	The Legal Aid Agency’s guidance sets policies for identifying and remunerating experts; the Scottish Code of Practice states “As the circumstances of each case may require, a solicitor is expected to...identify and instruct in good time necessary experts.”

Practice Principle #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.

Existing performance standards mandate that legal aid providers take all appropriate steps to defend clients' rights through motions practice, pleadings, and argument.¹² 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.¹³

Principle #7 in Review: Pretrial Litigation Across the Globe

Australia	Most territories' practice standards require consideration of bail applications, and several specifically call on legal aid providers to seek to narrow the issue, resolve the case in a timely fashion, and avoid fully contested adjudication where appropriate—all of which require pre-trial practice.
Czech Republic	The Criminal Procedure Code states that “The counsel is entitled to file motions, lodge appeals, file applications, inspect the file and participate in proceedings under the provisions of this Criminal Procedure Code;” further, it specifically provides for pre-trial alternative means of resolution (“diversions in criminal proceedings”), such as plea bargaining.
Fiji	There is a clear right to legal aid in the Legal Aid Act of 1996, and there is a Duty Lawyer Scheme “for those who require assistance instantaneously in court for bails, or mitigations.” However, there are no clear guidelines on legal aid practices.
Finland	There are no standards specifically regarding pre-trial litigation, but the Code of Conduct for Lawyers makes clear that attorneys must pursue the client's interests diligently, carry out assignments with due care, and protect the rights and interest of the client.

¹² 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

¹³ 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...”).

India	There is no formal requirement for this, but it reasonably falls under the general duty of diligence and competence in NALSA’s performance standards and multiple court decisions.
Iraq	The Attorneys Code requires attorneys to represent clients with “due care,” and further specifies that they must avoid any act that would delay concluding the dispute.
Japan	The Lawyers’ Rules state that a lawyer should timely file and argue all pretrial pleadings that may be advantageous to the client.
Kazakhstan	There are no specific provisions requiring pretrial litigation; however, a legal aid provider is entitled to gather and submit items, documents, information, and other data necessary for providing legal assistance, which is subject to the mandatory inclusion in the criminal case.
New Zealand	Practice Standards require legal aid providers to protect the interests of the client and act in accordance with all fiduciary duties and duties of care owed by lawyers to their clients.
Northern Ireland	Legal aid providers are subject to an obligation to file any pre-trial defense statement within 28 days of initial prosecution disclosure, setting out key elements of the defense.
Papua New Guinea	There are no specific provisions regarding pretrial litigation; the Professional Conduct Rules require lawyers to take legal action to protect and advance the client’s interest, and to conduct each case in a manner that is most advantageous to the client.
Russia	Defense counsel has the right to enter petitions and to “lodge complaints against the actions (or lack of action) and decisions of the inquirer, the investigator, or the prosecutor, or of the court, and to take part in the consideration thereof by the court.”
Scotland	At the initial hearing the accused is required to state how he pleads, and so defense counsel is responsible to advise the client regarding the plea, and any offers from the prosecution.
South Africa	There are significant statutory provisions regarding pretrial litigation, including plea bargaining.

Sweden	The principle of immediateness that is governing for Swedish criminal proceedings means that no pretrial litigation is possible, except for advocacy around pretrial release.
Taiwan	The bar association's Code of Ethics states "If a lawyer shall discover in the course of performing his/her duties that a settlement, cessation of litigation or admission of guilt conforms to his/her client's interests and legal justice, he/she ought to work in concert to bring it about." The Code of Criminal Procedure allows the court to summon the accused and his attorney to preliminary proceedings regarding pleading, evidence, and other trial-related matters.
Thailand	No information available.
Turkey	There are no specific provisions regarding pretrial litigation.
United Kingdom	There is no information on the obligation of defense lawyer to engage in pretrial litigation; the government has expressed desire to streamline the pretrial and trial processes.

Practice Principle #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.

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.

Principle #8 in Review:

Trial Defense Across the Globe

Australia	Several of the territories specifically require trial defense, and they further require practitioners to attend all hearings, and provide efficient, ethical, and high-quality services.
Czech Republic	Under the Criminal Procedure Code, counsel must always be present during trial and his role during trial is to ensure that all evidence is presented that alleviates or mitigates the defendant's guilt, that all evidence is properly and impartially assessed by the court and that all relevant circumstances are considered by the court in rendering its decision.
Fiji	There is a clear right to legal aid in the Legal Aid Act of 1996, and there is a Duty Lawyer Scheme "for those who require assistance instantaneously in court for bails, or mitigations." However, there are no clear guidelines on legal aid practices.
Finland	There are no standards specifically regarding trial advocacy, but the Code of Conduct for Lawyers makes clear that attorneys must pursue the client's interests diligently, carry out assignments with due care, and protect the rights and interest of the client.
India	The Allahabad High Court in <i>Rakesh v. State of UP</i> (2018) stated "a threshold level of competence and due diligence in the discharge of his duties as a defense counsel would certainly be the constitutional guaranteed expectation." In <i>Suk Das Vs. Union Territory of Arunachal Pradesh</i> (1986), the Supreme Court of India held that failure

	to provide free legal aid to an accused at the cost of the State would vitiate the entire trial unless such aid was refused by the accused.
Iraq	The Criminal Procedure Code requires a lawyer who is appointed by the court to “prepare the submission and defend the accused.”
Japan	There are not specific requirements for trial activity beyond the Lawyers’ Rules requirement to use the lawyer’s best efforts to protect the rights of the client.
Kazakhstan	There are no specific provisions requiring trial litigation; however, a legal aid provider cannot support a legal position harming the client, must use all legal means and methods to defend the client, and must take any actions not prohibited by law to establish factual circumstances to protect the rights, freedom, and interests of the client.
New Zealand	Practice Standards require the legal aid provider to protect the client as far as possible from being convicted, including requiring the prosecutor to prove guilt, and putting before the court any proper defense and any relevant law.
Northern Ireland	In accordance with the Bar Code of Conduct, it is a fundamental obligation of a barrister to ensure that every aspect of the client’s interests is properly represented and protected without fear or favor. Further, a barrister who is instructed to represent a client must ensure that his right to a fair trial is protected. Barristers who are instructed to represent a client must be present throughout the trial unless they have the express consent of the instructing solicitor and of the client.
Papua New Guinea	The Professional Conduct Rules state that “When defending a client on a criminal charge, a lawyer shall endeavor to protect his client from being convicted except by a competent tribunal and upon legally admissible evidence sufficient to support a conviction for the offence with which his client is charged,” and that a defense lawyer shall not miss a trial unless there are exceptional and unforeseeable circumstances, and he obtains consent, and he designates a competent deputy.
Russia	Participation of defense counsel at trial is compulsory; if defense counsel fails to appear, proceedings will be postponed; the suspect may not reject appointed counsel for jury trials.

Scotland	Solicitors are statutorily entitled to examine and cross examine witnesses; the Guide to Professional Conduct of Advocates requires appointed counsel to be present in court and appear for the accused for the duration of the trial.
South Africa	The Supreme Court has made several rulings setting high standards for attorney performance in presenting a client’s case; Legal Aid South Africa provides extensive training around trial representation; and their Standard Operating Procedures set standards and checklists for representation to ensure high performance.
Sweden	The Code of Judicial Procedure holds that during court proceedings defense counsel may make any request and take any measure required to protect the rights of the suspect.
Taiwan	The Code of Criminal Procedure requires the court to provide defense attorneys the opportunity to argue the probative value of evidence, and to make arguments of law and fact.
Thailand	No information available.
Turkey	The Criminal Procedure Code allows the defense lawyer to be present for all trial hearings, even if the accused is not.
United Kingdom	The SRA Solicitors Code of Conduct provides “Acting in the following way(s) may tend to show that you have achieved these outcomes and therefore complied with the Principles... Drawing the court’s attention to relevant cases and statutory provisions, and any material procedural irregularity”.

Practice Principle #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.

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.¹⁴

Principles #9 in Review: Sentence Mitigation Across the Globe

Australia	Several territories require legal aid providers to engage in pre-trial negotiations around sentencing, and one actively supports sentencing appeals.
Czech Republic	The Criminal Procedure Code requires counsel to ensure that all evidence is presented that alleviates or mitigates the defendant's guilt, and that favors the defendant's sentencing in the event they are found guilty.
Fiji	There is a clear right to legal aid in the Legal Aid Act of 1996, and there is a Duty Lawyer Scheme "for those who require assistance instantaneously in court for bails, or mitigations." However, there are no clear guidelines on legal aid practices.
Finland	There are no standards specifically regarding sentence mitigation, but the Code of Conduct for Lawyers makes clear that attorneys must pursue the client's interests diligently, carry out assignments with due care, and protect the rights and interest of the client.
India	There is no formal requirement for this, but it reasonably falls under the general duty of diligence and competence in NALSA's performance standards and multiple court decisions.
Iraq	The Attorneys Code requires attorneys to represent clients with "due care," but does not specifically reference sentence mitigation.

¹⁴ See *International Legal Foundation, General Standards of Performance 7*.

Japan	The Lawyers' Rules provide that lawyers should argue for the least restrictive result at sentencing; the sample checklist for defense lawyers provided by the Japan Federation Bar Association recommends alleging extenuation including damage recoveries (e.g., settlement with a victim) and rehabilitation circumstances.
Kazakhstan	There are no specific requirements around sentence mitigation beyond the obligation to protect the client's interests.
New Zealand	Legal aid is available during sentencing, but there are no specific obligations around it beyond the lawyer's general duty to protect the client's interests.
Northern Ireland	A legal aid provider is obliged to argue for a less restrictive result at sentencing by virtue of the regulatory standards to which they are subject.
Papua New Guinea	There are no specific provisions regarding sentence mitigation; the Professional Conduct Rules require lawyers to take legal action to protect and advance the client's interest, and to conduct each case in a manner that is most advantageous to the client.
Russia	There are extensive plea-bargaining procedures in place, all of which offer sentence mitigation for faster resolution of the case; there are not clear requirements for how defense lawyers must conduct these pretrial activities, or whether they must engage in sentence mitigation post-conviction.
Scotland	Advocates have a duty to act in the best interest of their client, and as judges are empowered to reduce or substitute sentences, it is general practice for defense counsel to argue for the least restrictive sentencing result.
South Africa	There is a statutory right to present evidence for sentence mitigation, and Legal Aid South Africa's Standard Operating Procedures require appointed counsel to argue for mitigation of sentence and to explore alternatives to imprisonment in a competent manner.
Sweden	There are no specific provisions regarding sentence mitigation; there is the general duty to advocate in the best interest of the client.

Taiwan	The Code of Criminal Procedure sets out considerations for sentencing mitigation, but there are not clear standards regarding the attorney’s role in advocating for such mitigation.
Thailand	No information available.
Turkey	Although there is no specific provision requiring a defense counsel to pursue the least restrictive result at sentencing, the Turkish Attorneyship Code sets forth that a legal counsel should aim to resolve cases and disputes on an equitable and fair basis.
United Kingdom	No information provided.

Practice Principle #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.

The right to appeal is 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.

Principle #10 in Review: Filing Appeals Across the Globe

Australia	Most of the territories have requirements regarding records keeping in order to have records available for appeal, but do not require appeals to be filed.
Czech Republic	The Criminal Procedure Code sets time and form parameters for appeals.
Fiji	There is a clear right to legal aid in the Legal Aid Act of 1996, and there is a Duty Lawyer Scheme “for those who require assistance instantaneously in court for bails, or mitigations.” However, there are no clear guidelines on legal aid practices.
Finland	The Criminal Procedure Act states that “Where necessary, an attorney shall assist his or her client also in submitting an appeal to a higher court.”
India	In <i>M.H. Hoskot v. State of Maharashtra</i> (1978), the Supreme Court held that if a prisoner is unable to engage a lawyer to file an appeal or revision on grounds of indigence, the Court must assign competent counsel to represent the prisoner provided he does not object to the lawyer. Further, the Court ordered that where a prisoner seeks to file an appeal or revision “every facility for the exercise of that right shall be made available by the Jail Administration.” A 2017 Supreme Court decision directed NALSA to lay down a procedure for timely filing of appeals by legal aid lawyers.
Iraq	The Attorneys’ Code requires attorneys to represent clients with “due care,” but does not specifically reference appeals; the Criminal Procedure Code does recognize the right to appeal.

Japan	There is a right to legal aid at the appellate level; the JRTI textbook states that a criminal defense lawyer must consider whether an appeal should be made for the case.
Kazakhstan	The law requires attorneys to appeal a sentence if the client or attorney believes it is unjust.
New Zealand	Practice Standards require legal aid providers to maintain complete records and consider the merits of any appeal, provide advice regarding appeal, and file notice of appeal in a timely manner.
Northern Ireland	The Bar Code of Conduct requires a barrister, after conviction and/or sentencing, to meet the client, explain the outcome of the case and advise whether there are grounds for an appeal, and explain relevant waiting periods. They are required to appear for the appeal unless they have advised the client against the appeal.
Papua New Guinea	The accused have the right to appeal a conviction and sentence; there are no provisions regarding a lawyer's obligations around appeal, beyond the requirement that lawyers take legal action to protect and advance the client's interest, and to conduct each case in a manner that is most advantageous to the client.
Russia	The Constitutional Court of the Russian Federation ruled in a 2003 case that because the Criminal Procedure Code designates the time at which the right to criminal legal aid commences but does not specify an end to that right, this right continues through all stages of the process, including on appeal and on any proceedings related to protecting the prisoner's rights while incarcerated. In a 2007 decision specifically raising the question of the right to state-funded legal aid on criminal appeals, the Court decided that the right to state-funded criminal legal aid applies at all stages of the criminal process and is not subject to the discretion of the court.
Scotland	The Guide to Professional Conduct for Advocates requires that they consider whether there are grounds for appeal and, if so, that they appear for the client at that appeal.
South Africa	There is a constitutional right to appeal, and by statute legal aid can be provided for appeals; courts have emphasized that the right to counsel includes the appellate stage and they set guidance on the minimum requirements of legal representation with regards to appeals; Legal Aid South Africa's Standard Operating Procedures set requirements for explaining potential appeals to clients, maintaining records for appeals, and conducting appeals.

Sweden	The accused has the right to appeal, and general practice is that legal aid providers continue representation in appeals based on their statutory duty to protect the interests of the client.
Taiwan	The bar association's Code of Ethics requires attorneys to maintain and keep client records for two years, so that they are preserved for appeal.
Thailand	The Criminal Procedure Code provides for the right to appeal and sets some parameters, but does not address the defense lawyer's obligations around executing an appeal.
Turkey	The Criminal Procedure Code recognizes the right to appeal; private counsel can only do so with permission of their client, but legal aid counsel can do so even against the will of the accused; the Appellate Court has found that the duty of care requires defense counsel to timely file appellate briefs and apply the law skillfully.
United Kingdom	No information provided.

Conclusion

The basic right to legal counsel is common in many State constitutions and codes around the world, yet despite these clear and codified protections, there is a global crisis in access to effective representation. This crisis leaves indigent individuals and their families without access to justice—a fact the world simply can no longer accept. Defining quality is tricky, yet it is imperative that providers have objective ways to measure and evaluate performance to ensure that criminal legal aid protects defendants' rights. We hope this comparative study helps underline where we may already have strong global consensus, and where norms may be emerging, in relation to proposed practice principles that can help us meet our commitments to guarantee access to justice for all.

The ILF developed the Ten Criminal Legal Aid Practice Principles detailed in this report to address the challenge of evaluating quality in legal aid and thereby help address a significant obstacle to tracking and improving access to justice. The principle-based procedure for providing legal aid is comprehensive in scope, covering the period from the time an individual is first arrested or accused to beyond the conclusion of the trial. Legal aid providers should strive to provide early representation and advocate for their clients, asking for their release from pretrial custody. They should prepare diligently for trial, engage in independent fact investigation, and consult with experts. Pretrial litigation is especially important, as it will help legal aid providers reduce the incidence of pretrial detention, and lays important groundwork for defending clients during all subsequent stages. All trial work should be followed with an appeal if the client is convicted, so that providers can raise every reasonable claim on their client's behalf. These are critical components in providing effective council.

While there is variation, this 19-country comparative research study reveals a strong, shared foundation for these principles in existing legal codes. The importance of immediate access to counsel upon arrest (Principle #1), client-centered advocacy (Principle #2), in-trial defense (Principle #8), and filing appeals (Principle #10) is grounded in the majority of States' laws reviewed in this report. Many countries also indicate that lawyers have the obligation to prepare diligently (Principle #5). Laws and practices that obligate lawyers to independently investigate facts (Principle #4), engage expert assistance (Principle #6), or litigate ahead of trial (Principle #7) appear to still be emerging, and are more common in democratic states with high levels of economic development. Advocacy for pretrial liberty (Principle #3) and sentence mitigation (Principle #9) are still developing worldwide, but there is a growing movement surrounding the rights of prisoners in many democratic states.

The 19 countries surveyed in this report are varied by location, regime type, and level of economic development, and thus when reviewed together offer a good initial test for the applicability of the Ten Criminal Legal Aid Practice Principles worldwide. Most states have specific codes related to each of the principles. Kazakhstan, Russia and Thailand had the most prominent gaps in information, while the United Kingdom, Turkey, and India have robust protections for some principles, yet no codified guarantees for others. Legal aid codes in South Africa and Japan are most closely aligned with the Ten Practice Principles, while Fiji does not lay out clear guidelines beyond the right to legal aid. Many of

the states surveyed in this report show a trend toward strengthening legal aid codes over time: Australia, India, Sweden, and Taiwan have made promising developments toward alignment, and will likely integrate laws and practices that reinforce these standards in the coming years. This report finds that the states with the most consensus on the Ten Principles are those that are democratic with high levels of economic development, though this should be understood as a trend, rather than a rule.

In presenting this research, we hope to contribute to a growing body of knowledge around access to justice, and to identify further areas for inquiry and collaboration. While we have offered a comparative analysis of a varied set of countries, we would welcome further analysis of an even broader sample set. Given that laws and practices are evolving within the countries studied, we also foresee the need to refresh this research periodically. We hope this research can serve as a starting point for fruitful discussion about performance standards for legal aid providers and measurements for quality legal aid, as together we strive to ensure access to justice for all, around the world.