

Court accommodations for persons with severe communication disabilities:

A legal scoping review

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Abstract

For persons with severe communication disabilities to be given access to justice, transformative equality and court accommodations should be made a global human rights priority as articulated in Article 13 of the Convention on the Rights of Persons with Disabilities. However, these individuals, face significant barriers when attempting to access the court system. Currently, there are numerous concerns about what accommodations should be afforded these individuals to ensure transformative equality in court. The aim of the current legal scoping review was to identify the range of documented court accommodations internationally that will enable persons with severe communication disabilities to participate equally and without discrimination in court. As the research aim is placed at the nexus of social sciences and law, a rigorous new 5-step framework were developed. Search terms were entered into eight databases following the Preferred Reporting Items for Systematic Review and Meta-Analysis guidelines in order to ensure a worldwide sample of data. From the included 54 publications, a total of 302 accommodations were identified. Using an inductive coding approach, these accommodations were categorized according to the four components of the procedural justice framework: 62% of the accommodations referred to the ‘Respect’ component; 27,40% referred to ‘Voice’; 19,47% to ‘Understanding’; and 15,51% to ‘Neutrality.’ Accommodations with the highest frequency count were the use of intermediaries, permitting augmentative and alternative communication, ensuring appropriate and proper questioning strategies, allowing frequent breaks, including CCTV in court, and using expert witnesses.

Keywords: accommodations, court, persons with severe communication disabilities, law, witness, defendant, procedural justice

Background

Globally, persons with severe communication disabilities are protected by the Convention on the Rights of Persons with Disabilities (CRPD), the first comprehensive human rights treaty of the twenty-first century (United Nations, 2006). The CRPD is also one of the most widely ratified United Nations (UN) treaties, as it has been signed by 164 countries and ratified by 180 countries (United Nations, 2006). Article 13 of the CRPD entitled *Access to Justice* specifically addresses human rights associated with the courts. Article 13.1 states that “all States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings” (United Nations, 2006, p.11).

Equality and non-discrimination are two of the pillars on which the CRPD is built (United Nations, 2006). Equality frameworks can be divided into three different models: formal equality, which is the equal treatment of all people as a matter of law, substantive equality, which involves the measures to equalize the enjoyment of human rights; and transformative equality, which comprises the measures to remove the causes of inequality (Lord & Brown, 2011; Minkowitz, 2006; White et al., 2020). Transformative equality is of particular relevance when identifying accommodations in court for all persons with disability – including those with severe communication disabilities – to allow them to participate equally in court, without barriers and discrimination (White et al., 2020). Measures to ensure transformative equality can demand positive action to ensure inclusion and participation of persons with severe communication disabilities. These persons have been subjected to historic discrimination and isolation through physical, social and attitudinal barriers, as well as through failure to make appropriate accommodations in all domains of life – specifically accommodations in court (Lord & Brown, 2011).

In spite of the existing international legal framework, persons with disabilities, especially those with severe communication disabilities, continue to face significant barriers when attempting to access the criminal justice system, and specifically the courts. For example, their cases often don't proceed to court, and when it does, they experience difficulty with understanding the complex maze of rules and practices that make up the court proceedings, with testifying and

giving evidence and their credibility as complainants is questioned (Bornman et al., 2016; Dagut & Morgan, 2017; Fitzsimons, 2016; Marinos & Whittingham, 2019; Spaan & Kaal, 2019).

Examples of these barriers include the limited knowledge or training of legal practitioners with regard to persons with communication disabilities (Archer & Hurley, 2013; Doak & Doak, 2017), lack of resources required by persons with disabilities (e.g. augmentative and alternative communication [AAC] methods) or access to sign language interpreters (Flynn, 2016b), and barriers related to policy and law (e.g. witness competency test (Pillay, 2012a). These barriers equally affect victims and defendants with disabilities (Salekin et al., 2010).

An additional barrier that persons with disabilities face is limited access to education, which has a direct impact on the necessary skills that are required to access legal or court documents (Dowse et al., 2014). A publication by the United Nations Educational, Scientific and Cultural Organization (UNESCO) Institute for Statistics (2018) confirmed that, on average, persons with disabilities are less likely to have access to education than their peers without disabilities. This can result in numerous disadvantages, for example lack of comprehension skills, negotiation skills, judgement and reasoning, as well as limited literacy skills (Dowse et al., 2014). The disadvantages associated with limited literacy (to mention a few) include difficulty with or inability to read or/and understand legal documents and write down information or statements for use in court proceedings (UNESCO & UIS, 2018).

Persons with severe communication disabilities are a heterogeneous group and can include individuals with profound physical, intellectual, sensory or socio-emotional disabilities, but who share a common characteristic: an inability to rely on spoken language to make their needs and wants known (Hourcade et al., 2004; O'Leary & Feely, 2018). Due to the extent of their disabilities, these individuals typically require highly specialized education and social, psychological and medical services in order to maximize their full potential for meaningful participation in society (Hourcade et al., 2004). Examples of medical conditions or disorders that persons with severe communication disabilities could be diagnosed with include cerebral palsy, autism spectrum disorder, intellectual disability (e.g. Down Syndrome) and acquired impairments such as traumatic brain injury (Beukelman & Mirinda, 2013).

Persons with severe communication disabilities experience receptive (understanding) and expressive language difficulties, which affect both spoken and written communication. As a

result, they may face additional barriers when attempting to access the court system (Flynn, 2016a, 2016b; White, Bornman, & Johnson, 2015). For example, a person with receptive language difficulties is likely to experience difficulty in understanding legal terminology and vocabulary, instructions, legal processes and written documents (O’Leary & Feely, 2018), whereas a person with expressive language difficulties is likely to find the (oral) interaction with legal professionals challenging (Benedet & Grant, 2012). This could have definite implications for them when accessing court, especially in countries where witnesses are required to testify *viva voce* in court, i.e. orally (Kilcommins, Edwards & Harold, 2013; White & Msipa, 2018).

Globally, the discrimination against persons with disabilities is recognised as a violation of their inherent dignity and worth. This publication highlights those human rights enjoyed by persons with severe communication disabilities, specifically in relation to the human right to access justice in the court system. Despite the recognition of this right under the auspices of the United Nations, with particular emphasis on the CRPD, persons with severe communication disabilities, their families and legal professionals still face uncertainty as to what court accommodations should be afforded to these individuals when accessing the court system (Edwards, Harold, & Kilcommins, 2012). Therefore, the aim of this legal scoping review is to identify the range of specific court accommodations that have been documented in the literature to enable persons with severe communication disabilities across the world to participate effectively, equally and without discrimination in court.

Method

In order to answer the research question, *What accommodations have been afforded to persons with severe communication disabilities across the world to enable them to participate equally in court without any form of discrimination?*, a systematic review of the literature was conducted (Gewurtz et al., 2016). As the research question is placed at the nexus of social sciences and law, a new framework and subsequent methodology was developed (Weaver et al., 2002). The six-step scoping review framework, developed by Arksey and O’Malley(2005) and refined by the Joanna Briggs Institute (2015), was combined with the four-step process for conducting a systematic review of legal doctrine developed by Baude, Chilton and Malani (2017). The result was the novel legal scoping review framework which is intended to document existing evidence of a specific legal topic by describing what has been written about the topic, and how has it been

examined to date. A legal scoping review can also be used to provide the necessary evidence to support a central claim, for example, the type and range of court accommodations that should be provided to persons with severe communication disabilities and assist courts by lending credibility to the process and reducing any perception of bias about their decisions (Baude et al., 2017) (see Table 1).

Table 1. *Development of a new methodology for conducting a legal scoping review*

Steps taken in a scoping review framework (Arksey & O'Malley, 2005; The Joanna Briggs Institute, 2015)	Steps taken in a systematic review of legal doctrine (Baude, Chilton, & Malani, 2017)	Steps proposed in the new legal scoping review framework
1. Identify a research question	1. State the question	1. Identify and state the research question
2. Identify studies	2. Define the sample of cases	2. Identify and define the studies related to legal cases, laws and treaties
3. Make study selection		3. Make study selection
4. Chart the data	3. Explain the weighting	4. Chart and weigh the data (e.g. in terms of recency, citation frequency, precedential status)
5. Collate, summarize and report the results	4. Conduct the analysis and state the conclusion	5. Conduct the analysis and report the results
6. Consult with stakeholders		

Table 1 shows that the new legal scoping review framework proposes a 5-step process. Most noticeable is Step 4, which postulates that a weighting be given to a study or case to increase its value in the subsequent synthesis of evidence across studies and cases (using a variety of considerations, for example recency, citation frequency or precedential status).

Step 1. Identify and state the research question

Within a legal scoping review, the research question needs to be clearly articulated, preferably using the PIO (Population, Intervention, Outcome) framework (Aslam & Emmanuel, 2010). This framework guides the scope of the research and facilitates the identification of relevant information as shown in Table 2. Therefore, the main research question, *What accommodations*

(Intervention) *have been afforded to persons with severe communication disabilities across the world* (Population) *to enable them to participate equally in court without any form of discrimination* (Outcome)? was supplemented by three specific sub-questions related to this population, irrespective of the country in which they reside:

- 1) Which sources typically document court accommodations for persons with severe communication disabilities?
- 2) Who are the typical participants who have benefited from court accommodations? (What is their role in court, e.g. witness, defendant? What types of disabilities are included? What is the age and gender of the persons focused on?)
- 3) What is the nature of these accommodations? (In what countries are they provided? Do they cite international or national law? How many specific cases do they mention? What types of court proceedings, e.g. criminal, civil, family, are most frequently mentioned? Which procedural justice component is addressed?)

Step 2. Identify and define the studies and legal cases

Clear and replicable processes were set at the start to increase reliability of the data. A four-stage, systematic, comprehensive and sensitive search strategy was adopted, which aimed to identify as much diverse and potentially relevant material as possible (Orellana et al., 2018). First, the social sciences and law librarians of the authors' affiliated universities were requested to assist with the searches, and to supplement these with a hand search of law books and journals. Second, a list of databases relevant to the two disciplines, social sciences and law, was compiled with the support of the librarians from both disciplines worldwide sample of data. The databases that were identified and selected in the social science discipline were PubMed, CINAHL, the Cochrane Library and PsycInfo, while in the law discipline the databases selected were Hein Online, Lexis Nexis, Sabinet and Saflii. Third, a comprehensive and systematic literature search was done in the selected social science and law databases and libraries. Fourth, alerts were set up with Google Scholar to ensure that new literature would be identified and captured.

Step 3. Make study selection

This step is dependent on the specific focus of the study. For the current study, we included all publications that were available in English, had been published between 2006 (adoption of the CRPD) and December 2019, and focused on court accommodations for persons with disabilities (irrespective of their role as victims or as defendants). As we reviewed the abstracts, we engaged in an iterative process of refining our inclusion and exclusion criteria (see Table 2), based on the PIO framework mentioned earlier.

Table 2. *Eligibility criteria based on the PIO framework for including studies in this scoping review*

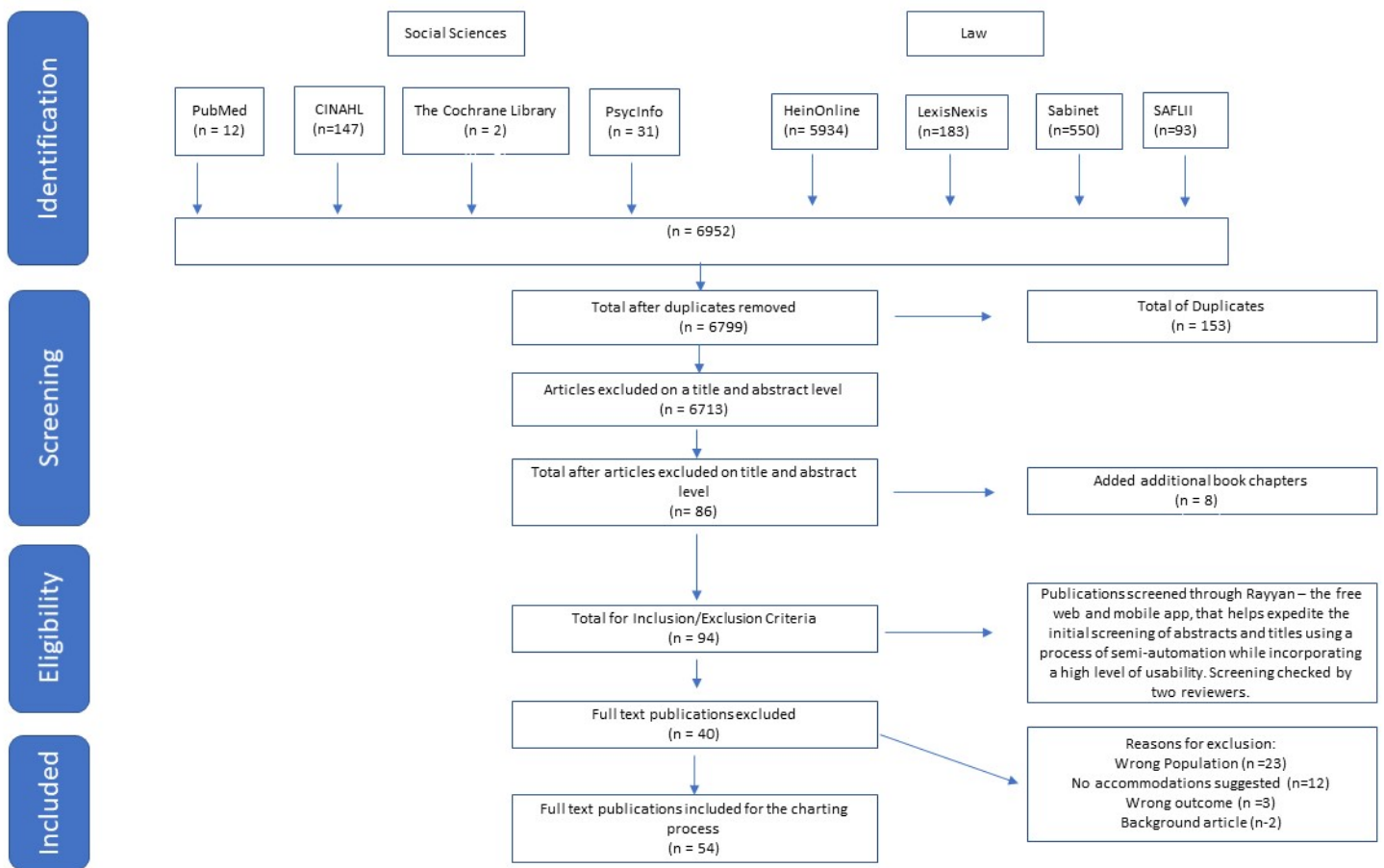
PIO	Inclusion criteria	Exclusion criteria
P	Population: Persons with severe communication disabilities who have either been victims or alleged perpetrators of crime	
	Persons = children and adults	Medical conditions – cardiovascular diseases, AIDS/HIV, etc.
	Persons with complex communication needs	Mental health illness that is treated with medication and defined as “... health conditions involving changes in emotion, thinking or behaviour (or a combination of these). Mental illnesses are associated with distress and/or problems functioning in social, work or family activities (e.g. major depressive disorder, schizophrenia and bipolar disorder).
	Persons with little or no functional speech	
	Persons with intellectual or cognitive disabilities (can have mental illness – dual diagnosis)	
	Victims of crime	
	Witnesses	
	Persons who are deaf	Mental illness is treatable. The vast majority of individuals with mental illness continue to function in their daily lives.” (The American Psychiatric Association, 2020).
	Persons who are visually impaired	
	Persons with sensory impairments	
	Persons with autism spectrum disorder (ASD)	The focus of the current study is on persons who have severe communication disabilities, and hence publications that reported on mental illness, mental disability and intellectual disability in the same publication were included.
	Perpetrators with disabilities	
	Accused with disabilities	
I	Intervention: Court accommodations relevant to communication disability	
	Strategies, communication boards, intermediaries, court preparation officers, training, communication accommodations.	Publications that only described barriers without referring to accommodations, were excluded. Interventions and strategies that did not focus on court accommodations for persons with communication disabilities, e.g. attitudinal training of court officers, strategies and accommodations used at the police station, etc.
	Physical accommodations, wheelchair access, child-friendly rooms, separate testifying rooms.	
O	Outcome: Access to justice and participation in court	

Participation in court proceedings Access to justice	Accommodations that did not focus on court, but on legal processes prior to court (e.g. interpreters used at police stations, or during the forensic examination) or after court (e.g. during detention).
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Figure 1 gives an outline of the study selection process in accordance with the Preferred Reporting Items for Systematic Review and Meta-Analyses (PRISMA) statement (Moher, Liberati, Tetzlaff, Altman & The PRISMA Group, 2009). Publications were screened through Rayyan, a free web and mobile app that expedited the initial screening of abstracts and titles. Rayyan uses a process of semi-automation while incorporating a high level of usability (Ouzzani et al., 2016).

Figure 1.

PRISMA study selection flow diagram



Step 4. Chart and weigh the data

The charting and weighting process involved all four authors. The first author used the data extraction tool to extract data from each publication. This included general information about the author, data and source of publication, descriptive information about the participants as well as information pertaining to the accommodations. This tool contained working definitions for all constructs measured (please see the footnotes that follow Table 4) and data was captured in an Excel spreadsheet.

Regarding participants, the CRPD describes disability as an aspect of human diversity and states that disability is an evolving concept *ipso facto*, which implies that there is not a conclusive or exhaustive list of disability. In other words, disability is not regarded as a medical or individual matter (as per the medical model of disability) but rather as the result of an outcome of interaction between the impairment and the environment (social model of disability) (Fitzsimons, 2016). Since disability-based barriers emanate from a combination of social, cultural, attitudinal and physical obstacles in the environment that persons with disabilities have to face, the need and role of accommodations must be highlighted (Fitzsimons, 2016). Bearing this in mind, the current study opted to use a broad classification of disability types that could result in severe communication disability. The groups include mental or intellectual disability (an impairment in intellectual and adaptive functions such as reasoning, problem solving and abstract thinking); hearing disability (hearing loss that prevents an individual from totally receiving sounds through the ear); visual disability (a functional limitation of the vision system, which cannot be recovered by correction such as glasses or contact lenses); communication disability (a deficit in language, speech, and communication); physical disability (a permanent and substantial limit to the individual's physical ability or motor skills); autism spectrum disorder (a persistent deficit in social communication and social interaction across multiple contexts); and multiple disabilities (any combination of any of the above-mentioned impairments) (Bianquin & Bulgarelli, 2016). This classification has been used purely for descriptive purposes.

As this study focuses mostly on criminal law (there were eight publications that mentioned other law for example family, civil etc.), witness includes the term victim, as the victim will participate in the justice system as a witness (Beckene et al., 2017). The term defendant will include the accused, offender and perpetrator. Child is defined as an individual below the age of eighteen

years (The Office of the High Commissioner for Human Rights, 1989) and adult as an individual of 18 years or older.

After the extracted data had been entered in the Excel spreadsheet, it was checked for reliability by the second, third and fourth authors independently. Results were then compared, and inter-rater reliability was calculated. Discrepancies were noted and revised when necessary. The following formula was used to calculate agreement: $\frac{\text{number of agreements}}{\text{number of agreements} + \text{disagreements}} \times \frac{100}{1}$ (Hallgren, 2012). A 97%-level of agreement was reached.

For the purposes of the current study, weighting was based on the frequency with which each accommodation had been reported. Each accommodation was counted in terms of frequency and ranked from highest (i.e. mentioned most frequently) to lowest.

Step 5. Conduct the analysis and report the results

An inductive coding approach was used to identify, synthesize and classify themes related to court accommodations (Fereday & Muir-Cochrane, 2006). All four authors engaged in this iterative process of reflecting on emerging themes and categories by reviewing publications and coming together to summarize key themes in the data. Points of disagreement were discussed in online team meetings until consensus was reached. Thereafter, the court accommodations were classified using the procedural justice framework that refers to the perceived fairness of the procedures and interpersonal communications that witnesses or defendants experience in court (Lagratta, 2014; Tyler, 2008). Research on procedural justice suggested four components (Dorfman, 2017; Ellem & Richards, 2018; Lagratta, 2014; Tyler, 2008; Tyler, Goff, & MacCoun, 2015) which, for the purpose of this study, were conceptualized as follows:

- i) Voice: The perception of a person with severe communication disabilities that they have a voice that is being heard. The focus is on the process that will assist the individual with expressive communication and language.
- ii) Respect: The perception of a person with severe communication disabilities that legal professionals will treat them with respect and dignity, thereby implying courtesy towards and recognition of the individual and their disability. Respect includes environmental adaptations and accommodations that make up the physical, social and attitudinal environment (White, Bornman, & Johnson, 2018).

- iii) Neutrality and fairness: The legal practitioners use objective, legitimate criteria to make decisions and apply fairness in decisions, and they do not allow personal bias or views to influence their choice or opinion.
 - iv) Trustworthiness and understanding: The comprehension of the person with severe communication disabilities of the language used in court and the way in which decisions are made. The focus is on the process that will assist the person's receptive language and whether the person feels that the motives of the legal practitioners are trustworthy.
- Descriptive characteristics of included publications (n = 54) are summarized in Table 4.

Table 4. Descriptive characteristics of the included publications (in alphabetical order)

No	General information			Participants			Accommodations			Procedural Justice Component			
	Author(s) & year	Type of source	Court role	Type of disability	Gender	Age	Country	International/ National law	Specific cases	Voice (n=83)	Respect (n=114)	Neutrality (n=47)	Understanding (n=58)
1	Backstrom (2016)	Law journal article	Defendant; Witness	-	-	-	US	National	-	<ul style="list-style-type: none"> • Use AAC ¹ • Use a sign language interpreter ² • Allow communication enhancements 	<ul style="list-style-type: none"> • Ensure physical accessibility ³ • Allow support person ⁴ • Allow support animal • Allow stuffed animal • Modify the court-room setup 		<ul style="list-style-type: none"> • Use modified oath • Allow leading questions
2	Beckene, Forrester-Jones & Murphy (2017)	Social science journal article	Witness	Mental; Intellectual	Female	Adult	UK	National	-	<ul style="list-style-type: none"> • Use an intermediary ⁵ 	<ul style="list-style-type: none"> • Testify behind a screen • Testify via live video/television link • Conduct trial <i>in camera</i> 	<ul style="list-style-type: none"> • Remove official attire • Allow video/pre-recorded evidence • Use video to cross-examine prior to trial 	

¹ Alternative and augmentative communication (AAC): Strategies and techniques used by individuals with severe communication disabilities who cannot rely on spoken language alone for communication purposes, e.g. persons with cerebral palsy or intellectual disability. AAC is commonly divided into unaided communication (i.e. systems that rely on one’s body to convey messages such as natural gestures, body language, facial expressions and sign language) and aided communication (i.e. systems that require the use of tools or equipment in addition to one’s body, for instance low-technology options such as paper-and-pencil options, communication books or boards, and high-technology options such as speech-generating devices that produce voice output). Both low- and high-technology communication devices allow the person to use either picture-based symbols, alphabet letters, Braille or Morse code to create messages (White et al., 2020).

² Sign language interpreter: Individuals who are qualified in the sign language that the witness/defendant uses (Davidson, Kovacevic, Cave, Hart, & Dark, 2015). It should be noted that different countries use different sign languages, e.g. American Sign Language (ASL) is used in the US and British Sign Language (BSL) in the UK.

³ Physical accessibility: Physical access to the courts, e.g. wheelchair ramps and lifts, stairs to and inside the courthouse, adapted witness chairs and jury boxes (Ortoleva, 2011).

⁴ Support person: Individual of the witness’s choice, although the support person cannot be a witness in the proceedings him/herself, and is only allowed to accompany the witness (Benedet & Grant, 2012).

⁵ Intermediary: Fulfills the role of communicating with the witness, putting questions to the witness as asked by the judge or attorneys, and voicing the answers given by the witness in reply to these questions. Additionally, the intermediary explains the questions or answers in as far as necessary to enable the witness to understand/grasp their meaning (Benedet & Grant, 2012). Therefore, an intermediary also assists the witness with understanding (receptive language), which is part of the ‘understanding’ procedural justice component. In the current study, intermediaries were classified only under the ‘voice’ component to emphasize the need of assisting individuals with severe communication disabilities to tell their version of events.

No	General information			Participants			Accommodations			Procedural Justice Component			
	Author(s) & year	Type of source	Court role	Type of disability	Gender	Age	Country	International/ National law	Specific cases	Voice (n=83)	Respect (n=114)	Neutrality (n=47)	Understanding (n=58)
3	Benedet & Grant (2012)	Law journal article	Witness	Mental; Intellectual; Physical; Multiple	Female	Adult	Australia Canada New Zealand South Africa UK	National	15	<ul style="list-style-type: none"> • Use an intermediary • Use a sign language interpreter 	<ul style="list-style-type: none"> • Allow support person • Testify behind a screen • Testify via live video/television link • Testify outside court- room • Use CCTV in court 	<ul style="list-style-type: none"> • Allow video/pre-recorded evidence 	<ul style="list-style-type: none"> • Allow judicial officers' intervention
4	BenZeev, Lerner & Klein (2014)	Book chapter	Witness	Mental; Intellectual; Physical; Communication	Female Male	Child	Israel	International National	2	<ul style="list-style-type: none"> • Involve a special investigator ⁶ • Use AAC • Use AAC toolkit ⁷ • Use an interpreter ⁸ 	<ul style="list-style-type: none"> • Conduct trial <i>in camera</i> • Testify behind a screen • Testify outside the courtroom • Allow frequent breaks • Testify not on the witness stand • Testify in the judge's chambers 	<ul style="list-style-type: none"> • Remove official attire • Involve an expert professional ⁹ • Involve an expert witness ¹⁰ 	<ul style="list-style-type: none"> • Use facilitator (to simplify language, give meaning and to support) • Allow linguistic simplification ¹¹

⁶ Special investigator: An expert with a professional background in psychology, social work, criminology, rehabilitation or special education, and who specializes in investigating persons with intellectual disabilities. This role includes preparing recommendations with regard to accommodations in the taking of court testimony, adapting the surroundings in the investigation room – and later on in court – to the needs and abilities of the suspect or witness, as well as selecting additional assistive devices meant to assist in the coherent investigation of the person with disabilities (BenZeev, Lerner, & Klein, 2014).

⁷ AAC Toolkit: A communication toolkit that includes both low and high technology aided communication systems (as described earlier) and user manuals (BenZeev et al., 2014).

⁸ Interpreter: An individual who assists the individual with severe communication disability if he/she cannot understand or speak the language used in court (Ortoleva, 2011).

⁹ Expert professional: A professional who has assessed and evaluated the individual (witness or defendant) and made a diagnosis and who will testify in court regarding the results/findings of their evaluation (Johnson, Blume, Paavola, & Vann, 2017).

¹⁰ Expert witness: A professional who informs and educates the court on their area of expertise (this includes a wide variety of professional backgrounds), educates the court about disability, explains how disability is properly assessed, and addresses and dispels common misconceptions and stereotypes (Johnson et al., 2017).

¹¹ Linguistic simplification: The process of editing and processing written and spoken information to ensure that it is simple, clear and easy to understand (BenZeev et al., 2014).

No	General information			Participants			Accommodations			Procedural Justice Component			
	Author(s) & year	Type of source	Court role	Type of disability	Gender	Age	Country	International/ National law	Specific cases	Voice (n=83)	Respect (n=114)	Neutrality (n=47)	Understanding (n=58)
											<ul style="list-style-type: none"> • Testify without the defendant present in the courtroom, and only the defense attorney present 		
5	Berryessa (2017)	Social science Journal article	Defendant; Witness	Autism spectrum disorder (ASD)	-	-	US	National	-		-	<ul style="list-style-type: none"> • Involve an expert witness 	-
6	Bornman (2014)	Book chapter	Witness	Communication	-	-	South Africa	International National	-	<ul style="list-style-type: none"> • Use an intermediary • Use AAC • Use anatomical dolls • Obtain a victim impact statement ¹² 	<ul style="list-style-type: none"> • Testify outside the courtroom • Develop specialized services for persons who use AAC • Conduct a functional assessment of individual 	<ul style="list-style-type: none"> • Involve an expert witness • Film proceedings to review the communication 	<ul style="list-style-type: none"> • Allow linguistic simplification • Use appropriate and proper questioning strategies
7	Bryen (2014)	Book chapter	Witness	Communication	-	-	US	International National	1	<ul style="list-style-type: none"> • Use AAC • Use an intermediary 	-	-	-
8	Bryen & Wickman (2014)	Book chapter	Witness	Physical; Communication Autism spectrum disorder (ASD)	Female	Child Adult	US	National	7	<ul style="list-style-type: none"> • Use AAC • Use interpreter • Use sign language interpreter • Use facilitated communication ¹³ 	-	-	<ul style="list-style-type: none"> • Allow leading questions
9	Carter & Boezaart (2016)	Law journal article	Witness	-	-	Child	South Africa	International National	-	<ul style="list-style-type: none"> • Use an intermediary 	<ul style="list-style-type: none"> • Ensure physical accessibility • Use CCTV in court • Conduct informal court proceedings in a 	-	<ul style="list-style-type: none"> • Use appropriate and proper

¹² Victim impact statement: Statement that is received at the sentencing stage and is used to describe the impact of the offence on the victim (or on the family members if the victim has died as a result of the offence) (Edwards et al., 2012).

¹³ Questioning strategies that are clear, brief, short and simple (White & Msipa, 2018).

No	General information			Participants			Accommodations			Procedural Justice Component			
	Author(s) & year	Type of source	Court role	Type of disability	Gender	Age	Country	International/ National law	Specific cases	Voice (n=83)	Respect (n=114)	Neutrality (n=47)	Understanding (n=58)
											relaxed and non-adversarial environment		questioning strategies ¹⁴
10	Chester (2018)	Social science journal article	Defendant	Mental; Intellectual	-	-	UK	National	-	• Use an intermediary	-	-	-
11	Cooper, Dando, Ormerod, Mattison, Marchant, Milne & Bull (2018)	Law journal article	Defendant; Witness	Mental; Intellectual; Physical; Autism spectrum disorder (ASD)	-	-	UK	National	-	• Use an intermediary	-	-	• Use appropriate and proper questioning strategies • Disallow tag questions • Disallow leading questions
12	Covarrubias (2008)	Law journal article	Defendant	Mental; Intellectual	-	-	US	National	-	-	-	• Use an expert professional	-
13	Cremin (2016)	Social science journal article	Defendant; Witness	-	-	-	Argentina, Azerbaijan, China, Costa Rica, Croatia, Dominican Republic, Ecuador, Hungary, Mexico, Peru, Turkmenistan	International National	-	• Use AAC • Use a sign language interpreter	• Ensure physical accessibility • Allow support person • Allow support animal • Conduct trial <i>in camera</i> • Allow enough and extra time to testify • Allow frequent breaks • Allow materials in braille and other accessible formats	• Remove official attire • Use an expert professional • Use an expert witness • Establish court procedures to enable a process for requesting accommodations	• Allow linguistic simplification • Use appropriate and proper questioning strategies • Provide information about the proceedings in plain language, braille, accessible and child-friendly formats
14	Cusack (2017)	Law journal article	Defendant	Mental; Intellectual	Male	Child	Ireland	National	1	• Use an intermediary	• Testify behind a screen	• Remove official attire	-

¹⁴ Facilitated communication: A technique developed originally for individuals with ASD, in which a facilitator provides physical assistance (e.g. supporting a person's arm) or emotional support (e.g. sitting with the person) to an individual as he/she types on a communication board or keyboard (Flynn, 2016a). However, this technique has been criticized for lack of autonomy and is regarded as having no research evidence (Hemsley et al., 2018).

No	General information			Participants			Accommodations			Procedural Justice Component			
	Author(s) & year	Type of source	Court role	Type of disability	Gender	Age	Country	International/ National law	Specific cases	Voice (n=83)	Respect (n=114)	Neutrality (n=47)	Understanding (n=58)
											<ul style="list-style-type: none"> • Testify via live video/television link 	<ul style="list-style-type: none"> • Allow video/ pre-recorded evidence • Prohibit personal cross-examination by accused or defendant • Allow sworn depositions in court 	
15	Davidson Kovacevic, Cave, Hart & Dark (2015)	Social science journal article	Defendant	Hearing	-	-	Australia	National	-	<ul style="list-style-type: none"> • Use a sign language interpreter • Use a deaf relay interpreter¹⁵ 	<ul style="list-style-type: none"> • Allow frequent breaks 	<ul style="list-style-type: none"> • Film the court proceedings to review the communication 	<ul style="list-style-type: none"> • Allow linguistic simplification • Regularly check understanding, particularly if defendant has poor language ability • Allow the interpreter time to interpret in the consecutive mode where possible, especially when discussing technical and abstract issues. • Use pictures/communication aids to enhance understanding

¹⁵ Deaf relay interpreters: Sign language interpreters who also share the person's cultural experience and are able to draw on this perspective to aid communication, as they are able to translate from the standard sign language into the witness/defendant's idiosyncratic or individualistic non-verbal signs (Davidson et al., 2015).

No	General information			Participants			Accommodations			Procedural Justice Component			
	Author(s) & year	Type of source	Court role	Type of disability	Gender	Age	Country	International/ National law	Specific cases	Voice (n=83)	Respect (n=114)	Neutrality (n=47)	Understanding (n=58)
													<ul style="list-style-type: none"> • Use strategies to check the individual is not simply agreeing irrespective of understanding
16	Doak and Doak (2017)	Law journal article	Witness	Mental; Intellectual; Physical; Communication	Female	Child	UK	National	6	<ul style="list-style-type: none"> • Use AAC • Use an intermediary 	<ul style="list-style-type: none"> • Testify via live video/television link • Allow the functional assessment of individual 	<ul style="list-style-type: none"> • Remove official attire • Allow video/pre-recorded evidence 	<ul style="list-style-type: none"> • Allow judicial officers' intervention • Use appropriate and proper questioning strategies
17	Edwards, Harold & Kilcommins (2012)	Research report	Witness	Mental; Intellectual	Female	Child Adult	Ireland	International National	4	<ul style="list-style-type: none"> • Use an intermediary • Use a sign language interpreter • Obtain a victim impact statement 	<ul style="list-style-type: none"> • Ensure physical accessibility • Testify via live video/television link • Use CCTV in court • Make information accessible for those with visual and hearing impairments 	<ul style="list-style-type: none"> • Remove official attire • Allow video/pre-recorded evidence • Allow out-of-court testimony 	<ul style="list-style-type: none"> • Allow judicial officers' intervention • Provide information about the proceedings in plain language, braille, accessible and child-friendly formats
18	Fitzsimons (2014)	Law journal article	Witness	-	-	-	Australia Canada UK US	International National	-	-	<ul style="list-style-type: none"> • Use auxiliary hearing devices 	-	-
19	Flynn (2016)	Book chapter	Defendant; Witness; Plaintiff; Juror	Mental or intellectual; Physical; Communication	Female Male	Child Adult	Bulgaria Ireland South Africa UK US	International National	17	<ul style="list-style-type: none"> • Use AAC • Use a sign language interpreter • Use facilitated communication 	<ul style="list-style-type: none"> • Ensure physical accessibility • Use auxiliary hearing devices¹⁶ 		<ul style="list-style-type: none"> • Provide real-time captioning of court proceedings

¹⁶ Auxiliary hearing devices: Include note takers, transcription services, written materials, telephone handset amplifiers, assistive listening devices and systems, telephones compatible with hearing aids, closed caption decoders, open and closed captioning, Telecommunications Device for the Deaf (TDDs), videotext displays, or other methods of making aurally delivered materials available to individuals with hearing impairment (Musumeci, 2005).

No	General information			Participants			Accommodations			Procedural Justice Component			
	Author(s) & year	Type of source	Court role	Type of disability	Gender	Age	Country	International/ National law	Specific cases	Voice (n=83)	Respect (n=114)	Neutrality (n=47)	Understanding (n=58)
											<ul style="list-style-type: none"> • Allow Guardian ad Litem (Children) ¹⁷ • Allow Next friend (Adult) ¹⁸ • Allow McKenzie friend ¹⁹ 	<ul style="list-style-type: none"> • Appoint an Amicus Curiae ²⁰ 	<ul style="list-style-type: none"> • Appoint independent advocate ²¹
20	Flynn & Lawson (2013)	Law journal article	Defendant; Witness	-	-	-	-	International	-	<ul style="list-style-type: none"> • Use AAC • Use an intermediary • Use a sign language interpreter 	<ul style="list-style-type: none"> • Ensure physical accessibility • Allow frequent breaks 	-	<ul style="list-style-type: none"> • Provide information about the proceedings in plain language, braille, accessible and child-friendly formats
21	Freckelton (2013)	Social science journal article	Defendant	Autism spectrum disorder (ASD)	-	-	Australia	International National	-	-	-	<ul style="list-style-type: none"> • Involve expert witness 	-
22	Geis (2014)	Law journal article	Defendant (juvenile)	Mental or intellectual; Physical; Hearing; Visual, Autism spectrum	-	Child	US	National	1	<ul style="list-style-type: none"> • Use AAC 	<ul style="list-style-type: none"> • Allow Guardian ad Litem 	-	-

¹⁷ Guardian ad Litem: An individual appointed by the court to represent a defendant’s best interests in legal proceedings, often in circumstances where the person is not present in the courtroom himself (Flynn, 2016a). This term is most frequently used in connection with children.

¹⁸ Next friend: An individual (a relative, close friend, etc.) who is chosen by a minor or by a person with a disability who will institute legal proceedings (Flynn, 2016a).

¹⁹ McKenzie friend: An individual who is there to morally support the person with the communication disability and who is allowed to take notes, help with case papers and quietly give advice on any aspect of the conduct of the case in court. Their services are normally not paid for (Flynn, 2016a).

²⁰ Amicus Curiae: This “friend of the court” role is often played by equality bodies, national human rights institutions, the Ombudsman or NGOs, and provide information to court – often on regional or international human rights standards or on comparative legal analysis, which may be useful to the court in making its decision regarding the rights of persons with disabilities (Flynn, 2016a).

²¹ Independent advocate: A state-appointed advocate with a legislative mandate to support persons with disabilities in the assertion and enforcement of their rights, or who is appointed as a substitute decision maker for a person with a disability. This may include accompanying a person and supporting them to communicate their views as part of a court process. Statutory advocates who perform this role may have some conflicting commitments, including a requirement to communicate to the court the course of action which he/she believes to be in the best interests of the person with disability, even where this conflicts with the person’s wishes (Flynn, 2016a).

No	General information			Participants			Accommodations			Procedural Justice Component			
	Author(s) & year	Type of source	Court role	Type of disability	Gender	Age	Country	International/ National law	Specific cases	Voice (n=83)	Respect (n=114)	Neutrality (n=47)	Understanding (n=58)
				disorder (ASD); Multiple									
23	Given (2014)	Book chapter	Witness	Communication	-	-	Australia	National	1	<ul style="list-style-type: none"> • Use AAC • Allow independent communication support worker²² 	-	-	<ul style="list-style-type: none"> • Use appropriate and proper questioning strategies
25	Gooding, Arstein-Kerslake, Andrews & McSherry (2016)	Law journal article	Defendant	Mental or intellectual	-	-	Australia	International National	5	<ul style="list-style-type: none"> • Give evidence through free narration (no questioning) 	<ul style="list-style-type: none"> • Allow support person • Allow frequent breaks • Provide one-on-one assistance to follow the proceedings 	-	<ul style="list-style-type: none"> • Allow linguistic simplification • Use appropriate and proper questioning strategies
25	Gooding, Arstein-Kerslake, Mercer & McSherry (2017)	Law journal article	Defendant	Mental or intellectual	Male	Adult	Australia	International National	5	<ul style="list-style-type: none"> • Use an intermediary 	<ul style="list-style-type: none"> • Allow support person • Use CCTV in court • Allow frequent breaks • Modify the court-room setup 	-	<ul style="list-style-type: none"> • Allow judicial officers' intervention • Allow linguistic simplification • Use appropriate and proper questioning strategies • Provide information about the proceedings in plain language, braille, accessible and child-friendly formats • Explain court processes to the defendant in an

²² Independent communication support worker: Individuals who assist persons with severe communication disabilities by word and sentence completion, thereby taking the pressure off the individual to complete whole words or sentences. They can also clarify what the speech-generating device has “spoken” (Given, 2014).

No	General information		Court role	Participants			Accommodations			Procedural Justice Component				
	Author(s) & year	Type of source		Type of disability	Gender	Age	Country	International/ National law	Specific cases	Voice (n=83)	Respect (n=114)	Neutrality (n=47)	Understanding (n=58)	
													accessible way	
26	Guider (2017)	Law journal article	Witness	Mental or intellectual	Female	Adult	US	National	-	-		<ul style="list-style-type: none"> • Use CCTV in court 	<ul style="list-style-type: none"> • Use out-of-court statements as evidence 	<ul style="list-style-type: none"> • -
27	Hepner, Woodward & Stewart (2015)	Social science journal article	Defendant; Witness	Mental or intellectual	-	-	Australia	International National	-	<ul style="list-style-type: none"> • Use AAC • Use an intermediary 	<ul style="list-style-type: none"> • Allow support person • Testify behind a screen • Testify outside courtroom • Conduct trial <i>in camera</i> • Use CCTV in court 	<ul style="list-style-type: none"> • Remove official attire 	<ul style="list-style-type: none"> • Use appropriate and proper questioning strategies • Familiarize defendant/witness with and explain the legal process and court procedures 	
28	Holness & Rule (2018)	Social science journal article	Witness	Mental or intellectual; Communication	-	-	South Africa	International National	2	<ul style="list-style-type: none"> • Use AAC • Use AAC toolkit • Use an interpreter • Use a sign language interpreter 	-	-	<ul style="list-style-type: none"> • Use trusted source for information (understanding) • Use pacing and repetition (understanding) 	
29	Johnson, Blume, Paavola & Vann (2017)	Law journal article	Defendant	Mental or intellectual	-	-	US	National	-	-	-	<ul style="list-style-type: none"> • Involve expert professional • Involve expert witness 	-	
30	Lafortune, Dichristina & Dunne (2012)	Law journal article	Witness	Mental or intellectual	-	-	US	National	-	-	<ul style="list-style-type: none"> • Allow frequent breaks • Allow additional time for pauses (to help with concentration and attention) 	<ul style="list-style-type: none"> • Involve expert witness 	<ul style="list-style-type: none"> • Explain concepts in easy, graphic, and concrete terms • Allow counsel to recap and summarize any information the person 	

No	General information			Participants			Accommodations			Procedural Justice Component			
	Author(s) & year	Type of source	Court role	Type of disability	Gender	Age	Country	International/ National law	Specific cases	Voice (n=83)	Respect (n=114)	Neutrality (n=47)	Understanding (n=58)
													failed to process • Allow person to take written notes
31	Larcher (2014)	Book chapter	Witness	Communication	-	-	UK	National	1	<ul style="list-style-type: none"> • Use AAC • Use an intermediary 	<ul style="list-style-type: none"> • Testify behind a screen • Testify via live video/television link • Conduct trial <i>in camera</i> • Allow frequent breaks • Address witness by name to ensure his /her concentration 	<ul style="list-style-type: none"> • Remove official attire • Allow video/ pre-recorded evidence 	<ul style="list-style-type: none"> • Use appropriate and proper questioning strategies • Disallow tag questions
32	López, Zapata & Martorell (2017)	Social science journal article	Witness	Mental or intellectual	Female Male	Child Adult	Spain	International National	29	<ul style="list-style-type: none"> • Use an intermediary 	<ul style="list-style-type: none"> • Testify behind a screen • Testify via live video/television link 	-	<ul style="list-style-type: none"> • Use appropriate and proper questioning strategies
33	Malunga, Kanyongolo & Mbweso (2017)	Social science journal article	Defendant; Witness	-	-	Child	Malawi	International National	-	<ul style="list-style-type: none"> • Use AAC • Use a sign language interpreter • Use an intermediary 	<ul style="list-style-type: none"> • Ensure physical accessibility • Provide materials in braille and other accessible formats • Relook terminology that carries stigma and discrimination • Allow guides to assist with accessibility 	-	<ul style="list-style-type: none"> • Provide readers to assist with access to information
34	Marinos, Griffiths, Fergus, Stromski & Rondeau (2014)	Law journal article	Witness	Mental or intellectual	-	-	Canada	International National	-	<ul style="list-style-type: none"> • Use AAC • Use a sign language interpreter • Use an interpreter 	<ul style="list-style-type: none"> • Testify behind a screen • Use CCTV in court • Allow witness support, preparation & 	<ul style="list-style-type: none"> • Involve expert witness 	-

No	General information		Court role	Participants			Accommodations			Voice (n=83)	Procedural Justice Component		
	Author(s) & year	Type of source		Type of disability	Gender	Age	Country	International/ National law	Specific cases		Respect (n=114)	Neutrality (n=47)	Understanding (n=58)
											<ul style="list-style-type: none"> profiling program²³ • Use auxiliary hearing devices 		
35	Marinos, Griffiths, Robinson, Gosse, Fergus, Stromski & Rondeau (2017)	Law journal article	Defendant; Witness	Mental or intellectual	-	-	Canada	International National	-	-	<ul style="list-style-type: none"> • Allow support person • Use CCTV in court • Allow witness support, preparation & profiling program 	<ul style="list-style-type: none"> • Involve expert professional • Involve expert witness • Use pre-sentence reports to make suggestions to the court about the individual's need 	-
36	Marinos & Whittingham (2019)	Social science journal article	Defendant; Witness	Mental or intellectual	-	-	Canada	International National	-	-	<ul style="list-style-type: none"> • Provide separate courts outside of the regular court (e.g. problem-solving courts) 	-	-
37	Msipa (2015)	Social science journal article	Witness	Mental or intellectual	-	-	South Africa Zimbabwe	International National	-	<ul style="list-style-type: none"> • Use an interpreter • Use speech-to-speech transmittal in order to testify 	<ul style="list-style-type: none"> • Allow frequent breaks 	-	<ul style="list-style-type: none"> • Use appropriate and proper questioning strategies
38	Murphy (2014)	Law journal article	Witness	Mental or intellectual; Communication	Female	Child Adult	US	National	2	<ul style="list-style-type: none"> • Use AAC • Use an intermediary 	<ul style="list-style-type: none"> • Ensure physical accessibility • Allow stuffed animal • Conduct trial <i>in camera</i> • Use CCTV in court • Allow Guardian ad Litem • Allow enough and extra time for testifying • Allow a familiar person to help 	<ul style="list-style-type: none"> • Involve expert professional 	<ul style="list-style-type: none"> • Use appropriate and proper questioning strategies • Forbid protracted questioning of children • Forbid continuances that cause needless delay of the trial

²³ Witness support, preparation and profiling program: A specific program developed in Liverpool (UK), to provide the court with a profile of the accused to increase its understanding of the nature of the disability, how it might interfere with the court process, and how the individual can be accommodated to receive fair and equitable treatment. The program can also support the individual to understand and be prepared for what to expect in court (Marinos et al., 2017).

No	General information			Participants			Accommodations			Procedural Justice Component			
	Author(s) & year	Type of source	Court role	Type of disability	Gender	Age	Country	International/ National law	Specific cases	Voice (n=83)	Respect (n=114)	Neutrality (n=47)	Understanding (n=58)
											the court to interpret and understand a child's needs and disability throughout the process		
39	Musumeci (2005)	Law journal article	Defendant	Mental or intellectual; Hearing	Male	Adult	US	National	5	• Use a sign language interpreter	• Use auxiliary hearing devices • Use visual alarms	-	-
40	Nair (2004)	Law journal article	Defendant; Witness	Mental or intellectual; Communication	Female, Male	Adult	Australia	National	3	-	-	-	• Allow judicial officers' intervention • Use appropriate and proper questioning strategies
41	O'Donnell & Gross (2012)	Social science journal article	Defendant	Mental; Intellectual	-	Child	US	National	-	-	-	• Involve expert witness	-
42	O' Leary (2016)	Master's thesis	Witness	Mental or intellectual	-	-	Australia, Ireland, Israel, UK	International National	-	• Use AAC • Use an intermediary • Give evidence through free narration (no questioning)	• Testify via live/ television link • Allow individualized support	• Remove official attire • Allow video/ pre-recorded evidence	• Use pictures/communication aids to enhance understanding
43	O'Leary & Feely (2018)	Social science journal article	Witness	Mental or intellectual	-	-	Australia, Ireland, Israel, UK	International National	-	• Use AAC • Use an intermediary • Give evidence through free narration (no questioning)	• Testify via live video/television link	• Remove official attire • Allow video/ pre-recorded evidence	-
44	Ortoleva (2011)	Law journal article	Witness	Physical	Female	Adult	South Africa	National	1	• Use AAC • Use a sign language interpreter • Allow communication in audio, video or other electronic form	• Ensure physical accessibility • Provide materials in braille or other accessible formats	-	-

No	General information			Participants			Accommodations			Procedural Justice Component			
	Author(s) & year	Type of source	Court role	Type of disability	Gender	Age	Country	International/ National law	Specific cases	Voice (n=83)	Respect (n=114)	Neutrality (n=47)	Understanding (n=58)
										if person has a disability (international criminal court)			
45	Padmanabhan (2014)	Book chapter	-	Communication	-	-	India	International National	-	• Use AAC	-	-	-
46	Pei, Leung, Jampolsky & Alsbury (2016)	Social science journal article	Witness	Mental or intellectual; Physical	Female Male	Adult	Canada	National	-	-	• Conduct a functional assessment	-	• Allow linguistic simplification
47	Pillay (2012a)	Social science journal article	Witness	Mental or intellectual	-	Child	South Africa	National	-	• Use an intermediary	• Use CCTV in court	-	-
48	Pillay (2012b)	Social science journal article	Witness	Mental or intellectual	-	Adult	South Africa	National	-	• Use an intermediary	-	-	-
49	Raha & Sengupta (2018)	Social science journal article	Witness	-	Female	-	India	National	-	• Use an interpreter	• Allow the assistance of a person familiar with the witness' manner of communication • Allow frequent breaks • Involve a qualified and experienced expert to record the child's evidence	• Prohibit direct questions by a defense lawyer and prosecutor • Film the proceedings	-
50	van den Anker, Dalhuisen & Stokkel (2011)	Student paper	Defendant	Mental or intellectual	Male	Child	France Germany Netherlands UK US	International National	-	• Interpreter	-	-	• Allow assistance by an expert or support person to explain the court process
51	Vanny, Levy & Hayes (2008)	Social science journal article	Defendant	Mental or intellectual	Female Male	Child	Australia	National	-	-	-	-	• Use pictures/communication aids to

No	General information		Court role	Participants			Accommodations			Procedural Justice Component			Understanding (n=58)
	Author(s) & year	Type of source		Type of disability	Gender	Age	Country	International/ National law	Specific cases	Voice (n=83)	Respect (n=114)	Neutrality (n=47)	
													enhance understanding
52	White & Msipa (2018)	Social science journal article	Witness	Communication	-	-	South Africa	International National	-	<ul style="list-style-type: none"> • Use AAC • Use an intermediary • Use anatomical dolls 	<ul style="list-style-type: none"> • Allow support person • Modify the setup of the courtroom • Conduct trial <i>in camera</i> • Use CCTV in court • Allow frequent breaks • Address the person with a disability by name and wait for him/her to make eye contact 	<ul style="list-style-type: none"> • Involve expert witness 	<ul style="list-style-type: none"> • Allow linguistic simplification • Use appropriate and proper questioning strategies
53	Wicaksana (2017)	Social science journal article	Witness	-	-	-	Indonesia	National	-	<ul style="list-style-type: none"> • Use a sign language interpreter 	<ul style="list-style-type: none"> • Allow civil society organization as a support 	-	-
54	Wilson, Prokop & Robins (2015)	Social science journal article	Defendant	Mental or intellectual	Male	Adult	US	National	-	-	<ul style="list-style-type: none"> • Allow Guardian ad Litem • Identify a family member or close friend who can assist the court 	-	-

* Specific cases that were recorded had to refer to specific accommodations used in court. Cases were also mentioned if they were in narrative form or sub judice in the form of case studies or stories. Cases related to witness competency were excluded.

Findings

Findings as shown in Table 4 are described according to the three sub-questions. An almost equal number of publications stemmed from the social science journals (40.4%) and from the law journals (38.9%). Of the 54 selected publications, half were published between 2016 and 2019 (n=27; 50%), 23 publications (43%) were published between 2011 and 2015, with only four (7%) published between 2006 and 2010. In terms of court roles that were discussed, ‘witness’ was mentioned most frequently (n=40, 74%) and ‘defendant’ was mentioned 25 times (in 46% of the publications). The type of disability that received the most attention was ‘mental or intellectual disability’ (n=35, 65%), followed by ‘communication disability’ (n=13, 24%). A wide range of countries were represented in the publications, namely the United States (US) (n=15, 28%); Australia (n=12, 22%); the United Kingdom (UK) (Ireland, England, Wales, n=11, 20%); South Africa (n=10, 19%); Canada (n=6, 11%); Ireland (n=5, 9%); Israel (n=2,4%) and India (n=2, 4%). The following countries were each mentioned once: Argentina; Azerbaijan; China; Costa Rica; Croatia; Dominican Republic; Ecuador; France; Germany; Hungary; Indonesia; Malawi; Mexico; Netherlands; Peru; Spain; Turkmenistan and Zimbabwe. National law was mentioned in nearly all the publications (n =53, 98%), whereas international law (e.g., CRPD) was mentioned 25 times (46%). Equal reference was made to children and adults (n=15, 28%). Gender was only specified in 46% (n=25) of publications, with females mentioned more frequently (n=15; 28%) than males (n=10; 19%). A total of 110 specific cases were mentioned across the 54 publications. A more in-depth analysis of these cases is beyond the scope of the current review.

Data was extracted with regards to the specific type of court proceedings (e.g. criminal, civil, family). Criminal courts were mentioned most frequently (n = 47, 87%) with the remainder of the publications referring to the following courts: Civil, State, Juvenile/Children, Supreme, Immigration, Equality, Family, Traditional, Mental Health and Problem Solving Courts as well as the European Court of Human Rights. As the publications thus focused on criminal court proceedings, data referring to the types of court proceedings were not included in Table 4.

The 302 identified court accommodations (sub-question 3) were spread almost equally between the number of procedural justice components that had been mentioned, with approximately a quarter of the publications (n=13; 24%) describing accommodations that covered all four

components (publications 3, 4, 6, 13, 15, 16, 17, 19, 27, 31, 38, 42, 52), only two components (publications 8, 11, 22, 23, 24, 28, 35, 39, 44, 46, 47, 50, 53), or only one component (publications 5, 7, 10, 18, 21, 29, 36, 40, 41, 45, 48, 51, 54). The remaining 28% (n=15) of publications (1, 2, 9, 14, 18, 20, 25, 26, 30, 32, 33, 34, 37, 43, 49) included accommodations that were spread across three of the components.

When considering the accommodation components mentioned according to frequency, it appears that accommodations with regard to ‘Respect’ were mentioned 114 times (37.75%); ‘Voice’ 83 times (27.48%); ‘Understanding’ 58 times (19.21%) and ‘Neutrality’ 47 times (15.56%).

Upon examining the specific accommodations mentioned more than five times under the ‘Respect’ component, allowing frequent breaks and permitting CCTV in court were both mentioned 11 times (9.6%), followed by physical accessibility and testifying via live video/television link, which were mentioned nine times (7.8%) each. Support person and testifying behind a screen were mentioned eight times (7%), while conducting trial *in camera* was mentioned seven times (6.1%).

The same analysis shows that in the ‘Voice’ component, intermediaries and AAC were both mentioned 22 times (26%), followed by sign language interpreters that were mentioned 14 times (19.8%) and interpreters mentioned seven times (8.4%). Within the ‘Understanding’ component, the use of appropriate and proper questioning strategies was mentioned most frequently, namely 15 times (25.4%). Linguistic simplification was mentioned eight times (13.5%), with judicial officers’ intervention referred to five times (8.4%). Finally, the ‘Neutrality’ component shows that expert witness was mentioned 11 times (23.9%), followed by removal of official attire (ten times or 21.7%), admission of video-recorded evidence recorded pre-trial (eight times or 7.3%), and expert professional (six times or 13%).

Overall, the accommodations ‘intermediary’ and ‘AAC’ each accounted for 7.28% of all accommodations (n=302), while ‘appropriate and proper questioning strategies’ accounted for 4.97%. ‘Frequent breaks’, ‘CCTV in court’ and ‘expert witness’ each accounted for 3.64% of all accommodations.

Discussion

This legal scoping review aimed to identify and describe the international court accommodations that were reported to enable persons with severe communication disabilities participate in court. Results show that court accommodations are indeed of interest to scholars from both legal and social science disciplines across different countries and that it has been addressed in international and national law. Furthermore, the review shows that accommodations have focused on both children and adults with a range of different types of disabilities across different roles (e.g. witnesses, defendants and even jurors in the court system).

The CRPD clearly states that key role-players in the court system should provide effective access to justice for persons with disabilities on an equal basis with others, through the provision of procedural and age-appropriate accommodations (United Nations, 2006). The specific procedural justice accommodations identified in this review could assist with effective access to justice for persons with disabilities. The first component focused on the individual's voice in court being heard and the accommodations that could assist the individual with expressive language and communication in court. The use of the intermediary system was one of the accommodations that was highlighted most frequently. Most countries, under legislation, provide for the use of an intermediary in court and there are recorded cases in this regard as discussed in publication 8 (*People v Miller*, 530 N.Y.S.2d 490 (City Ct. Rochester Cty. 1988)), publication 3 (*R v Watts*, [2010] EWCA Crim 1824, [2011] 1 Crim LR 58 at 61), and in publication 14 (*R (on the application of C) v Sevenoaks Youth Court* [2010] 1 All ER 735) included in the current review. The intermediary's role is threefold. Firstly, the intermediary should communicate questions put to the person with the communication disability in a clear and understandable format. Secondly, the intermediary should relay the answers given by this person in reply to all questions put by any party (attorney, prosecutor, judge). Thirdly, the intermediary should explain such questions or answers as far as necessary to enable the person to understand the question, as mentioned in publications 10, 16, 17, 27, 31, 43 and 52 included in this review. The intermediary can assist in identifying important procedural accommodations needed by the witness or defendant with a communication disability in order to testify and participate effectively (Benedet & Grant, 2012). Intermediaries can furthermore inform the judge about possible difficulties experienced in testifying as a result of the communication disability and can assist in the direct and cross-

examination processes. The current review positively highlighted the use of intermediaries, not only to enable the person with severe communication disabilities to effectively and equally participate in court, but also to facilitate and demystify the court process (rather than complicate it) (Hepner et al., 2015).

However, the use of an intermediary alone is unlikely to fully facilitate the process of participating in court for persons with severe communication disabilities (Doak & Doak, 2017). Given the focus of this research on severe communication disability, it is unsurprising that accommodations related to augmentative and alternative methods of communication (AAC) were recommended to be used alongside an intermediary to facilitate and optimize communication skills. In Article 2 of the CRPD, communication is defined as including “alternative ways of expressively communicating (other than speech or *viva voce*), to mention a few – for example, display of text, braille, tactile communication, large print, accessible multimedia, accessible information and communication technology” (United Nations, 2006).

As earlier described in the working definition of AAC, many persons with communication disabilities use AAC strategies and systems to communicate (Beukelman & Mirenda, 2013). For access to justice to be achieved, persons with a severe communication disability should be allowed to use their ‘voice’ to enable them to share their version of events, whether it be done via an intermediary, AAC, sign language interpreter or interpreter (publications 16, 22, 27, 28, 33, 34, 39, 44, 45, 48, 50, 51, 53 and 54 included in the current review). AAC was successfully used in court with specific mention to the following cases: (a) *R v Watts*, [2010] EWCA Crim 1824, [2011] 1 Crim LR 58 at 61, *Commonwealth v. Tavares*, 555 A.2d 199 (Pa. Super. Ct. 1989) as mentioned in publication 3, and (b) *People v Webb* 157 Misc.2d 474 (1993) 597 N.Y.S.2d 565, as mentioned in publication 8. Countries such as England, Wales, Scotland, South Africa and Israel have allowed individuals to use AAC strategies and systems in court, and there have been recorded narrative case descriptions from Israel (BenZeev et al., 2014), from South Africa (White et al., 2015) and from the UK (Larcher, 2014). Unfortunately, these accommodations are not always acknowledged or allowed by all courts (Flynn, 2016a, 2016b).

Flynn (2016a, 2016b) highlights the importance of the courts to be more accommodating and to recognize the diverse communication methods used by persons with severe communication disabilities to enable them to participate in court (e.g. to testify). It is also important to note that

court procedures and rules of evidence can be adapted where necessary to accommodate alternative forms of communication (e.g. braille, or simple language formats). This can be achieved without undermining key principles of the right to a fair trial (publications 16 and 20 in the current review). In *People v Miller*, the court stated the following in dicta: “Just because a procedure is unusual does not mean that it should not take place in a courtroom. The courts today should make every effort to open their doors to all who seek to come through them. We can no longer take the attitude that if it has not been done in the past, it should not be done in the future” (Bryen & Wickman, 2014, p.168)

Allowing frequent breaks are important to assist the person with a severe communication disability to maintain concentration, to allow the counsel to consult with this person to ensure their understanding of the court process, and to help alleviate stress (publication numbers 15, 25, 30 and 49). Persons with severe communication disabilities often have co-morbidities. For example, a person with cerebral palsy may have a physical and a communication disability (O’Leary, 2016) and they often suffer from fatigue due to their disabilities. The importance for frequent breaks in court is therefore highlighted in publication 25 (*R v JG [2014] ACTSC 120, R v Mathews [2013] QCA 203*). BenZeev et al. (2014) provide a narrative about a young witness with a severe head injury who had been sexually assaulted and who could successfully testify in court when frequent breaks were allowed.

Allowing closed circuit television (CCTV) in court allows for the individual to give testimony outside the court room (publication 17 – *Donnelly v Ireland [1998] 1 IR 321 and White v Ireland [1995] 1 IR 268*) so as to make the court process less intimidating and hostile for persons with communication disabilities (Edwards et al., 2012). Research has highlighted the negative impact of the rigid and hostile court room environment on the witnesses with severe communication disabilities and highlights how allowing their testimony in court via CCTV could enable them to provide a competent and reliable account of events (publications 26 and 43 selected for the current review).

The use of an expert witness has also been highlighted as an important accommodation in nine publications selected for the current review (publications 5, 6, 13, 21, 29, 30, 34, 41 and 52). Berryessa (2017) identified four roles that the expert witness typically fulfills – the first role being an ‘educator’ of the court who communicates the legal relevance of specific disability

characteristics (cerebral palsy, autism spectrum disorder, etc.) to instruct the court to maximize positive outcomes for individuals with severe communication disabilities. The second role is that of ‘reconstructionist’ who assesses and discusses how an individual’s disability could have contributed to the alleged criminal behavior on trial. The third role is that of ‘myth dispeller’ who dismisses inaccurate misconceptions about persons with disabilities and their symptoms during fact finding and when making procedural decisions. The last role of the expert witness is that of ‘communicator’ who educates the court on the legal aspects of a certain disability or disorder that a person (witness or defendant) has been diagnosed with, and distinctive ways in which its symptoms may affect their behavior and daily life. The use of knowledgeable expert witnesses can be a critical factor in educating lawyers, prosecutors and judges about the expected needs of witnesses or defendants with severe communication disabilities. Expert witnesses and expert professionals (also mentioned as an accommodation in the review) can provide the court with important information, for example, how the person with a communication disability communicates, as well as if and how they use a specific AAC system. Most importantly, however, they educate the court to understand that these individuals indeed can communicate, participate and testify (Covarrubias, 2008; Marinos et al., 2017; White & Msipa, 2018).

Research has emphasized that special measures can be put in place for persons with severe communication disabilities to make procedures less intimidating and less formal, for example by removing wigs and gowns (publications 14 and 42). This accommodation could make the person with a communication disability feel more comfortable and communicate more effectively in the court proceedings (Backstrom, 2016).

Differential questioning strategies and techniques that were highlighted as an important accommodation included the use of short and simple questions, ensuring brief and clear questions types, using yes/no questions, not allowing question tags, and avoiding inappropriate and complex questioning strategies (publications 4, 6, 9, 11, 13, 16, 23, 31, 32, 37 and 52). Persons with communication disabilities often have difficulties with receptive language and therefore certain adaptations should be made to address the communication demands of their participation in court. The guidelines for appropriate questioning described above should be followed to allow persons with a communication disability to concentrate and respond

effectively (White & Msipa, 2018). An example case that insisted the counsel use short and simple questions is in publication 25 (*R v JG [2014] ACTSC 120*).

A further accommodation that supported the above-mentioned accommodation was linguistic simplification (see publications 4, 13, 25, 46 and 52 in the current review). Israeli law requires the court systems to make the various proceedings accessible for persons with communication disabilities by means of linguistic simplification (BenZeev et al., 2014). Two sets of guidelines for linguistic simplification have been applied successfully in Israel. Firstly, linguistic access is facilitated by adapting the written or spoken information to the needs of the person with a communication disability through the use of various (linguistic/sensory) means. Secondly, linguistic simplification is stressed through a structured process of editing and processing information and making it simple, clear and easy to understand for persons with communication disabilities (BenZeev et al., 2014). When implemented, these guidelines could assist the person with a communication disability to understand important information about the court procedures as well as the questions posed in court. This would help the individual to act in a reliable manner and to be not confused by or about the proceedings (Edwards et al., 2012; Marinos et al., 2014; Pei, Leung, Jampolsky, & Alsbury, 2016).

Future research

This legal scoping review shows that there is a vast amount of possible court accommodations that could assist persons with severe communication disabilities to participate on an equal footing in the court system as a witness or defendant. However, it seemed that the most frequently used accommodations as extracted from the data, were those with a long history of demonstrated use in other settings (e.g., the use of sign language interpreters). This finding raises the question of what has truly changed, if anything, with the passage of the CRPD (UN, 2006). A comparative study investigating court accommodations pre- and post 2006, would therefore add important insights.

Future research could also focus on other key role-players with communication disabilities, for example jurors, judges, prosecutors and attorneys, and examine how accommodations can be implemented to allow their equal participation in the court system (Flynn, 2016a, 2016b). Our review reveals that although much has been reported on court accommodations for persons with severe communication disabilities, only limited attempts have been made to categorize these

accommodations conceptually or to examine if they have indeed led to full and equal participation for these individuals. As such, future research could also find out from relevant stakeholders (e.g. persons with severe communication disabilities who received such accommodations in court, or key role-players in court) whether the court accommodations that had been offered actually led to the full and equal participation of persons with severe communication disabilities in court. Finally, future research should aim to unpack the fairness construct within the domain of court accommodations by addressing the fairness argument in more depth regarding deciding who is eligible for accommodations, defining the parameters of what constitutes a communication disorder, and reaching the broadest audience possible within that population.

Limitations

It is important to acknowledge that our scoping review contains some important limitations. It is possible that not all relevant publications were identified, as grey literature or reports pertaining to experiences of person with disabilities in the criminal justice system were excluded.

Furthermore, some scoping reviews include stakeholder consultations and this review could potentially have been enriched by such consultation, as it could have directed us to additional relevant resources and helped us understand and ground the emerging findings within a legal context. However, to our knowledge this review is the first scoping review that used this specific research methodology. As such, it is expected to contribute to the existing body of literature and assist key role-players in the legal field when advocating for the human rights related to access to justice for persons with a severe communication disability.

Conclusion

This review sought to identify the specific accommodations that have been reported in literature and that enable persons with severe communication disabilities to participate in court and claim their human right to access justice. Different accommodations in court that addressed the four key components of procedural justice were highlighted, namely ‘Voice’, ‘Respect’, ‘Neutrality’ and ‘Understanding’. Persons with severe communication disabilities must be allowed to use their ‘voice’ and they must be afforded respect and an opportunity to be heard. Often persons with severe communication disabilities may have multiple disabilities and therefore more than

one accommodation may be needed for them to achieve equal participation in court. Procedural justice calls attention to the fact that it is not enough for the courts to demonstrate fairness; but that persons with severe communication disabilities should feel that the duration of the court process is fair. In this way, vast advantages can be realized for witnesses, as they will be less likely to become repeat victims and more likely to raise awareness of access to justice options to others in similar situations. Defendants will also be more likely to comply with court orders, and the possibility of re-offending may be decreased. For transformative equality in the court to come to fruition as stipulated in the CRPD, persons with severe communication disabilities should be given accommodations that can support them to be active participants in the court process. Only then will it be true to say that access to justice has been achieved.

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Authors' contributions

R.W., J.B and E.J. contributed to the study conceptualization, methodology development, data analysis, critical analysis and review, visualizing the work, writing the original draft and revision. D.M. contributed as a rater and reviewer to data analysis, critical analysis, review of the manuscript, commentary, and revision.

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