



**Report on intermediaries for justice  
around the globe**



**November 2020**



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This report is part of the work done by the Access to Justice Knowledge Hub for Fair Participation with the support of Open Society Foundations. The Access to Justice Knowledge Hub for Fair Participation 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, Taiwan, 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.

The work was led by María Gómez-Carrillo de Castro with the support of other Hub members, especially from Fayel Achieng Odeny, Paula Backen, Suzanne Cannon, Leigh Ann Davis, Tirza Leibowitz, Naama Lerner, Victor Lizama, Diana Scheinbaum and Jenny Talbot.

### **Acknowledgements**

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## 1. 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.<sup>1</sup>

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”),<sup>2</sup> 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 request<sup>3</sup>. 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

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<sup>1</sup> This 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.

<sup>2</sup> 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](https://www.ohchr.org/Documents/Issues/Disability/SR_Disability/GoodPractices/Principles_A2_Justice.pdf)

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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 role<sup>4</sup>:

*“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.”*

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.*

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<sup>4</sup> 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](https://www.ohchr.org/Documents/Issues/Disability/SR_Disability/GoodPractices/Principles_A2_Justice.pdf)

*Communication is influenced by context as well as the experiences, culture and emotions of the people involved.”<sup>5</sup>*

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, Canada<sup>6</sup>, some states of the United States of America and Spain.

### **Report structure**

This report is structured in different sections that cover the Hub’s understanding of the role of an intermediary, the methodology used to put together this report, a summary of the findings, a detailed description of each country’s system as explored during the interviews with the intermediaries in each one of these countries, recommendations for considering implementation of an intermediary service, further research, a conclusion and, at the end of this document, several annexes include the literal wording of the law, training programmes, codes of ethics and example of materials.

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<sup>5</sup> See the Justice Intermediary Starter Kit for more information under [www.justiceintermediary.org](http://www.justiceintermediary.org)

<sup>6</sup> Revised from ‘Ontario, Canada’ to ‘Canada’: 12 November 2020.

## 2. The Role of an Intermediary and Working Principles

This section sets out the theoretical background informing the design of the questionnaire and this report and the Hub's work. Before moving on to the findings, it is important to establish what the role of the intermediary is and under what principles it operates<sup>7</sup>. These principles are based on the principles used in Israel as proposed by one of the Hub members. They were selected as they have served to inform the Hub's discussion on intermediaries and to set up further intermediary schemes around the world. These are:

### **The Role of an Access to Justice Intermediary and Basic Operating Principles**

Enabling individuals with a disability to participate equally and fairly in judicial procedures is necessary to ensuring fundamental human rights. Access to Justice Intermediaries play an essential role in achieving this goal.

- Access to Justice Intermediaries will assist persons with a disability to participate in an optimal manner in the judicial process and maximize the ability of individuals to present their version of events, without directing or influencing the content of that version.
- The Intermediary will mediate between the person with disabilities and the judicial system, dismantling obstacles in language and communication, as well as in the physical and social environment, in order to enable them to understand the processes in which they are involved and to be understood by the other participants.
- Accommodations will be provided, when required, for a complainant, a witness, a suspect, a defendant, or other person using the legal system. This could be during criminal, civil or quasi-judicial procedures, at any stage of the process from first contact with the police, through arrest, pre-trial, testimony, sentencing, and serving a sentence. Accommodations are also relevant in the interaction between a person and his/her lawyer or a third person who has issued a summons for the giving of testimony.

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<sup>7</sup> These principles were developed by Tirza Leibowitz and Dr. Michal Gleitman, in close collaboration with Bizchut, The Israel Human Rights Center for People with Disabilities and the graduates of the first course for intermediaries at Tel Aviv University's School of Health Professions and are available under: <https://www.bizchut.org.il/post/access-to-justice-intermediaries-role-and-basic-operating-principles>



### **Examples of accommodations:**

- The Access to Justice Intermediary will alert the police investigator or court to overly open or complex questions that are not suited to the cognitive skills of the person with an intellectual disability and will suggest ways of simplifying the questions.
- The Intermediary will ensure a calm environment during testimony for a person whose disability affects his/her attention, that distractions are kept to a minimum, and, as necessary, that breaks are provided during testimony.
- The Intermediary will assist a person with a psychosocial (mental) disability to overcome anxiety by advance preparation, including a visit to a courtroom and observation of a court hearing.
- The Intermediary will not recommend accommodations if a person is able to give optimal testimony without their use.

### **Basic Operating Principles**

1. Consent of the person<sup>8</sup>: Accommodations will be provided only with the consent of the person. The Access to Justice Intermediary will explain to the person the implications of using accommodations and of refraining from use, in a way that will enable the person to choose to agree or not agree. Consent is required at every stage of the process.
2. The Intermediary's neutrality: The Intermediary is a neutral party, with no interest in the proceedings other than ensuring the right of a person to full and fair participation in the process. It is not the role of the Intermediary to secure a conviction or an acquittal or the acceptance or rejection of evidence by a witness. The Intermediary will not express a position or make suggestions relating to the person's credibility.
3. Avoid directing a person: Accommodations relating to communication or language differ on the extent to which they direct the person. The least directive accommodation is one that enables a person to express him/herself using unlimited vocabulary or symbols and to construct

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<sup>8</sup> Author's note: including that the person is involved in determining accommodations that meet their needs as well as giving their consent to the accommodations.

sentences on one's own. The more the accommodation limits the vocabulary or symbols used (e.g., when a person answers questions by pointing at a limited set of pictures placed before him/her), the chance of leading the person increases. As a rule, the accommodation that is the least directive, within those that respond to the person's communications abilities, should be used; if no option exists but to use an accommodation that offers a limited number of symbols, words or sentences, it should be used as minimally as possible, for example only to clarify a specific point in question.

4. Avoid<sup>9</sup> contaminating an investigation: The Intermediary ensures that none of his/her interventions will cause contamination of the investigation. This is relevant to all action relating to a case. For example, the Intermediary should avoid talking about the event which is being investigated with the person for whom accommodations are being provided, unless an official is present (such as a police investigator, or a person's defence lawyer). The Intermediary should avoid interference in the content of a person's version, even when alerting the court to the mismatch between a question posed to the person and the person's communication ability or when suggesting an alternative way of asking a question. The Intermediary shall not change or correct a version provided in the investigation or during testimony. The Intermediary shall inform the court or the other side of every action s/he undertakes to ensure that the proceedings are understood by the person or that others understand what the person has communicated.
5. Transparency: Every aspect of the Intermediary's involvement, including his/her interaction with the person to whom accommodations are provided, will take place in the presence or approval of the appropriate official, such as a police investigator, prosecutor, defence lawyer (in the case of accommodations for a suspect or defendant), or the court.
6. Accommodations that facilitate understanding and expression: The Intermediary will identify and suggest accommodations in the environment, language and communication that will enable the person full

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<sup>9</sup> Author's note: the intermediary must not contaminate evidence.

and fair participation in the procedures while maximizing the person's ability to convey his/her version of events. This should not be contingent on a formal assessment or diagnosis of a disability. It is not the Intermediary's role to raise or relate to elements of the disability (including medical history) that are not directly connected to the person's participation in the given judicial procedure.

### 3. Methodology

This report is based on online interviews with experienced intermediaries from each country. It does not cover an extensive legal analysis or historical account of how intermediary services were set up or of advocacy strategies. The accounts provided are reflected in this report and have not always been verified. The interviewees were informed of the purpose of collecting information on the different experiences around the world to give a general overview and, in some instances, their response was careful in order to illustrate their service in a positive light. The purpose of the interviews was to get a general sense of how the scheme works in each country, not to compare them or to test them in light of the principles mentioned above.

This report aims to provide descriptive information on how the different intermediary systems work around the world. The information presented here was obtained during the first research piece on 'Access to Justice' of persons with disabilities and through interviews with intermediaries in different countries. The selected countries are England and Wales, Spain, Mexico, USA (State of Vermont), Canada, Israel, Kenya and New Zealand.

The questionnaire used is available at Annex I (English and Spanish version). The questionnaire was sent in advance to persons that lead Intermediary services or work as intermediaries and then discussed during an online meeting. It focuses on the core components of the service and how it works, in which jurisdictions, how it is funded and what challenges the service encounters. The interviewees were selected through referral as experts on this subject in their country. Legal references were cross-checked whenever possible.

These countries were identified during the first research piece. Unfortunately, the author was unable to interview intermediaries in the Republic of Ireland or Australia. This may be revisited in the future, as well as any further countries that may set up similar schemes.

The author is aware that other type of supporting figures (e.g. appropriate adults, advocates, etc.) are available in these or other countries. These roles were not included as they do not focus specifically on communication and evidence giving. This report does not cover legal analysis, nor how persons with disabilities are identified and assessed nor the impact of the intermediary in each context. The report does not follow a comparative methodology.

#### 4. Summary

Intermediaries are used or are provided for in legislation in at least thirteen countries<sup>10</sup> around the world. In some cases, intermediaries as included in the law were initially not set out to assist persons with disabilities, but to assist children during the process of evidence giving. Legislation has only recently become sensitive to the needs of different populations, so in most cases, intermediaries have used different legal grounds to justify their assistance to persons with disabilities, even though their role might not be exactly regulated or described in the existing law, e.g. expert witness, technical assistance.

While parallelism has been drawn between assisting children and adults with disabilities, it should not be mixed up or considered equal. In the case of children, in some countries (e.g. Norway), intermediaries can testify instead of the child (hearsay evidence). In cases where intermediaries are provided for persons with disabilities, this is not allowed.

The terminology to refer to 'intermediaries' includes communication assistants/specialists (New Zealand, Canada, USA) and *facilitadores* (Spain and Mexico). In some cases, there are specific laws in place that regulate this role (e.g. England and Wales, New Zealand, Israel, Kenya, Spain - although the latter requires further development). In other cases, general accessibility or non-discrimination acts are applied, e.g. in Vermont, USA or Canada. While the legislation may not mention intermediaries expressly, the use draws from a strong general non-discrimination and accessibility duty to serve as the basis for intermediaries.

In Mexico, the role is introduced through a procedural code rule that allows for 'technical support' for the party that needs it. In most countries the work of intermediary focuses on access to justice in courts, with some exceptions from Israel, USA and Canada, where intermediaries may also support people in other instances, e.g. administrative meetings and hearings. The table below shows a summary of the researched countries (Table 1).

In most countries, the role of an intermediary is mainly defined through practice (in court) and neutrality is expected. Most schemes cover complainants and witnesses, while some also cover defendants (e.g. New Zealand and Mexico) or

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<sup>10</sup> Ireland, England and Wales, Spain, Israel, Norway, Iceland, Mexico, USA, Canada, Kenya, South Africa, Australia and New Zealand.

are trying to expand the service in equal terms to them. As for the professional profile, none of the legislations limit the role to a specific profession. In some countries, practice has carved out a most frequent professional profile, e.g. Speech and Language Therapists are common in England and Wales or psychologists in Spain. Other jurisdictions place higher value on other abilities, e.g. Mexico has not defined the person's background, but values demonstrated interpersonal skills. Israel has a more varied professional background, including criminologists.

The training and setup are determined and run by the organisations that initiated the intermediary scheme, with the exception of the England and Wales, where the Ministry of Justice has responsibility for setup and training.<sup>11</sup> Monitoring in the different countries is also commonly done internally, e.g. through reporting back after each job and through collective team meetings.

In some countries, funding is assumed by the State through funding of NGOs, e.g. Spain and Mexico, or through the courts or different services, e.g. in England and Wales and in some states of USA. These different forms of state funding differ in the level of discretion. NGO funding relies on policy preferences and is different from being statutorily embedded so there is no exception, e.g. in England and Wales funding is embedded in law, creating an obligation for funding, which in turn is a higher guarantee of the availability of intermediaries and the right to equal access to justice. However, most countries are dependent on unstable or indirect funding sources, which makes the running of intermediary services difficult due to uncertainty and lack of resources to do proper fundraising. Other challenges include maintaining the standards of services through appropriate training and monitoring schemes, being adequately recognised in court by all actors, engaging at earlier stages (e.g. with police) or broadening the services (finding appropriate professionals to fill the role / intermediaries). In some countries, the interviewed experts highlight that the role of intermediaries is not entirely clear (e.g. Kenya, New Zealand, USA) and the importance of making a good and professional impression in court rooms. Gaining the trust of lawyers, judges, police and prosecutors was consistently mentioned in all interviews as essential to develop this service. This was reflected when

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<sup>11</sup> For more information, see: <https://www.gov.uk/guidance/ministry-of-justice-witness-intermediary-scheme> (last visited 18 May 2020)

discussing the need for neutrality, the formality of reporting or how to expand the use of intermediaries.

	<b>Statutory entitlement</b>	<b>Parties</b>	<b>Jurisdictions</b>	<b>Profession (nuanced)</b>	<b>Professionally registered (location)</b>	<b>Training</b>	<b>Neutral</b>	<b>Service is directly state funded</b>	<b>Report submitted to court</b>
<b>England and Wales</b>	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
<b>New Zealand</b>	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
<b>Israel</b>	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
<b>Kenya</b>	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



<b>Canada</b>	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
<b>Vermont, USA</b>	No (ADA)	Different roles, not defendants	all courts and administrative instances	Professionals with in depth knowledge of disability	Contact NGO to refer an intermediary for the case	Organised by NGO	yes	Yes, Invoicing system	No
<b>Mexico</b>	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
<b>Spain</b>	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

Table 1.

## 5. Country findings

The following section is based on online interviews conducted with an experienced intermediary from each country. The information conveyed has not always been verified and is the perspective of intermediaries currently working in their own country.<sup>12</sup>

Each of the following sections covering the country findings is divided into subheadings which cover the position of the intermediary in the country's legal system, the law in that particular country, a general description of the role and tasks of an intermediary, the training, funding and pressing issues and future perspectives. The position of this role is expressly explained as each country has developed this service differently. The laws referred to in this section are copied entirely in Annex II. The trainings are described briefly and, whenever available, more details are provided in Annex III. After each country, there is a box indicating where to find more information or contact the organisations that run the intermediary scheme.

### England and Wales

#### **The intermediary in the justice system**

In England and Wales, intermediary is the term used to refer to the professional assistance in giving evidence. If the intermediary is supporting an alleged victim<sup>13</sup> or a witness, they are called 'registered intermediary', while if the support is given to a defendant, it is an 'intermediary'. This is due to the legislation, which expressly recognises the right of a witness, but not a defendant, to access an intermediary.<sup>14</sup> In practice, due to the use of inherent power of the court, intermediaries are assisting defendants in courts, although in smaller numbers. There is also a growing involvement of intermediaries in family (child custody) cases.

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<sup>12</sup> As the purpose of the interview was to collect a general overview of how intermediary schemes work around the globe, the interviewer did not go in depth into problematic areas, e.g. are we leaving anybody out. Further, the aim was not to compare or to evaluate the schemes. However, some of the interviewees seemed concerned with judgment or comparison and this might unknowingly have affected the portrayal of their services or reality.

<sup>13</sup> In England and Wales, the word victim is avoided to guarantee neutrality. Here it is mentioned for clarity's sake.

<sup>14</sup> Note that the term witness in legal English refers both to witness and alleged victim.

There are also other forms of support such as Appropriate Adults in police stations for vulnerable suspects, expert witness in courts and Liaison and Diversion services, present both at police stations and courts. Appropriate Adults are only present at police station for suspects that are considered vulnerable. Their job is to ensure that the defendant is treated in a fair and just manner and are able to participate effectively.<sup>15</sup> Appropriate Adults do not conduct formal assessments and are not specialized in communication needs. Professionals in liaison and diversion services are usually health professionals, e.g. psychiatric nurses. At police stations, they may assist in identifying vulnerable suspects. Expert witnesses are different from intermediaries, the former being partial. The term expert witness usually refers to psychologists and psychiatrists consulted by the court and paid for by the parties.

### **The law**

Intermediaries are regulated since 2003 for criminal witnesses in the Youth Justice and Criminal Evidence Act 1999. There is no basis in the law for other jurisdictions. *Ad hoc* support exists in civil cases as well as in family law and in a few cases of the Ministry of Defence.

The law defines who is eligible for an intermediary through the concept of 'vulnerable person', which is then interpreted by the court, which decides on a case by case basis if the vulnerability requires the involvement of an intermediary.

### **The intermediary's role**

The role of the registered intermediary is '*to assist two-way communication between the police or court and complainants or witnesses with communication needs.*'<sup>16</sup> In order to do so, the intermediary meets the witness before the proceeding and carries out a communication assessment, which is reflected in a report. The report is specifically non-evidential and covers the person's communication needs, without any reference to the legal case. The report does

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<sup>15</sup> More information available under: <https://www.appropriateadult.org.England and Wales/information/what-is-an-appropriate-adult>

<sup>16</sup> England and Wales: Ministry of Justice, Registered Intermediary Procedural Guidance (2019), available under: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/831537/moj-registered-intermediary-procedural-guidance.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/831537/moj-registered-intermediary-procedural-guidance.pdf)

not comment on competency, fitness to plead or telling truth / suggestibility. The reports are around 20-30 pages long.

Intermediaries do not have to follow recommendations for accommodations from expert witnesses (e.g. psychiatrists, psychologists) unless the intermediary has assessed the person and believes it is the best thing to do. Unlike expert witnesses, the intermediary is perceived as a neutral role and has a duty to remain impartial.<sup>17</sup>

The court decides on the basis of the legal provision whether an intermediary is required. In practice, the use of intermediary is not consistent and depends on each court. Some judges believe that advocates (the lawyer in court) are experienced and have been trained to question vulnerable witnesses, thus not needing the involvement of an intermediary. Another barrier to its use is the financial cost, as intermediaries are considered by some to be 'expensive'.

Assignment to criminal witness cases is done through the database of the Ministry of Justice on the basis of geographical proximity and competencies of the intermediary. The competencies of each intermediary have to be registered in the database to allow for appropriate allocation. The example given by the interviewee was that '*an intermediary whose professional background was in psychiatric nursing would not be appointed to work with a person recovering from a stroke, and a primary school teacher would not be allocated a person with dementia.*' In the case of non-registered intermediaries for defendants, there is no monitoring of suitability, and allocations often occur through the solicitor (lawyer acting outside of the court) or locally through the court. Non-registered intermediaries for defendants may be different from those who are part of the registered intermediary scheme.

Intermediaries are often involved at interview stage for criminal witnesses and for some defendants, and advise the police, following an assessment, on best methods for communicating with the person. Police may commission an intermediary to assess criminal witnesses and suspects for advice on their interview.

If / when the case goes to court, the intermediary is appointed to accompany the witness for evidence, and in some cases, the defendant throughout the trial. This

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<sup>17</sup> Point 6 Code of Ethics, Registered Intermediary Procedural Guidance (2019).

is done as officers of the court, not partial to either side. Some intermediaries may also attend pre-trial conferences with defendants. The intermediary leaves as soon as the witness finishes evidence, or at any point in the trial when a judge decides they are no longer needed for a defendant e.g. after she/he has given evidence, after the jury go out to decide verdict, or in some cases they stay until sentencing.

The Registered Intermediary Procedural Guidance includes a Code of Ethics and a Code of Practice and explains how the scheme works, including reporting templates.<sup>18</sup>

### **Training**

If it is a registered intermediary, the person is trained and monitored by the Ministry of Justice. In the case of non-registered intermediaries, there is no established training or monitoring system.

The selection criteria are to hold a university degree and most applicants are speech and language therapists, psychologists, special needs teachers, occupational therapists and psychiatric nurses. The experience criteria focus on abilities in assessing communication and writing reports on recommendations for maximizing communication (approx. 70% of the registered intermediaries are speech and language therapists). Most recruits have over 10 years working experience with people with disabilities, and there are very few from legal background.

For registered intermediaries, there is a seven-day training course plus expected attendance at mentoring sessions during the first few cases. For other intermediaries, there are two private agencies who recruit, train and supervise full time intermediaries for criminal defendants and family cases, or there is a one-day course for registered intermediaries who want to extend their practice into defendant or family work.

The content of the training for registered intermediaries covers the role of an intermediary, the law that frames this work, the accommodations that are already set in law (called 'special measures') and ideas for additional accommodations,

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<sup>18</sup> Available under: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/831537/moj-registered-intermediary-procedural-guidance.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/831537/moj-registered-intermediary-procedural-guidance.pdf) (last accessed 16 February 2020)

assessment, report writing, liaison with other professionals, how the police interview works, how the court trial works, terminology, etc. Practical exams including how to intervene and report writing.

This training may be failed, and some people drop out when they come to understand the unpredictability of the work and income, the need to be assertive in an adversarial system and the emotional demands of harrowing cases.

The monitoring system for registered intermediaries includes complaints logged with the Ministry of Justice (very few), a code of conduct and procedural manual, an annual Continuing Professional Development Log submitted for review and a peer review of one report per year. There is no supervision or observation scheme in place.

Intermediaries employed by private agencies are supervised, observed, appraised and attend ongoing training sessions.

### **Funding**

Registered Intermediaries are directly government funded and do not do voluntary work or through an NGO. This is established within the law and the different authorities involved at the stages of criminal justice fund the work, e.g. police fund interview work, Legal Aid Agency funds pre-trial defendant work and each court funds the work at court. While other intermediary schemes around the world may receive public grants to support the service delivered by an organisation, in this case the scheme is upheld and paid for by the government, similar to payment of interpreters. The right to an intermediary is conceived as a duty the justice system has towards vulnerable children and adults, and thus must fund this service through the courts.

### **Pressing issues and future perspectives**

The pressing issues identified in England and Wales is the inequity of intermediary services between criminal witnesses and suspects and defendants within the justice system. 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 intermediary scheme undergoes limited supervision, monitoring or quality control. Moreover, the scheme has significant challenges retaining workers due to the isolation of self-

employed individuals and within the legal system, and often inconsistent levels of work. Many legal professionals tend to misunderstand the complexity of the work carried out by intermediaries, often perceiving them as 'supporters' and not recognising their professional expertise.

On a positive note, the Ministry of Justice has committed to a review of all intermediary services within the next year. The Ministry of Justice is actively considering the development of court-appointed intermediary services for defendants. While this is welcomed, it would not include support for suspects with communication needs during police interview, neither would there be the same statutory entitlement to an intermediary, as provided for victims and witnesses.

A website raising awareness and providing information is also being developed: <https://www.intermediaries-for-justice.org>. Another non-governmental source of information is <https://www.theadvocatesgateway.org>

Vermont, United States of America

### **The intermediary in the justice system**

Intermediaries in Vermont (USA) are titled 'communication support specialists' and they work both with and beyond the justice system. The communication support specialists were introduced by an organisation supporting persons with disabilities. The Vermont Communication Support Project<sup>19</sup> (VCSP) in Vermont has existed since the 1990's and is the first programme of this sort in the country. It was created thanks to a public defender, who realized that his client needed accommodations regarding communication. Communication Support Specialists (CSS) assist people with disabilities in court, administrative hearings, and related meetings.

The service is available for all who qualify; however, services are not available to defendants in criminal court. This policy is subject to periodic review and is in place because the VCSP considers that the implications for a defendant need to be assessed carefully, e.g. being considered fit to plead because of the assistance, and the program would need additional resources to serve the criminal courts. There is a focus on developing formalized training, increased awareness, and respect for CSS programs.

There are other types of support services available within courts and administrative agencies, but none touch upon accommodations with regards to communication in the same way. Foreign and Deaf language interpretation and technical supports are available. The other existing forms of support are usually not neutral, e.g. advocates or providers of treatment support. Expert witnesses are also a different role within the justice system. CSS specifically focus on communication and effective participation in interactive dialogue settings.

### **The law**

The VCSP programme is implemented on the basis of the Americans with Disabilities Act (ADA). With the most recent ADA update, a person may have a 'disability label' or medical diagnoses, and/or can be assessed on a functional basis in order to qualify for accommodations. Clients are informed of their right to

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<sup>19</sup> <http://disabilityrightsvt.org/Programs/csp.html>



ask for support for what they reasonably need, whether it is for a meeting or hearing.

### **The intermediary's role**

The CSS is neutral and only provides support regarding communication. Communication is defined by the VCSP as follows: *'Communication may include comprehension, ability to express thoughts and feelings, ability to manage behaviour in a way that may allow for effective communication, ability to understand written documentation, or any other variable involved with imparting or exchanging information in an interactive setting such as an administrative meeting or court hearing.'*

CSS work provides services in all courts, except to defendants in criminal courts, because of a lack of resources and the potential implications of being considered fit to plead/competent due to the CSS' intervention.

The organisation has an advisory council that reviews this decision regularly, but the concern is that *'if someone's status regarding competency changes it puts that person in a whole difference situation'*.

Any person with disabilities can request the CSS' services through a form and an intake process. Initially, the VCSP needs some basic client intake information, including:

- Name / Date of Birth / Contact (address, telephone, email)
- Docket or Case Number (if applicable)
- Case Type (i.e. Children in need of Supervision -- CHINS, Divorce, Release from Abuse -- RFA, Reach Up...)
- Hearing/Meeting Schedule
- Lawyer & Contact (telephone, email)
- Disability (if known) and information regarding the potential effect on communication

Lawyers must file a motion for their clients to be approved for CSS services in court. CSS services must be approved by the applicable court or agency. If a court notices that the person may need support, they can also appoint a CSS. Nobody is forced to accept the services of a CSS per the ADA. The program receives an Explanation of Need (EON) form from a provider to evaluate if the

person qualifies for services. During the intake call, a case summary is developed by the program coordinator or director so that when the CSS meets the client, they already have a case summary, an initial communication plan and a pre-formatted invoice. The CSS may refuse an assignment in cases of conflict of interest or for any other reason that they may consider at their discretion, e.g. availability or suitability. Usually, the CSS receives a case summary before meeting the client and takes notes during the assignment. During the pre-meeting, the client and the CSS work out communication strategies together. The pre-meeting may also cover how to get to the meeting place or how to 'connect', if it is a virtual meeting. Sometimes clients want to discuss the details of their case, which is not the purpose of these meetings, except to organize information and support the client in being able to communicate the information that they express as relevant. The CSS will sometimes interject and refocus the conversation on the communication needs and accommodations. The CSS assists in the participation in an interactive dialogue setting, and is not there for other administrative tasks, e.g. to provide support filling in forms. The CSS may nevertheless read out information for the person, for instance, if s/he cannot read or has cognitive disabilities.

The assigned CSS will meet the person half an hour before the meeting or hearing to talk through the purpose of the meeting and what the client wants to communicate. During the pre-meeting, the CSS assists the client with understanding the information they have, getting their thoughts and priorities in order and determining tools and strategies for individualized communication support. No new information is brought to the client by the CSS. The CSS cannot advise, suggest possible solutions, or interfere in any other way, since this compromises the neutrality of the role.

Once in court, the judge will sometimes ask the CSS whether there are any accommodations that need to be taken into consideration. The CSS may explain some of the planned accommodations, e.g. need for breaks, or simply say that accommodations will be requested if necessary and give some examples. The response will be tailored to the client's needs and responses will respect privacy and avoid profiling (giving a stereotyped image of a person). Further, it is possible that the person may not need any specific accommodations during the meeting or hearing.

The CSS will use tools, e.g. cue cards or stress balls, pads, coloured pens, post-its, and different strategies, e.g. asking the court for a break or pause for the client to review their priority list or asking for clarification, to make sure the person can understand and communicate effectively. The communication strategies will be transparent to all present and to maintain neutrality. During the hearing or meeting, the CSS will take notes to be used during the post-meeting for review and comprehension checking.

After the meeting or hearing, a 30-minute post-meeting is held to go through the information received by the client. This may include a recap of information and next steps, appointments, what the person needs to do next and where to find any missing information or seek clarification. De-escalation is sometimes necessary during the post-meeting. No report is produced for the court or state administration which contain assessments or suggestions for reasonable accommodations.

The 30-minute private meeting structure before and after hearings/meetings is scheduled so that the client can maintain enough energy and attention for their hearing or meeting. One of the cardinal rules for communication specialists is to avoid introducing new information or being directive. The CSS is not a coach or emotional supporter. The CSS can help the client organize the information but cannot create or suggest the information or content. Courts have conference rooms for the pre and post meetings.

The case summary and any additional files or reports the VCSP has on file (e.g. Explanation of Need form) are kept for internal purposes. The CSS is provided with a copy of the case summary prior to a respective assignment. Reports on accommodations are kept for monitoring purposes and to encourage consistency. They also inform future assistance requests from that particular client.

Examples of cue cards:

Focus	Breathe	Calm	“?”
You will get your turn	I can do this!		

Cue cards should not be directive nor should the CSS.

**Two real life examples of accommodations:**

A client was having difficulty not raising his voice during the meetings, which had escalated previously due to all participants' behaviour. The CSS and client agreed that the CSS would suggest in a neutral tone to focus, which reminded the client to use the communication strategies they had developed together.

A client found it difficult being in court for longer periods of time. The CSS and client agreed to use a sign for breaks. The judge was told in advance that some breaks might be requested and that they would be short. When breaks were needed the client and CSS would go to a conference room for a few minutes and then return to the court room to resume the hearing.

The refugee population has grown, and a CSS was challenged to support a person with a language interpreter. In 2019, the team supported a woman with anxiety disorder and a learning disability who did not speak English. Another creative approach was when a man in his 40s had a stroke and needed to appear in probate court. He had no ability to speak, used no technology, but made himself understood using a letter board, and his comprehension was competent. The interviewee created some phrase sheets so he would not have to point and spell out his responses, and the judge accepted the use of these as an accommodation.

**Training**

Training for communication support specialists is provided for and monitored by the Vermont Communication Support Project. It consists of an intensive classroom study program and a mentorship, observing a trained CSS on assignments. On following assignments, the trainee is shadowed by a trained CSS. Admission requirements to the training program expect applicants to have some in-depth knowledge of disability, and have experience working with persons with disabilities. There must be some connection to disabilities or a foundational knowledge. Examples of current specialists include two family mediators and a director of a disability services programme.

The goal of the course is to provide future specialists with the skills, tools and strategies to support clients with disabilities in their effort to communicate as

effectively as possible. The training focuses on *'the 3 Ws' – What accommodation is needed, Why, and When'*.

The course is a very intensive two-day course, but the program has identified that it may need to be longer. It is possible to fail the course. Monitoring of the work is done after each assignment through a report to the program director and there is an annual training meeting and recertification process for all communication specialists.

### **Funding**

The Communication Specialists are self employed and invoice directly to the responsible entity (administration, court) for payment of their services. These administrative functions are performed by the VCSP office. For every assignment an estimate is sent first and before going to the first meeting, the CSS already has a formatted invoice. The services are funded through different governmental agencies -- the Department of Disability, Aging & Independent Living, the Department for Children and Families and the Department of Mental Health. Each agency contributes 25 000 USD per year, resulting in 75 000 USD a year for the program infrastructure. Then, the CSS are paid for by the entity requesting the service (Court, Dept of Children Services, etc.) and the Disability Rights Vermont administers the program.

In Oklahoma, where the project is being implemented with the support of the Vermont Communication Support Project, the plan is to process payments the same way as Sign Language interpreters. The court officer will clock them in and out with no need for an estimate.

### **Pressing issues and future perspectives**

The 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 a CSS because of the rural nature of the state. Some parts of the state use the service more and less 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. The organisation is currently in negotiations for higher fees as the system and the work of the CSS receives positive feedback and respect from clients, attorneys, judges and state workers.

## Canada

### **The intermediary in the justice system**

Intermediaries are known as 'Communication Intermediary' (CI). This role was introduced by the organisation Communication Disability Access Canada (CDAC). According to their website, communication intermediaries assist '*victims, witnesses and accused people who have speech and language disabilities to understand questions and to communicate answers effectively when communicating with police, legal or justice professionals.*'<sup>20</sup> Communication Intermediaries are qualified Speech-Language Pathologists with additional training from CDAC to work in police, legal and justice situations. Their role is neutral, as they do not side with any of the parties, but rather focus on 'authentic' assistance, which refers to '*transparent and person generated information*', avoiding simply reading information out loud or using pre-recorded forms to provide information. They do not act as expert witness and do not comment on the truth or reliability of the evidence presented. Their job is to assist the person in understanding questions and answering as best as accurately as possible. The CI works at all stages of the justice system from initial stages, e.g. at police interviews, and during and after the court proceedings.

Communication Intermediaries are not to be mixed up with communication assistants. Communication assistants are family members or support persons who assist an individual communicating in non-critical, non-justice situations. The Criminal Code includes the right to a support person for victims with disabilities subject to the court's admission<sup>21</sup>.

### **The law**

There is no specific legislation on communication intermediaries in Canada. The duty to accommodate people with disabilities is well recognized in the human rights legislation in Canada and in provincial, territorial laws. It is also found in the new accessibility legislation (Accessible Canada Act), where communication was identified as a priority.

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<sup>20</sup> <https://www.cdacanada.com/resources/access-to-justice-communication-intermediaries/about/communication-intermediaries/>

<sup>21</sup> section 486.1.1. Canada Criminal Code

Further, the Canada Evidence Act, applicable in criminal cases, recognises the right to “any means” to give “intelligible evidence” to persons with communication disabilities. While the Communication Intermediary is not specifically mentioned, it is considered covered by this section 6. The Criminal Code provides for a support person in section 486.1.1. One of the difficulties in Canada is the lack of awareness of people’s right to request and use communication intermediary services as an accommodation to access the justice system.

### **The intermediary’s role**

The CI meets the person and their support person or family to explain their role and how they work. After this initial presentation, the CI conducts a communication assessment of around 2- 4 hours, during which the CI looks at the person’s ability to attend, understand and express ideas and considers different strategies and aids that may be suitable. These assessments usually take place in one or two sessions. During these assessments, the CI explores the person’s ability to understand questions, notion of time, emotions and to tell a story. The strategies to support the person include visual calendars, body maps, pictures and objects. All this information is then reflected in a report for the relevant authority. The assessment may include reviewing third party reports and, with the person’s consent, interviewing other people in the person’s environment that can give some guidance on what tools to use. All interactions with the victim/witness are done in the presence of the investigating authority.

Further, the CI will explain the report and its recommendations to justice professionals, whenever supporting a person in court during criminal proceedings (whether victim, witness or defendant), the CI will participate during the *Voire Dire* (ground rules hearing) to get the court’s approval on the suggested accommodations. The CI will be present during all stages of the proceedings, not just the hearing and provides direct assistance, such as suggesting ways of asking questions, holding strategies in place to keep the person’s attention, or providing visual aids.

CI may decline petitions for service. The usual reasons behind this is lack of time, lack of expertise to support the person, not feeling comfortable, lack of experience or lack of availability.



Examples of the materials used can be found here:  
<https://www.cdacanada.com/resources/access-to-justice-communication-intermediaries/resources/picture-vocabularies/>

## **Training**

To be trained as Communication Intermediaries in Canada the person must be a qualified speech pathologist and have over 2 years of clinical work experience. CDAC trainings include information about the role of a CI; the CI model of service; communication assessment procedures; principles, practices, and code of ethics for supporting communication within police, legal and justice situations.

Trained CIs can be found on the CDAC database<sup>22</sup>, through which people can choose a CI on the basis of proximity and specialisation<sup>23</sup>. However, CDAC bears no responsibility over the person's service delivery or payment. In this sense, the CDAC website describes CIs as '*independent, regulated and qualified Speech-Language Pathologists*' who '*negotiate their own terms and payment*'.

CDAC has webinars on its website for justice professionals and also for people with communication disabilities: <https://www.cdacanada.com/resources/access-to-justice-communication-intermediaries/education/>

Further resources can be found here:  
<https://www.cdacanada.com/resources/access-to-justice-communication-intermediaries/resources/report-communication-intermediaries-in-ontario-sept-2018/>

## **Funding**

The CDAC training of CIs and its database were established using one-time project funding. There is currently no sustainable funding beyond a one-time family foundation grant. Payment for CI engagement and service is provided by the service requesting it, e.g. police or court. The organisation (CDAC) is not involved in overseeing payments or providing invoices or estimates.

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<sup>22</sup> <https://www.cdacanada.com/communication-assistance-database/>

<sup>23</sup> <https://www.cdacanada.com/communication-assistance-database/>

## **Pressing issues and future perspectives**

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 CI 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 accommodations 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 CIs.

A full report on the functioning of CIs in Canada can be found [here](#) including examples of accommodations used and reports .

## **Israel**

### **The intermediary in the justice system**

In Israel, intermediaries are referred to as 'Facilitators of Access to Justice'. They are the only disability-specific support role available within the justice system. They intervene in all jurisdictions (criminal, civil, family, mental health, labour, transport and procedural committees related to national insurance, for example). Other non-disability specific forms of support in the justice system can be found in rape crisis centres, family centres, or around support for victims of violent crimes and sexual assault, all provided by volunteers and organisations. Facilitators of Access to Justice do not assume the role of counselling or crisis support. This distinction is important as it underlines the focus and importance of support in communication.

Under Israeli law, there are two separate figures: an expert witness and an intermediary. In practice, however, the same person fulfils both roles. In this sense, intermediaries are considered an expert witness within the Israeli legal system and are thus responsible for submitting an expert opinion and supporting

the person's communication. In theory, an expert witness would write the report and defend it, and an intermediary would be responsible for the accommodations. The Special Investigator is under the auspices of the Social Affairs Department and is a person who is enabled to support and carry out investigations related to a narrow subset of the range of people who might need an intermediary, and is focused (by law) on persons with certain types of disabilities and certain type of crimes. They are obligated to provide accommodations for persons with intellectual disabilities or autism with high support needs during investigations carried out by the police. Once a special investigator becomes involved in a case, they continue to provide support and put in practice accommodations, during the investigation and the hearings in court. The Special Investigator has a similar role to the intermediary, but intervenes at an earlier stage. The status and path through which the intermediary and the special investigator enter the system are different. Both are considered neutral and work with defendants (suspects), witnesses and victims.

### **The law**

The law provides for courts to appoint an intermediary to provide the accommodations that person requires for the proceedings, at the person's request or at its own discretion. This means that the court may request it and has authority to decide over the appropriateness of the appointment. Despite this, the court does not assume the costs of an intermediary nor does the law mention anything on this point.

The intermediary may support any side in the proceeding, not being limited to victims. Any person with official proof of a disability (psychosocial, intellectual, autism) is entitled to accommodations. Note that persons with psychosocial disabilities are only entitled to accommodations during court appearances, not during police investigations.

There is no law regulating the service of intermediaries in detail, which impacts on the consistent use of intermediaries. The law provides for possible accommodations during court hearings, but the courts are currently not obliged to call facilitators to be involved in cases, or pay for this service, resulting in persons with not being appropriately supported, as identified in a recent report by

the Israeli State Comptroller (2019). The intervention of an intermediary can be disputed by the parties involved which occurs frequently.

### **The intermediary's role**

As mentioned above, intermediaries most commonly act as expert witness. Thus, they have three duties: write an expert opinion, defend this opinion before court and provide for accommodations. They work independently from all parties and are also independent from any government agency or medical experts consulted by the court. The report written by intermediaries has a very practical approach and touches upon the potential barriers when giving testimony in court occur and accommodations that will be needed. The court may consult with medical experts (e.g. psychologists, psychiatrists and neurologists).

There is no standard assessment or formalized tests for the report. The intermediary writes a report based on existing reports or assessments and a meeting with the person receiving support. The person has the opportunity to see and comment on the report before it is presented to the court. The report relates only to the specific case and is not used in any other context. The person may receive a copy of the report, by request, but this does not usually happen.

Through Bizchut's work, there is now a pool of intermediaries which the justice system refers to when an intermediary is required. Bizchut is currently working on obtaining certification for intermediaries recognised by the State to professionalize the system.

The appointment of a suitable intermediary depends on the person's main difficulties in the particular case and what jurisdiction it is in, as well as the intermediary's background, e.g. speech pathologist, expert in mental health. Unlike the Special Investigator, no threshold criteria relating to the type of disability, case or age is used to determine the eligibility for an intermediary.

Intermediaries may refuse to provide services, but this is rarely the case. Defendant lawyers may prefer to avoid intermediaries to use the person's disability as defence strategy.

Intermediaries meet the person before the proceedings. In criminal cases, the intermediary never meets the person alone, always in the presence of a lawyer, public defender or police detective. In civil cases, they may meet alone with the client or engage with the lawyer to assist with the use of accommodations.

The intermediary comes to court, before the person gives evidence, to defend their report requesting accommodations. This step is necessary for the judge to approve the intervention of the intermediary. Then the intermediary stays supporting the person for as long as needed to give evidence or to support the process of informing the person about the proceeding. There are no Ground Rules Hearing or similar meetings. At the first hearing, the expert opinion requesting accommodations is presented to the judge. The intermediary is sometimes asked to defend this request, but the use of an intermediary is obligatory in many cases involving persons with disabilities in Israel.

### **Training**

Intermediaries in Israel have varied professional backgrounds: occupational therapists, communication therapists, criminologists, lawyers (as long as they are not representing in the specific case), social workers, nurses, special education teachers. Bizchut arranged for training together with Tel Aviv University. As selection criteria, a first degree in a related and relevant subject was required, as well as passing a demanding interview and demonstrating some relevant practical experience. The training was held at Tel Aviv University by the Occupational Therapy Department (see Annex III for the training content). Intermediary services in Israel are provided by Bizchut. So far, this training has been delivered once. Bizchut is advocating for the government agency to take responsibility for this service and consequently see the training implemented on an ongoing basis with an official certified recognition.

Monitoring is done by Bizchut as external quality control and the other actors intervening in the proceeding also serve as control. If an intermediary is not doing their job properly then there will be objections from law enforcement professionals involved in the case. There is no formal quality control, mentoring or supervision provided by the government.

### **Two real life examples**

For a person with psycho-social disabilities the setting of the court room with its formality, gowns and wigs and protocol may be intimidating. In such a case, Bizchut may ask the judges and attorneys to remove their gowns, for the seating arrangement to be changed and for some of the formalities to be avoided.

In a case involving alleged rape of a patient by a member of staff in a psychiatric hospital, the hearing hit an obstacle when the victim insisted that the incident had happened at '6 in the night' when she and the defendant had been seen leaving a storeroom (the location of the alleged crime) at 6 in the morning. Numerous attempts to challenge this inconsistency were unsuccessful leading the judge to wonder if the victim's testimony was credible. An accommodation in the form of a new line of questioning explained the inconsistency. The victim was asked to describe her daily routine in the hospital. She described the morning shift from 7:00 in the morning, the afternoon shift and the night shift from night until 7 in the morning. Thus it became clear, through the witness herself, that "6 at night" means is 6 in the morning on the night shift. This clarification enabled the suspect to be convicted.

### **Pressing issues and future perspectives**

Funding is one of the main challenges Bizchut faces and 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 their own 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. The idea is to have a top down approach to this service.

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.

As an example of the work with the court, 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.

## Mexico

### **The intermediary in the justice system**

In Mexico, intermediaries are called '*facilitadores de justicia*', which literal translation would be 'justice facilitators' and they are considered disability consultants ('*Consultores técnicos en materia de discapacidad*'). There is no other formally recognised support role available around the justice system. They do not act as an expert witness, which is a role that is usually fulfilled by forensic psychiatrists, psychologists and social workers.

Documenta<sup>24</sup> is currently the only organisation providing intermediaries in Mexico.

### **The law**

The law does not provide expressly for intermediaries. There is a provision within the procedural code that includes 'auxiliary roles (*auxiliares de las partes*)' in different areas of expertise (see article 136 from the National Criminal Procedural), which is invoked to introduce intermediaries in court. Their tasks and limitations are not defined within the law, which only states that support should be 'technical', as in not legal advice or something that the court or lawyers/prosecutors cannot do. It refers to a type of expertise that has to be outsourced. The law does not establish any criteria regarding who is entitled to fulfill this role. If the person does not wish to be supported, the intermediary will raise this in court and let the court decide.

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<sup>24</sup> More information under <https://documenta.org.mx>

### **The intermediary's role**

In Mexico, the main role of intermediaries is to support the person in court, independently from all parties. They usually appear from the initial hearing (within the first 72 hours of the person's detention) until the end of the process or as soon as the person's need for support is identified. It may be the case that they are summoned to an already ongoing process or at the final stage. They are appointed by the court at the request of one of the parties or at the court's own initiative.

The court issues a petition ('un oficio') to Documenta asking for an intermediary including the date of the next hearing, the person's name and location. 10 to 15 minutes before the hearing begins the intermediary meets the defendant and conducts a short *ad hoc* assessment and establishment of rapport. In the court room, the intermediary sits next to the defendant and assists with communication, note taking or any other technique they deem relevant. If the person does not understand, the intermediary encourages the person to ask for clarification or asks for a specific accommodation directly. Intermediaries are never alone with the defendant.

Intermediaries are assigned to cases on the basis of availability to support the individual through the entire process and some of the intermediaries have specialized on supporting certain types of disabilities.

Occasionally, the actors in court mix up *inimputability*<sup>25</sup> (exclusion of capacity of guilt) with the right to procedural accommodation, which leads to confusion around the role of the intermediary.

### **Training**

To date, the training and control over this role is done by the organization Documenta. Only persons who are trained by the organization (Documenta), recently in collaboration with the university (UNAM), work as intermediaries. Families are not considered suitable to cover this task, as the role is conceived as neutral, in the sense that intermediaries do not support the legal

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<sup>25</sup> Inimputability is a Spanish legal term (*inimputabilidad*) that refers to the possibility of finding somebody guilty of criminal charges. In this context, evidence is usually presented to determine the inimputability of a person. The interviewees explained that the court and lawyers sometimes mistook their presence assisting the defendant with the experts giving evidence on the person's capacity of guilt.



argumentation, give evidence or advocate for either side. However, they can train as intermediaries and assist people to whom they are not related. Trainings can be failed if not completed or if the person does not have the personal abilities and skills to be a justice facilitator. Monitoring of their work is done subsequently through an obligatory report after each hearing and periodic individual and team meetings. Work on a more solid monitoring tool is underway.

### **Funding**

Intermediaries in Mexico are linked to Documenta, an NGO, and are funded through the courts for their services in proceedings. It is not a fixed salary.

### **Pressing issues and future perspectives**

The most pressing issue identified is funding and the fragility of the services, which could be ended on a political whim. The scheme was set up to assist defendants. The team has tried to reach out to other roles, e.g. witnesses. So far, the service has supported some victims at the request of courts that knew of the service provided by the facilitators and that recognize the same right to accommodations. However, the team has not been able to reach out to witnesses (victims included in this term) as much as expected, as the facilitator 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.

## New Zealand

### **The intermediary in the justice system**

Intermediaries are known as communication assistants in New Zealand. Their job is to assist defendants, witnesses and complainants during criminal proceedings. Communication Assistants (CAs) can be appointed in criminal and other legal proceedings under the Evidence Act 2006. Two agencies are currently contracted by the Ministry of Justice to deliver CA services.

Other forms of support that exist are the option of a young person having an Independent Nominated Person (INP) during police interviews, and a support person for witnesses or victims during evidence giving can be present in the room if evidence is given via Audio Visual Link.

There is also a Victim Support service from the Ministry of Justice in charge of the court familiarization visit and bringing the person to the Audio-Visual Link room.

Communication Assistants are considered a different role from expert witness, despite having some tasks in common. Communication Assistants are considered experts. They write up assessment findings and recommendations for the court, but their work is **not** considered evidence in the case. Expert Witnesses provide information and evidence about whether someone is fit to plea/fit to stand trial and may use the information provided by the Communication Assistant to do so, but the Communication Assistant does not comment or determine a person's fitness to plead. In some cases, Communication Assistants may be appointed as Expert Witnesses if the case requires specific evidence about a person's speech, language and communication but this is not usually the case.

There are two agencies<sup>26</sup> currently providing services as communication assistants. All involved are Speech-Language Therapists, part-time or full time, all of which are registered members with the New Zealand Speech-Language Therapists Association.

Identification of persons in need of communication assistance relies on judges, lawyers, police and social workers identifying the need for a referral. Some training has been provided to justice stakeholders by CAs but this is not yet

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<sup>26</sup> One of them is called Talking Trouble which operates as a social enterprise.

widespread. On a few occasions, family members or the persons themselves have reached out for this service.

### **The law**

Communication Assistants are covered in s80 and s81 of The Evidence Act 2006 for defendants and for witnesses. The law considers that communication assistants are needed to enable defendants to understand the proceedings and to support defendants, witnesses and complainants in giving evidence. The Communication Assistant may be appointed on petition of the defendant, the witness or the complainant or on initiative of the court.

Exceptions to this provision are that the defendant '*can sufficiently understand the proceeding*', or if the defendant chooses to give evidence, that s/he can '*sufficiently understand questions put orally and can adequately respond to them.*' Similarly, if the court considers that a witness can sufficiently understand questions put orally and can adequately respond to them, communication assistants' appointment or attendance may be waived. The judge may direct what kind of communication assistance will be provided.

The law does not say anything about who can or cannot be an intermediary. In practice, it is mainly Speech-Language Therapists.

### **The intermediary's role**

Communication Assistants work with defendants, witnesses and complainants, usually when the proceedings are already at court. The most frequent work is done within the criminal jurisdiction, but they have also been appointed for Family Court Proceedings, civil and mental health courts. In some cases, there has been support during the police interview, but they are most commonly brought in after the Evidential Video Interview (equivalent of Achieving Best Evidence<sup>27</sup> in England and Wales).

Communication Assistants are also engaged to assist in Family Group Conferences in the Care and Protection and Youth Justice processes (usually for children/youth but sometimes to assist adults), and sometimes they are engaged by Probation to assist at Pre-sentencing assessments and at the Parole Board.

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<sup>27</sup> [https://www.cps.gov.England and Wales/sites/default/files/documents/legal\\_guidance/best\\_evidence\\_in\\_criminal\\_proceedings.pdf](https://www.cps.gov.England and Wales/sites/default/files/documents/legal_guidance/best_evidence_in_criminal_proceedings.pdf)

The role of Communication Assistants is neutral and impartial. A similar range of areas are assessed in each assessment, but assessed using different materials and tasks depending on the age, interests, nature of the person's difficulties. Sometimes aspects of formalised tests are used, but not very frequently. CA may sometimes access the assessments of other professionals if they are available, but not always. As well as assessing the person themselves and their communication issues, the CA also assesses the effectiveness of strategies that aim to improve communication with that person that are relevant to the legal process the person faces e.g. listening to evidence and understanding it, understanding questions in cross-examination, giving their own version of events in taking of instruction, or whatever is relevant (depending on whether the person is a defendant or prosecution witness) They undertake an assessment to determine speech, language and communication needs that may impact the participation on the specific legal tasks the person needs to be involved with. This is written down in a recommendation report and then a CA assists in proceedings as needed. If assisting, most of the work occurs before the cross-examination or trial.

Communication Assistants participate in a Ground Rules Hearing<sup>28</sup> to determine what recommendations will be agreed on. This is a very frequent proceeding, nearly always for Judge-alone or Jury trials. There isn't always a Ground Rules Hearing if CAs are assisting in call overs or pre-trial hearings, or for Youth Court, but sometimes there are professionals' meetings which are not always as formal as a Ground Rules Hearing.

Communication Assistants check the communication environment is set up appropriately (e.g. hearing loops, amplification, seating). This work includes ensuring that all people involved understand the person's communication needs and how they need to adapt their communication style, e.g. ensure the questions are likely to be understood or ensure a defendant can instruct their counsel and understand the information and any decisions relating to their case.

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<sup>28</sup> A Ground Rules Hearing is an optional final call-over confirming arrangements for trial, including the directions provided by the Communication Assistant. Definition obtained and abridged from <https://www.benchmark.org.nz/guideline-summaries/pre-trial-case-management/#Thirteen>

Report writing is part of the appointed Communication Assistant's job. A similar range of areas are assessed in each assessment, but are assessed using different materials and tasks depending on the age, interests, nature of the person's difficulties. Sometimes aspects of formalised tests are used, but not very frequently. Other professionals' assessments may be accessed if available. As well as assessing the person and their communication issues, the CA also assesses the effectiveness of strategies that aim to improve communication with that person that are relevant to the legal process the person faces e.g. listening to evidence and understanding it, understanding questions in cross-examination, giving their own version of events in taking of instruction, or whatever is relevant (depending on whether the person is a defendant or prosecution witness).

The reports are generally 12 – 25 pages long and are typically formal in style. The CAs often try to include a 'Communication Passport'<sup>29</sup> (see an example in Annex VI) which they try to co-write with the individual, so their voice and views are included in the report.

The report goes to the court, which decides whether to release it or not. Sometimes it is released to others e.g. probation, but that is more likely for a defendant than a complainant. The Communication Passport is often released to others as it does not include information about the court or the reason for the referral to CA services.

Special emphasis is given to the assessment. While the CA is doing the assessment, s/he makes sure the person understands why the CA is coming to meet them and what the purpose of their role is. She lets the person know the judge has asked them to come and that she will be writing a report for the court. Sometimes, the CA may write notes on a list for the report with the person as they do the tasks, about how they got on with the task and what made it easier or more difficult. At the end of the session, the CA usually asks the person what they think needs to go in the report and they co-create some content under headings – 'things that make concentrating trickier' or 'things that help' etc. Those sections sometimes become a Communication Passport or essentially become the basis of the recommendations that the CA writes in a much more formal style. See Annex V for the standard letter informing about the CA's role. They may also

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<sup>29</sup> A Communication Passport is a document that helps the person share key information about themselves on their communication needs.

use a short video to introduce the service and the CA and then discuss it during the first meeting.

When working with witnesses or complainants, the Communication Assistant supports a familiarization visit to court. They monitor communication during cross-examination and only assist to provide advice if communication breaks down. The communication assistants never answer for the person and follows the recommendations agreed upon in the Ground Rules Hearing. Examples of strategies used include planning with counsel and the judge before a hearing precisely what communication tools may be used in questioning and then assisting as required, taking a break for a discussion with the legal professionals (counsel and judge) about how questions might be re-worded for a witness if they are not comprehending. Special care is taken in not introducing any element that may be leading.

When working with defendants, the CA's role is to assist throughout the proceedings to ensure that the defendant can instruct their counsel effectively and can understand the evidence being presented by others (often by drawing/writing/whispering/requesting breaks to review information etc.). Communication assistants may also be required post-trial to attend pre-sentencing assessments and sentencing itself. Communication Assistants in New Zealand are usually involved from the start to the end of the trial and not just during the act of giving evidence, working with both sides so everybody understands that communication assistants are neutral and impartial.

These are some examples of accommodations provided:

- a. Seating/timing of session/breaks
- b. What the CA might do in the legal context – before, during, after court
- c. What the other professionals need to do – the lawyers/judge/anyone else
- d. What the person themselves needs to do.

Referrals come through the Court Registrars, and the communication assessment report is sent to the Judge, who decides whether it is necessary to share it with anybody else. It is usually shared with both Counsels. Communication Assistants do not accept contracts from the Defense Counsel or the Crown directly except in very rare circumstances.

If all efforts and assessments of the person's needs and strategies have been tested and the communication assistant concludes that their assistance is not effective, the communication assistant reflects this in their report and may not be required to assist in court.

The agency Talking Trouble has a central referral process which tries to match an appropriate Communication Assistant in terms of skills, location and their availability. In some cases, the agency appoints two professionals with different areas of expertise to conduct the assessment or to cover time consuming cases. Matching criteria include age, gender and culture/language background. The latter is currently not covered appropriately.<sup>30</sup> Moretalk, the second agency providing intermediary services, operates in a similar manner but was not interviewed for this study.

### **Talking Trouble's working model**

For Talking Trouble, *'providing adequate supervision and support has been very important as well as ensuring that the processes to introduce suitable SLTs to the role and provide them with sufficient training has been essential.'* To do so, they conduct peer reviews of all reports and provide phone and in person support during assessments and trials. Teamwork is essential, and Talking Trouble wants to avoid a model in which individual practitioners work in isolation. Experienced Communication Assistants also co-work cases and discuss the recommendations. Self-reflection and presentations are required at peer professional development sessions.

### **The training**

Communication Assistants are nearly always Speech-Language Therapists, but the legislation does not specify a profession. All staff at Talking Trouble Aotearoa

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<sup>30</sup> In New Zealand, due to the country's characteristics, a high level of cultural knowledge and an understanding of how this impacts on communication is essential. At Talking Trouble, there is a communication assistant who speaks Te Reo Māori and can use and understand NZSL (NZ Sign Language), and this person is developing Māori strategy and cultural training for the rest of the team. A new team member who is Māori and who speaks Te reo Māori has recently started training, but this is not deemed sufficient by the organization. The Treaty of Waitangi applies to all that happens in the country, so there must be a bicultural approach and include service provision in safe and appropriate ways for Māori.

NZ are clinical Speech-Language Therapists, and nearly all have more than 10 years (and often more) experience.

Training is internal in both agencies. During the recruitment stage, at Talking Trouble Aotearoa NZ, the trainers ensure that the applicants understand the potential stressors and that they make an informed decision on their own suitability to this role. There is special emphasis on the neutrality and impartiality of the role, as well as the issues around scheduling, traveling, complexity and the ability to stay calm and able to manage highly complex and stressful situations. Excellent oral and written skills and high-level clinical reasoning skills are required. A highly professional, team approach and ability to adapt communication using a functional, creative approach is needed. They must be able to communicate effectively and quickly develop effective relationships with the people they assist and the legal professionals involved.

Police and reference checks are done. Before pursuing more training, applicants get to observe and co-work.

## **Funding**

In New Zealand, there are two contractors delivering communication assistance services, one is a social enterprise (Talking Trouble) and the other is a private company. Both are contracted with the Ministry of Justice or by the relevant agency, e.g. police. Processes and protocols are still being worked out for the situations where it is unclear what will be covered by Court and what needs to be funded by other stakeholders.

## **Pressing issues and future perspectives**

In recent years, the team from 'Talking Trouble'<sup>31</sup> 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 a communication assistant. 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.

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<sup>31</sup> More information under <https://talkingtroublenz.org/about-ttanz/>



The fact that communication assistants assist prosecution witnesses/complainants and defendants gives them 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 Communication Assistants. 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 hopes 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 Communication Assistants 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 communication assistants 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 and so the training for Communication Assistants and all the other stakeholders can be targeted accordingly. At the time of interview, intermediaries were introduced in New Zealand under a pilot programme and their role was new to courts and has had a positive reception. The need for clarity refers to the situations related to the court hearing in which a CA can assist the person other than the moment of giving evidence.

The Communication Assistant scheme is part of the current justice review. Communication Assistants have 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.

#### Real life examples

- a. A CA assisted the defendant in a jury trial. This involved assisting counsel to take instruction pre-trial as well as during the trial. The person presented with cognitive and language difficulties which they had had since childhood, and some mental health difficulties. The trial also involved a complainant with an intellectual disability who was assisted by a different CA. The CA assisted both counsel with the preparation of questions, and monitored and assisted during questioning.
- b. The CA assisted a young person in Youth Justice processes. The CA was also appointed to assist in Family Group Conferences which are part of Youth Justice processes in NZ (this part of the role was funded by Oranga Tamariki, not the Court).
- c. The CA was appointed to assist a child of 6 who was typically developing when they were being cross-examined in a trial.
- d. The CA was asked to assess an adult defendant who had had a very severe stroke. The CA concluded that the person was unable to reliably respond to strategies that enabled more effective communication due to their very significant language difficulties, and informed the court that a CA would not be effective for legal processes. The person was then later found unfit after a fitness process was triggered.

## Kenya

### **The intermediary in the justice system**

Kenya has an intermediary system introduced by the court and specific legislation. The term used in Kenya is 'intermediaries'. While professional intermediaries exist, family members and other persons (e.g. nurses) who are close to the individual may act as 'intermediary'. In cases in which abuse has occurred within families, family members may be unwilling or unable to act as 'intermediary' and, in the absence of professional intermediaries, such cases may fail to progress. The Kenya Association of the Intellectually Handicapped (KAIH), which runs an access to justice programme, recommends using professional intermediaries rather than people whose neutrality may be compromised by virtue of being close to the person or otherwise involved in the case.

Intermediaries work with victims and with defendants and to date, only in criminal courts. The right to an intermediary can be questioned and the court usually requests an expert opinion. According to current practice, often a psychiatrist will be asked by the court to determine whether a person can testify. A psychiatrist's opinion may determine that a person is unfit to stand trial, or that a person cannot give evidence, which leads to the case being dismissed. That is the practice that KAIH and others are trying to change, and instead, apply the correct framing, which is that it is an issue of communication and accommodations (not credibility or capacity to testify), and that intermediaries should play a role in recommending accommodations, rather than psychiatrists determining capacity.

### **The law**

In Kenya, intermediaries are recognized by the Constitution and by specific laws. The Evidence Act includes limitations to the possibility to testify and allows for experts (expert witness) to inform on a person's capacity to testify. Further, the law states that courts may allow hearsay evidence if it is in accordance with the Evidence Act. This differs significantly from the conceptualization of intermediaries in other countries.

The law covers victims and witnesses. In the case of defendants, the intermediaries argue that defendants have the same right as witnesses to testify with support. During the first cases it was difficult to convince the court, since there were concerns that the intermediary was going to take sides with the

defendant and help make a better case. Currently, courts are accepting that an intermediary will guarantee equal treatment for the defendant. Lastly, the law does not mention who can act as an intermediary.

### **The intermediary's role**

The Kenya Association of the Intellectually Handicapped (KAIH) set up this service after identifying the need for it. It advocates for a neutral model based on the principles set out above in Section 2. However, the process of putting it into place is still not consistent and has met some resistances.

Intermediaries are usually called for by family members who reach out for their services through KAIH. So far, KAIH has advocated for and provided this service, facing different challenges. For instance, as there is no structure in place to arrange for intermediaries, sometimes family members or other persons that have not been trained act as intermediary.

When a petition comes to KAIH, the case is assigned to an intermediary based on proximity, availability and expertise. The intermediary will assist the person in court. There is no report writing or submission, but the intermediary will have prepared an internal report and have them during the hearing. This may change in the future. Intermediaries will be with the person in court, at police stations or during medical examinations.

The court does not usually interact with intermediaries. Sometimes, in the experience of the interviewee, the intermediary is not even acknowledged. Intermediaries work with the prosecution or defense, as in they explain to them why they are there and what role they have. It can be difficult to get the space to work and intermediaries are often dismissed or brushed off roughly. Once in court, the intermediary explains what they will do and what they will not do, e.g. state when a line of questioning is not acceptable, or give examples of how to ask questions. The intermediary prepares an expert opinion including what they found and what tools they intend to use. This expert opinion is not submitted and the court does not admit it. Whenever the intermediary wants to talk, they ask the judge for permission, which may be granted or denied. The support given in court to date is only oral support, e.g. asking for clarification or rewording questions. The intermediaries at KAIH are aware of other useful tools and accommodations

but feel that right now, their role in court is too new to bring in other tools or probes.

Intermediaries may refuse to take a case if they do not have time, feel unsafe or need to take a break from cases if they feel they will not be able to remain emotionally neutral.

Intermediaries may be required to take the person to the expert witness / psychiatrist, which are within government institutions. The intermediary goes to support communication with the expert witness, but, in the interviewee's experience, the psychiatrist often ignores the intermediary.

Most times an expert witness is a professional called to the stand to answer from their point of view with their expertise, usually an expert in psychiatry or psychology. In the interviewee's experience, they are often not very familiar with the support needs of persons with disabilities and use legal jargon when giving their opinion, such as suggesting that the person 'is incompetent' or 'cannot stand trial'. Often their opinion is against the person's participation in trial.

There is no monitoring of the intermediary's work.

## **Training**

The Kenya Association of the Intellectually Handicapped (KAIH) has trained 40 intermediaries and provided them with materials. However, since there is very little demand, few have had a chance to put their knowledge into practice. There is a strong emphasis on the neutrality of the role, techniques on how to avoid leading the person, avoiding contamination of the evidence and transparency. More detail about the program and case studies can be found on the KAIH website<sup>32</sup>. When KAIH developed the training, community health volunteers were prioritised to be trained because they already have a good training background and know how to navigate the government systems and structures. Their work experience helps them understand the cases much faster and they are already exposed to hearing about cases too. Prior to the training, they used to contaminate the cases at the beginning in their referral, they got emotional and pushed for the cases. This was considered detrimental and was targeted through the training.

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<sup>32</sup> <https://www.kaihid.org/access-to-justice/#1536435695563-3fe7d1db-e764>

## **Funding**

The funding runs through NGOs. Intermediaries are not paid by the court or administration. It often runs as a voluntary service. The law does not mention funding or how intermediaries are to be paid.

## **Pressing issues and future perspectives**

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 initial report on Access to Justice mentioned in the introduction identified a contradictory practice: *Voir dire* examinations<sup>33</sup> of 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. There needs to be 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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<sup>33</sup> A *voir dire* is pre-testimony procedure under which the Court examines the witness to establish whether the person can give evidence.

## Spain

### **The intermediary in the justice system**

Intermediaries in the Spanish justice system are called “*facilitadores*”. Sometimes within courts they are also referred to as psychologists or expert witnesses. The law refers only to “*the act of giving evidence through an expert*”. In practice, a foundation (Fundación Alapar) started acting as “*facilitadores*” in 2012. Their undertaking consisted in recording the evidence given by victims to report a sexual crime and then support their report as evidence in court. The purpose of recording evidence is to reduce the number of times a person has to give evidence and to allow for an earlier collection of evidence, due to the long-lasting criminal procedures. A development of this was to act as third party (not being involved in the crime reporting) or acting under the supervision of police or prosecution to promote the reporting of sexual crimes. Nowadays, they are an established service acting in court and supporting victims with intellectual disabilities to report crimes. As the service has grown, the foundation has trained public legal officials (forensic psychologists), other NGOs and police on how to obtain evidence without tainting it and on how to act as an intermediary. The service now works more independently from the complainant in order to reinforce neutrality. As a principle, the foundation’s victim support unit never represented the victim and acted as intermediary.

The intermediary is in touch with the emotional supporter and may collaborate whenever necessary to establish the best options around accommodations and support.

The intermediary is sometimes called in as an expert witness, in the sense that the intermediary is the person that heard the victim giving evidence firsthand. In some occasions, the intermediary is then asked to act as a psychologist expert witness, which is when the intermediary gives their opinion as a psychologist. Spanish doctrine recognizes these two different roles which may sometimes in practice be delivered by the same person.

### **The law**

The law (Ley 4/2015, de 27 de abril, del Estatuto de la víctima del delito) provides for emotional support and giving evidence through an expert, as well as pre-recording evidence. It does not talk specifically about a support role in

communication but of the right of a vulnerable person to give evidence with the support of an expert. The law leaves it to future regulation to define the role and specificities of the expert.

The priority of the law is to reduce the number of times a person has to give evidence. Recordings of evidence, however, is not automatic when the victim is a young person, according to the recent developments of the Spanish Supreme Court, which reinforces the general rule of giving evidence before the court.

The Criminal Procedural Code (Ley de Enjuiciamiento Criminal) also recognises the right to give evidence through an expert in article 433.

### **The intermediary's role**

The role of the intermediary is to support the act of giving evidence of the victim or witness and to assess the person's capacity to give evidence, design the necessary support and assist the person during the hearing. In some cases, the intermediary is responsible for obtaining the testimony. On some occasions, the court may ask the intermediary to give an expert opinion on the evidence, as well as conducting an evaluation of harm and credibility (*Evaluación de daño y credibilidad*). This is established by practice and is not contained in the law.

The evaluated capacities<sup>34</sup> are:

- Expression and understanding
- Details
- Narrative sequencing
- Space-time orientation
- Episodic and semantic memory
- Sustained and focused attention
- Quantification
- Reasoning
- Social Desirability
- Acquiescence or compliance

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<sup>34</sup> In Spanish: *Capacidades evaluadas: Expresión y comprensión; Detalles; Secuenciación narrativa; Incardinación espacio-temporal; Memoria episódica y semántica; Atención sostenida y focalizada; Cuantificación; Razonamiento; Deseabilidad social; Aquiescencia; Sugestionabilidad; Procesos cognitivos (interacciones, conversaciones...); Identificación de caras.*



- Suggestibility
- Cognitive processes (interactions, conversations...)
- Facial identification.

The report by an intermediary covers communication patterns, expression and understanding and recommended adaptations.

Intermediaries work only in criminal courts and mainly for complainants and on some occasions for witnesses, even though this is not covered by the law. Intermediaries assist any adult with an intellectual disability and any child. This may be applied to a person with psychosocial disabilities or difficulties with the legal proceeding, e.g. low socio-cultural background. Ideally, the intermediary assists from the very beginning of the process at the police and adapts the entire process for the person. The intervention of an intermediary is decided by the people involved in the process and approved by the courts, which means that often one has to convince the judge to allow the assistance of an intermediary. Intermediaries are assigned to cases based on workload, expertise (e.g. expertise with persons with autism, age). Intermediaries work independently. They assist with the capacity evaluations, assisting the person when receiving information under a mandate of neutrality and, if the court has not allowed the intermediary to assist, they may explain to the person what is going to happen and assist during the meetings with their lawyers. On other occasions, the intermediary is summoned by the court at the request of the Public Prosecution. The law does not cover acting as an intermediary for defendants but in practice, staff from Plena Inclusión<sup>35</sup> has supported defendants with intellectual disabilities and has assisted in putting procedural accommodations in place.

### **Training**

The law does not define who can act as an intermediary nor does it prescribe a specific professional profile. However, courts value that the intermediary is a licensed psychologist and this helps the credibility of the role.

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<sup>35</sup> See <https://www.plenainclusion.org> for more information.

Intermediaries under Fundación Alapar<sup>36</sup>'s training must be psychologists due to the foundational knowledge from the training, and the tools used to conduct assessments. Further, forensic psychology knowledge and expertise in intellectual disability is strongly recommended. Valued interpersonal skills include ability to be persistent, assertive skills, dynamic, agile and to have initiative.

## **Funding**

This service is funded by a foundation, which receives public funds to cover part of the service. There is also an agreement between Fundación Alapar and the General Council of the Judiciary.

## **Pressing issues and future perspectives**

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 may 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. Pre-recorded evidence has been accepted and promoted under EU victim's rights directive to avoid double victimization, facilitate interaction with the authorities and promote reporting of crime.<sup>37</sup>

Funding is considered a permanent issue. However, there is increasing recognition of this role and the foundation is receiving more cases. 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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<sup>36</sup> See <http://nomasabuso.com/familiares/que-es-la-uavdi/> for more information.

<sup>37</sup> Paras.(53) and (63) DIRECTIVE 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA

## 6. Considerations around developing an intermediary scheme and further research

### **Considerations around developing an intermediary scheme**

Most of interviewed participants have experience in setting up a scheme or supporting other intermediaries to start their own scheme and stressed the importance of professionalism, collaboration with the justice system, neutrality, the challenges delivering these services and the positive impact it had on proceedings. This section reflects on the information collected and outlines ideas to be considered when thinking about replicating an intermediary scheme.

The Principles and Guidelines set out by the Special Rapporteur on the Rights of Persons with Disabilities<sup>38</sup> provide excellent guidance when considering intermediary schemes and procedural accommodation.

Further, the principles laid out in section 2<sup>39</sup> are a good starting point to design a scheme as they were developed based on experience and knowledge of the criminal justice system and specifically refer to intermediary schemes. Non-adherence to these principles when designing an intermediary scheme should be adequately justified.

#### *Neutrality*

Neutrality was considered paramount by all intermediaries and is played out differently in each context due to cultural differences and different structure in the legal proceedings. Criminal justice relies strongly on strict procedural roles to guarantee equality and fairness. Inserting a new role within this system with strict rules to guarantee a fair trial is a delicate matter. Guarding neutrality is key to enable an intermediary to actually intervene and put accommodations into place. Legal actors need to be able to trust that this intervention will not change the fundamentals of evidence rules, that the intermediary will not lead the witness or contaminate evidence. Intermediaries in countries where there is trust in this neutrality and that the evidence rules remain unchanged, the intermediary has

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<sup>38</sup> 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](https://www.ohchr.org/Documents/Issues/Disability/SR_Disability/GoodPractices/Principles_A2_Justice.pdf)

<sup>39</sup> Available under: <https://www.bizchut.org.il/post/access-to-justice-intermediaries-role-and-basic-operating-principles>

more space to act. This neutrality also helps maintain the boundaries and the trust.

The criminal justice system is a complex system with resistance to change. This is why it is essential to maintain neutrality and to have a solid strategy or guidelines when proposing a scheme or an assistance of an intermediary. The role of intermediaries as conceived in the Hub<sup>40</sup> and in the International Principles and Guidelines<sup>41</sup> is to assist in communication. Any statements that implies taking sides with one or another party may be perceived as evidence contamination and cause harm. Intermediaries do not provide information or legal advice to the person, but they assist the person with their communication needs during their interviews and hearings or similar encounters. Further, they work independently from all parties and should not be paid for by parties, as this may put their neutrality in question.

Neutrality can be compromised easily if the scheme is not properly designed and implemented, or if the intermediary acts carelessly. It is essential to understand that, in case of compromising neutrality, it may affect the admissibility of the evidence and the future use of intermediaries.

#### *How to maintain neutrality*

It is important to consider how a service and an intermediary will maintain neutrality, e.g. receiving payment from a party may compromise the neutrality. Information collected and delivered to courts by an intermediary through a report or a formal statement should be done in a transparent manner. For instance, intermediaries will insist on not discussing the case when meeting the person or during the communication needs assessment. The role of an intermediary needs to be explained to the person with disabilities receiving the assistance and their families in a way the person understands and may also need to be explained to the legal actors. Intermediaries should avoid becoming the main person to contact by the person concerned or family members for information on how the legal proceedings are going or what is going to happen next. Note that when

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<sup>40</sup> See Footnote 1.

<sup>41</sup> 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](https://www.ohchr.org/Documents/Issues/Disability/SR_Disability/GoodPractices/Principles_A2_Justice.pdf)

providing services, intermediaries do not speak on behalf of the person either, nor decide for the person.

Maintaining neutrality will also help intermediaries draw boundaries with family members and persons with disabilities, who may put too much pressure on intermediaries to inform them or solve situations.

Gaining trust of the courts and other legal actors was considered essential to implementation of this type of service and it requires good and professional service delivery and neutrality. Services which advocate for the implementation of an intermediary scheme must reflect on how to frame and find arguments and collect data to critique the accessibility and fairness of the justice system, especially if they also engage in service provision or in further activities with the justice system, e.g. training for judges.

Moreover, it may well be that the organisation advocating for intermediaries provides services of some kind to persons with disabilities. While the reputation of a longstanding organisation or the already existing structure can facilitate the establishment of a new service, how this plays out on neutrality and on maintaining the neutrality needs to be carefully considered. For instance, if intermediaries also have other roles within the organisation, e.g. psychologist or support worker, it may be difficult to separate their duties. In some countries, intermediary services were established by long standing organisations through a separate structure, e.g. separate name, sister organisation, different staff and visible head/director of this service.

#### *How to convey neutrality and professionalism to legal actors*

Introducing the intermediary into an established system can be tricky and some professionals may feel threatened or that it compromises their work or the fairness of the legal proceedings. Make sure to convey a clear understanding of the limits of the intermediary's work, the benefits of assistance during communication and the neutrality of this assistance.

Legal proceedings are designed differently in each country and how legal actors interact will vary. Moreover, courts have their own internal culture and it is important to understand this in order to take it into account when designing and communicating the purpose of intermediary services. For example, in England and Wales, an intermediary is considered an officer of the court. Formal

recognition of the role in court has not been achieved in all countries but was considered a milestone in the establishment of the role. It is vital to get familiar with the legal system and culture in each context. The interviewees stressed the importance of keeping a homogenous format in service delivery, e.g. request forms, report formats and sharing knowledge among intermediaries and drawing clear boundaries of the role of an intermediary. For instance, intermediaries from New Zealand consult with the courts whenever they receive a request, they consider beyond their usual task of assisting in court.

The interviews also showed that it is important to be honest about the assistance the intermediary can provide or if the expertise required is not within the skillset of the intermediaries available.

Transparency in their working methods, e.g. through report writing or explaining why and how they will proceed, is also essential to gain the trust of both parties and convey neutrality.

Intermediaries do not speak or decide on behalf of the person and do not take over police or prosecution roles. Determining how to investigate, examine or assess evidence remains in the hands of those responsible for it by the regular rules of evidence. The intermediary addresses only one aspect, and that is on conveying how the disability might affect challenges in communication relating to investigation or testimony, and how to get around those challenges.

#### *How to train and support intermediaries*

Training is essential to ensure that intermediaries fill the assigned complex and nuanced role. It is complicated to learn how to provide support without leading the witness and how to remain neutral in a highly regulated context like a court room, or in situations of stress and contradictory argumentation. It is not a context people are used to. Trainings have to touch upon different aspects and benefit from participation from persons with disabilities, legal actors and other intermediaries. There are different proposals on trainings from the reviewed countries (see Annex III). The Hub has also prepared a learning module to be launched in 2021 as a resource for stakeholders considering the development of an intermediary scheme in their local legal system. It is expected to be available in 2021 at [www.justiceintermediary.org](http://www.justiceintermediary.org) as a free download.

The job can be lonely, difficult and having people to discuss and share ideas or doubts can be helpful. Legal actors such as prosecutors, criminal lawyers, judges may be invited to deliver certain sections of the programme as well as persons with disabilities. Some organisations are trying to get independent actors (e.g. universities) to take over the training to increase awareness and professionalism, to improve the training quality and to ensure appropriate qualification certificates for students.

Support within the organization looks different. In some cases, the director or coordinator of the service is available over the phone for questions or difficult cases. In others, intermediaries work with peers or reports on the delivered services are reviewed by managers to keep consistency and quality on the service delivery. Continuing professional development or refreshment trainings are also included in some programmes. The work can be difficult. Considering what mechanisms to support intermediaries during their work is also important. Some countries have designed this as an individual freelance profession, while others prefer teamwork (in pairs) and with debriefing meetings to discuss particularly complex cases.

The work intermediaries do is complex and cannot be reduced to simple translation. It requires specific skills and expertise. Adequate training and continuing professional development need to be in place and formal recognition of this training by the relevant authorities is desirable to professionalise the role. People with disabilities should participate in the design and delivering the training.

### *Becoming sustainable*

Funding is a common challenge for many organisations of intermediaries. Most organisations work with the courts, ministry of justice or government to get funded. This may come in shape of a collaboration agreement. Ideally, funding should be secured in the law. However, this may take time to be achieved. Each country has tackled or is tackling this in different ways.

Sustainability also means having professionals available for upcoming cases. This may prove to be difficult due to the unpredictability of the work and the duration of each case. In some countries, intermediaries may have other more stable jobs that are combined with working as an intermediary, while in others,

they work as independent (freelance) professionals. Having another job may mean that occasionally they cannot accept cases due to unavailability.

Funding is a common challenge throughout the world. States need to step up to the commitment taken on with the CRPD and fund these services in the same manner as other officers of the court, e.g. interpreters are funded.

#### *Other aspects of the intermediary's job*

While the intermediary's job is mainly focused on communication needs of persons with disabilities, it is important to acknowledge diversity of people with disabilities and the implications this may have in the delivery of services, e.g. different cultural backgrounds. These different aspects have to be considered when seeking expertise, designing the training or thinking about adequate accommodations. It can also influence on how a person's disability is perceived. Considerations around safety of the intermediary (physical and psychological) are also important. This may have implications for example on where meetings take place.

Lastly, collecting regular feedback from clients and courts is an invaluable source of information to improve and adapt the services to the circumstances.

#### *Portraying disability*

Disability is strongly stigmatised, and this also affects courts. The way intermediaries interact or portray disability and support needs may contribute to reducing stigma or increase it. This needs to be carefully considered when choosing language and arguments around the need for intermediaries. Involving persons with disabilities in different phases of project design, implementation and evaluation, as well as in trainings, can be beneficial when considering this point. Involving people with disabilities in the report writing can guarantee that the person has some control over how they are represented.

#### *Other roles*

It is important to familiarise oneself with other roles within the criminal justice system and legal figures that may be a gateway to introducing the intermediary, e.g. technical support in Mexico. Clarity on the differences from these other roles, e.g. psychiatrists, lawyers, emotional support services, is paramount in order to



demonstrate the uniqueness and benefits of the role of the intermediary. In some countries, the intervention of an intermediary may be disputed by the parties. Therefore, clarity on the role and tasks of the intermediary and how they contribute to a fair trial is essential to argue before a court or to advise other legal actors.

#### *Limits of the role of an intermediary*

Persons with disabilities may be in difficult situations when they get into the justice system. An intermediary should have a clearly defined role as described in the principles and in the examples given from the different countries. People with disabilities that come before court may experience lack of support in other areas of life, an unfair outcome, or their lawyer may not take the time to explain the process to their clients. An intermediary should not try to compensate all faults, gaps and deficiencies in the justice system. This can seriously affect the neutrality of their role, contribute to exhaustion and may cover up for systemic or other people's faults. In some countries, like Israel and Spain, intermediaries also act as expert witnesses which may involve issuing an expert opinion on the person's disability, with the legal implications this may have in each jurisdiction. This is also something to take into consideration, especially when the strategy to introduce intermediary into a legal system involve using the figure of expert witness as an entry point into courts.<sup>42</sup> Make sure to understand the implications of an expert witness or other roles before comparing them or using them to introduce intermediaries in courts.

#### *Overburdening, ambiguity and conflation with other roles*

Intermediaries have a very specific function within the justice system and to guarantee access to justice. It is important that intermediaries stick to the role of assisting in communication rather than taking on other elements, which may be burdensome due to workload and psychological stress, as well as damaging to neutrality, e.g. providing psychological support to witnesses, or finding an

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<sup>42</sup> Expert witness is used here as an open term to express the idea of including external experts in a court proceeding. However, the definition of this role is country dependent. In some cases, it involves taking sides, e.g. provide evidence to prove a point made by one of the parties. In others, it refers merely to being considered an expert by the court.

alternative outcome for defendants. Advocating for the rights of persons with disabilities and serving as an intermediary are different things. Advocating may mean acting as a lawyer or arguing in favour of the rights of person with disabilities or in favour of a particular outcome. The former sense (acting as a lawyer and intermediary) should be avoided at all cost and the latter should only be done to argue for accommodations or the use of an intermediary. Intermediary may have to argue with lawyers or court officials to obtain the accommodations requested, but they should refrain from proposing outcomes or implying guilt or innocence. This may compromise the neutrality and has also a higher emotional toll. Intermediaries can experience discomfort, exhaustion from the amount of work or demands from the environment.

#### *Clarity of the role*

It is important to think exactly what role the intermediary is, e.g. whether they provide information or attend meetings where information is provided to facilitate communication between court and person, lawyer and person, police and person. Taking on the role of providing information on legal meaning can be dangerous if a legal interpretation is being given and is invading other roles. In some cases, intermediaries make sure complainants have access to psychological support from a different source before exposing the person to questioning and evidence giving, or attend all meetings the person has with the authorities who convey information with the assistance of the intermediary.

#### **Further research**

Research on this topic is scarce and most commonly from England and Wales or other English-speaking countries, e.g. New Zealand (See bibliography). The topics set out above are in need for further research, as well as the efficiency and impact of intermediaries in the legal system and the adequacy of assessment tools and the reports used in courts. Most services have their own evaluation system, but this is usually not done by independent researchers. The training of intermediaries or legal actors and the involvement of people with disabilities as trainers is also a fairly unexplored topic as well as ethical issues around the role and use of intermediaries. Further, a research around good communication and assistance strategies for intermediaries in legal settings will help future

endeavours to set up an intermediary scheme, as well as research on which tools can promote accessibility in the justice system and how can the collaboration between legal actors be enhanced. Legal comparative studies of intermediary systems in different jurisdictions can provide a better understanding of the legal underpinnings and reality of different jurisdictions. In addition, research on adequate support and assistance in court for defendants and around the challenges with regards to fitness to plead can be very beneficial to address ongoing challenges. The history of each organisation as well as the used advocacy strategies and the authority or formal recognition of intermediaries can also provide interesting insights.

Participation of persons with disabilities in researching these topics and other, such as research on the role of the person during their assessment and with regards to the report written about them and how their experience of being assisted by intermediaries and in the justice system in general is desirable.

## 7. Conclusions

This report provides a descriptive role around the role of intermediaries, which is fairly new and unknown role in most of the explored jurisdictions, even though it is rapidly expanding. The CRPD and the International Principles and Guidelines support the use of intermediaries to assist persons with disabilities in access to justice and to leverage the field.

While experience shows that the use of intermediaries can be difficult to introduce, once the courts and other legal actors become familiar with their work, the intermediary is well accepted in the system. It may initially be challenging to convey to others of the need for an intermediary, but it makes a great difference in the participation of persons with disabilities and the judicial outcome. There are different ways and legal basis to argue for an intermediary, each country has found its own grounds, legal definition and professional profile to match its own particular context. In some occasions, intermediary schemes have been introduced using specific legislation, in others, through non-discrimination acts and other generic support figures.

States need to take up the responsibility and commitment to the rights of persons with disabilities and to a fair trial, and assume the cost and implementation of such services. However, in most countries, this service relies on non-

governmental organisations to advocate for accommodation, recognition of intermediaries in court and as a professional category. Service provision itself relies on NGOs in most countries.

Neutrality and professionalism are paramount in order to fit into the complexity of the judicial accusation and defence balance, and to stop contributing to the idea of charity and further stigmatisation of persons with disabilities. Formally recognised training and a status within the court system can also support the neutrality of this figure and ease the intervention of intermediaries.

A common issue is the lack of consistent use or being summoned when proceedings are already initiated or only for the evidence giving part, which makes it difficult to assist the person and shows that the accessibility and communication needs of the person have not been considered throughout the entire process. It is important that the role of the intermediary, their expertise and their support in ensuring that the equal participation of persons with disabilities is available at the earliest intersection point of the person with disabilities with the justice system and be available throughout the process.

Despite the numerous challenges, the interviewees expressed overwhelming enthusiasm for the role and had many testimonies of success in assisting people with disabilities in court. The need for intermediaries is urgent in all legal systems, as persons with disabilities are going through the justice system on a daily basis without adequate assistance to understand and participate equally. Communication assistance is not covered by legal advice nor can be substituted by legal actors' good will or by simple speaking louder, slower or with what the legal actor may consider simpler terms.

While the evidence consistently shows the benefits of introducing an intermediary scheme, the lack of governments' commitment to fund and support these services through adequate recognition of their role in the justice system and comprehensive regulation hinders the full development of these services, which leaves people with disabilities without adequate assistance before courts, violating their right to access to justice and to a fair trial.

**Abbreviations**

NGO	Non-Governmental Organisation
CI	Communication Intermediary
EON	Explanation of Need (Vermont)
CSS	Communication Support Specialist
JI	Justice Intermediary
CA	Communication Assistant

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## Annex I - Questionnaire in English and Spanish

Dear participant,

Thank you very much for participating in this research. At the Access for Justice Hub we are interested in finding out as much as information as possible on the different forms of intermediaries, communication assistants or facilitators to support persons with disabilities in accessing justice that exist around the world. From our first research we found that there are different forms of support and that each country has regulated them differently. We want to know more about how these roles are defined, how do they work, who gets their support and what are the current challenges they face.

This questionnaire will guide the conversation with Maria. Please provide as much information as you can. When we use the term intermediary, we refer to communication assistants or *facilitadores*, persons that support the person with disabilities in giving evidence. Note that we are interested in the whole process of entering the justice system, but we are aware that most efforts are commonly around the act of giving evidence. We acknowledge that there are other support roles (advocates, friends of court, *acompañante*) which we are also interested in mapping and identifying. However, this questionnaire will focus primarily on intermediaries as in a person who assists individuals with disabilities to participate effectively in justice procedures by enabling communication between all parties.

1. Country:
2. Name of intermediaries:
  - a. What are intermediaries called in your country?  
*E.g. communication assistants.*
  - b. What other support figures exist? *E.g. Appropriate adult, peer supporter, emotional supporter.*
  - c. In some jurisdictions, expert witness is something different from an intermediary, while in others, it refers to the same figure. Please tell us whether in your jurisdiction there is a separate “expert witness” and if so, who appoints this figure and what is her role.
3. Is there national legislation defining the role of intermediaries?  
*(Which law? What does it say?)*
4. What are their tasks? What are their boundaries—what can they *not* do?
5. In what jurisdictions do they work:
  - a. Criminal
  - b. Civil
  - c. Administrative
  - d. Family
  - e. Mental health
  - f. Other:
6. Is it limited to being a particular side or role:
  - a. Witness
  - b. Victim
  - c. Suspect or defendant
  - d. Other:
7. Who can be an intermediary? Can different people act as intermediaries? Who cannot be an intermediary? *(Family, worker from day care centre, etc.)*
8. What are the selection criteria?  
*(e.g. a certain degree or profession, years of experience, being registered)*
9. Is there any particular training?
  - a. If yes, who runs the training?
  - b. What are the contents?
  - c. Can one fail the training?



10. Is there any monitoring of the intermediaries' work?

*There are different types of reports that may be used in court. One is strictly about the person's communication needs what is required to address these during investigation or in court. There is also a report in which psychiatrists or psychologists assess general aspects of a person's ability to give testimony: mental capacity, capacity to remember events, reliability. In certain jurisdictions, intermediaries may be tasked with writing reports on communication needs but might also be involved in other type of reports. We are interested in teasing out who writes which reports and what exactly the intermediary does.*

11. How does an intermediary work?

- a. Do intermediaries act as an assessor of needs and write reports (even if they do not then support the person in court)?
- b. Do intermediaries work independently or do they have to follow somebody else's recommendations (e.g. forensic psychologist)?

12. Can an intermediary refuse to support a person? On what grounds?

*Research shows that intermediaries are not used consistently. Can you tell us:*

13. Which criteria decide that a person needs an intermediary?

- a. Is it decided by the law, at a court's discretion, upon request of the parties or on recommendation of some actor involved?

14. How are intermediaries assigned to a person or a case? Are there any criteria? (*We are interested in knowing whether intermediaries specialize on certain cases, age groups or types of disabilities*).

15. When does an intermediary appear (what procedural moment) and disappear?

16. Who do they work with (*lawyers, court, prosecution*)? Do they serve in each instance on behalf of a particular side that asked for their intervention (e.g. for the prosecutor, or for the defense attorney)?

17. How is this service funded?

- a. Are they independent workers, part of an NGO, is it government funded?
- b. Is it a statutory (entitlement) service or voluntary service?
- c. Does the law say anything on this?

18. What are the pressing issues for the service?

- a. What are the issues that each service is really struggling with?
- b. Is it finance, is it recognition by courts / police / advocates, is it consistency, is it finding enough suitably qualified people to do the intermediary role, or something else.
- c. Check provision of services – is it being used regularly?

19. What are the positive things that you see happening either now or in the near future?

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## Questionnaire in Spanish

Estimado participante,

Muchas gracias por participar en esta investigación. En el Grupo de Acceso a la Justicia estamos interesados en obtener cuanta más información posible sobre las distintas formas de facilitador, asistente de comunicación o persona de apoyo en el marco de acceso a la justicia en el mundo. Durante la primera revisión de la literatura descubrimos que existen distintas formas de apoyo y que cada país lo ha regulado de manera diferente. Queremos saber más sobre cómo se definen estas figuras, cómo funcionan, quién tiene derecho a recibir apoyo y qué retos tiene su implementación.

Este cuestionario guiará la conversación con María. Por favor, incluya cuánta más información posible. Cuando usamos el término facilitador, nos referimos a asistentes de comunicación, intermediarios, personas que apoyan a la persona con discapacidad a la hora de testificar.

Nos interesa todo el proceso de acceder a la justicia, pero somos conscientes que normalmente el apoyo se concentra entorno al momento de testificar.

Sabemos que hay otras formas de apoyo (defensores, amigos del tribunal, acompañantes) que también estamos interesados en identificar. No obstante, este cuestionario se centra principalmente en el facilitador como persona que asiste a la persona con discapacidad a participar de manera efectiva en procesos judiciales facilitando la comunicación entre todas las partes.

1. País
2. Terminología
  - a. ¿Cómo se llaman los facilitadores en su país?
  - b. ¿Existen otras figuras de apoyo? P.ej. apoyo entre iguales, soporte emocional.
  - c. En algunas jurisdicciones, el llamado testigo experto no cumple la misma función que un facilitador, mientras que, en otros, se refiere a la misma figura. Por favor, indíquenos si en su jurisdicción existe la figura del “testigo experto” y, en ese caso, quién nombra esta figura y cuál es su rol.
3. ¿Existe legislación nacional que defina el papel del facilitador? (¿Qué ley? ¿Qué dice?)
4. ¿Cuál es la función del facilitador? ¿Cuáles son sus límites – qué es lo que no pueden hacer?
5. ¿En qué jurisdicción trabajan?
  - a. Penal
  - b. Civil
  - c. Administrativo
  - d. Familia
  - e. Salud mental
  - f. Otra:
6. ¿Está limitado a apoyar a alguna parte o un rol en concreto?
  - a. Testigo
  - b. Víctima
  - c. Sospecho o acusado
  - d. Otro:
7. ¿Quién puede ser un facilitador? ¿Pueden ser distintos perfiles profesionales?  
¿Quién no puede ser un facilitador? (Familia, trabajadores del centro de día, etc.)
8. ¿Cuáles son los criterios de selección? (p.ej. una titulación, años de experiencia, estar registrado)
9. ¿Hay alguna formación específica?
  - a. En caso afirmativo, ¿quién organiza esta formación?

- b. ¿Cuál es el contenido?
  - c. ¿Se puede suspender esta formación?
10. ¿Hay alguien que supervise o monitorice el trabajo de los facilitadores?

Existen distintos informes que pueden ser usados en los tribunales. Uno de ellos se limita únicamente a las necesidades de comunicación de la persona que deben tenerse en cuenta durante la investigación y el proceso judicial. También existe un informe en el que psicólogos y psiquiatras evalúan los aspectos generales de la capacidad de una persona para dar testimonio: capacidad mental, capacidad para recordar eventos, fiabilidad. En algunas jurisdicciones, los facilitadores tienen la tarea de redactar informes sobre las necesidades de comunicación, pero también pueden redactar otro tipo de informes. Nos interesa saber quién escribe qué informes y qué hace exactamente el facilitador.

11. ¿Cómo trabaja el facilitador?
- a. ¿El facilitador valora las necesidades de la persona y redacta informes (incluso si luego no interviene como figura de apoyo en el juzgado)?
  - b. ¿Trabaja de manera independiente o debe seguir las pautas de otra persona (p.ej. un psicólogo forense)?
12. ¿Puede el facilitador rechazar el mandato de apoyar a una persona?  
¿Con qué fundamento?

La literatura nos muestra que los facilitadores no son usados de manera continua o consistente. Puede indicarnos

13. ¿Qué criterios deciden que una persona necesita un facilitador?
- a. ¿Lo decide la ley, el tribunal a discreción, a petición de parte o por recomendación de alguien?
14. ¿Cómo se asigna un facilitador a un caso o una persona? (Queremos saber si los facilitadores se especializan en algunas materias, tipos de discapacidad o edad)
15. ¿Cuándo aparece el facilitador (en qué momento procesal) y cuándo desaparece?

16. ¿Con quién trabaja (abogados, tribunal, fiscalía)? ¿Sirven en cada instancia para la parte que solicitó sus servicios (p.ej. fiscalía, la defensa)?
17. ¿Cómo se financia este servicio?
- a. ¿Son trabajadores independientes, parte de una ONG, pagados por el Estado?
  - b. ¿Existe un derecho reconocido en la ley o es un servicio voluntario?
  - c. ¿La ley se pronuncia sobre la financiación?
18. ¿Cuáles son las cuestiones urgentes para el servicio?
- a. ¿Qué cuestiones son problemáticas?
  - b. ¿Es algo financiero/el reconocimiento por parte de los tribunales/policía/abogados, es la consistencia, encontrar a personas adecuadas para hacer de facilitador....?
  - c. ¿Se usan de manera habitual?
19. ¿Qué cosas positivas están pasando ahora en esta área o van a pasar en un futuro no muy lejano?

## Annex II- The laws

### England and Wales

#### Criteria to be eligible for an intermediary

A witness is eligible for the assistance of an intermediary if they satisfy the test in section 16 of the 1999 Act.

#### Youth Justice and Criminal Evidence Act 1999

(1) A witness in criminal proceedings (other than the accused) is eligible for assistance by virtue of this section '(a) if under the age of 17 [now 18] at the time of the hearing; or (b) if the court considers that the quality of evidence given by the witness is likely to be diminished by reason or any circumstances falling within subsection (2)' (section 16 (1) of the 1999 Act).

(2) The circumstances falling within subsection (2) are '(a) that the witness (i) suffers from mental disorder within the meaning of the Mental Health Act 1983; or (ii) otherwise has a significant impairment of intelligence and social functioning; (b) that the witness has a physical disability or is suffering from a physical disorder' (section 16 (2) of the 1999 Act).

(5) Section 16 (5) of the 1999 Act says that 'references to the quality of a witness's evidence are to its quality in terms of completeness, coherence and accuracy; and for this purpose "coherence" refers to a witness's ability in giving evidence to give answers which address the questions put to the witness and can be understood both individually and collectively'.

#### Examination of witness through an intermediary

#### Youth Justice and Criminal Evidence Act 1999

#### Examination of witness through intermediary.

(1) A special measures direction may provide for any examination of the witness (however and wherever conducted) to be conducted through an interpreter or other person approved by the court for the purposes of this section ("an intermediary").

(2) The function of an intermediary is to communicate—

(a) to the witness, questions put to the witness, and

(b) to any person asking such questions, the answers given by the witness in reply to them,

and to explain such questions or answers so far as necessary to enable them to be understood by the witness or person in question.

(3) Any examination of the witness in pursuance of subsection (1) must take place in the presence of such persons as [F1Criminal Procedure Rules] or the direction may provide, but in circumstances in which—

(a) the judge or justices (or both) and legal representatives acting in the proceedings are able to see and hear the examination of the witness and to communicate with the intermediary, and

(b) (except in the case of a video recorded examination) the jury (if there is one) are able to see and hear the examination of the witness.

(4) Where two or more legal representatives are acting for a party to the proceedings, subsection (3)(a) is to be regarded as satisfied in relation to those representatives if at all material times it is satisfied in relation to at least one of them.

(5) A person may not act as an intermediary in a particular case except after making a declaration, in such form as may be prescribed by [F2Criminal Procedure Rules], that he will faithfully perform his function as intermediary.

(6) Subsection (1) does not apply to an interview of the witness which is recorded by means of a video recording with a view to its admission as evidence in chief of the witness; but a special measures direction may provide for such a recording to be admitted under section 27 if the interview was conducted through an intermediary and—

(a) that person complied with subsection (5) before the interview began, and

(b) the court's approval for the purposes of this section is given before the direction is given.

(7) Section 1 of the M1Perjury Act 1911 (perjury) shall apply in relation to a person acting as an intermediary as it applies in relation to a person lawfully sworn as an interpreter in a judicial proceeding; and for this purpose, where a person acts as an intermediary in any proceeding which is not a judicial proceeding for the



purposes of that section, that proceeding shall be taken to be part of the judicial proceeding in which the witness's evidence is given.

## Canada

Canada Evidence Act, RSC 1985 c C-5, s 6

1. If a witness has difficulty communicating by reason of a physical disability, the court may order that the witness be permitted to give evidence by any means that enables the evidence to be intelligible.
2. If a witness with a mental disability is determined under s.16 to have the capacity to give evidence and has difficulty communicating by reason of a disability, the Court may order that the witness be permitted to give evidence by any means that enables the evidence to be intelligible.
3. The Court may conduct an inquiry to determine if the means by which a witness may be permitted to give evidence under subsection (1) or (2) is necessary and reliable.

## **Criminal Code**

Support person — witnesses under 18 or who have a disability

486.1 (1) In any proceedings against an accused, the judge or justice shall, on application of the prosecutor in respect of a witness who is under the age of 18 years or who has a mental or physical disability, or on application of such a witness, order that a support person of the witness' choice be permitted to be present and to be close to the witness while the witness testifies, unless the judge or justice is of the opinion that the order would interfere with the proper administration of justice.

## **Other witnesses**

(2) In any proceedings against an accused, the judge or justice may, on application of the prosecutor in respect of a witness, or on application of a witness, order that a support person of the witness' choice be permitted to be present and to be close to the witness while the witness testifies if the judge or justice is of the opinion that the order would facilitate the giving of a full and candid account by the witness of the acts complained of or would otherwise be in the interest of the proper administration of justice.

## México

### Artículo 136. Consultores técnicos

*“Si por las circunstancias del caso, las partes que intervienen en el procedimiento consideran necesaria la asistencia de un consultor en una ciencia, arte o técnica, así lo plantearán al Órgano jurisdiccional. El consultor técnico podrá acompañar en las audiencias a la parte con quien colabora, para apoyarla técnicamente.”*

## Israel

The Investigation and Testimonial Procedural Act (Accommodations for Persons with Mental or Intellectual Disabilities), initiated and promoted by Bizchut, was enacted by the Israeli Parliament (the Knesset) in 2005 and came into force into 2006. Accommodations provided under the law include:

- Interrogations performed by a professional (psychologist, social worker, special education professional) specially trained in how to communication with persons with specific disabilities
- Utilization of experts to advise the court on the type of disability, its characteristics and implications these could have on the giving of testimony
- Utilization of special devices and alternative and augmentative communication, such as pictures and communication boards
- Giving testimony through closed circuit TV, behind closed doors or in the judge’s chambers and without official attire

Accessibility Chapter of the Equal Rights Law for Persons with Disabilities (2005): This legislation is among the most progressive in the world, stating that all locations and services available to the public must be accessible to people with all disabilities. The second law tackled, among many other things, accessibility of the police and court systems at all levels: accessibility for people with physical or sensory disabilities and mental, intellectual or communication disabilities also covered in earlier legislation. Here, the regulations are very specific, including provision of and for many technical accommodations.

## New Zealand

Evidence Act 2006

Public Act 2006 No 69

### **80 Communication assistance**

(1) A defendant in a criminal proceeding is entitled to communication assistance, in accordance with this section and any regulations made under this Act, to—

- (a) enable the defendant to understand the proceeding; and
- (b) give evidence if the defendant elects to do so.

(2) Communication assistance may be provided to a defendant in a criminal proceeding on the application of the defendant in the proceeding or on the initiative of the Judge.

(3) A witness in a civil or criminal proceeding is entitled to communication assistance in accordance with this section and any regulations made under this Act to enable that witness to give evidence.

(4) Communication assistance may be provided to a witness on the application of the witness or any party to the proceeding or on the initiative of the Judge.

(5) Any statement made in court to a Judge or a witness by a person providing communication assistance must, if known by the person making that statement to be false and intended by that person to be misleading, be treated as perjury for the purposes of [sections 108](#) and [109](#) of the Crimes Act 1961.

### **81 Communication assistance need not be provided in certain circumstances**

(1) Communication assistance need not be provided to a defendant in a criminal proceeding if the Judge considers that the defendant—

- (a) can sufficiently understand the proceeding; and
- (b) if the defendant elects to give evidence, can sufficiently understand questions put orally and can adequately respond to them.

(2) Communication assistance need not be provided to a witness in a civil or a criminal proceeding if the Judge considers that the witness can sufficiently understand questions put orally and can adequately respond to them.

(3) The Judge may direct what kind of communication assistance is to be provided to a defendant or a witness.

## Kenya

### Constitution of Kenya 2010

#### 50. Fair hearing

(7) In the interest of justice, a court may allow an intermediary to assist a complainant or an accused person to communicate with the court.

#### 54. Persons with disabilities

(1) A person with any disability is entitled—

(a) to be treated with dignity and respect and to be addressed and referred to in a manner that is not demeaning;

(b) to access educational institutions and facilities for persons with disabilities that are integrated into society to the extent compatible with the interests of the person;

(c) to reasonable access to all places, public transport and information;

(d) to use Sign language, Braille or other appropriate means of communication; and

(e) to access materials and devices to overcome constraints arising from the person's disability.

(2) The State shall ensure the progressive implementation of the principle that at least five percent of the members of the public in elective and appointive bodies are persons with disabilities.

### **Evidence Act 46 (2014)**

#### 52. Opinions of persons with special knowledge

When the court has to form an opinion as to—

(a) the usages and tenets of any association, body of men or family; or

(b) the constitution and government of any religious or charitable foundation; or

(c) the meaning of words or terms used in particular districts or by particular classes of people,

the opinions of persons having special means of knowledge thereon are admissible.

## CHAPTER V – WITNESSES

### PART I – COMPETENCY OF WITNESSES

#### 125. Competency generally

(1) All persons shall be competent to testify unless the court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, by tender years, extreme old age, disease (whether of body or mind) or any similar cause.

(2) A mentally disordered person or a lunatic is not incompetent to testify unless he is prevented by his condition from understanding the questions put to him and giving rational answers to them.

#### **The Sexual Offences Act (Rules of Court) 2014**

16. (1) The court may direct the making an audio-visual record of the testimony of a vulnerable witness when the facilities for making an audio-visual record are available.

(2) An audio-visual record of the testimony of a vulnerable witness shall form part of the record of the court.

(3) If the court admits an audio-visual record of the testimony of a vulnerable witness, the court may excuse the witness, wholly or in part, from giving evidence in person in later proceedings.

17. The court may admit in evidence a statement of facts-in- issue made by a vulnerable witness to an intermediary if the statement is made in accordance with the provisions of the Evidence Act.

Spain

**Ley 4/2015, del Estatuto de la Víctima**

**Artículo 26 Medidas de protección para menores y personas con discapacidad necesitadas de especial protección**

1. En el caso de las víctimas menores de edad y en el de víctimas con discapacidad necesitadas de especial protección, además de las medidas previstas en el artículo anterior se adoptarán, de acuerdo con lo dispuesto en la [Ley de Enjuiciamiento Criminal](#), las medidas que resulten necesarias para evitar o limitar, en la medida de lo posible, que el desarrollo de la investigación o la celebración del juicio se conviertan en una nueva fuente de perjuicios para la víctima del delito. En particular, serán aplicables las siguientes:

a) Las declaraciones recibidas durante la fase de investigación serán grabadas por medios audiovisuales y podrán ser reproducidas en el juicio en los casos y condiciones determinadas por la [Ley de Enjuiciamiento Criminal](#).

b) La declaración podrá recibirse por medio de expertos.

2. El Fiscal recabará del Juez o Tribunal la designación de un defensor judicial de la víctima, para que la represente en la investigación y en el proceso penal, en los siguientes casos:

a) Cuando valore que los representantes legales de la víctima menor de edad o con capacidad judicialmente modificada tienen con ella un conflicto de intereses, derivado o no del hecho investigado, que no permite confiar en una gestión adecuada de sus intereses en la investigación o en el proceso penal.

b) Cuando el conflicto de intereses a que se refiere la letra a) de este apartado exista con uno de los progenitores y el otro no se encuentre en condiciones de ejercer adecuadamente sus funciones de representación y asistencia de la víctima menor o con capacidad judicialmente modificada.

c) Cuando la víctima menor de edad o con capacidad judicialmente modificada no esté acompañada o se encuentre separada de quienes ejerzan la patria potestad o cargos tutelares.

3. Cuando existan dudas sobre la edad de la víctima y no pueda ser determinada con certeza, se presumirá que se trata de una persona menor de edad, a los efectos de lo dispuesto en esta Ley.

### **Artículo 433 Ley de Enjuiciamiento Criminal:**

#### **Artículo 433**

Al presentarse a declarar, los testigos entregarán al secretario la copia de la cédula de citación.

Los testigos mayores de edad penal prestarán juramento o promesa de decir todo lo que supieren respecto a lo que les fuere preguntado, estando el Juez obligado a informarles, en un lenguaje claro y comprensible, de la obligación que tienen de ser veraces y de la posibilidad de incurrir en un delito de falso testimonio en causa criminal.

Los testigos que, de acuerdo con lo dispuesto en el [Estatuto de la Víctima del Delito](#), tengan la condición de víctimas del delito, podrán hacerse acompañar por su representante legal y por una persona de su elección durante la práctica de estas diligencias, salvo que en este último caso, motivadamente, se resuelva lo contrario por el Juez de Instrucción para garantizar el correcto desarrollo de la misma.

En el caso de los testigos menores de edad o personas con la capacidad judicialmente modificada, el Juez de Instrucción podrá acordar, cuando a la vista de la falta de madurez de la víctima resulte necesario para evitar causarles graves perjuicios, que se les tome declaración mediante la intervención de expertos y con intervención del Ministerio Fiscal. Con esta finalidad, podrá acordarse también que las preguntas se trasladen a la víctima directamente por los expertos o, incluso, excluir o limitar la presencia de las partes en el lugar de la exploración de la víctima. En estos casos, el Juez dispondrá lo necesario para facilitar a las partes la posibilidad de trasladar preguntas o de pedir aclaraciones a la víctima, siempre que ello resulte posible. El Juez ordenará la grabación de la declaración por medios audiovisuales.

## Annex III – Training contents

### Canada

Information obtained from CDAC's website<sup>43</sup>. There are two courses listed, but only one of them leads to the habilitation as communication intermediary.

Following topics are covered through online webinars and live sessions:

*Communication Intermediaries are Speech-Language Pathologists with additional training from CDAC to support people communicating in police, legal and justice situations.*

*Our three, online, recorded webinars address:*

- *Communication Intermediary Service Model*
- *Role of a Communication Intermediary*
- *Practice Principles and Guidelines*
- *The Criminal Justice System*

*Process:*

*Take the three mandatory recorded webinars at your own pace anytime between Oct 1 – 18, 2019. Please allow at least 3 hours for the entire series.*

*On completion, you have the option to:*

*Attend a live Q and A online session on October 22 (noon – 1.15 pm EST) with Joanna Birenbaum, Lawyer, Barbara Collier and Elyse Shumway, Communication Intermediaries.*

*View additional webinars on the CDAC website given by registered Communication Intermediaries in ENGLAND AND WALES.*

*Be listed on the CDAC communication intermediary database.*

*Registration is restricted to qualified Speech-Language Pathologists, working in Canada, who are currently, or were in the past, eligible for membership in an*

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<sup>43</sup> <https://courses.cdacanada.com/courses/communication-intermediary-course-for-speech-language-pathologists/>



*SLP professional association and who have at least two years clinical experience.*

*This webinar series is offered at no cost to participants and is sponsored by the Odette Family Foundation.*

## Mexico

1. Why human rights and persons with disabilities?
  - a. What are human rights
  - b. Characteristics
  - c. Duties
  - d. Dignity
  - e. The right to equality and non-discrimination  
Discrimination on the basis of disability
  - f. Formal equality and substantial equality
  - g. Differential perspective, suspicious categories
  - h. Link between disabilities and human rights
2. Defining disability
  - a. How do we understand disability
  - b. Ableism
  - c. Models and theories of disability
  - d. Social and human rights model of disability
  - e. Diversity within disability
  - f. Mind and disability
3. Origin and impact of the Convention on the Rights of Persons with Disabilities
  - a. Background
  - b. The Independent Living Movement
  - c. The User and Survivors of Psychiatry Movement
  - d. How does it start
  - e. Preparatory work
  - f. Content and scope
4. Understanding legal capacity as a foundation to exercise rights
  - a. What is legal capacity
  - b. Art. 12 of the Convention on the Rights of Persons with Disabilities. International experiences
  - c. Legal harmonization and international good practices
5. Firsthand experiences of persons with disabilities and human rights  
Conversations with experts by experience
6. The right to access to justice: international standards and national law

- a. What is access to justice
  - b. Access to justice according to international standards
  - c. The contribution and vision of the Convention on the rights of persons with disabilities: art. 13
  - d. Constitution and human rights
  - e. Implications of the reform of art. 1 CPEUM
  - f. The legal framework of disability and access to justice
7. The criminal justice system with a human rights perspective
    - a. The criminal justice system: principles, stages, actors.
    - b. criminal justice system and disability: victims and defendants
  8. Thoughts on the justice system and the rights of persons with disabilities: inimputability and security measures.
    - a. Round table with legal actors.
  9. The civil justice: thoughts from a disability perspective
    - a. Legal framework: opportunities and challenges
    - b. Changes in the international sphere
    - c. The state of interdiction
    - d. Other restriction in civil matters
    - e. Current challenges
  10. Arturo Medina before the Committee on the Rights of Persons with Disabilities
    - a. Analysis of Arturo Medina's case and the Committee on the Rights of Persons with Disabilities' resolution
    - b. Discusión with selfadvocates
  11. The legacy of the medical vision and the questioning of capacity in legal processes
    - a. Link between law and psychiatry
    - b. Medicalisation of the justice system
    - c. The role of expert witness' reports
    - d. Challenges
  12. The institutionalization as the system's response
    - a. Definitions
    - b. Total institution

- c. Implications of institutionalization. The way towards deinstitutionalization
- 13. Persons with intellectual and psychosocial disabilities in the prison system
  - a. Persons with disabilities deprived of liberty
  - b. Inimputability and security measures.
  - c. Women and prison
- 14. Persons in situation of homelessness and multiple vulnerabilities.
  - a. The right to the street?
- 15. Violence and disability
  - a. Interseccionalidad and transversality
  - b. Victims with disabilities
  - c. Women with disabilities and specific violence
  - d. Attending to victims with disabilities
- 16. New mental health paradigms
  - a. Human rights standards in mental health care
- 17. New paradigms regarding drug use
  - a. The problematic consumption of substances and the harm reduction
- 18. Sentencing enforcement and social reintegration
- 19. Alternatives to punitivism
- 20. Barriers people with disabilities face and tools to facilitate participation
  - a. Normative, attitudinal, physical and communication barriers
  - b. Stigma
  - c. Tools: accessibility, reasonable accommodation, universal design, procedural accommodation, support products and awareness raising.
- 21. Support systems to exercise legal capacity
  - a. Art. 12 CRPD: From the substitution in decision-making to support in decision-making
  - b. The support system in decision-making and types of support
  - c. Safeguards in the support system
  - d. Differences between support and care
  - e. Professional assistance in disability

- f. International good practices on support for persons with intellectual or psychosocial disabilities.
22. Procedural accommodation and the expert consultant
- a. Origin: international experiences
  - b. National legal framework
  - c. Procedural accommodation according to the type of barrier
  - d. Multidisciplinary approach instead of a bioclinical focus
  - e. Operational principles
  - f. Personal skills and techniques of the consultant
  - g. Ways of building procedural accommodations
23. The assistance in disability to eliminate barriers in treatment and environment
- a. Background in assisting disability for access to justice
  - b. Psychological first aid for critical moments
  - c. Self care
24. Empathic listening workshop in psychosis and other critical situations in mental health
25. Communication as the basis of participation
- a. General concepts of human communication
  - b. Language and speech
  - c. Alternative and augmentative communication
  - d. Information and communication technologies
26. Easy to read workshop
- a. Easy to read and cognitive accessibility
  - b. Easy and simple language
27. Non verbal communication workshop
- a. Sign language and verbal and non verbal communication
28. Simulation lab and role playing
- a. Implementation of procedural accommodation on the basis of real cases where experts have intervened
  - b. Arguments for the intermediary

Total hours: 116

**Bizchut, The Israel Human Rights Center for People with Disabilities****SYLLABUS FOR TEL AVIV UNIVERSITY COURSE**

<b>Subject</b>	<b>Issue being studied</b>	<b>Details</b>	<b>No of hours</b>	<b>Comments</b>
<b>Introduction to Disability</b>	Acquaintance with different kinds of disability	Definitions, distinguishing between disabilities, typical difficulties & challenges. Emphasis on 'invisible' disabilities	4	Including meeting & open discussion with people with intellectual & psychiatric disabilities & autism
	Acquaintance with assessment systems & treatment	Assessment Committees, District Psychiatrist, Center for Assessing Autism in Sheba Hospital, relevant Divisions of Social Affairs Ministry & Health Ministry & relevance of each one in legal procedures	3	
	Changing the way we view persons with disabilities	Emphasis on attitudes common among people involved in criminal matters (for victims & offenders)	3	Meeting with a person with autism who went through legal procedure & conversation about the process and social stigma attached to pwd
	Involvement of pwd in crime	Reasons for involvement of pwd in criminal acts (as victims & offenders), common types of offences	2	
<b>Introduction to Legal Procedures</b>	Acquaintance with criminal procedures	Basic concepts in the criminal process – victim, witness,	3	

		suspect, accused, fit to stand trial, investigation, confrontation, line-up, reconstruction, indictment, evidence, judgement, sentence, detention, imprisonment, community service, rehabilitation		
		Stages in criminal process & central rules that guide this, emphasis on accommodation needs of pwd in each of these stages	6	
	Acquaintance with civil procedures & comparison between this & criminal process	Basic concepts, different courts & characteristics of each one, stages in process, main differences between civil & criminal law, emphasis on accommodation needs of pwd in each of these stages	3	
	Acquaintance with the main agencies in legal procedures	Meetings with the police, district attorneys, public defenders, legal aid, Dept for Special Investigations in Ministry of Social Affairs	6	
<b>Access to Justice – making legal procedures accessible</b>	Major problems with accessibility in legal procedures	Difficulty with understanding the procedures, problems dealing with the legal setting, difficult of abiding by the rules (police, court), typical language problems	6	Including experiential workshop
	Tools for providing accommodations	Justice Facilitators – defining this role	1	
		Reading of assessments & other	4	

		materials, defining accommodation needs of pwd from these resources		
		Accommodations in justice procedures for people with physical or sensory disabilities	2	
		Accommodations in justice procedures for people with intellectual disabilities	3	
		Accommodations for people with psychiatric disabilities	3	
		Accommodations for people with autism	3	
		Accommodations for people with ADD	3	
	Writing an expert opinion	The role of an expert opinion, its structure, its status in court, presentation of expert opinion by justice facilitator in court & justification of its content, opposition to expert opinion	3	Including writing of expert opinion and simulation of presenting it in court
<b>Legislation</b>	The Investigation & Testimony Procedural Act	Thorough study of the Investigation & Testimony Procedural Act (Accommodations for Persons with Mental or Intellectual Disabilities), 2005	5	
	The Equal Rights for Persons with Disabilities Law	Main aspects of the law & their implications for the work of justice facilitators	2	
	Regulations for the Accessibility Chapter of the Equal Rights Law	Differences between original legislation & the regulations	1	
		Thorough study of the chapters that deal with accessibility in investigations, in	4	



		judicial courts & in prisons		
<b>Examination</b>	Analysis of a case	Analysis of a sample case: reading materials, identifying difficulties, constructing accommodations & writing of expert opinion		An examination is preferable but a paper is also possible
<b>Practical Training</b>		Practical experience dealing with 3 real cases with supervision & guidance	30	
<b>TOTAL</b>			<b>100</b>	

## Annex IV: Codes of Ethics & Standards

### Canada

CDAC has shared its Code of Ethics online<sup>44</sup>:

*Code of Ethics and Guideline Practices*

*Communication Intermediaries listed on the CDAC database work independently of CDAC. However, they have all agree to abide by the following Code of Ethics and Guidelines for Professional Practice for Communication Intermediaries.*

*A communication intermediary:*

- *Supports a person with a communication disability to communicate as accurately, completely and authentically as possible within a legal / justice context.*
- *Accepts work for which they are qualified and that they judge to be within their professional competence.*
- *Strives to the best of their ability to enable effective communication between a person with communication disability and the legal / justice professional.*
- *Maintains neutral and impartial at all times.*
- *Does not work as an expert witness, advisor, advocate, mediator, coach, therapist, or personal attendant.*
- *Does not express opinions about the truth of a person's communication or any aspect of the case that could contaminate the evidence or lead to an allegation of rehearsing or coaching the individual.*
- *Removes themselves from assignments where there is any perceived or real conflict of interest.*
- *Treats as confidential all information pertaining to an individual and case.*
- *Respects the authority and judgment of the court.*
- *Works at all times in the presence of a justice professional.*
- *Conducts an assessment of the communication needs of the person and provides a written report with recommendations about required communication supports and aids.*

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<sup>44</sup> <https://www.cdacanada.com/resources/access-to-justice-communication-intermediaries/about/code-of-ethics-and-guideline-practices/>

- *Takes an oath of assurance to the court that they will perform to the best of their skill and ability and be honest in dealings with the court.*
- *Uses communication strategies and aids that are appropriate to the individual's comprehension communication requirements to facilitate understanding of questions without suggesting answers, anticipating the intention of the questioner or altering the meaning of the question.*
- *Notifies CDAC of any criminal investigation or proceedings against them, or any complaint or investigation into their conduct or competence as a speech language pathologist or communication intermediary.*

**A Communication Intermediary does not:**

- *Express an expert opinion on the truth or reliability of what a victim, witness, or accused person has communicated*
- *Comment advise or give an expert opinion on the victim, witness or accused person's competence to give evidence*
- *Work as an expert witness, support person, advocate, counselor or coach for the witness, victim or accused person*

## Annex V – Information letter (NZ)

### **Communication Assistants at Court**

Going to Court usually involves listening to people talking, sometimes for a long time. Sometimes the talking involved can be very complicated. Lots of long and complicated words are often used at court.

Sometimes the Judge asks a Communication Assistant to help make sure that people can understand what is being said in court and can say what they need to say.

### **What do Communication Assistants do?**

Communication Assistants are usually speech-language therapists. Their work is about communication, talking, listening and understanding what others are saying.



### **Who asks a Communication Assistant to see someone?**

The Judge asks a Communication Assistant to find out what might be easy and what might be tricky for someone when they are listening and trying to understand and explain information. The Communication Assistant writes a report for the Court about what they think will help.

The Communication Assistant is neutral and impartial which means that they are not on anyone's side. They don't work for the Police or for anyone's lawyers. They don't give any advice about legal things. Their job is only to help everyone involved with the court communicate with the person

### What do Communication Assistants do when they do an assessment?



A Communication Assistant's job is to find out 2 things:

#### 1) *How the person is getting on with communication:*

- Listening and concentrating
- Telling people ideas, answering questions and explaining things
- Understanding what others are saying
- Reading and writing
- Knowing the words that are used in court and other meetings



#### 2) *What might help the person with communication in court*

### What will happen when the Communication Assistant does their assessment?

The Communication Assistant does some different talking and listening tasks. It takes about 1 – 2 hours. They have breaks in between activities.

Short tasks + breaks

They do NOT have to discuss information about why the person has to go to Court. Someone else will be there too to listen to check there is no

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[contact@talkingtroublenz.org](mailto:contact@talkingtroublenz.org) 021 103 4842

talking about the charges. An interpreter might be there too if the person speaks English and another language.

~~Why the person have to go to court~~

→ not talking about that

The Communication Assistant writes a report for the Judge about the person's communication and what will help them when they need to listen, understand and answer questions in court or when talking about legal things.




The Communication Assistant will not talk about what the person tells them with anyone else. They keep information safely.

**Can the Communication Assistant come to court to assist?**

Yes, the Judge might ask the Communication Assistant to come to the court with the person to make sure the questions make sense and that the person can say what they want to say.

## Annex VI: Template of a Communication Passport<sup>45</sup>



# \_\_\_\_\_’s Communication Passport

These recommendations were written by the young person and \_\_\_\_\_ (profession/role \_\_\_\_\_)

<b>Things that are annoying</b>	<b>Things that help</b>

Young person’s full name:  
Date:Professional’s name and role:

## Communication Passports



These templates can be used by anyone who wants to help someone create a one page Communication Passport.

Our team of speech-language therapists at Talking Trouble Aotearoa NZ often create these with a person so they can have their say about what helps/gets in the way of communicating, and gives a quick and easy guide for others to know how to help. They can choose who needs to see the Communication Passport and what goes in it. We’ve known passports to be given to people before important meetings so they can understand what to do to help, or when transitioning to new places or services. The Communication Passport can be updated when new information comes to light or things change.

We sometimes use a Talking Mat <https://www.talkingmats.com/> first to help someone reflect on their own communication skills, and what they’d like people to do to support their communication. Sometimes we just open a blank document and start a list about ‘things that are annoying’ and ‘things that help’. There isn’t one way to do these. They can be personalised with colour, decoration and detail, and can be any size and can be laminated. We often make them in Powerpoint, but they can be handwritten or typed. Multiple copies can be useful so everyone who needs the information can get a copy. We like to try to have the person’s own words included. Anyone can help someone put together a Communication Passport – it doesn’t have to be a speech-language therapist.

The example passports we’ve included here have had all identifying information has been removed or changed.

You are welcome to use our templates and we’d love to know how you use them and what templates work best in your setting. You can find other materials you might find handy on our website under resources. <http://talkingtroublenz.org/links-and-resources/>

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<https://twitter.com/TalkTroubleNZ> <https://www.facebook.com/talkingtroubleaotearoanz/>

<sup>45</sup> Obtained from <http://talkingtroublenz.org/links-and-resources/attachment/ttanz-communication-passport-templates-for-website/>



These recommendations were written by XXXXXXXXXXXX and XXXXXXXXXXXX

**Things you need to know**

**Things that are tricky**

**Things that help**



**!! You need to know... !!**

**My Communication Passport**

My name is:

This is about me  
Please read!

This will help you to  
get to know me and  
how I communicate

**You can help me to communicate**

Please do...

Please don't...

**You can help me to *understand*  
more easily by...**

**I might need extra help with...**

**You can help me to *use my*  
*language* more easily by...**



Young person's full name:

Professional's name and role:

Date:



This communication passport was made by XXXXXXXXX and XXXXXXXXXXXXX on ...

### Things you need to know

I love Hip Hop

Sometimes I 'lose it' and want to leave. You'll know because I start to swear and fiddle with my clothes. Thinking about, and talking about my big brother calms me down. Perhaps there could be photos of him nearby.

#### Things that are tricky

- Listening when people don't explain things & listening to boring stuff
- Making decisions – "got my boyfriend on one side and my family on the other wanting me to be safe...don't always know what to do"
- Finding the words I need to say what I want to say is hard. When this happens I just change the subject or say it doesn't matter

#### Things that help me

- Say less. Stick to the key messages you need me to understand. Pause between phrases. Explain what you mean. Check that I've understood you before you say anything else
- Write things down in simple lists, flow diagrams or headings to help me keep paying attention and remember
- Build my vocabulary – word maps, explain new/tricky words



This communication passport was made by XXXXXXXXX and XXXXXXXXXXXXX on .....

### Things you need to know

I enjoy talking but I choose when I talk and when I don't  
I don't like meeting new people

#### Things that are tricky

- Understanding, and remembering what people say
- Knowing the words for the stuff I want to talk about
- Making decisions
- Explaining things
- Staying on topic
- Reading body language
- Asking questions & asking for help

#### Things that help me

- Write it down, talk slowly... I'm not a fast thinker
- Build my vocabulary – word maps, explain new/tricky words
- Signpost topics so that I can see what topic you want me to stay on
- Use Comic Strip Conversations to help me give you the best information I can
- Check my understanding of the stuff we have just talked about





## Jimmy **works best** with people who

- ✓ Don't try to 'push' or 'teach' too much
- ✓ Pick up on what he's doing and where's at
- ✓ Praise him for what he does
- ✓ Can make things that are tricky into something enjoyable

# Jimmy Jones

## Communication Passport March 2019

This information about Jimmy has been put together during a conversation between Jimmy, his Dad and a speech-language therapist. It is designed to give an overview of what helps and gets in the way for Jimmy.

## Stuff Jimmy loves

Hanging out with mates

Sometimes – gym, soccer, fishing

## Stuff that makes Jimmy annoyed

- ✗ Talking for ages in a room
- ✗ Lots of talking
- ✗ Waiting
- ✗ Talking about me when I'm not there
- ✗ People reading stuff out for me...takes too long...just let me read it to myself

## How to **help**

- ✓ Don't talk too much
- ✓ Make it **quick**
- ✓ Get it all done and get on with it
- ✓ Keep talking and reading **short** and **easy**.

Signs listening and understanding are tricky

## You might notice

Fidgeting  
Eyes wandering off  
Jimmy shuts off  
Wants to gap it  
Stands up, covers eyes, paces, swears

## Making complicated things easier

Work out the most important things Jimmy needs to know – keep it **short, simple** and **quick**

**Draw it**  
Write **key words**