

Peer Review System in the Chilean Public Defender Office (DPP)- Improving Quality Assurance

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The act (law 19.718) that creates the DPP, states the systems that shall take place in order to control the performance of the providers of public defence, regardless their contractual regime. This system is conformed by peer review, External audits, provider reports and complaints.

Likewise, this law states that the National Defender will set the general standards to be observed, along the judicial process, by public defenders.

Consequently, one of the first tasks that had to be assumed by the DPP, after its creation, was the elaboration and setting of the standards of defence. These were set as parameters for the technical performance of defenders, in areas relating indictees' guarantees and rights, parameters that were conceived as a way of ensuring the quality and effectiveness of the service, beyond the compliance of otherwise applicable legal or formal minimums.

With the preparation of the first standards, in 2002 the administrative unit that according to art 8 of the 19.718 law shall deal with the design and implementation of the assessment and control mechanisms on the performance of public defenders (Department of Control, Assessments and Complaints management, DECR), undertook the study of the peer review mechanism to be implemented. It was defined that peer reviews would be the essential mechanisms for qualitative assessment of defence, whereas the external audits would deal with more quantitative assessments. Thus, by the end of 2002 the first pilot initiatives of inspections took place, commanded by lawyers from the DECR. During that time peer reviews were labelled as “provisional”, as they took place while the system was being tested and adjusted, and while the whole control system was developed as mandated by the law.

For these first peer reviews there was direct control of the National Defender. They were conducted by officials designated for that purpose by the Head of the Department DECR, who also supervised them.

The methodology, in general terms, is specified in the law and the regulations on Procurement and criminal defence Provision. Inspections begin without previous notification, examining defenders performance, files and case data, and also interviewing beneficiaries and participants. Finally a written report is issued, containing a general conclusion and particular findings, and the analysis of the cases examined with an overall opinion.

In 2003, two inspector offices were established in La Serena and Temuco, the districts where the criminal system reform was first implemented. In 2004 a third office was opened in Santiago. Each office has jurisdiction over a number of districts, for the purpose of control.

Since the subject of evaluation is the performance of defenders in relation with the standards, it was felt that the inspectors should be lawyers with experience in criminal law and criminal procedural reform and preferably would have performed outstandingly as public criminal defenders. Thus, a number of inspectors were appointed, based on public contests, first for the North and South offices (2003) and in 2004 for Santiago's, thus replicating the gradual implementation of the criminal procedural reform in the country.

Along with this process the institution had the opportunity to learn from international experiences, in particular from Canada and the UK.

From these beginnings, the peer review system has changed considerably, always aiming to improve the processes, to provide tools to the system to consolidate the management of information, incorporating the regional management teams and stakeholders in program planning peer reviews and management of performance improvement of the defenders review; extending peer reviews beyond the assessment of the technical defence by incorporating administrative inspections, defining new methodologies and establishing rules for assessing standards in order to unify criteria and to improve the system cycle.

Currently, the peer review system operates as a virtuous, permanent and dynamic cycle, in which different stakeholders interact.

Stages of the cycle:

- I. **Peer Review Annual Plan**, approved by the National Public Defender contains critical areas in the provision of defence to be considered with priority both in determining the causes to review and the selection of defenders. This peer review plan indicates range for the next calendar year and considers as relevant inputs to make it the opinion of the Studies Department. This plan also specifies the areas where thematic peer reviews shall be conducted, to cover institutional issues that criticality require specific monitoring. There are also administrative peer reviews conducted on providers performance, in order to assess compliance of contractual duties and administrative guidelines. This Plan is approved in early December every year, to be apply on peer reviews carried out from January 1st the following year.
- II. **Programming of annual schedule of peer reviews:** This defines the public defenders to be inspected during the following year, according to the prioritization process that takes place, considering a number of variables such as regional defenders requests, previous inspections results, complaints, sanctions, and other factors or indicators of potential risks. The prioritization process makes it possible to optimize human resources, considering that there are 13 professional peer reviewers for a total number of 640 public defenders.

- III. **Preliminary review.** Once the schedule is set, for every peer reviewer and as progress is made along the year, each time a new peer review starts the inspector examines the available background information from informatical systems and other records, selects 15 cases (files) to conform the sample for examination, and outlines the aspects that she/he will review in more detail once in the fieldwork stage. This stage ends with a short minute that must be approved by the zone chief inspector.
- IV. **Fieldwork, sample and analysis.** At this stage the peer reviewer approaches the public defender under review, requests the files of the 15 cases, interviews the professional him or herself, interviews the clients who are in prison, attends court hearings and requests audio records from previous audiences. Before the end of the field visit the inspectors held a feedback interview with the defender. In case she/he has identified some findings that suggest a compromise of rights or interests of the clients, she/he contacts the district defender and communicates it to the zone inspector chief, for them to decide the necessary and urgent corrective actions.
- V. **Report.** The inspector makes the analysis of all the information collected, generating her/his opinion on the defender performance, and elaborating an executive report with findings and the foundations for the conclusion of the performance. It can be classify as compliant, with minor observations, with major observations or insufficient. Besides, the inspector completes a form of evaluation to report the particular assessment of every standard of defence, with specification of objectives and targets. Based on this information it is later possible to aggregate information on findings in specific areas of performance.
- Every peer review report is reviewed by another peer (from a different zone office), to cross check the application of criteria and to provide a means for the standardization of work among zone offices. The report is also approved by the zone inspector chief, and in cases of insufficient performance by the head of the inspection unit of the DECR.
- Once approved the report is sent to the district defender, who has to send it to the inspected public defender within 10 days.
- VI. **Objections to the report.**
- The inspected professional or provider of public defence services (in administrative inspections), can rebut the inspection report addressing his remarks and objections to the Head of the Department of Control, Evaluation, and Complaints (DECR), who will discuss the background and will deliver a decision, either confirming or modifying the report.
- VII. **Regional supervision:** Once the final decision is firm, in cases of deficient performance the district defender is responsible for communicating to the National Public Defender his decision on the case, in order to find a solution for the indicated deficiencies. This can range from actions of technical supervision to sanctions or to finish the services by the provider. The inspection unit supervises this process, facilitating communications,

information and in general facilitating any required assistance. In the district offices the technical supervision is assumed by the professional teams under the lead of the chief of studies. They commit on the follow up of the critical cases with activities, and their evaluations.

- VIII. **Follow up:** To ensure compliance, to close the quality cycle, the inspections unit and the zone inspector chiefs held meetings with every district, twice a year.

- IX. **Evaluation:** By the end of each year, every zone office issues a report to give an account of the peer reviews that were conducted during the year. Among other matters, they refer to practices or repeated findings detected in the area of operation, also evaluating the feasibility of improvements in methodology and work processes. It concludes with the issuing of the annual management report of the inspection system that is submitted to the authority of the service, and to the Studies Department (DEP), that uses this information as an input for designing technical guidelines, training programs, and other resources to materialize the necessary quality improvements.

Peer Review system in numbers.

The institution has 13 peer reviewers who perform defence inspections and one for administrative inspections. The peer review unit also has administrative staff in the three zone offices (North in La Serena, South in Temuco and Centre in Santiago). The head of the Unit is part of the Department of Evaluation and Control, where she is assisted and supported by other members of the DECR staff.

The following table shows coverage of defence peer reviews performed in 2014

Table 1

Inspections year 2014																
Basic statistics																
	Total Inspections				Scheduled Inspections			Thematic Inspections			Reactive Inspections					
Number of Inspections	271				156			110			5					
% of total	100%				58%			41%			2%					
Examined files (case-indictee)	2.713				2.337			345			31					
% del Total	100%				86%			13%			1%					
ongoing cases examined	1.625	60%	2.713		1.379	59%	2.337		220	9%	345		26	1%	31	
closed cases examined	1.089	40%			954	41%			130	6%			5	0%		
Indictees female	540	20%	2.682		387	17%	2.306		148	6%	345		5	0%	31	
Indictees male	2.142	80%			1.919	83%			197	9%			26	1%		
Non adults	192	8%	2.410		147	7%	2.081		45	2%	308		0	0%	21	
Adults	2.218	92%			1.934	93%			263	13%			21	1%		
Indictees under preventive detention	1.281	473%			1.105	708%			173	157%			3	60%		

Source: DECR

Conclusion and challenges.

Nowadays, 13 years from the time of the first peer review we can affirm, as DPP, that the peer review system in their role of assessing defence standards for public criminal defence, and the mission of the latter to ensure clients (indictees) a real and effective quality defence (that protects rights, interests and guarantees), of indictees under criminal action, have safeguarded the efficiency of the service of public criminal defence, first rising findings to improve, and then ensuring the following up of these measures, and making quality service better every time.

This contribution affects, directly, the role of public defence as an effective counterweight to the exercise of the punitive powers of the State, by the prosecutor service. As a matter of fact, more efficient public defenders to safeguard the rights of indictees will be more effective counterparts to the punitive pretensions of prosecutors.

Moreover, from a structural point of view, the necessity of maintaining an efficient peer review system is part of the design of the public defence system, that in a relevant percentage is covered by the provision of services by private agents, which are funded by the state. Hence, the peer review system allows the institution to comply with its duty to ensure the appropriate use of public resources, with the particularity that the DPP, with the service it provides, exercises a guarantee or human right of indictees, namely to count on technical defence.

We consider as the main challenges for the future in relation with peer reviews:

- a) To ensure the necessary dynamism to adjust technical criteria to the guidelines and emphases of new authorities, including revision of standards of defence.
- b) To improve the efficiency in the collection of data. Current delays affect the times and timings of inspection reports, and can be reduced by improving on line access to it (particularly in the case of audio records held by the judicial power).
- c) To maintain a high profile of specialisation in the peer review team, for them to exercise a suitable expert judgement in quality assessment.
- d) To increase the range of peer reviews, without compromising the quality of them.

We are certain that we will achieve this and more, based on the experience capacities and commitment of our team, on the continuous improvement of quality assurance methods applied by our peer review system, and the interest and institutional determination to consolidate a solid quality system system. And along this path we will certainly appreciate every opportunity to share experiences that can tip us on how to achieve our goals in place.