

Justice Intermediary Starter Kit

MODULE 9

AROUND THE WORLD

www.justiceintermediary.org



Report on intermediaries for justice around the globe

The Access to Justice Hub for Fair Participation has compiled a report on several of these countries, called The full report is available on our website here.

The report includes:

- **Country's intermediary scheme**
- **The local legal basis**
- **The JI role**
- **Working principles**
- **Some training plans**
- **Good practices**
- **Ideas for research**
- **Recommendations for setting up a scheme.**

JIs are active or in legislation in at least thirteen countries around the world, although not all are expressly used for persons with disabilities but were initially designed for children. The terminology to refer to 'intermediaries' includes communication assistants (for New Zealand, Canada, USA) and facilitadores (for Spain and Mexico).

In some jurisdictions, there is specific laws in place that regulate the JI role (for example New Zealand, Israel, Kenya). In other places, general accessibility or non-discrimination acts are applied (for example Vermont, USA or Ontario, Canada). In Mexico, the figure is introduced through a procedural code rule that allows for 'technical support'.

In most countries the work of the JI focuses on access to justice in courts, with some exceptions from USA and Canada, where JIs may also support people in other instances such as administrative hearings.

The JI role is mainly defined through practice in court and neutrality is expected. Most JI schemes assist victims and witnesses, while some also include defendants (New Zealand and Mexico) or are trying to expand the service in equal terms to them (England and Wales).

As for the JI's professional profile, most of the legislations do not limit the role to a specific profession. In some countries, practice has carved out a most frequent professional profile, for example speech and language therapists are common in England and Wales or psychologists in Spain.

Other jurisdictions place higher value on other abilities, for example the Mexican scheme has focussed on the values for example demonstrated interpersonal skills. Israel's scheme has a more varied professional background, including criminologists.



Setting up of JI schemes, and training for JIs, tend to be determined and run by the organisations that have initiated the scheme, with the exception of England and Wales where the Ministry of Justice has taken on this role.

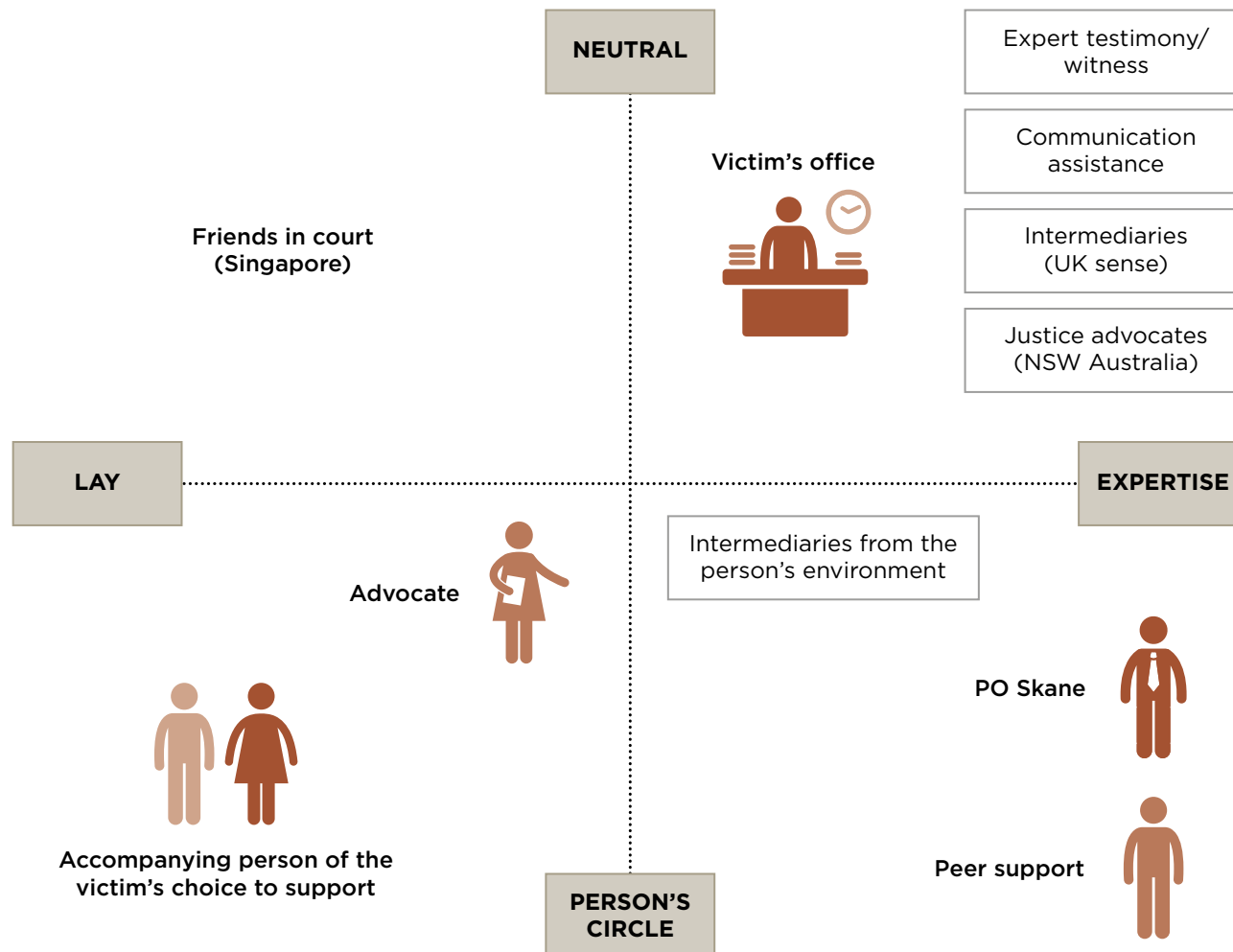
Monitoring and support of JIs in the different countries is commonly done internally, for example through reporting back after each job and through collective team meetings.

In some countries, funding is provided by the State through funding of NGOs, for example in Spain and Mexico, or through the courts or different services, for example in UK and USA. However, most countries have unstable or indirect funding sources, which makes the running of intermediary services difficult due to uncertainty, often compounded by lack of resources to undertake effective fundraising.

As can be seen in the diagram (page 5) of supporting figures, there are various roles that intercept the role of Justice Intermediary. These roles vary in relation to their degree of neutrality. For example, a non-legal advocate will be partial to their client and family members may only have expertise derived from knowing the individual without understanding the legal system.

In some parts of the world, JIs have been recruited from the family or close friends of the person with disability, and in others a social worker or human rights advocate takes on the role of JI. It will be important for each new scheme to consider the fundamental principles of the JI, as described across this Kit and are contained succinctly in the previously mentioned **Report**.

Access to Justice: Supporting Figures



Support figures/Accompanying person: New Zealand, Spain and EU Legislation.

Appropriate Adult: (UK, Singapore), Independent Third Persons (Victoria, Australia) – the need to be present during police interviews, getting finger prints – evidence given may be rejected in court.

Intermediaries/Communication Assistant: have different roles. Some are present during all the proceedings, some only in the moment of giving evidence. Some are conceived to support the person, some are thought to facilitate communication among all parties.

REPORT ON INTERMEDIARIES FOR JUSTICE AROUND THE GLOBE

	Statutory entitlement	Parties	Jurisdictions	Profession (nuanced)	Professionally registered (location)	Training	Neutral	Service is directly state funded	Report submitted to court
England and Wales	For witnesses and complainants	Complainant, witness and defendants	Criminal and family	Many Speech and Language Therapists, also teachers, psychologists	Yes, for complainants and witnesses	Formal (organised by the State)	Yes	Yes	Yes, on communication skills and proposed accommodations
New Zealand	For witnesses, complainants and defendants	Complainants, witness and defendants	Criminal (mainly) Family Youth courts Mental health	Speech and Language Therapists	2 specialised organisations	Organised by service provider	Yes	Yes (pilot program)	Yes, on communication skills
Israel	For witnesses, complainants and defendants	Complainants, witness and defendants	Criminal, civil, family law, mental health, labour, other	Any background, intermediaries are assigned to match the case/ jurisdiction	Contact NGO (Bizchut) to refer an intermediary for the case	Bizchut + Tel Aviv University	Yes	No	Yes, communication skills and proposed accommodations
Kenya	For complainants and defendants	Complainants and defendants (Constitution)	Criminal	High number of Community Health Workers and advocates for the rights of persons with intellectual disabilities	No	Organised by NGO	Yes, by	No	Only for internal use, not submitted to the court

REPORT ON INTERMEDIARIES FOR JUSTICE AROUND THE GLOBE

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Canada	Not expressly	Complainants, witness and defendants	Criminal	Speech and Language Therapists	No official, but on a publicly available data base	Organised by NGO	Yes	No	Yes
Vermont, USA	No (ADA)	Different roles, not defendants	All courts and administrative instance	Professionals with in depth knowledge of disability	Contact NGO to refer an intermediary for the case	Organised by NGO	Yes	Yes, Invoicing system	No
Mexico	No	Defendant	Criminal	Anybody	Contact NGO (Documenta) to refer an intermediary for the case	Organised by NGO, collaboration with university	Yes, by practice (as proposed by Documenta, no legal standing)	No (exception: a city funded pilot)	No
Spain	For complainants mainly	Complainants and witnesses	Criminal	Not specified in the law, most commonly psychologists (especially with victims)	No	No formal training	Yes	No (or indirect)	Yes, on communication skills and ability to testify/credibility

Pressing issues and future perspectives

In this section, the comments from a selection of schemes, gives some indicators for the continued work and future plans, as described by the contact from that state or country.

Consent have been given for the sharing of their primary contact details.



PRESSING ISSUES AND FUTURE PERSPECTIVES

England and Wales

The pressing issue identified in UK is the inequity of service between criminal witnesses and persons with disabilities in other positions such as defendants, suspects and non-criminal areas of law. While there is legislation in place to treat defendants equally, the government has not yet implemented it, resulting in inconsistent and ad hoc provision of service.

Work under the registered scheme undergoes only limited supervision, monitoring and quality control. There are significant challenges with retention due to the isolation as self-employed individuals and within the legal system and often inconsistent levels of work.

There is a perception that legal professionals often misunderstand the complexity of the work carried out by intermediaries, often perceiving them as 'supporters' and not recognising their level of professional expertise.

On a positive note, the Ministry of Justice has committed to a review of all intermediary services. A website raising awareness and providing information can be found at <https://www.intermediaries-for-justice.org>.

Readers around the world can become members (no fee). Another useful non-governmental source of information is <https://www.theadvocatesgateway.org>

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Vermont, USA

The Vermont Communication Support Project (VCSP) is designing a form request and approval for the judges to simplify the process of requesting services. Funding for the program is also an ongoing challenge as well as outreach to all persons with disabilities who may need an intermediary because of the rural nature of the state.

Some parts of the state use the service more than others. In the interviewee's experience, sometimes the most effective strategy for awareness is "word-of-mouth". Another identified challenge is recruitment, since the job is currently only part-time and the pay is low. This means that most of the staff have full-time jobs and work as intermediaries in spare time.

The organisation is currently in negotiations for higher fees as the system and the work of the VCSP receives positive feedback and respect from clients, attorneys, judges and state workers."

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Canada

Sustainable funding was identified as the main challenge as well as the fact that many people do not know that they are entitled to support in communication and that the justice system does not have adequate information about how and when to provide intermediary services. Another issue is the competing demands and that intermediaries hold full time jobs and are often not available to support people or the service is reliant on the person's good will. In addition, more training is required.

Further, victims, witnesses and defendants are not aware of their right to access to justice, reasonable accommodation and support. Information campaigns and educating potential service users is required.

On a positive note, the Accessible Canada Act is being introduced to develop accessibility standards in the justice system for federal programmes. This may have a strong impact on the courts and encourage the use of intermediaries.

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Mexico

The most pressing issue identified is funding and the fragility of the services, which could be ended on a political whim. So far, the service has supported some victims at the request of courts that knew of the service provided by the intermediaries and that recognize the same right to accommodations.

However, the team has not been able to reach out to victims as much as expected, as the intermediary only acts once the proceeding has reached the courts, and many processes never reach that stage due to different barriers in reporting crimes.

Further, the team is currently tackling the issue of monitoring to guarantee the quality of the services provided.

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Spain

The lack of recognition of this service or that the intermediary is not allowed to assist in all the tasks deemed necessary is considered an important issue that intermediaries face with each job, e.g. during the formulation of questions or more invasive functions. People mix up the need for an intermediary with the need for a carer. There are many courts that now recognize the need for an intermediary, but many do not. The validity of pre-recorded piece of evidence is being increasingly accepted and courts are starting to stop proceedings to move to pre-recorded evidence or introduce adaptations.

Funding is considered a permanent issue. However, there is increasing recognition of this role and the referral rate is increasing. In the future, training needs to increase. Self-care of the intermediary is promoted among colleagues. In the future, there is a need to create a public database to expand this service, as well as to raise awareness among legal professionals. Persons with disabilities are learning more about their rights, but there is still a long way to go.

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Israel

Funding is one of the main challenges faced by the non-governmental organisation, Bizchut, which runs the current service. It is advocating for the Court Administration to assume the responsibility of these services. At the moment, the courts have agreed to run pilot programmes as a first step towards a statutory provision of the services.

The current legislation says that the person will fund its accommodation needs. When Bizchut advocated for the recognition of intermediaries, state funding was not an option.

The other identified challenges include a more consistent provision throughout the court system and the state assuming the financial and organisational responsibility of this service. This includes recognising intermediaries as an official profession, regulating its provision, including training and certification, as well as payment rates.

On a positive note, Bizchut hopes to achieve a breakthrough with the court system just as they managed to have a breakthrough with the law, which will increase the awareness of this role and improve training.

Bizchut is currently in discussion with the Tel Aviv Court to set up a service that provides an 'on-call' access to a justice facilitator who will be stationed at the court and be available to step into any case or court hearing in which it becomes obvious that accommodations are required.

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New Zealand

In recent years, the team from 'Talking Trouble' has delivered a wide range of training and awareness raising activities across the justice sector to increase the use of communication accessible processes and resources, regardless of the actual use of an intermediary. They have delivered training for police, lawyers, judges, prison staff, youth justice social workers, family group conference coordinators and Bail Support workers to adapt communication in their work. Another project looked at accessibility within bail condition forms.

The fact that the service assists prosecution witnesses/complainants and defendants gives the practitioner a well-rounded perspective of the criminal justice system, which is useful for the trainings and when consulted by other stakeholders.

The responsibility for having communication accessible processes and addressing individuals' needs has been placed on everyone's shoulders in New Zealand, not just the intermediary. Often, the personnel involved in legal processes are already equipped with some level of at least awareness and skill in spotting language and communication needs and responding to them.

For the future, Talking Trouble hope to grow their collaboration with police to assist in police interviews and an official scheme recognized by all parties involved, which includes the necessary training, accreditation and complaints processes.

Both agencies providing for intermediary have been liaising with the Ministry of Justice to determine a national training process, accreditation and formal processes. There are various ministries involved in planning the processes for Communication Assistance.

Finding the appropriate workforce with relevant expertise is challenging, as suitable candidates (experienced Speech-Language Therapists) may already have jobs and cannot assume communication assistance roles when the work is sporadic, inflexible, on short notice and rescheduled frequently.

The psychological, physical and professional safety of the contexts in which intermediary work was also identified as an important issue, and the team is constantly reviewing how to be aware of the boundaries of their role and how their work may be tested in legal appeals.

This calls for official Communication Assistance processes and procedures to be determined so there is clarity for all about the boundaries of the role for all and so the training for intermediary and all the other stakeholders can be targeted accordingly.

The intermediary scheme is part of the current justice review. It has received more attention due to the media's attention of some cases, e.g. the case of Teina Pora who spent 20 years in prison wrongfully convicted and who had Fetal Alcohol Spectrum Disorder and who clearly did not understand questions in the police interviews that were shown in the media.

These types of themes have recently also been covered in the Chief Science Advisor to Justice's recent reports and the media.

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Kenya

There is a lack of implementation of legislation recognising the intermediary as well as a lack of awareness among the legal actors of the needs of persons with disabilities, especially persons with intellectual disabilities. It is unclear who is responsible for the accommodations and what the role of intermediaries is within the justice system. The report on Access to Justice identified a contradictory practice: Voir dire examinations to adults with intellectual disabilities which test the person's capacity to give evidence are inconsistently practiced and deny the person's right to testify and the Evidence Act is not in line with the more recent legislation that allows for intermediaries.

Further, there is a need for formal accreditation for intermediaries to support their recognition and role in all proceedings. At the moment, the intermediary has to argue each step to get recognized and permission to support the person. Training depends on KAIH and USPK (Users and Survivors of Psychiatry in Kenya) and available funds. More visibility of the intermediary's work and clarity on the role (what to do and what not to do), as well as a monitoring mechanism.

On a positive note, the cases in which intermediaries have intervened show that intermediaries have a positive impact. The legal actors listened to the recommendations made by the intermediary and in one case, the judge called the intermediary into chamber to understand the role of an intermediary better. It is a learning process, progress comes slowly and it is messy. In a recent case, a woman with autism needed to walk around and leave the court room every now and then. The judge accepted the intermediary's suggestions, took more time for the process and accommodated the room to serve the woman's needs.

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In summary

- The JI role has been interpreted in a variety of ways across the globe
- Not all countries have specific regulations by law
- Neutrality is generally expected, either by law or in practice
- Training is often arranged by organisations, rather than through the legal system
- Monitoring, supervision and support varies greatly
- Funding has been established in some schemes, whilst in others it remains an ongoing concern.

Reflection Tool: Module 9

This is an opportunity for the user to reflect on the content of the module and also assist us with continued improvements and updates.

Please [Click here](#) to contribute your reflections.

Which current local legislation will support the instigation of a JI scheme?

What additional legislation will be needed?

How do you anticipate getting funding?

Continued over the page...

Which of the surveyed schemes could be relevant in providing more information for your scheme?

Will impartiality be central to your scheme, and if so how will this be assured?

Which other roles do you already have that may intersect with the new JI role, and how will you set the boundaries?