

This excerpt is taken from the Report on intermediaries for justice around the globe. This report was created for [The Access to Justice Knowledge Hub](#)

Introduction

This research is part of a collective project to research, discuss and disseminate different aspects around access to justice with persons with disabilities in form of a hub.

The Access to Justice Knowledge Hub for Fair Participation (the “Hub”) aggregates approaches, expertise, practice, and tools from around the world, to advance the evolution of justice systems so that they enable full and fair participation of persons with disabilities in the justice system. The Hub builds on the knowledge of its participants from a variety of countries (Israel, Kenya, Mexico, South Africa, Spain, United Kingdom, United States, Zimbabwe) to disseminate tools and support for solutions, closely linked with people’s experience of discrimination and with the overarching goal of full participation. We seek to help create an enabling environment where all participants, regardless of their role in the process, can participate and be equally and fairly heard in justice procedures.¹

The Hub contributed to the drafting of the International Principles and Guidelines on Access to Justice laid by the Special Rapporteur on the Rights of Persons with Disabilities (“International Principles and Guidelines”),² which also inform the discussion and recommendations in this report. Further, the Hub’s work is strongly informed by the Convention on the Rights of Persons with Disabilities. This report follows an initial report on ‘Access to Justice’ Initiatives for persons with disabilities around the world which is available upon request³. Unlike the first report, this report focuses solely on the regulation and use of intermediaries or communication assistants in court. It is based on descriptions obtained through interviews with intermediaries around the world on how the service of intermediaries is organised and delivered in their country. The information and description are not exhaustive and have not always been verified. Lastly, this report does not follow a comparative methodology but contains an initial mapping and description of the different intermediary systems around the world.

Throughout the report, the term ‘intermediary’ will be used to refer to ‘persons that support or assist a person with disabilities in giving evidence before court in a neutral role’. The International Principles and Guidelines set out by the Special Rapporteur include following definition of this role⁴: “Intermediaries (also known as “facilitators”): persons who work, as required, with justice system personnel and persons with disabilities to ensure effective communication during legal proceedings. They support persons with disabilities to understand and make informed choices, making sure that things are explained and talked about in ways that they can understand and that appropriate accommodations and support are provided. Intermediaries are neutral and they do not speak for persons with disabilities or for the justice system, nor do they lead or influence decisions or outcomes.”

¹This description can be found in the Hub’s response to a questionnaire on good practices in access to justice issued by the Special Rapporteur on the Rights of Persons with Disabilities in August 2019. This response was led by Bob Fleishner with the collaboration of all Hub members.

²Special Rapporteur on the Rights of Persons with Disabilities. International Principles and Guidelines on Access to Justice for Persons with Disabilities. Geneva, 2020. Available under: https://www.ohchr.org/Documents/Issues/Disability/SR_Disability/GoodPractices/Principles_A2_Justice.pdf

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⁴ Special Rapporteur on the Rights of Persons with Disabilities. International Principles and Guidelines on Access to Justice for Persons with Disabilities. Geneva, 2020. Available under: https://www.ohchr.org/Documents/Issues/Disability/SR_Disability/GoodPractices/Principles_A2_Justice.pdf

This is a loose definition due to the variances in the configuration of the role of an intermediary in each country. Whenever a country has a different term for this figure, that term will be used. Note that the term complainant will be used to refer to victims and defendants for accused person. The term 'victim' is avoided to refer to situations prior to a judgement in some jurisdictions to preserve innocence of the defendant. In some cases, witnesses refer to victims and third party witnesses. In this report, complainant and witnesses will be differentiated for clarity.

Communication has a broader meaning than commonly understood. *“Communication includes imparting, conveying or exchange of ideas, knowledge and information by means of speech, writing or non-verbal methods. Communication is also about the way we establish contact with others, enabling us to build relationships and influence others. Communication is a mutual and dynamic process and not simply a transfer of information from one to another. Communication is influenced by context as well as the experiences, culture and emotions of the people involved.”*⁵

The first report undertaken within the Hub’s working framework found different support figures across the globe. It looked at possible good practices and specific measures to improve access to justice for persons with disabilities in general. It found, for instance, that there are different support roles around persons with disabilities accessing justice, e.g. emotional support or information points. This second report focuses on the role of the intermediary, as in the different forms of providing communication assistance in court. This form of assistance is explored in this report in depth covering services from New Zealand, Kenya, England and Wales, Israel, Mexico, Canada⁶, some states of the United States of America and Spain.

⁵ See the Justice Intermediary Starter Kit for more information under www.justiceintermediary.org

⁶ Revised from ‘Ontario, Canada’ to ‘Canada’: 12 November 2020.