

2023 International Forum on Legal Aid

Legal Aid in the Post-Pandemic Era.

National Report Session II

**Moderator: Professor Alan Paterson, Chair
International Legal Aid Group**

Global Changes to Legal Aid Systems after the Pandemic: Tweaks or Transformations



**International
Legal Aid Group**

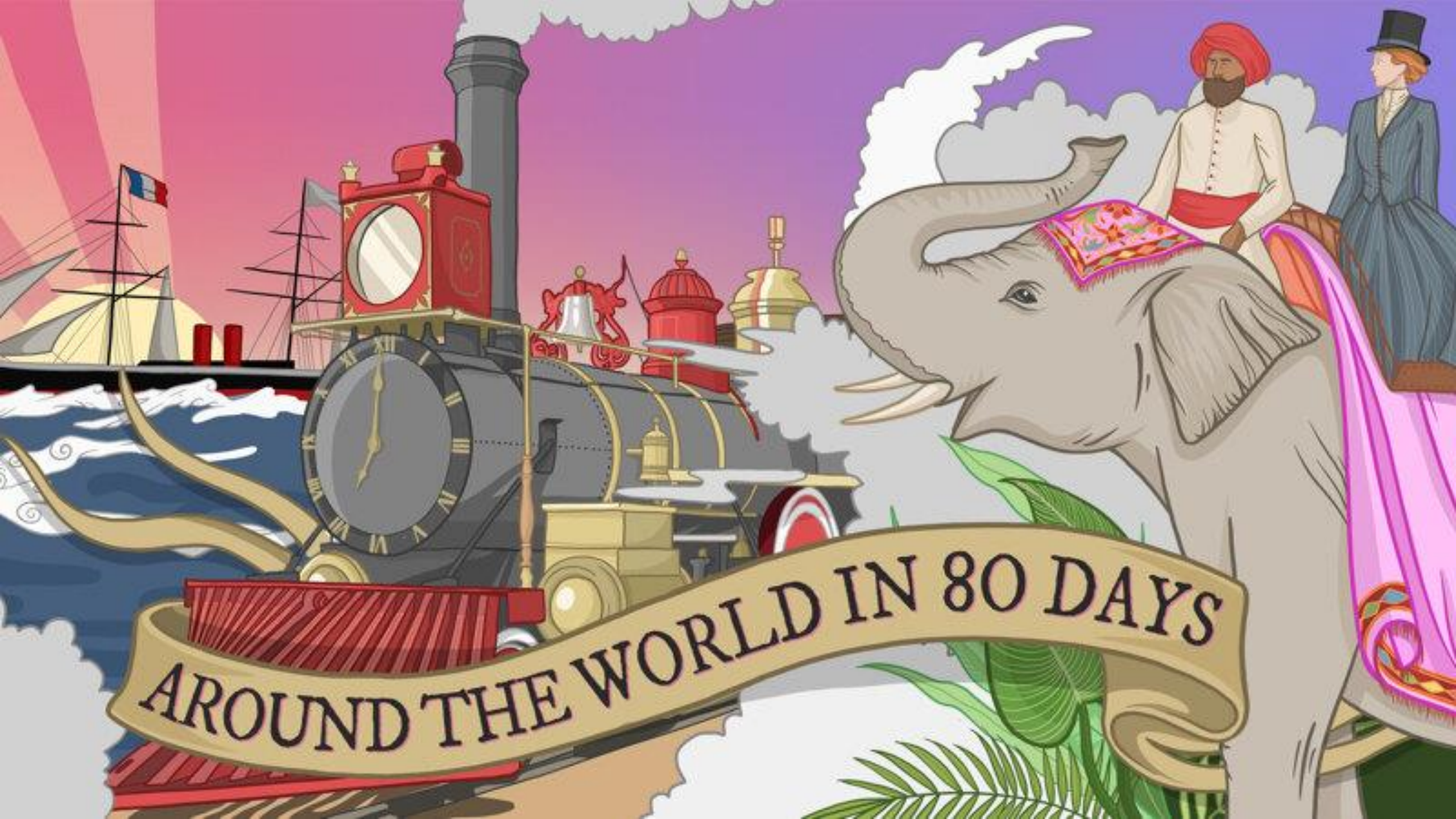


General remarks

- National Reports received from around the world including **Australia**, **Brazil**, Canada, China, Japan, the Netherlands, New Zealand, the Phillipines, **Taiwan**, Ukraine, Vietnam
- Many thanks to the writers – most of whom will not have the opportunity to present – except those in red
- Particular congratulations to those who followed the template questions
- Distilling common themes in 30 minutes rather a challenge

National reports





AROUND THE WORLD IN 80 DAYS

A WORD OF CAUTION

- Proper comparison is very difficult. Legal Aid reflects the features (courts, culture, judges, lawyers, procedures etc) of the home jurisdiction
- It can be like contrasting :
- Legal aid transplants don't always work
- It's more about:
Stimulating out of the box thinking



Eligibility limits

- Australia 8%
- Japan 20%
- The Netherlands 38%
- Finland 52%
- Scotland 70 %

BUT...

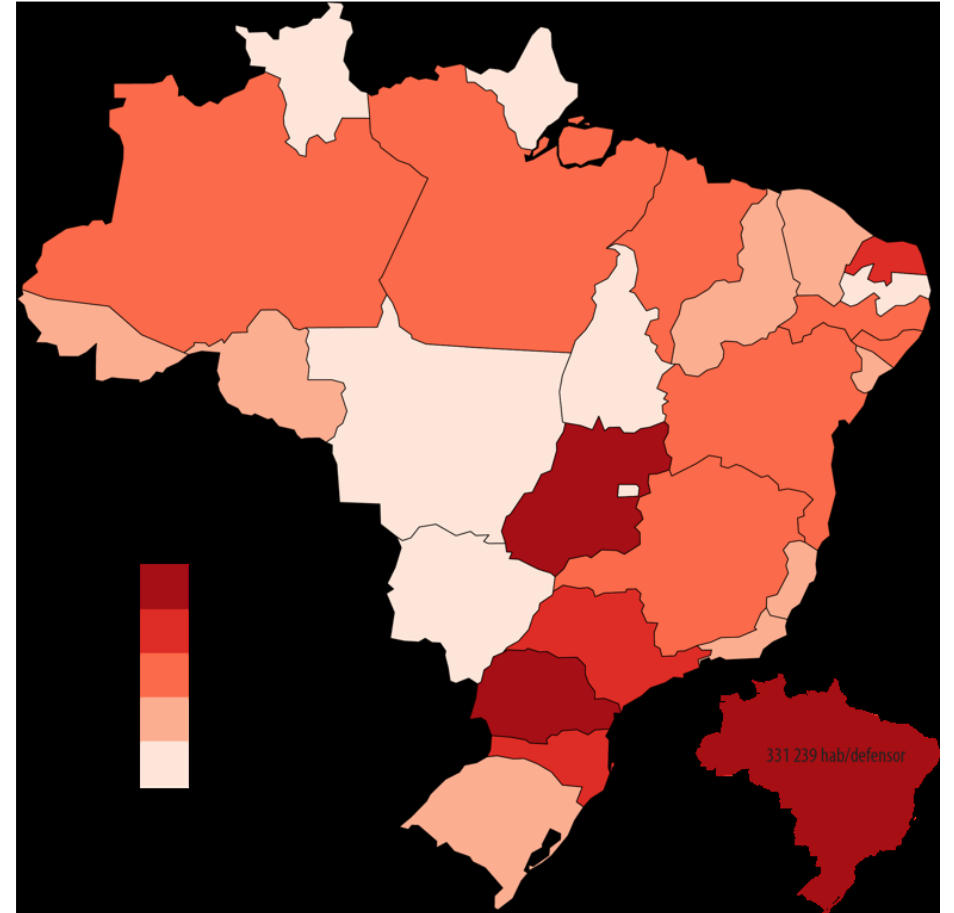
Ratio Legal Aid providers to Population

Vietnam 1: 70,000

Philippines 1 : 45,000

Brazil 1: 34,000

Scotland 1:2,500



General Issues

- 1. Who runs Legal Aid ?**
- 2. What is the Delivery Model?**
- 3. What underpins the programmes?
Evidence policy making?**
- 4. The importance of Early Intervention**
- 5. Austerity and Delivering More for Less**
- 6. Policy making and Budget control**
- 7. Post-Covid developments**
- 8. Emerging trends**

General Issues

1. Who runs Legal Aid ?

2. What is the Delivery Model?

**3. What underpins the programmes?
Evidence policy making?**

4. The importance of Early Intervention

5. Austerity and Delivering More for Less

6. Policy making and Budget control

7. Post-Covid developments

8. Emerging trends

Who runs Legal Aid?

National Legal Aid Agency

(a) Inside the Government / MOJ

New Zealand
England and Wales
Northern Ireland
Hong Kong
Ukraine
Finland
Vietnam

(b) Outside the Government / MOJ

Japan
Ireland
The Netherlands
Scotland
Australia
Canada
Brazil
Taiwan
The Philippines

General Issues

1. Who runs Legal Aid ?

2. What is the Delivery Model?

**3. What underpins the programmes?
Evidence policy making?**

4. The importance of Early Intervention

5. Austerity and Delivering More for Less

6. Policy making and Budget control

7. Post-Covid developments

8. Emerging trends

What is the Delivery Model?

**Mainly Public
Defender / staff
lawyers**

**The Philippines
Vietnam (8:1)**

**Mainly Private
lawyers under
contract/ registration**

**England and Wales
Northern Ireland
Hong Kong
Scotland (95:5)
Japan (99:1) (Holism)**

**Genuine Mixed Public /
Private**

**Ukraine (Criminal v 50:50 in Civil)
Ireland (Criminal v 50:50 Civil)
Finland (Staff: any matter; Private: only
Court cases)
Australia
Canada (73% Private;10% Staff;17%
Paralegal)
Brazil (Mainly Public Defender)
Netherlands (Primary v Secondary)
New Zealand (30% Cr is PDS) 24 CLCs
Chile
South Africa**

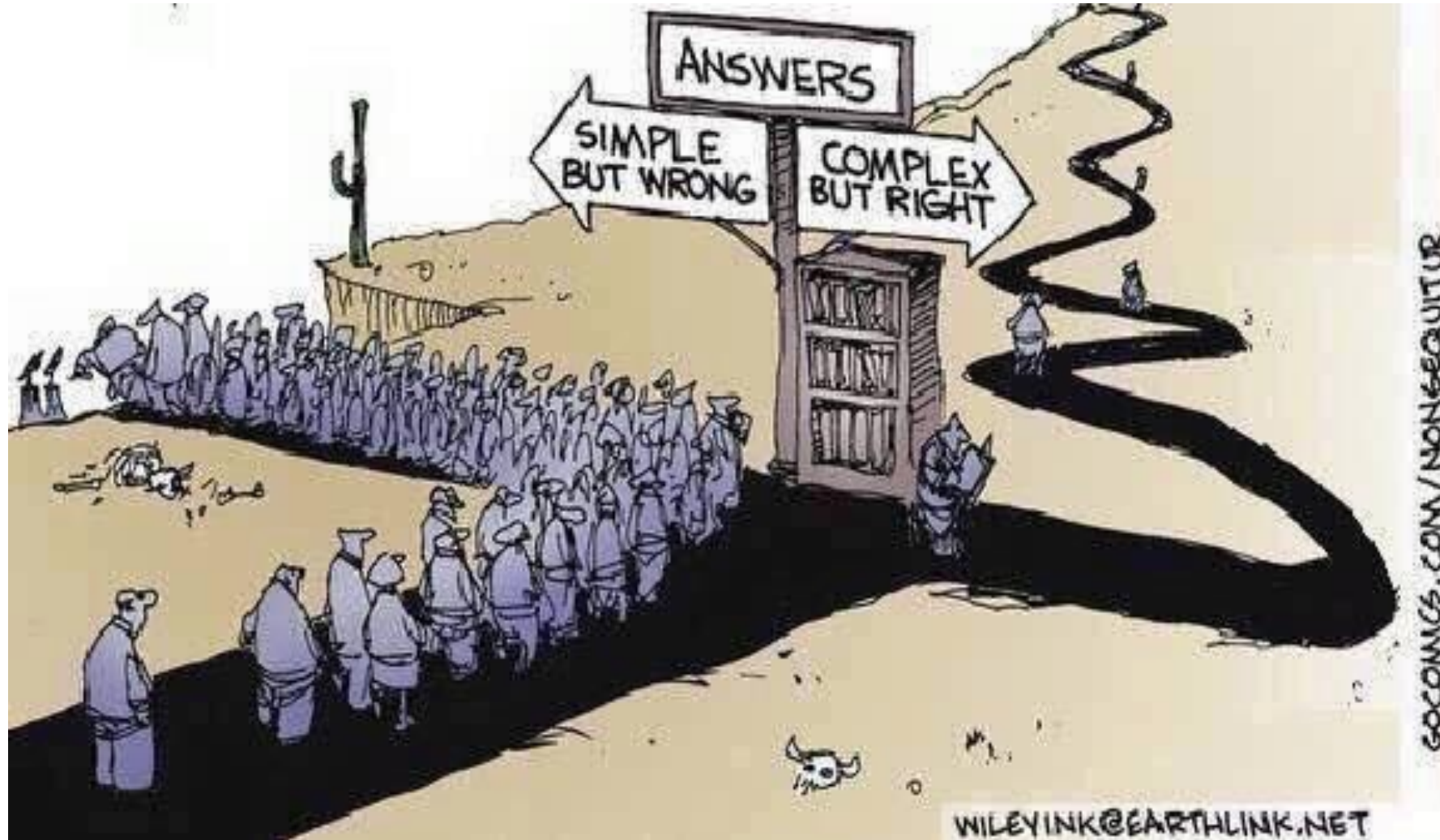
Variation in legal assistance systems

- Forms of payments to external lawyers:

Contracts, Salaried “Constants” (Lithuania), fixed fee per case, per hour, per event, ex-post assessment and more...

- NGOs, Uni Law Clinics, Civil Society, Trades Unions, local governments, pro-bono (1 p.a.), paralegals, paralegal volunteers, insurance, statutory HR bodies, Limited Licence Legal Technicians (fam. USA), self-help, self-rep, no-foal-no-fee (Ireland), legal assistants (Zambia), Independent Childrens Lawyers (Australia)

Complex, Planned, Mixed Model



General Issues

- 1. Who runs Legal Aid ?**
- 2. What is the Delivery Model?**
- 3. What underpins the programmes?
Evidence policy making?**
- 4. The importance of Early Intervention**
- 5. Austerity and Delivering More for Less**
- 6. Policy making and Budget control**
- 7. Post-Covid developments**
- 8. Emerging trends**

Evidence based Policymaking - Needs Assessment studies

Government research responsibility

England and Wales?

New Zealand

Finland

LAA research responsibility

Scotland

The Netherlands (New
Knowledge Centre)

Canada

Australia

Taiwan

Neither

Ukraine?

Vietnam

Latvia?

Japan (LAA lost its)

General Issues

- 1. Who runs Legal Aid ?**
- 2. What is the Delivery Model?**
- 3. What underpins the programmes?
Evidence policy making?**
- 4. The importance of Early Intervention**
- 5. Austerity and Delivering More for Less**
- 6. Policy making and Budget control**
- 7. Post-Covid developments**
- 8. Emerging trends**

The importance of Early Intervention

Stemmed from Hazel Genn's work in England on Justiciable Problems and Unmet Need around 2000

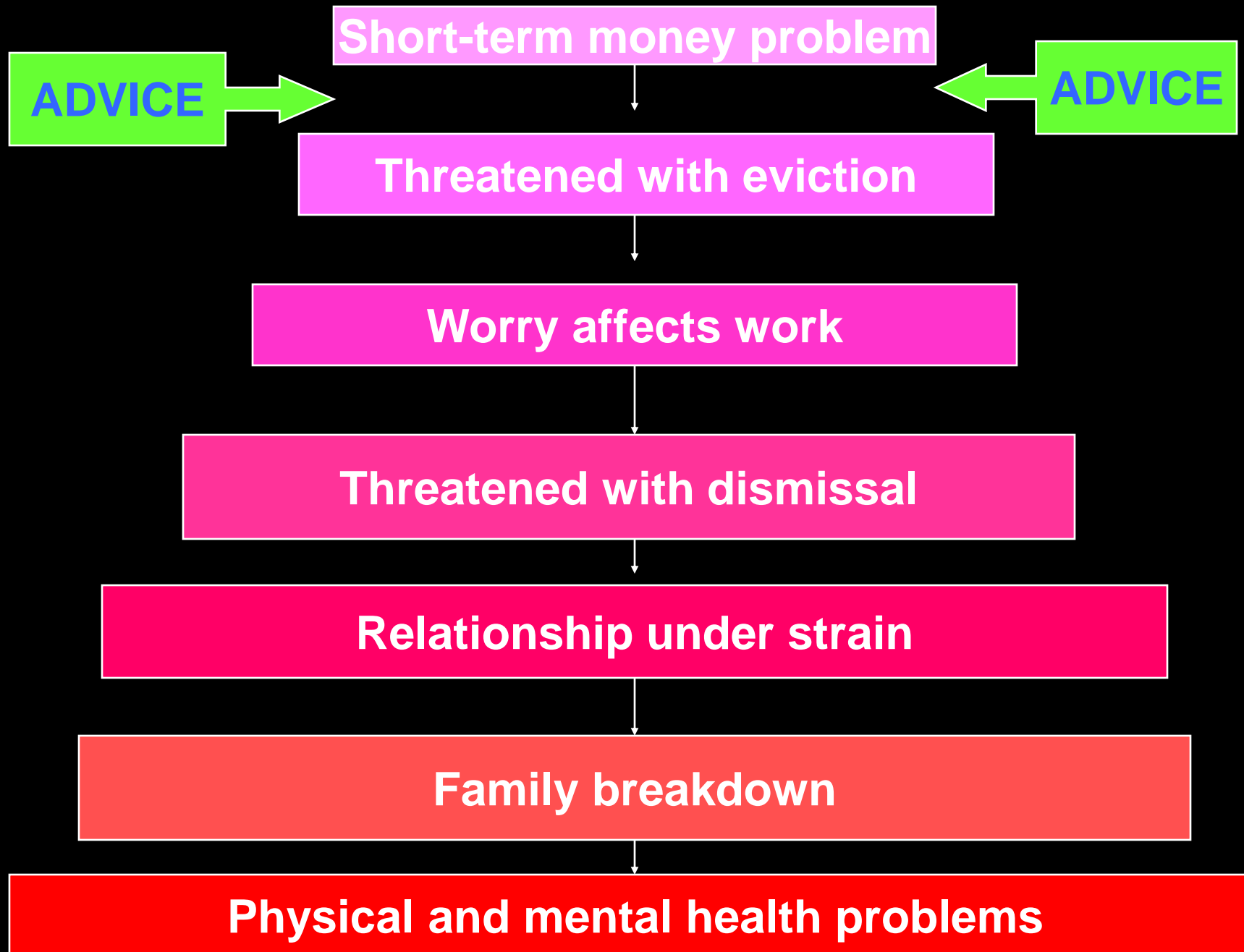
Replicated in over 150 countries, sometimes several times.

I The importance of Preventative Lawyering – like preventative medicine



Preventative legal services

- Can help people to help themselves
- Can avoid disasters from occurring
- Can minimise the cascade effect





The importance of Early Intervention 2

Stemmed from Hazel Genn's work in England on Justiciable Problems and Unmet Need around 2000

Replicated in over 150 countries, sometimes several times.

- I The importance of Preventative Lawyering – like preventative medicine
- II The vital importance of appropriate triage from an appropriate triage person – the Netherlands Loket v public / private generalists

Shop front Legal Service Counters in The Netherlands



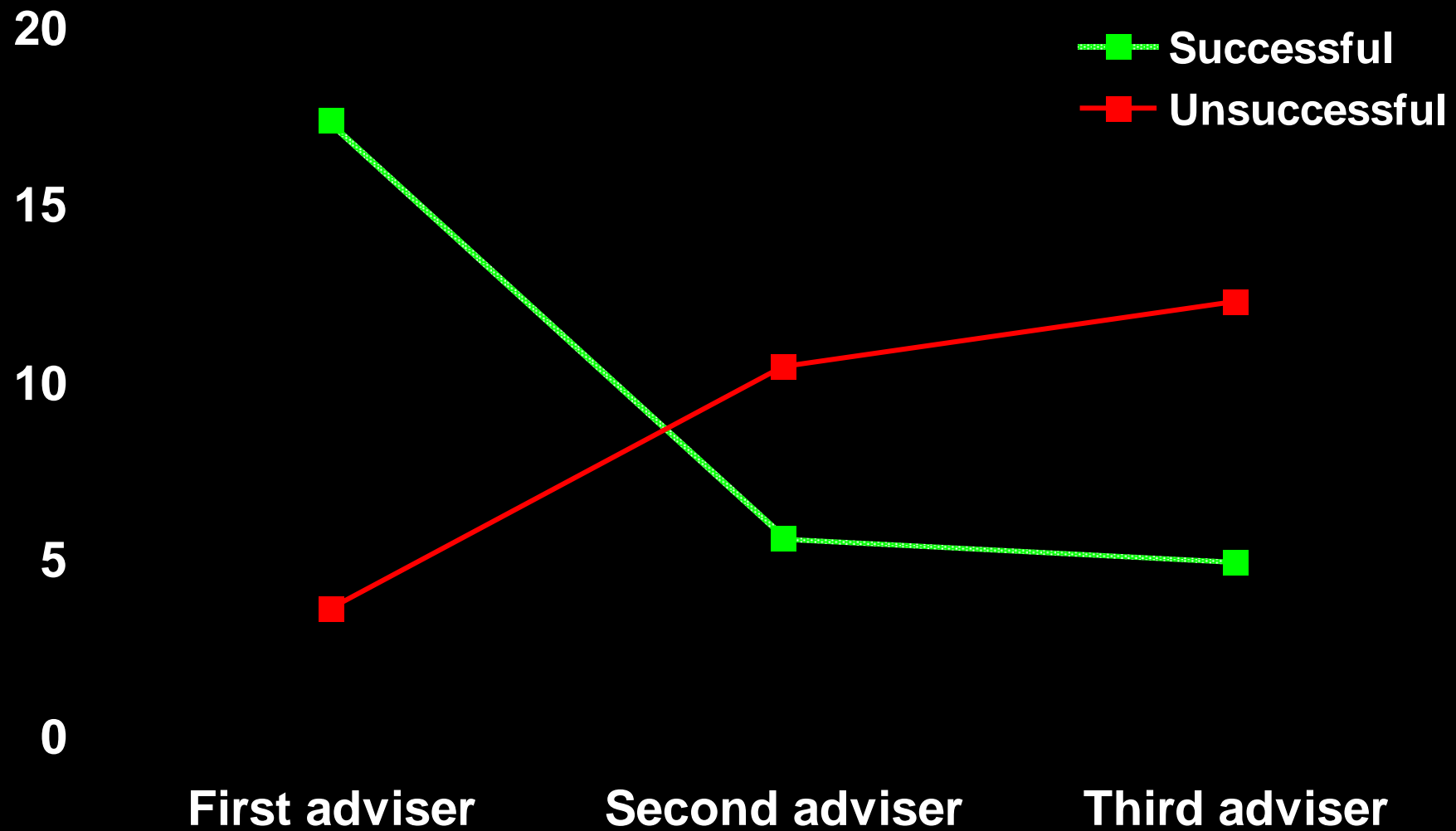
Appropriate advice and assistance

- Triage by advisers - fitting advice to:
 - type of problem
 - type of person
 - type of opposition

One size does not fit all

- * Of appropriate quality

Proportion of referrals that are successful



The importance of Early Intervention 3

Stemmed from Hazel Genn's work in England on Justiciable Problems and Unmet Need around 2000

Replicated in over 150 countries, sometimes several times.

- I The importance of Preventative Lawyering – like preventative medicine
- II The vital importance of appropriate triage from an appropriate triage person
- III Key modern development of Holism e.g. Health/ Justice Partnerships in Australia (Almost every State), Canada ; England and Wales; Scotland (PDSO).

Holism and Early intervention

“Prevention needs to address the wider determinants that influence individual behaviour. Focusing on individual behaviours can only go so far towards improving population health. These wider determinants include poor-quality housing, loneliness, or financial worries. Realising our aspiration to person-centred care – and to effective prevention – therefore requires action to understand and address these wider determinants”.

“One way of doing this is through holistic support in healthcare settings, in the form of advice workers or referral to local sources of community support... By making sure that patients are able to address their basic needs and social circumstances, we can maximise the chances that our clinical interventions succeed. (**Practising Realistic Medicine, 2018, Scottish Government**)

Health Justice

Integrating health and legal services

England

Australia

Canada

Scotland

Japan (Staff Attorneys)



Sierra Leone Prison



General Issues

- 1. Who runs Legal Aid ?**
- 2. What is the Delivery Model?**
- 3. What underpins the programmes?
Evidence policy making?**
- 4. The importance of Early Intervention**
- 5. Austerity and Delivering More for Less**
- 6. Policy making and Budget control**
- 7. Post-Covid developments**
- 8. Emerging trends**

The importance of buses



The Original



The Shenzhen Bus



What if politicians will only pay for a bicycle?



How much do we value Legal Aid ?

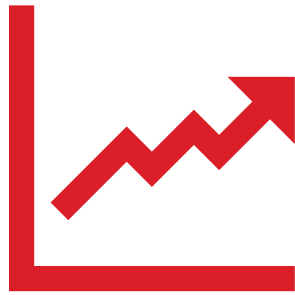
Less than cost of Halloween costumes for our pets?



– less on legal aid than the annual spend by the public on ice cream

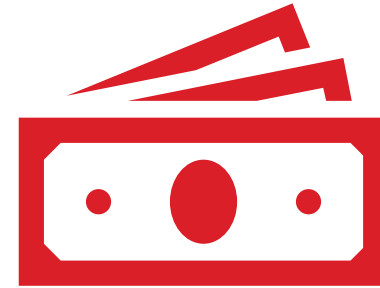


International Trends



Rising:

Costs, fees, legal services demand,
overburdened personnel



Falling:

Scope, eligibility, lawyers (leaving)
(exceptions-donor-fed), funding at
constant risk

Managing the Resources I

I **Adjust Scope**

- a) Reduce it – LASPO England and Wales
- b) Across the Board expansion – Almost no one
- c) Selected areas – Specially vulnerable groups: Japan (crime victims; elderly), Taiwan, Philippines (women and children abuse; disabled persons; Victims Assistance Unit)
Australia (family abuse, veterans, disability)
Chile (minors, victims of rape, vulnerable people)
Ukraine (human trafficking; internally displaced persons)
Netherlands (victim support; child benefit; gas extraction)
Ontario (specialist clinics for those with disability, AIDS, asylum seekers)
Brazil (Units for elderly, disability, sexual diversity)
Burundi (elderly)

Burundi



Managing the Resources II

II **Adjust Financial Eligibility**

- a) Introduce contributions – rare unless already exist - loan
- b) Across board increase – Scotland the rare outlier 70% (NZ proposal)
- c) Vulnerable groups – *free* – Scotland, Philippines, the Netherlands, Australia, Japan, Ukraine

III **Increase / decrease payments or salaries to providers**

- a) The Netherlands – research based; Scotland –strikes ; British Columbia –media
NZ
- b) Public Defender programmes

“Vulnerability” increasingly seen as measure of need vs “poverty/welfare”

- ❑ Gender-based violence and abuse
- ❑ Human trafficking
- ❑ Labour exploitation
- ❑ Victims
- ❑ Counter terrorism
- ❑ Children, adoption
- ❑ Seniors
- ❑ Alcohol and Drugs

Forced Hospitalisation

Homeless

First Nations

Young Adults

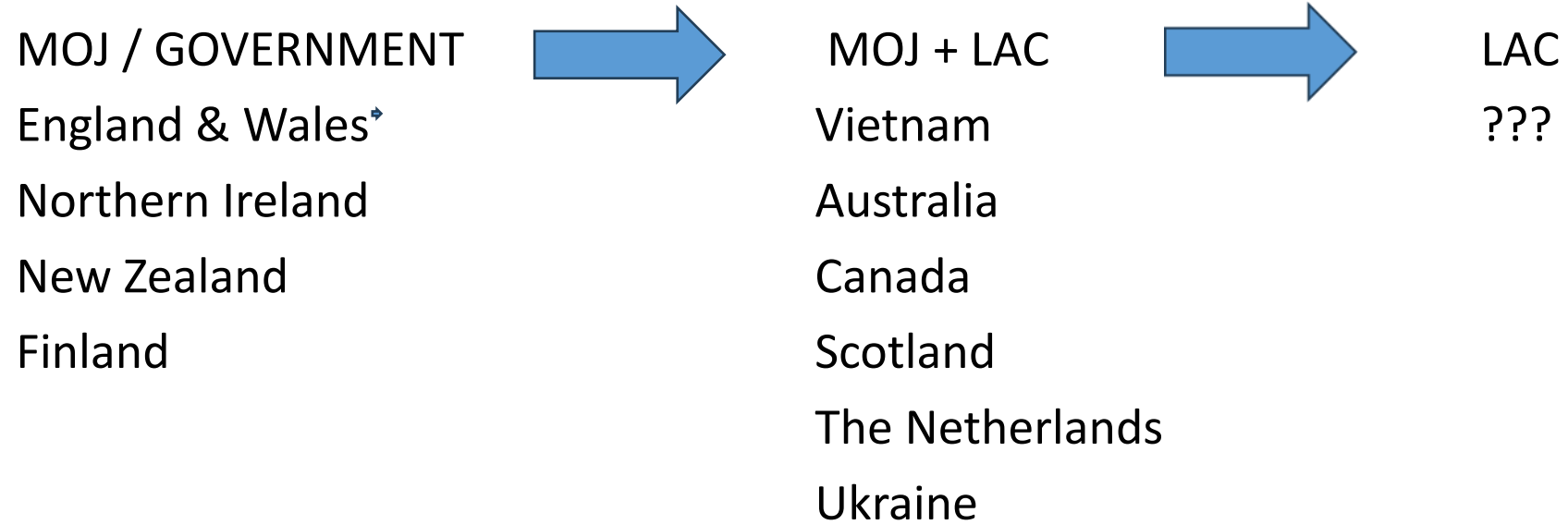
Women

Race, caste, disability

General Issues

- 1. Who runs Legal Aid ?**
- 2. What is the Delivery Model?**
- 3. What underpins the programmes?
Evidence policy making?**
- 4. The importance of Early Intervention**
- 5. Austerity and Delivering More for Less**
- 6. Policy making and Budget control**
- 7. Post-Covid developments**
- 8. Emerging trends**

Who controls the levers?



Alternative Levers

1) GROUP / CLASS ACTIONS – STRATEGIC LITIGATION

- a) The problem of the individuated nature of legal aid – Scotland, New Zealand. Test cases (e.g. Canada, Ireland, England & Wales)but what about class actions and financial eligibility?
- b) Strategic Advocacy e.g Australian challenge to false algorithm of Robodebt
- c) Public Defender programmes – strategic litigation /class actions in Brazil

2) THIRD PARTY FUNDING

- a) Legal Expenses Insurance – Large increase in Japan, widely used in Sweden

General Issues

- 1. Who runs Legal Aid ?**
- 2. What is the Delivery Model?**
- 3. What underpins the programmes?
Evidence policy making?**
- 4. The importance of Early Intervention**
- 5. Austerity and Delivering More for Less**
- 6. Policy making and Budget control**
- 7. Post-Covid developments**
- 8. Emerging trends**

What Happens when COVID-19 hits?



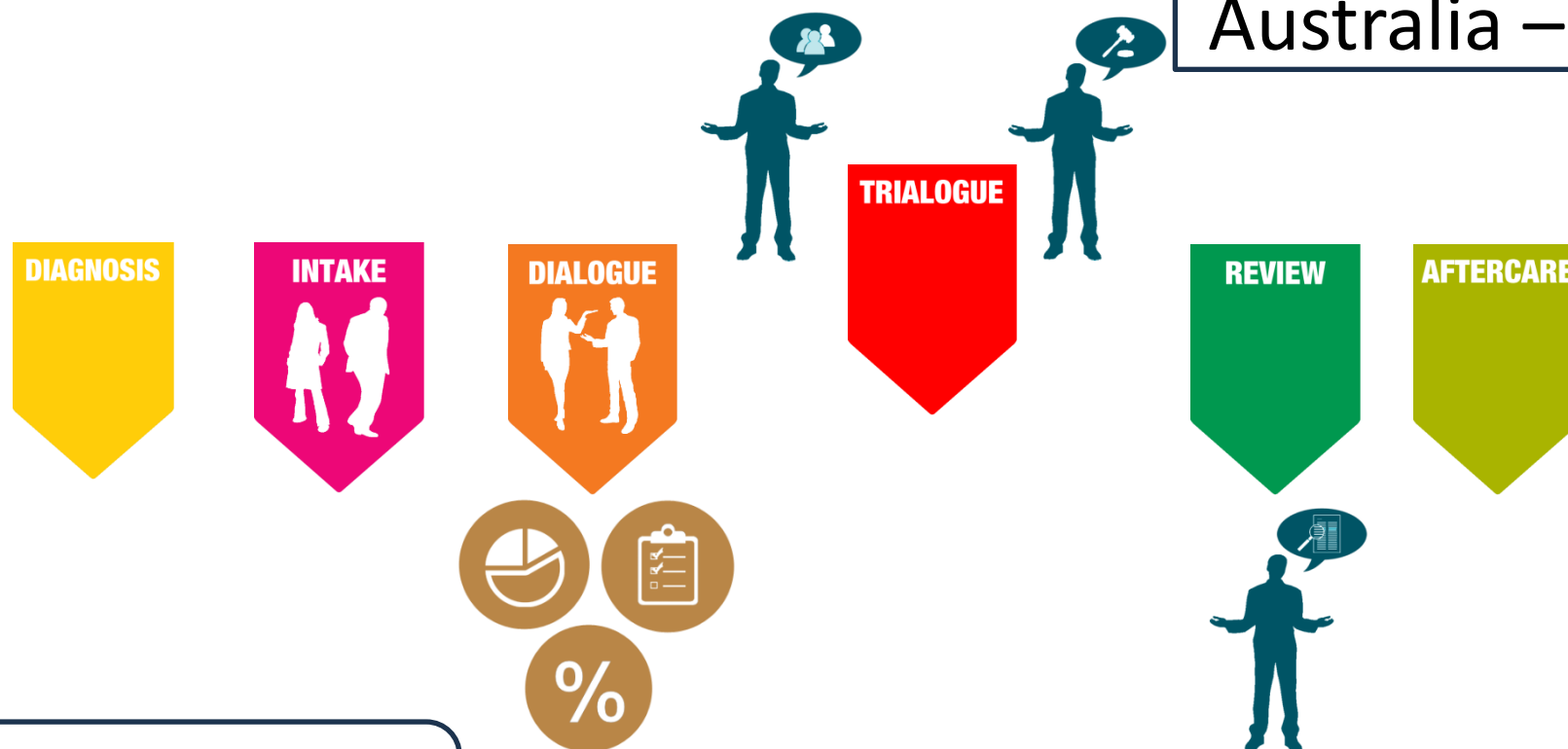
The rise and Rise of Digital Helplines

Ukraine – Messaging platforms – “WikiLegalAid” (5.6 M '20 > 20 M 2023)

Vietnam – Community meeting rooms with internet / zoom for remote advice

Brazil - use of mobile phones to update and advise clients, provide documentation e.g. birth certificates for homeless persons, and teleservice for basic advice [However, platforms don't always integrate]

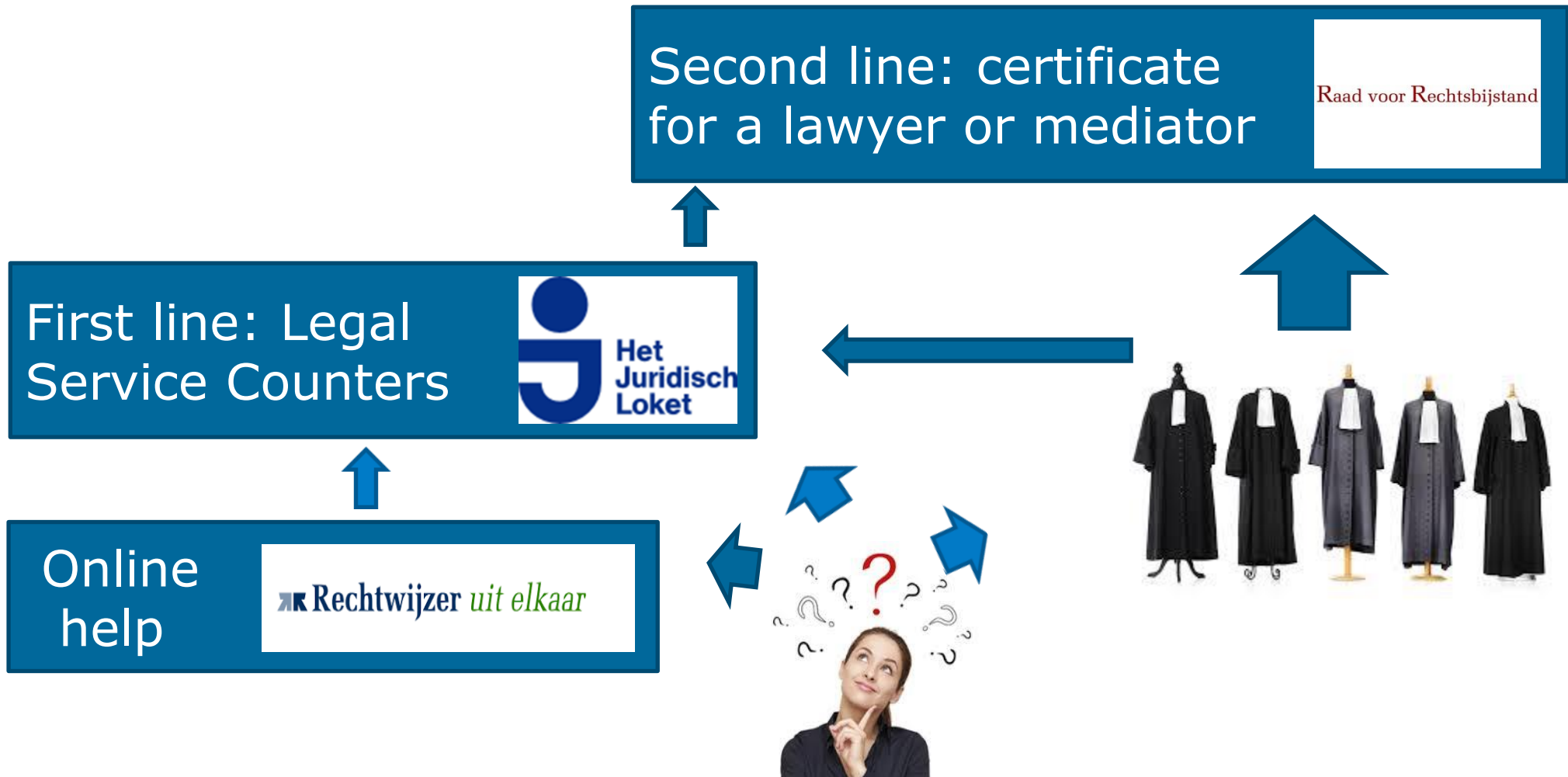
The Philippines – During COVID the Chief Public Attorney instructed all Public Attorneys to keep their electronic communications available 24/7 – followed by the Persida Acosta Legal Advice live free legal aid every Friday at 1.30pm (Facebook, YouTube, Twitter, Toktok, Instagram) 1 million followers and counting.....



Hot Docs, A2J (US)



Online, first line and second line



What of Digital Exclusion ?



What of Digital Exclusion ? II

A problem in most jurisdictions – whether its insufficient bandwidth, lack of access to the internet, not having a smart phone but... the case of Rwanda



General Issues

- 1. Who runs Legal Aid ?**
- 2. What is the Delivery Model?**
- 3. What underpins the programmes?
Evidence policy making?**
- 4. The importance of Early Intervention**
- 5. Austerity and Delivering More for Less**
- 6. Policy making and Budget control**
- 7. Post-Covid developments**
- 8. Emerging trends**

Chat GPT

Form

- Chatbot
- Workflow Application

Context

- LangChain (Chains, Agents)
- OpenAI Plugins



Language Computer

- OpenAI
- Hugging Face



Knowledge

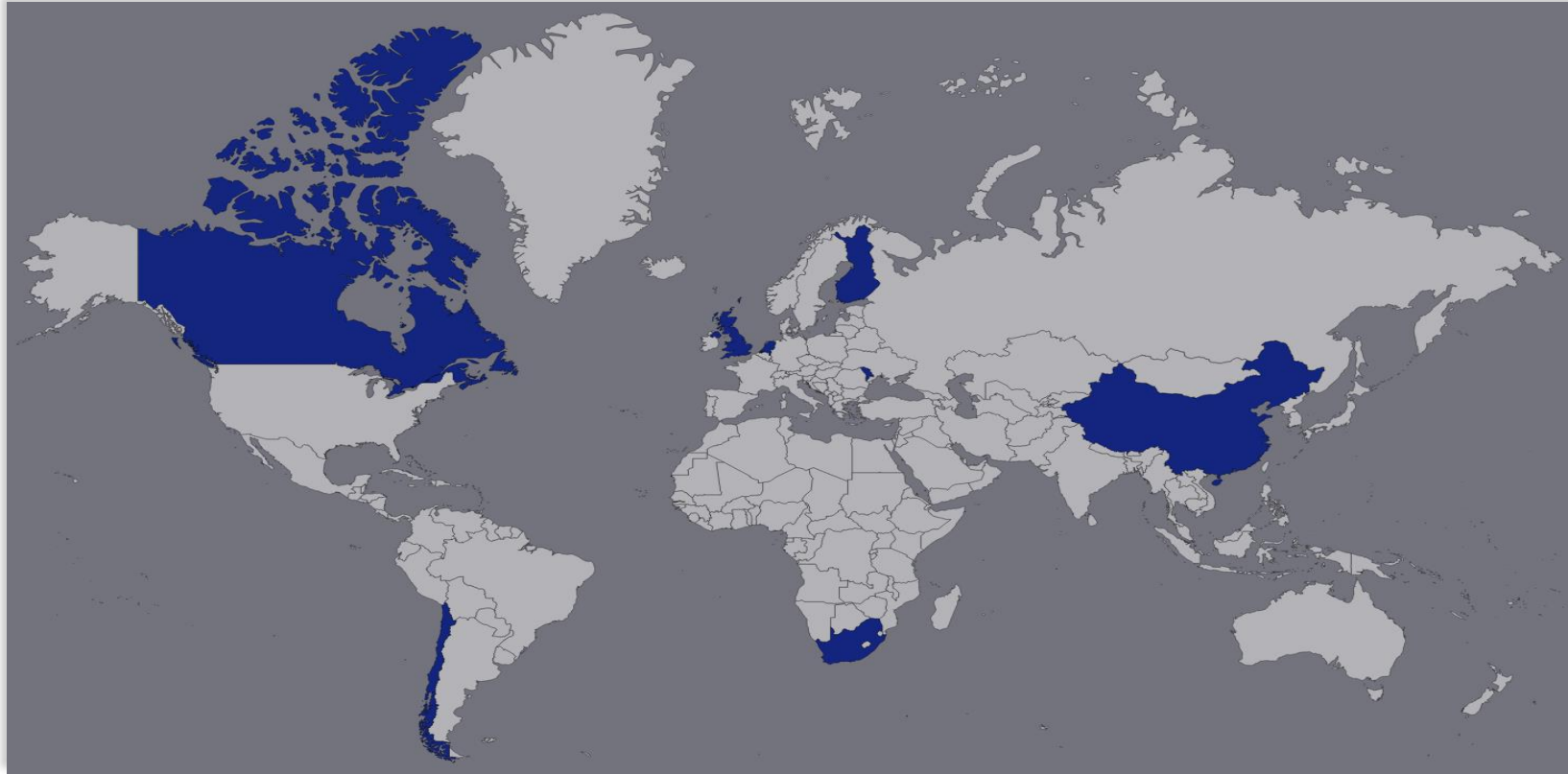
- Vector Databases
- External API's



Chat GPT: Essential Skills for Resolving People's Justice Problems

- Understanding the Complexity of Justice Problems
- Legal Knowledge and Analytical Skills
- Communication and Interpersonal Skills
- Problem-Solving and Critical Thinking
- Collaboration and Networking
- Empowerment and Conflict Resolution

USING QUALITY MONITORING TO CHANGE LEGAL CULTURE



The Spread of Peer Review England and Wales, Scotland, Canada (Quebec), Finland, Georgia, Moldova, South Africa, Chile, China, New Zealand, Ukraine and The Netherlands

Peer Review

同儕審查

“The evaluation of the *service* provided against *specified criteria* and *levels of performance* by an independent person with significant current or *recent practical experience* in the areas being reviewed”

「針對服務是否達到指定標準或績效要求，由目前或近期內在該特定領域具有重要實務經驗的獨立人士，進行評估。」

**PEER REVIEW CRITERIA FOR CIVIL LEGAL ASSISTANCE CASES (TRIAL
IMPLEMETATION)** All China Law Association
民事法律援助案件同行评估标准（试行）

File Number and Name案卷编号和承办律师姓名.....

Peer Reviewer(s) names同行评估人员姓名.....

Initial meeting(s)(Key moments)
初次会见（关键时刻）

1. Did the lawyer understand the problems of the client, listen carefully to him/her, understand his/her demands and take detailed notes?

1 2 3 C N/A

1、律师能否准确理解当事人的问题？是否认真倾听当事人叙述，准确理解当事人诉求，并制作详细的谈话笔录？

1 2 3 C N/A

Public Legal Education/ Outreach

- TV, Radio, documentaries, Phone-ins – School outreach – Sierra Leone, Zambia, India;
- Mama Samia Legal Aid Campaign- Tanzania;
- Awareness raising- paralegals, mobile clinics, Legal Aid Week, posters- Rwanda;
- Justice Centres- Jordan; Lectures Japan;
- Street Law- USA, Ireland
- Webinars, podcasts, social media, video Ukraine



Conclusions 1



- 1) Be careful what you compare
- 2) Statistics don't tell the whole story
- 3) Importance of evidence based policymaking



Conclusions 2

- An independent LAA is better than one in Government
- Complex, planned, mixed model is the way forward, but no single right mix
- Preventative legal aid and early intervention is the future
- Managing resources efficiently includes prioritising vulnerable groups

Conclusions 3

- Post COVID digital helplines and advice packages are here to stay – but we need to tackle digital exclusion

- **Emerging trends.**

- Generative AI
- Quality Assurance
- Public Legal Education