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**Accommodating persons with severe communication disabilities in court:
Development and appraisal of guidelines**

by

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DECLARATION OF ORIGINALITY

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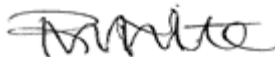
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Declaration

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ETHICS STATEMENT

The author, whose name appears on the title page of this dissertation, has obtained the applicable research ethics approval for the research described in this work.

The author declares that she has observed the ethical standards required in terms of the University of Pretoria's Code of Ethics for Researchers and the Policy Guidelines for Responsible Research.

* Please note that this thesis went through a title change and the final registered title was, *“Accommodating persons with severe communication disabilities in court: Development and appraisal of guidelines”*. (See Appendix 6A)

** The student acknowledges her core financial contributors, the National Institute for the Humanities and Social Sciences (NIHSS) in collaboration with the South African Humanities Deans Association (SAHUDA) and their financial assistance towards this research. Opinions expressed and conclusions arrived at are those of the student and cannot necessarily be attributed to the NIHSS and SAHUDA.

True peace is not merely the absence of war, it is the presence of justice.

Jane Addams

Sociologist, activist and the first American woman to be awarded the Nobel Peace Prize for her work in philosophy and women's rights
(1931)

Although the world is full of suffering, it is also full of the overcoming of it.

Hellen Keller

Author, disability rights advocate, political activist and lecturer

I alone cannot change the world, but I can cast a stone across the waters to create many ripples.

Mother Theresa

Roman Catholic missionary and recipient of the Nobel Peace Prize for her work undertaken in the struggle to overcome poverty and distress
(1979)

For there is always light, if only we're brave enough to see it. If only we're brave enough to be it.

Amanda Gorman

Poet and activist

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For I know the plans I have for you, declares the LORD, plans to prosper you and not to harm you, plans to give you hope and a future (Jeremiah 29: 11)

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Abstract

Persons with severe communication disabilities often face violations of their basic human rights, such as exclusion from the justice system. Accessing the justice system – whether as a witness, defendant or legal practitioner with a severe communication disability – is extremely challenging. These individuals also face intersectional discrimination based on several interacting personal characteristics (for example, being a woman with a severe communication disability), which exacerbates the challenges they experience when needing to access the justice system. One significant barrier in this regard is the lack of court accommodations that are (or should be) made available to them. Not only is this an obstacle for the primary stakeholder group, but secondary stakeholders (e.g., attorneys, judges, magistrates and other legal practitioners) are often unaware of these accommodations. To rectify this problem, a human rights framework incorporating procedural justice principles (having a voice; being treated with respect; using neutral criteria for decision making; understanding the court language) was used, together with a three-phase mixed methods social justice research design (using a sequential exploratory design). The study included 78 participants (many with disabilities themselves) and aimed to develop and appraise guidelines for court accommodations. These should be provided to persons with severe communication disabilities to allow their equal participation in the court system and achieve access to justice, irrespective of their role or country of jurisdiction. Phase 1, the Qualitative Engagement Phase, aimed to identify existing court accommodations and entailed a legal scoping review of the extant literature, focus group sessions with South African and international experts, as well as online interviews with legal practitioners with disabilities. Thereafter, the qualitative findings from Phase 1 were triangulated and integrated with those of Phase 2, the Quantitative Feature Phase, and court accommodation guidelines were developed (using procedural justice principles). Finally, in Phase 3, the Quantitative Test Phase, the court accommodation guidelines were appraised by legal experts using a custom-developed appraisal tool known as the Court Accommodation Guideline Appraisal Tool (CAGAT). Overall, the quality of the court accommodation guidelines was rated as very good and excellent which the legal experts would recommend (some with modifications), and the guidelines were deemed to be a trustworthy resource to be implemented in the court system. The study concluded by suggesting that future research could focus on customising the court accommodation guidelines

per specific stakeholder group (e.g., primary stakeholders (witness, defendant) and secondary stakeholders (judge, attorney)) and per country's jurisdictions.

Keywords: Access to justice, Accommodations, Convention on the Rights of Persons with Disabilities (CRPD), Court, Guidelines, Human rights, Intersectionality, Persons with severe communication disabilities, Procedural justice

CHAPTER 1

PROBLEM STATEMENT AND RATIONALE

1.1 Introduction

Chapter 1 outlines the research problem and highlights the significance and relevance of the study. Next, the chapter offers the operational definitions of some of the important and frequently used terms in this thesis. This is followed by a list of abbreviations, acronyms and Latin phrases, after which the chapter concludes with an overview of the six chapters of the thesis.

1.2 Problem statement

Historically, persons with disabilities have faced discrimination and violation of their basic human rights. One example is their exclusion from the justice system, such as when attempting to report a crime at the police station, participating in court through testifying or pleading, or being involved in prison reform programmes. Accessing the justice system, whether as a witness, defendant or as a legal practitioner with a disability, has and continues to be extremely challenging – to the point where these individuals lose hope and regard the justice system as inaccessible. Within the already marginalised sphere of disability, individuals with severe communication disabilities face further challenges as they are unable to rely on spoken language to make their needs and wants known or to protect themselves to be safe (Bryen, 2014).

Persons with severe communication disabilities also face multiple forms of discrimination (also known as intersectionality) on the basis of several personal grounds or characteristics that interact with one another. Examples are gender (being a woman with a severe communication disability), age (being a child with a severe communication disability), race (being a person of colour with a severe communication disability), or socio-economic status (being a poor person with a severe communication disability).

Access to justice is vital for persons with severe communication disabilities as it could protect them against the discrimination and violence they commonly face. However, these individuals face countless barriers when accessing the system. More often than not, persons with severe communication disabilities experience feelings of shame and embarrassment and have to cope with the emotional toll of reporting a crime. The victim with a communication disability also may fear retribution – particularly if the perpetrator were to be a family member. It could

have a dire impact on the individual's daily life activities should the violence occur at the hand of a carer or family member, and could ultimately lead to their health and safety being compromised (Bornman et al., 2016; Edwards et al., 2012; Fitzsimons, 2016). To aggravate the situation, these individuals may not have the vocabulary needed to make a statement or testify in court (Viljoen et al., 2021; White et al., 2015), since many persons with severe communication disabilities have limited or no access to education. This results in poor literacy skills and may lead to communication and language barriers when they try to report a crime, or when they need to testify in court (Camilleri & Pedersen, 2019). Nevertheless, these challenges only represent the tip of the iceberg in terms of barriers for persons with severe communication disabilities when needing to access the justice system.

Families and caregivers who support persons with severe communication disabilities in their quest for justice may also feel powerless and overwhelmed, as secondary stakeholders in the justice system often do not have the relevant knowledge and skills to support them with information and advice about the legal process (from the first contact at a police station to the subsequent involvement in court). The families who support these individuals may fear negative repercussions (e.g., if the accused is the provider of financial support) and might decide against reporting the crime. Furthermore, if families perceive the prospects of successful prosecution as being slim, they are also less likely to report these crimes. Therefore, many of the crimes go unreported, ultimately resulting in no justice at all (Artz et al., 2016).

With regard to the legal practitioners, their insufficient training (and consequently their inadequate knowledge) may contribute to self-doubt of their ability to support persons with severe communication disabilities in court, hence resulting in their withdrawal from such cases. Legal stakeholders may also be disrespectful because they do not understand the individual's disability. The legal practitioners may furthermore feel overwhelmed because they are acutely aware of the difficulties that persons with severe communication disabilities experience in understanding the complex maze of rules and practices that make up legal proceedings such as pleading, providing testimony or giving evidence. This may result in legal practitioners questioning the credibility of witnesses and defendants with disabilities (Benedet & Grant, 2012; Doak & Doak, 2017; Kilcommins et al., 2013). All of these obstacles lead to a lack of awareness of court accommodations and inevitably result in important accommodations not being available.

It is therefore advised that a variety of accommodations should be provided, as research suggests that persons with severe communication disabilities are a heterogeneous population who may have multiple disabilities and thus require more than one accommodation to participate equally in court. Although the literature describes some accommodations (e.g., the use of intermediaries or augmentative and alternative communication (AAC) strategies), these accommodations alone cannot provide the equality that persons with severe communication disabilities require to participate in the justice system. For this reason, it can be argued that the court system fails to provide accommodations to enable persons with severe communication disabilities to participate equally in the court system. For persons with severe communication disabilities to access the court system, transformative equality must be the goal – in addition to formal and substantive equality. This is needed to ensure real transformation of the court system and guarantee equality for persons with disabilities (Atrey et al., 2017).

A further critical construct to consider in terms of access to justice for persons with disabilities is procedural justice, as this can assist in ensuring fairness and equality, not only in the legal outcome, but also in the court process. Transformative equality and procedural justice can both guide researchers in their attempts to identify court accommodations for persons with severe communication disabilities.

From the above, it becomes clear that persons with severe communication disabilities are often not afforded the appropriate evidence-based court accommodations needed for equal and fair participation in the court system. The purpose of the current study is to develop and appraise guidelines for court accommodations that should be provided to persons with severe communication disabilities to allow their equal participation in the court system and achieve access to justice, irrespective of their role (witness, defendant or legal practitioner). Court accommodation guidelines could help achieve transformative equality and procedural justice by offering concise instructions and recommendations to primary stakeholders (persons with severe communication disabilities and their families) and secondary stakeholders (legal practitioners, intermediaries, forensic nurses and psychologists) when needing to access the court system. More importantly, court accommodation guidelines could ultimately improve the much-needed outcome for these individuals, which is unrestricted access to justice.

1.3 Definition of terms

The following terms are critical to this study, and their definitions explain how they are operationalised in the current study. The terms are presented in alphabetical order.

1.3.1 Access to justice

Access to justice is generally understood as a person's effective access to formal and informal legal systems, procedures, information, and locations used in the administration of justice, and in particular, access to a fair hearing and to an appropriate remedy for breach of rights (Flynn & Lawson, 2013). In this thesis, access to justice is viewed from the unique perspective of persons with disabilities. It is rooted in the fundamental principles of respect for human dignity, equality and non-discrimination. Furthermore, in alignment with the study's focus, access to justice specifically illuminates the court – in other words, what measures or accommodations would need to be put in place for a person with a severe communication disability to participate effectively in court. This participation implies that they could access the justice system (i.e., be present) but also be actively engaged in the proceedings, in an equal and fair manner, through the availability of accommodations that could support and strengthen their participation, irrespective of whether this would be in the role of witness, defendant or legal practitioner. For the purpose of this study, persons with severe communication disability who have been accused of or charged with a crime, will be referred to as the 'defendant', as opposed to the 'accused', as the former term is in line with the human rights focus of the CRPD and therefore also used by the United Nations (United Nations, 2020).

1.3.2 Accommodations

In the CRPD, reasonable accommodation is defined as the "necessary and appropriate modifications and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms" (United Nations, 2006, p. 4). This definition highlights the fact that accommodations are provided on a specific-person basis, as required by individuals with severe communication disability. For the purpose of this study, it was also decided to only use the term 'accommodations' (as opposed to 'reasonable accommodation') as reasonable accommodation in itself is often not sufficient to change the court system (Lawson, 2008). The question of what constitutes reasonableness is used as a red

herring. Effective and appropriate accommodations require a range of strategies, approaches, persons and changes to procedures and processes that could assist the person with a severe communication disability to access justice: accommodations are as heterogeneous as the population who requires them. Therefore, in this thesis, accommodations refer to all the appropriate modifications, adjustments, strategies, support persons and legal professionals (for example an intermediary or expert witness) that persons with severe communication disabilities can use or benefit from so as to ensure equal and fair participation in the court system. However, in stating that, the researcher acknowledges the importance of the term ‘reasonable accommodation’.

It is also imperative here not to confuse accommodations with universal design. The CRPD defines universal design as the “design of products, environments, programmes and services to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design. Universal design shall not exclude assistive devices for particular groups of persons with disabilities where this is needed” (United Nations, 2006, p. 4). The general comments on Article 9 of the CRPD (Committee on the Rights of Persons with Disabilities, 2014) reiterate that the purpose of universal design is to benefit all. Although the researcher agrees that universal design is crucial and necessary to allow persons with severe communication disabilities participation in court, this is not sufficient. Adaptations are therefore aimed at adapting systems, procedures and information for specific individuals, over and above principles of universal design that are applicable to all. To redress inequalities from the past for persons with severe communication disabilities, and to achieve procedural justice for them, accommodations are required in addition to universal design. Hence, in this study the focus will be on accommodations.

1.3.3 Augmentative and alternative communication (AAC)

The CRPD, which is used as the theoretical framework for this study, defines communication as including “languages, display of text, Braille, tactile communication, large print, accessible multimedia as well as written, audio, plain-language, human-reader and augmentative and alternative modes, means and formats of communication, including accessible information and communication technology” (United Nations, 2006, p. 4). Beukelman and Light (2020) provide a clarification of what these augmentative and alternative modes of communication are by describing them as a set of tools and strategies (including spoken and

written modes of communication) that a person with a severe communication disability can use to solve everyday communicative challenges. In the current thesis, the focus is on both unaided and aided forms of AAC.

Unaided communication includes strategies where the person only uses their body to communicate and ranges from non-linguistic means of communication (e.g., gestures and facial expressions) to linguistic forms, for example, manual signs from sign language. This could include any of the sign languages used across the globe, such as South African Sign Language (SASL), American Sign Language (ASL), British Sign Language (BSL) and German Sign Language (Deutsche Gebärdensprache (DGS)).

Aided communication can be defined as systems that require external assistance (e.g., using pictures or objects) to produce a message. Aided systems range in terms of their linguistic features. On the one end of the aided symbol linguistic continuum, one finds symbol systems such as traditional orthography (e.g., letters of the alphabet). Its linguistic features allow literate persons with communication disabilities to generate their own messages. Alphabet letters can also be presented in Braille or Morse code format. On the other side of this continuum are symbol sets that contain limited numbers of easily guessable symbols with limited linguistic features. Symbol sets thus consist of a defined number of symbols that have no rules for expansion or generating new words, for example, Picture Communication Symbols (PCS™). This means that messages can only be compiled by selecting symbols from the pre-selected set (Beukelman & Light, 2020). Between these two points are a range of different types of symbols (e.g., Widgit symbols™, Symbolstix™, Blissymbols™) that differ in terms of their transparency, and that become increasingly more translucent and opaque as their linguistic features increase.

1.3.4 Convention on the Rights of Persons with Disabilities (CRPD)

The CRPD is an international human rights treaty and strengthened legal framework that is intended to protect the rights and dignity of persons with disabilities (United Nations, 2006). This human rights framework was also incorporated throughout the study. The CRPD was officially adopted by the United Nations on 13 December 2006 and opened for signature on 30 March 2007 (United Nations, 2021a). Its main purpose was to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity (United Nations, 2006). It consists of 50 separate articles with Articles 5 to 30 setting out the fundamental rights protected by the

CRPD, while the remaining provisions establish mechanisms for implementation and monitoring (Series, 2020). The CRPD introduced an innovative framework where States Parties need to report back to the CRPD committee who is in charge of monitoring implementation of the various articles of the CRPD. The benchmark against which successful implementation of the CRPD is measured is the extent to which persons with disabilities really have the benefit of equal rights in comparison to their peers in society (Series, 2020). Officially, the CRPD has become the bedrock of international legislation for persons with disabilities. The CRPD was used as the conceptual framework to guide this study.

1.3.5 Court

The court is an institution, typically a government institution, with the authority to adjudicate legal disputes/disagreements between parties. It carries out the administration of justice in civil, criminal and administrative matters – in accordance with the rule of law – by interpreting, defending and applying the law in legal cases (Courts and Tribunals Judiciary, 2017; Jacobson & Cooper, 2020). For the purpose of the current study, court will include all types of courts, for example, criminal, civil, children’s and mental health courts, with the legal stakeholders in the court being divided into primary and secondary stakeholders (McCold, 2000; Schoeman, 2019). Primary stakeholders are those directly affected by the crime or offence, for example, the witness and defendant with severe communication disabilities. The secondary stakeholders are linked to society and the government, namely the judge, justice, the prosecutor, the attorney, the defence attorney, the jury, the intermediary, a support person and the court officer.

1.3.6 Guidelines

In this study, guidelines are defined as systematically developed statements to assist legal practitioners and persons with severe communication disabilities about the court accommodations that are available to them. The guidelines are grouped into four thematic categories and based on procedural justice principles, namely having a voice, being treated with respect, using objective criteria for decision making, and understanding the court language. This categorisation was used as opposed to a mere list of statements, as it could assist with the readability, practicality and feasibility of the guidelines.

1.3.7 Intersectionality

In this study, intersectionality is used as the theoretical framework to guide the student. Intersectionality can be defined as a critical framework that provides the student with a specific viewpoint when examining the situations and relationships which result from discrimination on the basis of various grounds, which cannot be disentangled from each other and which by being interconnected create unique forms of disadvantage (for example, a woman with a severe communication disability or a child with a severe communication disability) (Atewologun, 2018; de Beco, 2017). Intersectionality recognises not only that the heterogeneity of particular marginalised groups of people (for example, persons with severe communication disabilities) but also that intra-group differences may lead to diverse kinds of discrimination.

1.3.8 Justice system

The justice system can be defined as the judiciary system, irrespective of country and jurisdiction, that includes different stakeholders, for example, the judges and magistrates who govern the courts. The justice system also includes the police, the courts, the correctional services and the juvenile justice system (Indermaur & Roberts, 2009). For the purpose of the study in hand, the court system and the relevant legal stakeholders are included in the justice system (Jacobson & Cooper, 2020).

1.3.9 Legal proceedings

Article 13 (Access to justice) of the CRPD explicitly states that persons with disabilities are entitled to effective access to justice “in all legal proceedings, including at investigative and other preliminary stages”, for example, in the pre-trial process (e.g., when giving a statement) or in the post-trial process (e.g., prison reform programmes or counselling). Although it acknowledges the other stages, this study focuses on one specific stage of the legal proceedings, namely participation in court.

1.3.10 Person with a severe communication disability

Persons with severe communication disabilities are a diverse group of persons, in terms of age, ethnicity and race, socio-economic status and disability. Their disability can be physical, intellectual, sensory, socio-emotional or any combination thereof (i.e., multiple disability) and could include diagnoses such as cerebral palsy (CP), autism spectrum disorder (ASD),

intellectual disability (e.g., Down Syndrome) as well as acquired impairments such as illness (e.g. cerebro-vascular incidents or neuro-degenerative diseases such as motor neuron disease) or traumatic brain injury stemming from violence or accidents (Beukelman & Light, 2020). These individuals can also be referred to as persons with complex communication needs or persons who are non-verbal. Persons with severe communication disabilities often lack the ability to rely on speech to communicate their daily needs or to participate in social activities. Due to the extent of their disabilities, individuals with severe communication disabilities typically require a variety of specialised services and technologies to participate meaningfully in society (Hourcade et al., 2004). Furthermore, they typically benefit from using AAC (low technology such as communication boards and books, and high technology such as speech-generating devices), as well as a range of adaptive technology and accommodations to communicate and participate effectively across a wide range of different communication contexts, including specific contexts such as in court (Beukelman & Light, 2020). Please see Chapter 2 (pg. 28 – 30) for a further explanation of who is regarded as a witness and/or a defendant with a severe communication disability in this thesis.

1.3.11 Procedural justice

Procedural justice is concerned with people’s contact with the justice system and has a twofold focus: both on the outcome of the case and on the way in which that case is handled (Brems & Lavrysen, 2013). Procedural justice also involves the process by which decisions are made to promote fairness to individuals who enter the justice system. Therefore, it supports the idea that how a defendant or a witness with a severe communication disability is treated (or how they subjectively experience this treatment) has a profound effect on their perception of the process and the likelihood of their ongoing compliance with court orders and the law in general. As indicated earlier, four procedural justice principles (having a voice; being treated with respect; using objective criteria for decision making; and understanding the court language) were used to ensure fairness and equality for persons with severe communication disabilities when needing to access the court system (Tyler, 2008).

1.4 List of abbreviations and acronyms

AAC: Augmentative and Alternative Communication

AGREE II: Appraisal of Guidelines for Research and Evaluation

ASD:	Autism Spectrum Disorder
ASHA:	American Speech-Language-Hearing Association
ASL:	American Sign Language
BA:	Bachelor of Arts degree
BSc:	Bachelor of Science degree
BSL:	British Sign Language
CAGAT:	Court Accommodations Guidelines Appraisal Tool
CAQDAS:	Computer-Assisted Qualitative Data Analysis Software
CCTV:	Closed-circuit television
CEDAW:	Convention on the Elimination of all forms of Discrimination Against Women
CERD:	Convention on the Elimination of All Forms of Racial Discrimination
CP:	Cerebral Palsy
CPO:	Court preparation officers
CRC:	Convention on the Rights of the Child
CRPD:	Convention on the Rights of Persons with Disabilities
DGS:	Deutsche Gebärdensprache (German Sign Language)
FSHD:	Facioscapulohumeral muscular dystrophy
ICJ:	International Commission of Jurists
IOM:	Institute of Medicine
IT:	Information Technology
LLB:	Bachelors of Law
LLD:	Doctor of Law
LLM:	Master's of Law

NGO:	Non-governmental organisation
NPA:	National Prosecuting Authority
PCS:	Picture Communication Symbols®
PhD:	Doctor of Philosophy
SA:	South Africa
SASL:	South African Sign Language
SGBV:	Sexual and Gender-Based Violence
UDHR:	Universal Declaration of Human Rights
UK:	United Kingdom
UN:	United Nations
UNSRIJL:	The United Nations Special Rapporteur of the Independence of Judges and Lawyers
USA:	United States of America
WHO:	World Health Organization

1.5 Latin phrases

<i>Amicus curia:</i>	‘friend of the court’
<i>Guardian ad litem:</i>	‘for the suit’
<i>In camera:</i>	‘in the chamber’
<i>Pro bono:</i>	‘for the public good’
<i>Viva voce:</i>	‘with living voice’, but most often translated as ‘by word of mouth’

1.6 Overview of chapters

Chapter 1 provides the justification for the study by highlighting the challenges experienced by persons with severe communication disabilities when attempting to access the court system. This is followed by an explanation of frequently used terms and definitions, and the abbreviations,

acronyms and Latin phrases that appear in this thesis. Finally, an overview of the six chapters of this thesis is presented.

Chapter 2 focuses on appropriate literature on human rights as an international law, and discusses the CRPD as a human rights framework. Specific emphasis is placed on Article 5 (Equality), Article 13 (Access to justice) and Article 21 (Freedom of expression and opinion, and access to information). Next, persons with severe communication disabilities and the barriers they face in the court system are investigated, following an outline of the different legal roles they could occupy. This is followed by a discussion of regional and country-specific laws for persons with severe communication disabilities that could assist them to access justice. Participation in the court process and an in-depth discussion of the various legal stakeholders (primary and secondary stakeholders) in the courtroom follow next. Procedural justice in the courts is deliberated on, as well as the principles that could be used to assist persons with severe communication disabilities to access the justice system. Chapter 2 concludes with a clear description and application of intersectionality and the term ‘intersectional discrimination’, and it indicates how this impacts persons with severe communication disabilities when they need to access the justice system.

This study used a three-phased mixed methods social justice research design (using a sequential exploratory design). Therefore, the methodology, ethical considerations, results and discussion for these three phases are discussed sequentially in Chapters 3, 4 and 5.

Chapter 3 starts by describing the research design, main aim and sub-aims of the complete thesis. This is followed by a detailed account of the four data sources that make up Phase 1 – the Qualitative Engagement Phase. It starts by describing Data source 1, which comprised a legal scoping review of published literature of court accommodations for persons with severe communication disabilities. Next follows a discussion of Data source 2, an expert focus group that was conducted to elicit personal opinions from known practitioners in the field in one specific jurisdiction, namely South Africa. Thereafter, Data source 3, an international expert focus group that was conducted online, is unpacked. This focus group aimed to investigate possible universal court accommodations that could enable persons with severe communication disabilities (irrespective of role) from across the globe to equally participate in the court system, thereby ensuring their access to justice. Lastly follows a report on Data source 4, namely online interviews with seven legal practitioners with disabilities that sought to describe the unique

perspectives of these practitioners on how they (as persons with a disability themselves) experienced participation in the judiciary system. Chapter 3 concludes by commenting on the trustworthiness of Phase 1 and summarising the implications of Phase 1 for Phase 2.

Chapter 4 unpacks the methodology, ethical considerations, results and discussion of Phase 2 – the Quantitative Feature Phase. This second phase entails the integration and triangulation of the qualitative results from the four data sources of Phase 1 and starts by describing the aims and sub-aims of Phase 2. Next, the process of developing the guidelines for court accommodations for persons with severe communication disabilities is discussed and the stakeholder review is described, followed by a focus on the trustworthiness of Phase 2. Chapter 4 concludes with a summary, suggests the implications of Phase 2 and makes recommendations for Phase 3.

Chapter 5 focuses on the third and final phase of the study, the Quantitative Test Phase, and discusses the methodology, ethical considerations and results of this phase. The chapter starts by describing the main aim and the sub-aims of Phase 3, namely, to appraise the court accommodation guidelines using a custom-developed appraisal tool – the Court Accommodations Guidelines Appraisal Tool (CAGAT) – which is based on the Appraisal of Guidelines for Research and Evaluation (AGREE II), an existing framework. The development of the CAGAT is described, together with the pilot study that was conducted to strengthen its validity. The chapter reports on the data collection for the main study, which entailed expert practitioners employing the CAGAT to appraise the guidelines developed in Phase 2, followed by the methods of data analysis and an outline of the results for each domain. Chapter 5 concludes with comments on the reliability and validity of Phase 3, and a summary of its results.

As the final chapter of the study, *Chapter 6* presents a summary of results across the three phases, followed by an in-depth discussion of their clinical implications. A critical appraisal of the study follows, focusing on both its strengths and limitations. The chapter concludes with recommendations for further research.

1.7 Conclusion

Chapter 1 provided the rationale for the study by highlighting the plethora of barriers that persons with severe communication disabilities face when they need to access the justice system, It also documented the lack of court accommodations and gave an explanation of the operational

definitions, abbreviations and acronyms used in this thesis. The chapter concluded with an overview of the six chapters of this thesis.

CHAPTER 2

LITERATURE REVIEW

2.1 Introduction

The CRPD, the first comprehensive human rights treaty of the 21st century, clearly articulates the right to equality, the right of access to justice, the right to freedom of expression and opinion, and the right of access to information (United Nations, 2006). All of these rights are directly linked to assisting persons with severe communication disabilities in accessing and participating in the justice system. Using the CRPD as a human rights framework can assist researchers and practitioners to support persons with severe communication details in equally accessing the justice system. Following a detailed discussion of persons with severe communication disabilities, the barriers they may experience, and the different legal roles they could possibly occupy in court, this chapter focuses on regional and country-specific laws related to accessing justice for persons with severe communication disabilities. Participation in the court system process is described in detail, and this chapter outlines how a person with a severe disability can effectively participate in court. It also states the different primary and secondary stakeholders who may be present in the courtroom and describes how procedural justice principles can be used to assist in accessing justice. The chapter concludes by contextualising how intersectionality and intersectional discrimination have an impact on persons with severe communication disabilities who try to access the court system.

2.2 Human rights: An international law of focus

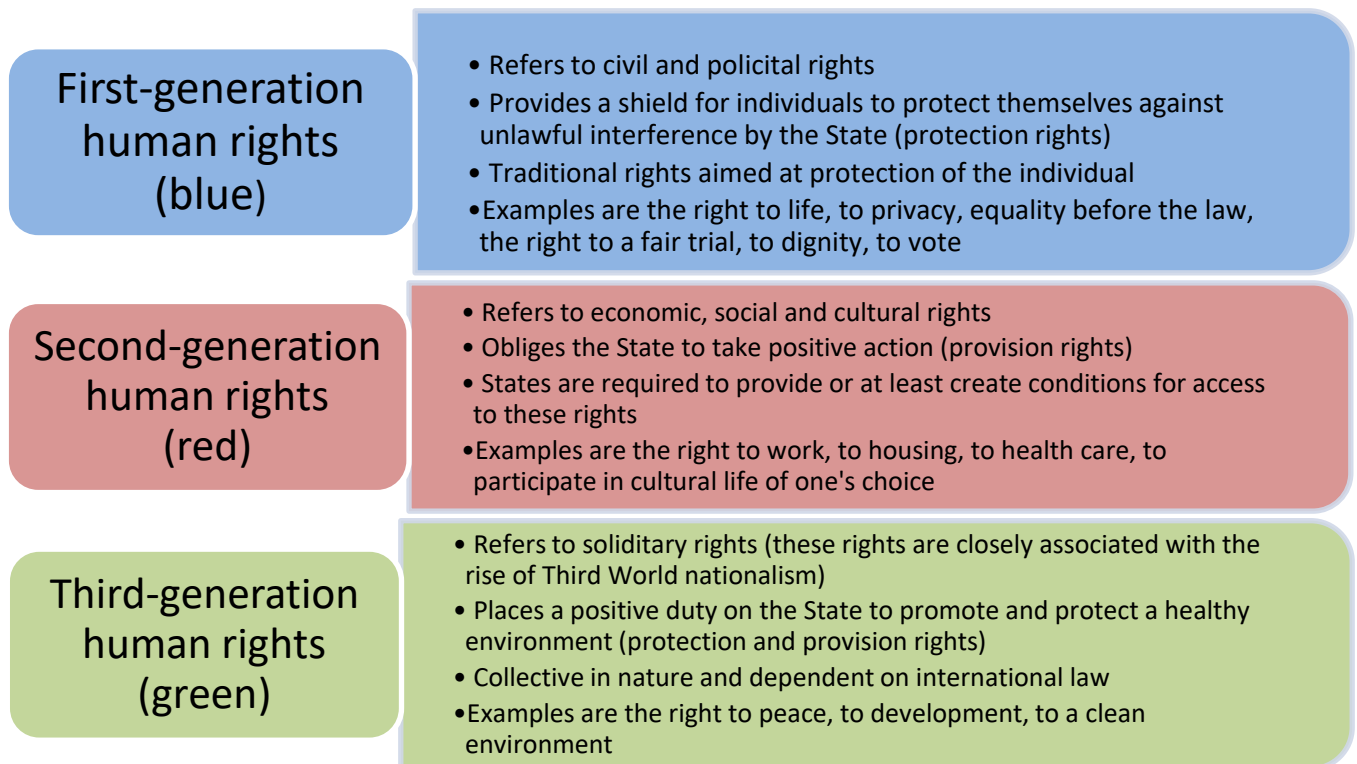
Over half a century ago, on 10 December 1948, the UN's General Assembly (United Nations, 1948) adopted the Universal Declaration of Human Rights (UDHR). This was in response to the gross violation of human rights that occurred during the Second World War and the UDHR had world peace and the broad protection of the human rights of mankind at its core. The declaration became the foundation of the modern human rights movement and is widely regarded as a universal standard of achievement for all people and all nations (Global Citizenship Commission, 2016; Harpur, 2012; Hibbert, 2017). The preamble of the UDHR, which states that human rights is the foundation of global freedom, justice and peace (United Nations, 1948), paved the way for the adoption of further human rights conventions focused on specific aspects that are highlighted in critical disabilities studies and intersectionality theory. Examples are the

International Convention on the Elimination of All Forms of Racial Discrimination (CERD) (United Nations, 1969), the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) (United Nations, 1988), the Convention on the Rights of the Child (CRC) (United Nations, 1989), and the Convention on the Rights of Persons with Disabilities (CRPD) (United Nations, 2006).

In 1979, the Czech jurist Karel Vasak classified human rights into first-, second- and third-generation rights (Domaradzki et al., 2019; Mubangizi, 2004). Furthermore, in 1997, Johan Galtung (known as the ‘Father of Academic Peace Research’) labelled the first generation of human rights as belonging to the upper middle-class (blue), the second generation as belonging to the working class (red) and the third generation as belonging to social movements (green) (Sano, 2000; Zohadi, 2004). This provides a historical overview of the progression of rights. Figure 2.1 illustrates the classification of these rights.

Figure 2.1

Generation classification of human rights



Several legal scholars have criticised Vasak's classification of human rights (Domaradzki et al., 2019; Jensen, 2017; Macklem, 2015; Mubangizi, 2004), as well as Galtung's colour labels (Mubangizi, 2004; Sano, 2000; Zohadi, 2004) and highlight that human rights should not be classified or grouped in terms of a 'generation framework' for the sake of clarity. As such, they argue that a classification is historically inaccurate, analytically unhelpful, and conceptually misguided (Jensen, 2017; Macklem, 2015). However, legal theorist Mubangizi (2004) suggests that the classification of human rights should not necessarily be regarded as a negative notion if applied appropriately. In fact, it can encourage thinking about the breadth and complexity of the human rights field as well as assist in reflecting on rights from different conceptual perspectives. For the purpose of this study, access to justice is classified as a first-generation (blue) human right that aims to protect persons with disabilities from discrimination and unfair treatment by acting as a shield against unlawful interference by the State. More importantly, access to justice promotes the effective access to police, prisons, courts, tribunals, and other instruments of justice – all of which should be equally attainable to people with disabilities and to their peers without disabilities (Cremin, 2016).

2.3 The Convention on the Rights of Persons with Disabilities (CRPD) as an international human rights framework

The CRPD is an international disability treaty and established a strengthened and procedural legal framework that is intended to protect the rights and dignity of persons with disabilities (Ortoleva, 2011b; United Nations, 2006). On 13 December 2006 the CRPD was adopted at the UN Headquarters in New York and on 30 March 2007 it was opened for signature (United Nations, 2021a). Altogether 82 countries signed the Convention, 44 signed the Optional Protocol, and one ratified the Convention at that time. This was the highest number of signatories in history to a UN Convention on its opening day (United Nations, 2021a). To date, the CRPD has been signed and ratified by 182 countries (United Nations, 2021d). The Convention is also praised for its progressive nature, as it had the direct input from persons with disabilities themselves in its drafting process (United Nations, 2021b).

The CRPD was also designed to be a human rights instrument with an explicit focus on the social (as opposed to the medical) model of disability, which maintains that disability results from interactions between an individual with an impairment and/or health condition and their surrounding social and cultural environment (Lansdown, 2012). It adopts a broad categorisation

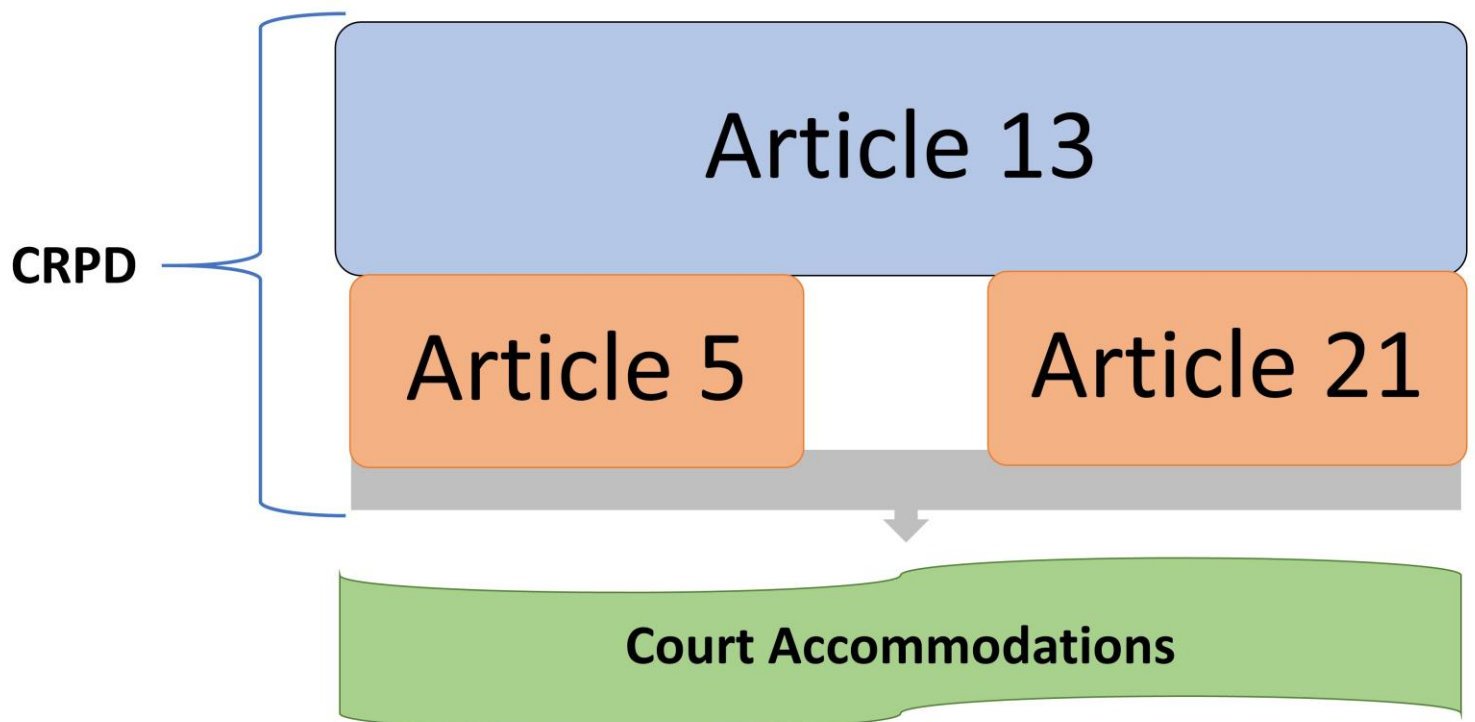
of persons with disabilities and reaffirms that all persons with all types and severity of disabilities must enjoy all human rights and fundamental freedoms (United Nations, 2006). The CRPD clarifies and qualifies how all categories of rights apply to persons with disabilities. It also identifies areas where adaptations have to be made for persons with disabilities to effectively exercise their rights and/or areas where their rights have been violated, and where protection of rights must be reinforced (Chan et al., 2012; Minkowitz, 2017).

Scholars have started applying the CRPD as a human rights framework across different life areas of persons with disabilities, including the legal, cultural, social and economic sphere (Lansdown, 2012; Minkowitz, 2017; Murphy & Bantry-White, 2020; Werner, 2012). More specifically, the CRPD can be used as a human rights framework to apply a human rights lens on persons with disability when wanting to access their human rights and gain access to justice (Chan et al., 2012; Flynn, 2016b).

The CRPD consists of 50 articles that can be broken down as follows: Article 1: The purpose; Article 2: Definitions; Article 3: General principles; Article 4: General obligations; Articles 5 – 30: Specific rights; Article 31: Statistics and data collection; Article 32: International cooperation; Article 33: Implementation and monitoring measures; Articles 34 – 39: Committee; Article 40: Conference and States Parties; and lastly, Article 41 and onwards: Final clauses (United Nations, 2014). For the purpose of this study, three specific rights will be highlighted: Article 5 (Equality), Article 13 (Access to justice) and Article 21 (Freedom of expression and opinion, and access to information). Articles 5 and 21 will be discussed in relation to Article 13, keeping a focus on persons with severe communication disabilities and their participation in the court system throughout. Figure 2.2. highlights the study focus on the nexus of Articles 5, 13 and 21 of the CRPD.

Figure 2.2

Study focus



2.3.1 Article 5 – Equality

Article 5 of the CRPD focuses on the constructs equality and non-discrimination and emphasises that “States Parties recognise that all persons are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law” (United Nations, 2006, p. 7).

Literature distinguishes at least three types of equality: formal equality (which is the equal treatment as a matter of law); substantive equality (which refers to the measures that need to be taken to equalise the enjoyment of human rights) and transformative equality (which refers to the measures that are needed to remove the causes of inequality) (Minkowitz, 2017). Persons with disability have historically been denied equal opportunities and treatment, and hence all three types of equality are relevant and essential for these individuals to participate equally in society. Formal equality is needed to achieve equal status as recognised members of society who

have all human rights (Fredman, 2016b). Substantive equality, in turn, is needed to proactively redistribute power and resources (Fredman, 2016b). Transformative equality is needed to ensure that a real transformation of opportunities, institutions and systems occur that are no longer grounded in historically determined paradigms of power and life patterns (Celik, 2017; Flynn, 2016; Flynn & Lawson, 2013; Goldschmidt, 2017; Minkowitz, 2017; Ortoleva, 2011).

Transformative equality aims to overcome structural, institutional, as well as direct and indirect discrimination by introducing positive duties to transform society (and institutions such as the court system) (Degener, 2016). Fredman (2017) and colleagues provide a detailed account and delineate four initiatives for achieving transformative equality for persons with disabilities. They suggest that measures must

- (i) redress the social and economic disadvantage associated with disability;
- (ii) address stigma, stereotyping, prejudice and violence on the basis of disability;
- (iii) enhance participation and strengthen the voice of persons with disabilities, and
- (iv) accommodate difference by achieving structural change.

These dimensions need to be considered simultaneously in evaluating whether a measure advances equality for persons with disabilities, especially when access to education, health care and the court system is at stake (Atrey et al., 2017; Fredman, 2016a).

The CRPD also challenges the traditional approach towards equality and discrimination by emphasising the concept of reasonable accommodation (which is defined in Article 2 of the CRPD) (Celik, 2017; Degener, 2016; Series, 2020; Weller, 2016). Reasonable accommodation can be defined as all necessary and appropriate modifications and adjustments that do not impose a disproportionate burden when needed in a particular case to ensure that persons with disabilities can enjoy or exercise – on an equal basis with others – all human rights and fundamental freedoms (United Nations, 2006). Reasonable accommodations are thus needed because concepts such as ‘universal design’ have not always been implemented in the court system (Lid, 2014). For example, universal design would mean that wheelchair ramps are added to court buildings, but many court buildings have been built centuries ago with no wheelchair ramps, therefore adding or building a ramp to an existing court structure would be a reasonable accommodation. Furthermore, reasonable accommodation is not only limited to the structural (physical) accommodations, but also linked to modifications in legal procedures, adjustments and services (Flynn, 2016).

In the court context, the CRPD provides a much-needed gateway for persons with disabilities to be able to access the court system, and to be provided with accommodations that can enable them to participate equally and without discrimination, irrelevant of their role (witness, defendant or legal practitioner) (Flynn, 2016; Flynn & Lawson, 2013; O’Leary & Feely, 2018). Author Caroline Belden (2018) challenges the reader to reflect on the terms ‘equality’ and ‘equity’ and goes on to state, “Equality is leaving the door open for anyone who has the means to approach it; equity is ensuring there is a pathway to that door for those who need it” (p. 2). Legal practitioners and relevant stakeholders should ensure that persons with severe communication disabilities are provided with court accommodations that can allow them to participate in the court system, and that can also assist them in the whole legal process of participating equally.

2.3.2 Article 13 – Access to Justice

Article 13 of the CRPD declares 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” (UN, 2006, p. 11). Article 13 further states that, “In order to help to ensure effective access to justice for persons with disabilities, States Parties shall promote appropriate training for those working in the field of administration of justice” (UN, 2006, p. 11).

Access to justice as a concept has evolved and attracted significant academic and legal interest in the 21st century, especially in terms of access to justice for persons with disabilities and how it can be utilised to ensure the cornerstone of human rights: equality, non-discrimination and inherent dignity (Cremin, 2016; Flynn & Lawson, 2013; Ortoleva, 2011). The term ‘access to justice’ has broadly been defined as a person’s effective access to the formal and informal legal systems, procedures, information, and locations used in the administration of justice (Flynn, 2016; Lord et al., 2012).

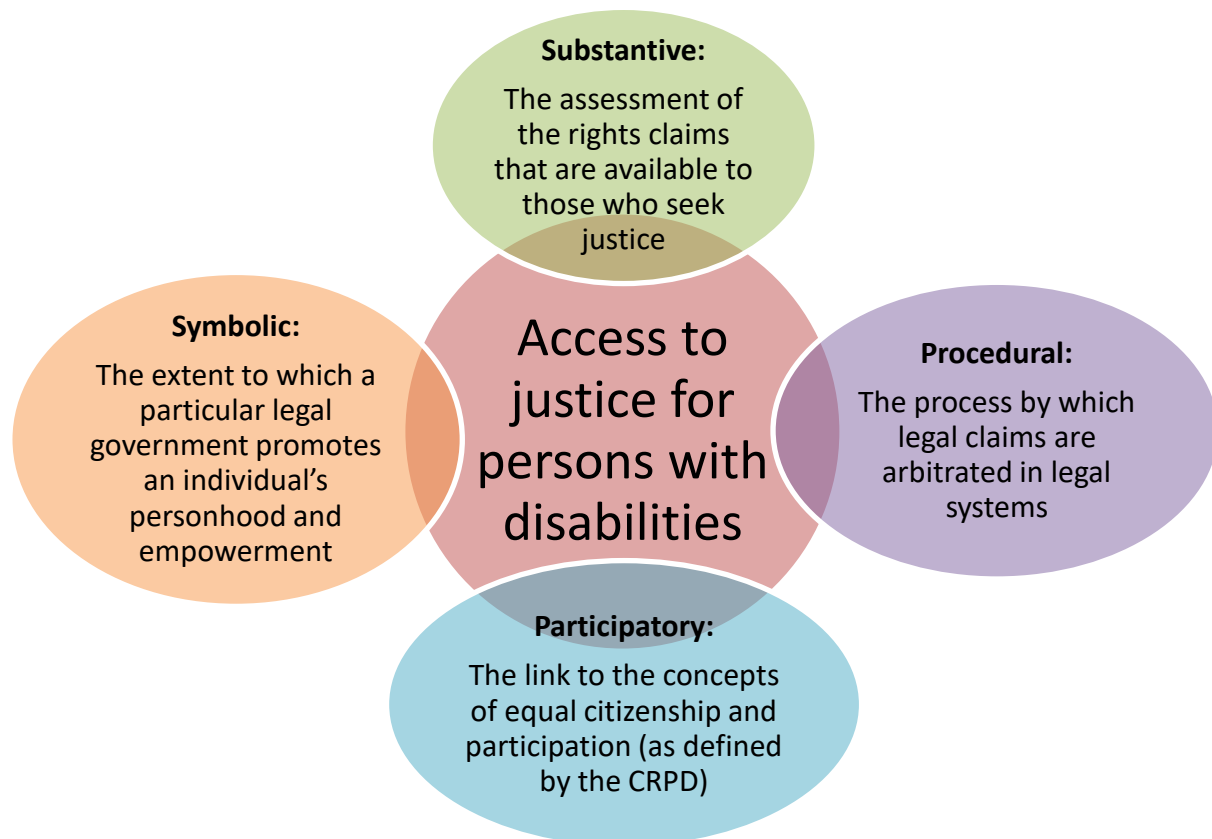
Furthermore, Bahdi (2007), supported by Flynn and Lawson (2013) and later by Flynn (2016), proposes a more intricate focus on the implications of access to justice by dissecting its three interlocking components, namely substantive, procedural and symbolic justice. These distinct components provide a helpful point of departure for understanding the analysis of access to justice for persons with disabilities (Flynn & Lawson, 2013).

- First, the substantive component of access to justice can be defined as an assessment of the rights claims that are available to those who seek justice, and it focuses on the content of the legal rules and principles that shape the decisions made about those who make a claim for access to justice. Substantive access to justice is deeply interwoven with the idea of respect for the equality of all citizens. However, as Bahdi (2007) clearly delineates, the substantive element of access to justice requires the development of laws and policies that promote substantive equality. Substantive justice cannot be achieved without the involvement of the disadvantaged group themselves, for example persons with disabilities (Flynn, 2016; Flynn & Lawson, 2013).
- Second, the procedural component of access to justice refers to the traditional interpretation that access to justice is the process by which legal claims are arbitrated in legal systems (Bahdi, 2007; Flynn, 2016; Flynn & Lawson, 2013). When focusing on the procedural component of access to justice, the opportunities and barriers to getting the individual's claims into court, should be examined (Bahdi, 2007). For persons with disabilities, that would mean the removal of procedural barriers and the introduction of supports and accommodations that could enable these individuals to equally and effectively participate in court, irrespective of their role (witness, defendant or legal practitioner) (Flynn, 2016; Flynn & Lawson, 2013).
- Third, the symbolic component of access to justice, which can be defined as the “steps outside of doctrinal law” (Bahdi, 2007, p. 3), specifically examines the extent to which a particular legal government promotes an individual's personhood and empowerment. Therefore, in the context of persons with disabilities, this will involve a broader analysis of access to justice outside the narrow confines of the court system, which incorporates political, social and cultural activities that further the equal participation of persons with disabilities (Flynn, 2016; Flynn & Lawson, 2013).
- Flynn and Lawson (2013) continue to introduce a fourth component of access to justice, namely the participatory component. The authors elaborate how this component is closely linked to the concepts of equal citizenship, but also ‘deeply rooted’ in the definition of ‘access to justice’ as stated in the CRPD, which has a specific and paramount focus on participation of persons with disabilities. The equal participation of persons with disabilities is also not role specific in the justice system, and therefore the right to

participate on an equal basis with others extends to witnesses, defendants, and legal practitioners (judges, advocates, jurors, etc.) (Flynn, 2016). Figure 2.3 illustrates the four components of access to justice for persons with disabilities as conceptualised by Flynn and Lawson (2013).

Figure 2.3

The four components of access to justice for persons with disabilities



This four-dimensional understanding of access to justice can be used as a framework to analyse the various aspects of the justice system, more specifically the court system and the experiences of persons with disabilities in this system (Flynn & Lawson, 2013). This framework can also assist researchers when identifying court accommodations for persons with severe

communication disabilities to ensure equal participation in the justice system as a witness, defendant or legal practitioner.

2.3.3 Article 21 – Freedom of expression and opinion, and access to information

Article 21 of the CRPD proclaims that, “States Parties shall take all appropriate measures to ensure that persons with disabilities can exercise the right to freedom of expression and opinion, including the freedom to seek, receive and impart information and ideas on an equal basis with others and through all forms of communication of their choice” (United Nations, 2006, p. 14). This article further elucidates what communication modes and methods are referred to by providing examples such as the use of sign languages, Braille, AAC, and all other accessible formats of communication that constitute the preferred choice of a person with a disability’s official communication interaction. It underscores that all of these modes and methods should be allowed (United Nations, 2006).

Communication rights are becoming increasingly important in the 21st century as research is highlighting that persons with severe communication difficulties may also be vulnerable to human rights abuses such as sexual and gender-based violence. Furthermore, they are also vulnerable due to not receiving support or assistance in their pursuit of access to justice (Marshall & Barrett, 2018; McLeod, 2018). Communication is critical for reporting human rights violations, seeking help and legal advice, and receiving support when wanting to access the justice system (Bornman, 2017; Marshall & Barrett, 2018).

2.4 Persons with severe communication disabilities

For centuries, persons with disabilities have been denied access to justice and they have often found the process of accessing the justice system shrouded in stressful, discriminatory and unaccommodating barriers (Bornman et al., 2016; Bryen & Wickman, 2014; Camilleri & Pedersen, 2019; Cusack, 2020; Flynn et al., 2019; O’Leary & Feely, 2018; Pillay, 2012b; Schwartz & Elder, 2018; Spaan & Kaal, 2019; Viljoen et al., 2021; White et al., 2015; Ziv, 2007). Within the already marginalised sphere of disability, arguably the most vulnerable group are those individuals with severe communication disabilities, as they are unable to rely on spoken language to make their needs and wants known, or to protect themselves and to be safe (Bryen & Wickman, 2014; O’Leary & Feely, 2018).

Persons with severe communication disabilities (also referred to as persons with complex communication needs, or as non-verbal) are a heterogeneous group of individuals. They vary in terms of age, ethnicity and race, socio-economic status, disability type (e.g., physical, intellectual, sensory, socio-emotional or multiple disability) and severity (e.g., mild, moderate or profound). These disabilities could be the result of diagnoses such as CP, ASD, intellectual disability (e.g., Down Syndrome) and acquired impairments such as traumatic brain injury (Beukelman & Light, 2020). However, persons with severe communication disability share a common characteristic: an inability to rely on spoken language to make their needs and wants known (Beukelman & Light, 2020; Camilleri & Pedersen, 2019; Hourcade et al., 2004; O’Leary, 2016; White et al., 2015). Due to the extent of their disabilities, individuals with severe communication disabilities typically require highly specialised education and social, psychological and medical services to maximise their full potential for meaningful participation in society (Hourcade et al., 2004). Furthermore, they typically require adaptive supports and accommodations to communicate effectively – not only across a wide range of different communication contexts, but also in specific contexts such as in court (Beukelman & Light, 2020; Doak & Doak, 2017).

Persons with severe communication disabilities experience receptive (understanding) and expressive language difficulties, which affect both their spoken and written communication. As a result, they may face additional barriers when attempting to access the justice system (Beukelman & Light, 2020; Bornman et al., 2016; Flynn, 2016b). For example, a person with receptive language difficulties is likely to experience challenges in understanding legal terminology and vocabulary, instructions, legal processes and written documents (Camilleri & Pedersen, 2019; 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* (orally) in court (Kilcommins et al., 2013; Msipa, 2015).

Persons with severe communication disabilities experience many barriers, which include (but are not limited to) attitudinal, communication, information, knowledge and skills, language and literacy, physical and resource barriers when trying to access the justice system (Beukelman & Light, 2020; Bornman et al., 2016; Viljoen, 2018). Table 2.1 provides a definition and some

examples of these typical barriers that are experienced not only by persons with severe communication disabilities, but also by legal practitioners who work in the court system. Albeit the definitions for the barriers in Table 2.1 focus more on the persons with severe communication disabilities (column 3), the definitions have a similar weighting for the legal practitioners or relevant stakeholders (column 4).

Table 2.1*Barriers that persons with severe communication disabilities and legal practitioners experience in the justice system*

Barriers	Definition	Examples	
		Persons with severe communication disabilities	Legal practitioners and relevant stakeholders
1. Attitudinal barriers	These barriers refer to negative attitudes within the legal profession, family or community concerning the person with a disability (Bornman et al., 2016).	People with severe communication disabilities have an understanding of and attitude towards the justice system which can cause them not to report crimes, or not to expect justice for a crime that was perpetrated against them. These are often attitudes borne out of fear and trepidation, or concern that their reports will not be taken seriously, and that reporting a crime may mean that their independence will be taken away from them (Edwards et al., 2012).	Legal practitioners often have negative attitudes and believe that persons with severe communication disabilities do not have the credibility or competency to give evidence or participate in court (Benedet & Grant, 2012; Hepner et al., 2015; O’Leary & Feely, 2018).
2. Communication barriers	These barriers refer to the ability of a person with a severe communication disability to communicate, and the specific modes and methods they use for communication (Beukelman & Light, 2020).	Persons with severe communication disabilities often rely on other modes and methods of communication, for example the use of sign language, speech-generating devices and/or alphabet boards (Benedet & Grant, 2012; Doak & Doak, 2017; O’Leary & Feely, 2018).	Legal practitioners often do not have disability training or the knowledge on how to communicate effectively with a person with a severe communication disability (for example, if the person is using a speech-generating device) (Edwards et al., 2012; Larson, 2014)
3. Information barriers	These barriers refer to the lack of information provided to the persons with a severe communication disability regarding the procedures and processes in the courts (Viljoen, 2018).	Persons with severe communication disabilities are often not provided with accessible documents describing the court process, procedures and important information needed to understand the court process as a witness or as a defendant (Marinos et al., 2014, 2017).	Legal practitioners in the court often do not have information on how to assist persons with severe communication disabilities, for example, documents that outline what accommodations could be used to assist the individual in participating in court, or what intermediary services to contact to assist with communication matters (Edwards et al., 2012; Kilcommins et al., 2013).
4. Knowledge and skill barriers	These barriers refer to the lack of knowledge and/or skills of the professionals who work with or assist persons with severe communication disabilities, resulting in their not being able to address the needs or strategies for those individuals (Bornman et al., 2016).	Persons with severe communication disabilities often do not know how the court system works and how the legal procedures are conducted (Kilcommins et al., 2013).	The lack of disability training and awareness for legal practitioners is one of the most documented barriers in the field of persons with disabilities and access to justice (Beckene et al., 2017; Benedet & Grant, 2012; Doak & Doak, 2017; Marinos et al., 2017; Nair, 2010; O’Leary & Feely, 2018).
5. Language and literacy barriers	These barriers refer to the language and literacy ability of the person with a severe communication disability and if	The language used in court has often been described as being complex and abstract (Nair, 2010). Most persons with severe communication disabilities, due to	Legal practitioners and the courts often do not know how to simplify language and include pictorial support on documents and resources that

	they can understand the chosen language used in courts (Viljoen, 2018).	their own language and literacy capabilities, may find this language confusing and not understandable. This may also cause severe anxiety, especially during certain stages of the court trial, for example during cross-examination (Kebbell et al., 2001).	could assist persons with severe communication disabilities to participate in court (Beqiraj et al., 2017; Camilleri & Pedersen, 2019).
6. Physical barriers	These barriers refer to the lack of accessibility of the physical court structure (Viljoen, 2018).	The court structures are often not designed with persons with disabilities in mind and therefore there are a lack of physical resources in the courtroom that could ensure physical accessibility such as wheelchair ramps, elevators, or accessible hallways for persons who use wheelchairs (O’Leary, 2016).	Many legal practitioners, due to limited disability training, are not aware of the physical barriers that persons with severe communication disabilities experience. Therefore, they may not know that special requests need to be reported and documented before the person with a severe communication disability arrives at court. This could lead to postponements of trials and court dates (Kilcommins et al., 2013).
7. Resource barriers	These barriers refer to the lack of resources within the court system (Bornman et al., 2016).	Resources that should be readily available, such as sign language interpreters, court documents printed in Braille, intermediaries and support persons have been documented as being limited in most courts (Benedet & Grant, 2012; Marinos et al., 2017).	Resources, such as guidelines that could assist legal practitioners on how to accommodate persons with severe communication disabilities, are lacking in the court system (Larson, 2014).

From Table 2.1, it is clear that there are many barriers due to a multitude of different resources for persons with severe communication disabilities when they need to access and participate in the justice system – whether as a witness, defendant or legal practitioner.

2.4.1 The witness with a severe communication disability

Historically, the justice system was not designed with the needs and interests of witnesses with severe communication disabilities in mind (Beckene et al., 2017; Benedet & Grant, 2012; Doak & Doak, 2017; Flynn, 2016). Two studies funded by the WHO confirm the high international figures for prevalence and risk of violence against adults and children with disabilities (Hughes et al., 2012; Jones et al., 2012). Data collected from 21,557 adults with disabilities shows that the pooled prevalence indicated that 33.3% of these adults reported that they had experienced violence in the 12 months prior to participating in the study. This included 24% with mental illness, 6.1% with intellectual disabilities and 3.2% with non-specific impairment (Hughes et al., 2012). In an American study that compared 9086 women with and without disabilities, results showed that 39% of the women who had been raped in the 12 months preceding the survey had a disability at the time of the rape (Basile et al., 2016). Another American study that reported on 21,615 respondents and their victimisation (lifetime violence), found that 25.6% of women with disabilities reported sexual violence compared to 14.7% of women without disabilities (Mitra et al., 2016). This type of victimisation was also observed in American men, as 13.9% of men with disabilities reported sexual violence compared to 3.7% of men without disabilities (Mitra et al., 2011).

The high prevalence figures for abuse and violence against both men and women with a disability also extend to children. Globally, children with disabilities are three to four times more likely to experience violence than their peers without disability (World Health Organization, 2015). Furthermore, data obtained from 18,000 children with disabilities showed that an alarming one in every five (20%) children with disabilities, experienced physical violence and 14% had been sexually abused (Jones et al., 2012). Given the high rate of sexual assault and crimes faced by children and adults with severe communication disabilities, their victimisation must unfortunately be considered the norm rather than the exception (Beckene et al., 2017; Benedet & Grant, 2012).

Previous research concerning the social vulnerability of persons with severe communication disabilities reported a greater level of risk for these individuals being victims of

crime and coming into contact with the justice system compared to the general population (Beqiraj et al., 2017; Flynn et al., 2019; Morrison et al., 2019). The available social science literature supports the view that witnesses with severe communication disabilities are able to give accurate, useful, and truthful evidence during the court process, but that their ability to do so is greatly hindered by the lack of court accommodations and the currently used practices of cross-examination (Benedet & Grant, 2012; Doak & Doak, 2017; Hepner et al., 2015). Research continues to highlight that since the witness's evidence is usually essential to a conviction, it is particularly important that the justice system ensures a court process that is truly fair and provides the necessary accommodations to assist these individuals in their pursuit of access to justice (Benedet & Grant, 2012; Camilleri & Pedersen, 2019; Hepner et al., 2015; Marinos et al., 2017; O'Leary & Feely, 2018; Vanny et al., 2008).

2.4.2 *The defendant with a severe communication disability*

The Advocates Gateway (2017) reported on the profile of defendants with disabilities and report that many young defendants suffer from delayed brain development and impaired reasoning ability. Thus, they may not be fully able to comprehend the seriousness or longer-term consequences of their criminal behaviour or its impact on the victim. Furthermore, many defendants have literacy difficulties (either due to age or to disability), which may be associated with difficulty in understanding, processing and retaining information, and in organising an appropriate response to questions (The Advocate's Gateway, 2017). They may be unable to express themselves to give a coherent and accurate account and may be unable to read their police interviews, plead guilty or not guilty, and understand court orders (Talbot, 2012; The Advocate's Gateway, 2017).

All defendants who come before any court have, by law, the right to a fair trial (Equality and Human Rights Commission, 2020; Gooding et al., 2017; Talbot, 2012). Defendants should be able to enter a plea and to participate effectively in court proceedings, but for certain defendants, such as persons with severe communication disabilities, court proceedings can be especially challenging, thereby rendering the individual vulnerable (Equality and Human Rights Commission, 2020; Talbot, 2008, 2012). In these instances, specific support or accommodations should be made available to assist these vulnerable defendants so as to ensure their right to a fair trial by helping them to participate in court proceedings effectively (Camilleri & Pedersen, 2019).

However, Talbot (2012) pointed out that the availability of special measures for defendants seems to be problematic for at least two main reasons: firstly, there is no routine or systematic procedure for identifying the particular support needs of defendants with disabilities, and secondly, there are few accommodations in law available for defendants with disabilities. Defendants with severe communication disabilities have particular support needs which, if left unmet, can affect their ability to participate effectively in court proceedings and compromise their right to a fair trial, as protected by Article 13 (Access to Justice) in the CRPD (Gooding et al., 2017; Talbot, 2012; Vanny et al., 2008). The current arrangements for accommodations to support defendants with severe communication disabilities in court proceedings are inequitable. Witnesses with severe communication disabilities are by law able to access certain support accommodations (such as an intermediary), whereas defendants with severe communication disabilities do not have statutory protection and must rely on the discretion of the individual court and on the common law (Talbot, 2012) – this is a direct violation of their human right of access to justice.

2.4.3 The legal practitioner with a severe communication disability

Little research had been conducted on persons with severe communication disabilities in professional occupations generally, let alone in law, which implies that persons with disabilities are largely unexpected in higher-status occupations (Foster & Hirst, 2020; Gewurtz et al., 2016). This is reflected in broader social and employment policy, which concentrates on the entry of persons with disabilities into any form of work (the so called ‘all work test’), often meaning low-skilled and low-paid jobs, instead of starting from the assumption that the labour market is failing to utilise untapped talent (Foster & Hirst, 2020; Gewurtz et al., 2016; Kim et al., 2020).

The scant existing research that includes legal practitioners with disabilities, focuses mostly on the barriers that they experience in their role as legal practitioners (Dorfman, 2016; Flynn, 2016; Foster & Hirst, 2020). Ill-treatment, ignorance or discrimination from peers and senior personnel have also been reported by legal practitioners with disabilities (Flynn 2016; Foster & Hirst 2020). Furthermore, reports suggest that very little (if any) workplace accommodations have been provided or suggested for legal practitioners with disabilities to allow them to effectively perform their job responsibilities in the justice system (Gewurtz et al., 2016; Kim et al., 2020).

2.5 Regional and country-specific laws for persons with severe communication disabilities

Many regions and countries are magnifying the term ‘access to justice’ for persons with severe communication disabilities by attempting to domesticate the CRPD. These countries have their own laws and legislation that can assist and support persons with disabilities (irrespective of role) to access the justice system. Table 2.2 focuses on regional acts, specifically the African Charter and the European Union Directives that enable persons with disabilities to access justice, while Table 2.3 outlines laws and legislation from various countries that protect persons with disabilities from discrimination and unequal treatment (Beqiraj et al., 2017; Flynn et al., 2019). These regional and country-specific laws were identified in two international published reports namely: ‘Access to justice for persons with disabilities : From international principles to practice’ (Beqiraj et al., 2017) and ‘Access to Justice of Persons with Disabilities’ (Flynn et al., 2019). The identified regions and countries listed in Tables 2.2 and 2.3 cannot claim to be exhaustive lists, however, they are representative of the current regional and country-specific laws that are in place to protect persons with disabilities and their human right – access to justice.

Table 2.2

Regional acts that enable persons with disabilities to access justice

Region	Act	Purpose of Act	Specific reference to 'Access to justice'	Specific reference to persons with severe communication disabilities	Specific reference to role (witnesses, defendants or legal practitioners with disabilities)
Africa	African Charter (Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa)	<ul style="list-style-type: none"> To promote, protect and ensure the full and equal enjoyment of all human and people's rights by all persons with disabilities, and to ensure respect for their inherent dignity (African Union, 2018). 	Yes – Article 13 (Right to access to justice) in the Charter (African Union, 2018, p. 10).	Yes, Article 15 (Accessibility) states, "Every person with a disability has the right to barrier free access to the physical environment, transportation, information, including communications technologies and systems, and other facilities and services open or provided to the public" and furthermore explains, "...States Parties shall take reasonable and progressive step measures to facilitate full enjoyment by persons with disabilities of this right, and such measures shall, among others, apply to: c) Information, communications, sign languages and tactile interpretation services, Braille, audio and other services, including electronic services and emergency services" (African Union, 2018, p. 11)	<ul style="list-style-type: none"> Witnesses with disabilities Defendants with disabilities Legal practitioners with disabilities
Europe	European Union 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	<ul style="list-style-type: none"> To establish minimum standards on the rights, support and protection of victims of crime, including access to appropriate information (European Parliament & European Council, 2012). 	Yes – under Point 9 in preamble of Directive (European Parliament & European Council, 2012, p. 58).	Yes, under Article 3 (The right to understand and be understood), point 2 it states: "Member States shall ensure that communications with victims are given in simple and accessible language, orally or in writing. Such communications shall take into account the personal characteristics of the victim, including any disability which may affect the ability to understand or to be understood", and under Article 23 (Right to protection of victims with specific protection needs during criminal proceedings), point 3: The following measures shall be available for victims with specific protection needs identified during court proceedings: (a) measures to avoid visual contact between victims and offenders including during the giving of evidence, by appropriate means including the use of communication technology; (b) measures to ensure that the victim may be heard in the courtroom without being present, in particular through the use of appropriate communication technology (European Parliament & European Council, 2012, p. 9).	<ul style="list-style-type: none"> Witnesses with disabilities

Region	Act	Purpose of Act	Specific reference to 'Access to justice'	Specific reference to persons with severe communication disabilities	Specific reference to role (witnesses, defendants or legal practitioners with disabilities)
Europe	Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010: The right to interpretation and translation in criminal proceedings	<ul style="list-style-type: none"> To ensure the right of suspected or accused persons to interpretation and translation in criminal proceedings with a view to ensuring their right to a fair trial (European Parliament & European Council, 2010). 	No	Yes, under Article 2 (Right to interpretation), point 3 states: "The right to interpretation under paragraphs 1 and 2 includes appropriate assistance for persons with hearing or speech impediments"(European Parliament & European Council, 2010, p. 4).	<ul style="list-style-type: none"> Accused ¹ with disabilities

Table 2.2 provided specific directives for persons with disabilities when needing to access the justice system. Next, Table 2.3 provides country-specific examples of acts that enable persons with disabilities to access justice. All of the countries mentioned in Table 2.3 are signatories and have ratified the CRPD, except for the USA, which is only a signatory and has not ratified the Convention.

¹ Although the term 'defendant' is preferred in the current thesis as explained in Chapter 1, some legislation refers to 'accused'. This terminology was retained in reference to the specific legislation to provide a truthful account thereof.

Table 2.3

Country-specific acts that enable persons with disabilities to access justice

Country or region	Act	Purpose of Act	Specific reference to access to justice	Specific reference to persons with severe communication disability	Specific reference to role
Australia	Disability Discrimination Act 1992	<ul style="list-style-type: none"> • To eliminate discrimination against persons with disabilities • To ensure that persons with disabilities have the same rights to equality before the law as the rest of the community • To promote recognition and acceptance within the community of the principle that persons with disabilities have the same fundamental rights as the rest of the community (Commonwealth of Australia, 1992) 	No	No	<ul style="list-style-type: none"> • Witnesses with disabilities • Defendants with disabilities • Legal practitioners with disabilities
Austria	Second Protection Against Violence Act 2009	<ul style="list-style-type: none"> • To improve the protection of victims in Austria • To provide the option of providing psychosocial support and emotional support during the proceedings and to assist in preparing for them (Republic of Austria, 2009) 	No	No	<ul style="list-style-type: none"> • Witnesses with disabilities
Bangladesh	The Evidence Act 1872	<ul style="list-style-type: none"> • To enable a witness who is unable to speak to give his evidence in any other manner in which he can make it intelligible, as by writing or by signs; but such writing must be done, and the signs made in open court. Evidence so given shall be deemed to be oral evidence (Section 9) (Republic of Bangladesh, 2021) 	No	No	<ul style="list-style-type: none"> • Witnesses with disabilities
Belgium	The Belgian Constitution 1831	<ul style="list-style-type: none"> • To ensure the right to full inclusion of persons with disabilities in society • To ensure the right to reasonable accommodation for persons with disability (Article 22) (The Kingdom of Belgium, 2021) 	No	No	<ul style="list-style-type: none"> • Witnesses with disabilities • Defendants with disabilities • Legal practitioners with disabilities
Germany	The Courts Constitution Act – Section 186 and Section 191a	<ul style="list-style-type: none"> • To provide special provision with regard to communication for persons with hearing impairments or speech impairments in court proceedings 	No	Yes, these provisions are in section 186	<ul style="list-style-type: none"> • Witnesses with disabilities • Defendants with disabilities

Country or region	Act	Purpose of Act	Specific reference to access to justice	Specific reference to persons with severe communication disability	Specific reference to role
	1949	<ul style="list-style-type: none"> To make documents accessible for persons who are blind or visually impaired (Federal Republic of Germany, 2019) 			<ul style="list-style-type: none"> Legal practitioners with disabilities
India	The Rights of Persons with Disabilities Act 2016	<ul style="list-style-type: none"> To give effect to the CRPD and for matters connected therewith or incidental thereto (Government of India, 2016) 	Yes, in Article 12	Yes, under Chapter 1: Definitions in the Act, ‘communication’ can be defined as including... “means and formats of communication, languages, display of text, Braille, tactile communication, signs, large print, accessible multimedia, written, audio, video, visual displays, sign language, plain-language, human-reader, AAC modes and accessible information and communication technology” (Government of India, 2016, p. 5).	<ul style="list-style-type: none"> Witnesses with disabilities Defendants with disabilities Legal practitioners with disabilities
Ireland	Disability Act 2005	<ul style="list-style-type: none"> To ensure that courts, as public places, meet the certain required accessibility criteria for persons with disabilities (Government of Ireland, 2005) 	No	Yes, in Part 3 (access to buildings, services and sectoral plans) it is stated, “Where a public body communicates in electronic form with one or more persons, the head of the body shall ensure, that as far as practicable, the contents of the communication are accessible to persons with a visual impairment to whom adaptive technology is available” (Government of Ireland, 2005, p. 28).	<ul style="list-style-type: none"> Witnesses with disabilities Defendants with disabilities Legal practitioners with disabilities
Israel	The Investigation and Testimony Procedural Act (Accommodations	<ul style="list-style-type: none"> To ensure that comprehensive accommodations are offered to people with mental and cognitive disabilities during police investigations and court 	Yes, Section 20, 21 and 22.	Yes, the Act clearly states that “it authorizes the court to hear the testimony of a person with a disability with ‘assistance of	<ul style="list-style-type: none"> Witnesses with disabilities

Country or region	Act	Purpose of Act	Specific reference to access to justice	Specific reference to persons with severe communication disability	Specific reference to role
	for Persons with Mental or Cognitive Disabilities) of 2005	testimony, in instances of serious crimes involving a person with a disability (Ziv, 2007) <ul style="list-style-type: none"> In regard to the witness' communication abilities, it clearly states, "In addition, they can communicate with the witness through pictures, electronic devices or other non-verbal methods, in order to interpret and convey to the court an enhanced understanding of the witness' testimony" (Ziv, 2007) 		alternative communication or supportive communication measures, including the assistance of people, computerized devices, communication boards, pictures, symbols, letters or words" (Ziv, 2007, p. 14).	
Kenya	Persons with Disabilities Act 2003	<ul style="list-style-type: none"> To provide for the rights and rehabilitation of persons with disabilities and to achieve equalisation of opportunities for persons with disabilities (Republic of Kenya, 2003) 	Yes, Article 38	No	<ul style="list-style-type: none"> Witnesses with disabilities Defendants with disabilities Legal practitioners with disabilities
Lesotho	The Persons with Disability Equity Act No. 24 of 2021	<ul style="list-style-type: none"> To provide equal opportunities and recognition of rights of persons living with disabilities in Lesotho (The Kingdom of Lesotho, 2021). It specifically states, "A person with mental disabilities shall be assisted in every possible manner to effectively, directly and indirectly participate in all legal proceedings, including giving evidence in court" (The Kingdom of Lesotho, 2021) 	Yes, Article 13	No	<ul style="list-style-type: none"> Witnesses with disabilities Defendants with disabilities Legal practitioners with disabilities
Montenegro	Law on the Prohibition of Discrimination of Persons with Disabilities, 2015	<ul style="list-style-type: none"> To prohibit discrimination against persons with disabilities in all areas of life (Kostic-Mandic, 2020) 	No	No	<ul style="list-style-type: none"> Witnesses with disabilities Defendants with disabilities Legal practitioners with disabilities
Slovenia	Article 223 of the Court Rules	<ul style="list-style-type: none"> To ensure that all persons with special needs shall have a right to equal participation in the court procedure (Republic of Slovenia, 2019) 	Yes, Article 223	No	<ul style="list-style-type: none"> Witnesses with disabilities Defendants Legal practitioners with disabilities

Country or region	Act	Purpose of Act	Specific reference to access to justice	Specific reference to persons with severe communication disability	Specific reference to role
South Africa	The Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (PEPUDA or the Equality Act, Act No. 4 of 2000) Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007	<ul style="list-style-type: none"> To prevent and prohibit unfair discrimination and harassment; to promote equality and eliminate unfair discrimination; to prevent and prohibit hate speech; and to provide for matters connected therewith (Chapter 2 – Section 9; Republic of South Africa, 2000) To allow the use of an intermediary by stating, “Whenever criminal proceedings are pending before any court and it appears to such court that it would expose any witness under the biological or mental age of eighteen years to undue mental stress or suffering if he or she testifies at such proceedings, the court may, subject to subsection (4), appoint a competent person as an intermediary in order to enable such witness to give his or her evidence through that intermediary” (Section 170; Republic of South Africa, 2007) 	Yes, Section 4: Guiding principles No	No No	<ul style="list-style-type: none"> Witnesses with disabilities Defendants with disabilities Legal practitioners with disabilities Witnesses with disabilities Defendants with disabilities with disabilities
Spain	Organic Law 6/1985, of 1 July, on The Judiciary, 1985	<ul style="list-style-type: none"> To ensure that “... within the selection process, a portion of no less than five percent of the vacant posts will be reserved to be filled by individuals with a degree of disability equal to or greater than 33 percent, providing that they successfully complete the selection exams and accredit the degree of disability and compatibility with the performance of the corresponding duties and tasks in the manner that will be determined via regulations. Incorporation of individuals with disabilities into careers as judges or state prosecutors will be grounded on the principles of equal opportunity, non-discrimination and compensation for disadvantages, and, where applicable, the selection processes will be adapted to the special needs and particular characteristics of these individuals, via reasonable modification of time allocated and resources within selection 	No	No	<ul style="list-style-type: none"> Legal practitioners such as judges or state prosecutors with disabilities

Country or region	Act	Purpose of Act	Specific reference to access to justice	Specific reference to persons with severe communication disability	Specific reference to role
	Organic Act 5/1995, dated May 22, on Jury Court	<p>processes” (Article 301, point 9; The Spanish Parliament, 1985)</p> <ul style="list-style-type: none"> To ensure that “[t]hose people with disabilities shall not be excluded of acting as a Jury due to that circumstance. The Administration of Justice shall provide them with the relevant support, as well as the reasonable adjustments in order for them to be able to perform their part normally” (Article 8, point 5; The Spanish Parliament, 2017) 	No	No	<ul style="list-style-type: none"> Legal practitioners (jurors) with disabilities
Ukraine	Article 72 of the Commercial Procedure Code of Ukraine; Article 75 of the Civil Procedure Code of Ukraine; Article 71 of the Code of Administrative Procedure of Ukraine; Article 56 of the Criminal Procedure Code of Ukraine	<ul style="list-style-type: none"> To ensure that the rules of procedural law contain provisions on the possibility of involving an interpreter who possesses the technique of sign language translation in litigation. The participation of an interpreter with a sign language translation technique is compulsory when considering a case involving a hearing-impaired person. In addition, in accordance with Article 68 of the Code of Criminal Procedure of Ukraine, the investigating judge or court shall, if necessary, in the criminal proceeding employ the appropriate translator (sign language translator) for the translation of explanations, testimonies or documents of the party to the criminal proceedings (Ukraine Government, 2019) 	No	No	<ul style="list-style-type: none"> Witnesses with disabilities Defendants with disabilities
United Kingdom (Scotland)	Vulnerable Witnesses (Scotland) Act 2004	<ul style="list-style-type: none"> To allow witnesses under the age of 16 who are regarded as vulnerable to give evidence by the use of standard special measure(s). This also includes persons with disabilities (Scottish Executive, 2005) 	No	No	<ul style="list-style-type: none"> Witnesses with disabilities
United Kingdom (England and Wales)	Police and Criminal Evidence Act 1984 (PACE)	<ul style="list-style-type: none"> To allow the accused to have an ‘appropriate adult’ to safeguard the interests, rights, entitlements and welfare of children and vulnerable people who are suspected of a criminal offence, by ensuring. that they are treated in a fair and just manner and are able to participate effectively (Home Office: National Appropriate Adult Network, 2011) 	No	No	<ul style="list-style-type: none"> Defendants with disabilities

Country or region	Act	Purpose of Act	Specific reference to access to justice	Specific reference to persons with severe communication disability	Specific reference to role
	Youth Justice and Criminal Evidence Act 1999	<ul style="list-style-type: none"> To allow for the use of intermediaries, including for persons with disabilities (Article 29; United Kingdom Government (GOV.UK), 1999) 	No	Yes, Section 30 (Aids to communication) states that “A special measures direction may provide for the witness, while giving evidence (whether by testimony in court or otherwise), to be provided with such device as the court considers appropriate with a view to enabling questions or answers to be communicated to or by the witness despite any disability or disorder or other impairment which the witness has or suffers from” (United Kingdom Government (GOV.UK), 1999, p. 22)	<ul style="list-style-type: none"> Witnesses with disabilities
	Americans with Disabilities Act (ADA) 1990	<ul style="list-style-type: none"> To prohibit discrimination against individuals with disabilities in all areas of public life, including jobs, schools, transportation, and all public and private places that are open to the general public (The United States Department of Justice, 1990) 	Yes, has multiple amendments (The United States Department of Justice, 1990).	No	<ul style="list-style-type: none"> Witnesses, with disabilities Defendants with disabilities Legal practitioners with disabilities

As highlighted in Tables 2.2 and 2.3, a positive outcome of the last three decades is that many countries and regions have drafted and are starting to enforce specific acts and legislation that highlight persons with disabilities as rights holders to assist them to equally participate in the justice system, irrespective of their role (witness, defendant or legal practitioner).

2.6 Participation in court

Participation is defined as engagement in a life situation (Imms et al., 2017; Ramsten & Blomberg, 2019; Rix et al., 2020) and it entails two distinctive components, namely attendance (being in the life situation) and involvement (the experience of participation while being in the life situation) (Imms, 2020). These two components can provide some clarity for outcome measurements when considering the participation of a person with a severe communication disability who wishes to access justice, irrespective of their specific role in the justice system. If persons with disabilities cannot ‘attend’ a life situation, participation is completely impossible. It is furthermore important to acknowledge that it will still be ineffective and insufficient should persons with severe communication disabilities merely ‘attend’ their court roles (Imms, 2020). Therefore, providing structural changes such as wheelchair ramps are appropriate, but not enough, as these structural changes need to be considered simultaneously when evaluating whether a measure advances transformative equality for persons with severe communication disabilities or not (Atrey et al., 2017). For true participation to transpire, attendance should at least be acknowledged as the first step (Jacobson & Cooper, 2020).

Research has been conducted on participation in court, and a provisional framework entitled ‘Ten Points of Participation’ has been proposed to assist witnesses and defendants to better understand what they could expect in court and also what the court expects from them (Jacobson & Cooper, 2020). This ‘Ten Points of Participation’ provisional framework could also assist persons with severe communication disabilities to reflect on their own understanding of participation in the court (Jacobson & Cooper, 2020). Table 2.4 outlines each of these points and the guidance it could offer by applying it to persons with severe communication disabilities.

Table 2.4*Explanation of the ‘Ten Points of Participation’ provisional framework*

Participation	Application to persons with severe communication disabilities
<i>What does participation involve?</i>	
1. The provision and/or elicitation of information for the court	The way persons with a severe communication disability can provide information (including evidence) and how the court will make information available to them.
2. Being informed about proceedings	Sources of information about how the legal process works and sources of advice on the use of accessible language without reliance on legal jargon.
3. Having legal representation	Sources of legal representation and information about funding so that persons with severe communication disability may consider representation and understand that a legal representative is intended as a facilitator of, not as a substitute for their participation.
4. Protection of well-being	Adaptations (including, but not limited to special measures) and how these may be sought and applied according to the needs of the person with a severe communication disability and the specific case.
5. The ‘guidance’ of the person with a severe communication disability such that disruption of proceedings is minimised	The responsibilities of the person with a severe communication disability with regard to the disruption of proceedings and the potential consequences (for the individual and the court process) of disruption.
6. Presence at proceedings	Implications of virtual versus physical presence, and the bases on which informed choices might be made (where applicable) about whether and how to attend proceedings.
<i>What are the functions of participation?</i>	
7. The exercise of legal rights	What legal rights are and how they differ, depending on the role of the person with a severe communication disability in the court.
8. Enabling court decision making	How the participation of a person with a severe communication disability can facilitate decision making, for example asking for the use of video-link technology.
9. Legitimation of court processes and outcomes	How having a ‘voice’ in proceedings can contribute to perceptions of the fairness of the process and outcome.
10. Potential therapeutic benefits	Potential benefits to the individual, separate from the legal outcome, that may arise from participation, for example, feeling empowered by participating.

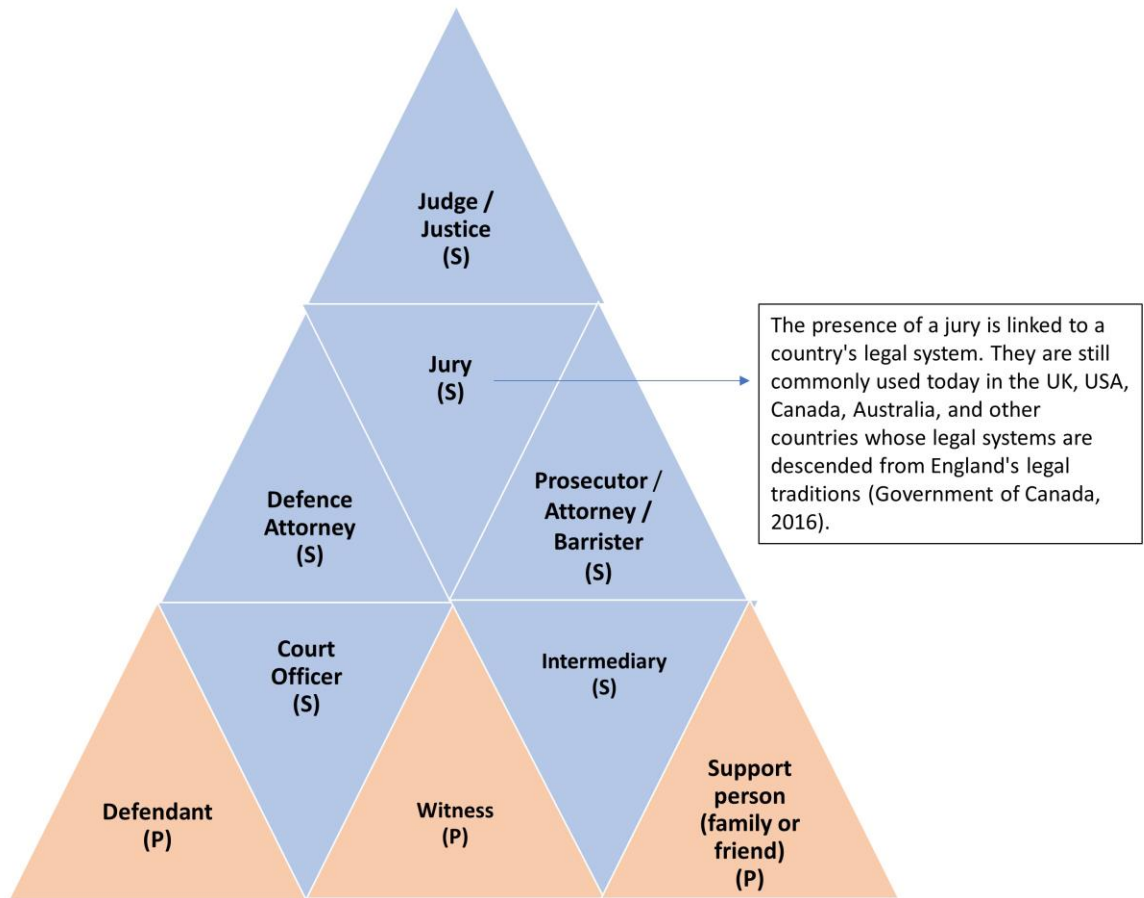
The ‘Ten Points of Participation’ provisional framework can assist persons with severe communication disabilities and their support network, as well as the relevant legal stakeholders who assist or work with these individuals, to gain a better understanding of what effective participation truly entails. It is also important when unpacking the concept of court participation and different court stages (i.e., pre-trial, trial and post-trial) and process (i.e., testifying, cross-examination, pleading). Although the court process can be different for the witness, defendant and legal practitioner, the focus in this study falls on how these individuals can participate equally in court and feel that their ‘voices’ have been heard and that they are regarded as meaningful members of the court process (Lord & Stein, 2009). Therefore, the current study will illuminate how persons with severe communication disabilities can access the court to participate equally. Different types of court (civil, criminal, children’s, mental health, etc.), distinct roles

(witness, defendant, legal practitioner, etc.) and many stakeholders are involved in the court process on a daily basis. Courtrooms can look very different, depending on these three variables.

McCold (2000), in his research on restorative justice, divided the stakeholders in a criminal event between primary and secondary stakeholders so as to distinguish between the affected stakeholders and their specific needs or responsibilities. Primary stakeholders are those individuals who are directly impacted by the crime or offence, for example the victim, defendant and micro-communities (i.e., family members or friends). Secondary stakeholders are those persons linked to society and the government, for example, the stakeholders who work in the court (the judge, the defence attorney, the jury, the intermediary, etc.) and in other stages of the court process (e.g. police, wardens, psychologists) (McCold, 2000; McCold & Wachtel, 2003). Figure 2.4 attempts to highlight the different stakeholders (P = primary stakeholder, S= secondary stakeholder) who may be present in a typical courtroom, irrespective of the type of court.

Figure 2.4

Stakeholders in the courtroom



On the day of court various stakeholders will be in the courtroom. In Table 2.5, the various primary and secondary stakeholders are defined and the implications for persons with severe communication disabilities outlined. Although Table 2.5 focuses more on the witness and defendant with a severe communication disability, it goes without saying that the legal practitioner with a disability – whether pursuing the role of a juror, attorney or judge – should always enjoy the basic human rights of employment and equality to support them in their specific legal role.

Table 2.5*Different stakeholder definitions and the implications for persons with severe communication disabilities*

Stakeholder	Definition	Implications for persons with severe communication disabilities
Judge/Justice (Secondary stakeholder)	The judge or justice is in charge of the court. He or she listens to what is said in court and decides if the defendant is guilty, unless a jury fulfils this function and makes this decision (Australia’s Federal Prosecution Service, 2021; Government of Canada, 2016; NHS England and NHS Improvement, 2020; The Courts Service of Ireland, 2015). If a jury is present, the judge’s role is to be in charge of court proceedings and to decide on any legal issues arising in the case.	In the court setting, the experiences of persons with severe communication disabilities are greatly influenced by the attitude of the judge, and the way in which he/she understands and interprets accessibility and the accommodations he/she allows, not only in terms of physical access, but also in demystifying the court process and procedures and in ensuring that understandable language is used (Edwards et al., 2012; O’Mahony, 2012).
Prosecutor/ Attorney/ Barrister (Secondary stakeholder)	A prosecutor is a government lawyer who presents the evidence to show that an offence was committed by the accused or defendant. This person may also be called a crown attorney or barrister (Australia’s Federal Prosecution Service, 2021; Government of Canada, 2016; The Courts Service of Ireland, 2015).	In the court setting, it is important that all prosecutors, attorneys or barristers receive disability training for them to be aware and knowledgeable in terms of how a person with a severe communication disability can testify or participate in court – for example, using a communication board to testify (Beqiraj et al., 2017; Camilleri & Pedersen, 2019; Edwards et al., 2012).
Defence attorney (Secondary stakeholder)	The defence attorney is a lawyer who represents a person charged with a criminal offence – the defendant (The Courts Service of Ireland, 2015). Generally, defendants are required to pay for the defence attorney’s service, however, most countries have local <i>pro bono</i> services that can assist (Jacobson & Cooper, 2020).	Hostile defence attorneys notoriously use intimidating and coercive questioning strategies that have a particularly negative impact on the testimony of persons with severe communication disabilities (Kebbell et al., 2001). Again this highlights the importance of disability training for all legal practitioners in court (Camilleri & Pedersen, 2019).
Jury (Secondary stakeholder)	The jury usually consists of 12 people who listen to the evidence presented in a criminal trial, and decide whether the accused is guilty or not guilty (Government of Canada, 2016). As shown in Figure 2.4, not all countries employ the jury system.	Persons with severe communication disabilities should be given the opportunity to participate as jurors; however, there are very little court accommodations for persons with severe communication disabilities to allow them to participate in this capacity (Bertrand et al., 2017; Napier & McEwin, 2015).
Intermediary (Secondary stakeholder)	An intermediary is a communication specialist who supports the witness (or defendant) during interviews and in court to effectively communicate their best evidence (Plotnikoff & Woolfson, 2015; United Kingdom Government, 2018).	The use of intermediaries is becoming a common practice in most countries as courts start enforcing the legislation that has been put in place for the use of intermediaries to assist persons with severe communication disabilities (witnesses and defendants) to communicate effectively in court (Fambasayi & Koraan, 2018; Hepner et al., 2015; O’Mahony, 2012; Plotnikoff & Woolfson, 2015). However, many courts still do not enforce this, and in many courts,

Stakeholder	Definition	Implications for persons with severe communication disabilities
Witness (Primary stakeholder)	The witness is the individual who testifies in court to provide evidence in the case. The witness can be called to give evidence by the prosecutor (attorney or barrister) or by the defence attorney (United Kingdom Government, 2018).	registered intermediaries are not available to assist the witness or defendant (Jonker & Swanzen, 2007). Witnesses with severe communication disabilities should be offered a variety of accommodations and strategies. On many occasions, however, there are no set guidelines or resources for the witnesses or the families on what accommodations are available (Marinos et al., 2014; Nair, 2010).
Defendant (Primary stakeholder)	The defendant is the individual (also sometimes referred to as the alleged perpetrator or offender) accused of breaking the law and charged for the crime (Government of Canada, 2016).	Defendants with severe communication disabilities are often denied accommodations and a fair trial in court due to a variety of reasons that include a lack of resources and accommodations, and the limited training of legal practitioners (Equality and Human Rights Commission, 2020; The Advocate’s Gateway, 2017).
Court officer (Secondary stakeholder)	The court officer is responsible for the safety of all people in the courtroom. If the defendant is kept in jail, the court officer will escort the defendant to and from the courtroom. The court officer administers oaths and affirmations to witnesses (Australia’s Federal Prosecution Service, 2021; Government of Canada, 2016).	The court officer usually has more contact with the defendant with a severe communication disability and should ensure that all security measures, such as checkpoints and/or metal detectors, are administered with respect (Lagratta, 2014). Court officers should also be encouraged to convey procedures orally and through signage that uses clear and respectful language (Flynn et al., 2019; Lagratta, 2014).
Support person (family or friend) (Primary stakeholder)	A support person is a person who the court has agreed can be present and who can be in close proximity to the witness when he or she gives testimony in court. The judge may however order that the support person and witness may not communicate with each other while the witness testifies (Benedet & Grant, 2012). This support person may not be allowed to be present in all situations (Government of Canada, 2016).	Support persons for persons with severe communication disabilities are becoming more common in the courts as they provide emotional support to the individual. Many witnesses have however reported that a support person was not offered to them (Hepner et al., 2015; Kuosmanen & Starke, 2015). In some cases, the support person can be a friend or family member (Benedet & Grant, 2012).

Table 2.5 highlighted the primary and secondary stakeholders in the courtroom and how these specific stakeholders can have a direct impact on the participation of the person with severe communication disability in the court room. It is important that the relevant stakeholders execute court and legal processes with fairness and objectivity when working with persons with severe communication disabilities (Brems & Lavrysen, 2013; Lagratta, 2014; Tyler, 2008). Utilising procedural justice principles is a well-researched approach that legal practitioners can use to ensure fair and objective processes for persons with severe communication disabilities.

2.7 Procedural justice in the courts

The concept of ‘procedural justice’, also often labelled as ‘procedural fairness’, has been well researched over the years (Bowen & LaGratta, 2014; Brems & Lavrysen, 2013; Dorfman, 2017; Ellem & Richards, 2018; Lagratta, 2014; Pennington, 2015; Tyler, 1988; Tyler, 2008; Tyler et al., 2015; Wood et al., 2020). Procedural justice is rooted in the notion that the manner in which disputes are handled by the court has a direct and powerful influence on how individuals evaluate their experiences in the court system (Tyler, 2008). Its central empirical finding is that in people’s contact with the justice system, they not only care about the outcome of their case, but also value the way in which it was handled (Brems & Lavrysen, 2013). However, Bowen and LaGratta (2014) suggest that procedural justice and fairness has a wider meaning than merely ensuring outcomes and upholding the legal process. It should also entail the process by which decisions are made to promote fairness to individuals coming into the justice system. Procedural justice therefore supports the idea that how a defendant or a witness with a severe communication disability is treated, has a profound effect on their perception of the process and their ongoing likelihood of complying with court orders and the law generally (Bowen & LaGratta, 2014; Brems & Lavrysen, 2013).

Research on procedural justice suggests four crucial components (Dorfman, 2017; Ellem & Richards, 2018; Lagratta, 2014; Tyler, 2008; Tyler, Goff, & MacCoun, 2015) conceptualised as follows for persons with severe communication disabilities:

- (i) **Having a voice** requires that legal practitioners support persons with severe communication disabilities to actively participate in court by allowing their ‘voice’ to be heard, irrespective of the means or modes of communication that are used (for example, allowing the person with a severe communication disability to use their communication device to testify, or using an intermediary to assist with the individual’s communication).
- (ii) **Being treated with respect** requires that legal practitioners engage with persons with severe communication disabilities in a respectful manner; thereby implying courtesy and dignity towards them and recognising the individual and their disability (for example, using portable wheelchair ramps or testifying via a CCTV-link).

- (iii) **Using objective criteria for decision making** requires that legal practitioners use objective, legitimate criteria to make decisions and apply fairness in all decisions (for example, involving an expert witness to testify).
- (iv) **Understanding the court language** requires that legal practitioners focus on the ability of the individual with a severe communication disability to understand the language used in court in order to build trust (for example, using appropriate and proper questioning strategies).

When considering how a person with a severe communication disability can participate in the court system, procedural justice principles should be applied to ensure fairness and equality, not only in the outcome, but also in the process. Since procedural justice highlights the right for the individual to have a voice and to be heard in court, and since one of the crucial measures of transformative equality is to enhance participation and strengthen the voice of persons with severe communication disabilities, procedural justice principles can be linked back to transformative equality (Atrey et al., 2017).

Another theory that has been used by many legal scholars to examine justice and human rights issues of persons with disabilities is intersectionality (Cramer & Plummer, 2009; de Beco, 2017; Dorfman, 2017; Kule et al., 2019; Lodovici & Orlando, 2017; Marshall & Barrett, 2018; Smith, 2016; Thill, 2015). In the next section follows a discussion of intersectionality as a theoretical framework to highlight the issues that persons with severe communication disabilities face when needing to access the justice system – more specifically, the court system.

2.8 Intersectionality as a theory

Very often, people are excluded from the justice system because of a combination of factors, for example due to disability, and/or due to gender (e.g., women), and/or due to age (e.g., children). The recognition of these discriminatory factors is known as the intersectionality (Cramer & Plummer, 2009; Flynn, 2016; Goldschmidt, 2017; Kim et al., 2020; Thill, 2015). Intersectionality has also been used in international human rights law to enhance the protection of human rights for persons with disabilities (de Beco, 2017; Degener, 2016; Marshall & Barrett, 2018). The CRPD has been a precise entry point for researching intersectionality in the area of international human rights law (de Beco, 2017). Apart from protecting the human rights of persons with disabilities in general, the CRPD pays specific attention to several subgroups of persons with disabilities (for example persons with severe communication disabilities) and guarantees

protection against discrimination on all grounds (de Beco, 2017; United Nations, 2006). The CRPD has a separate provision dealing with women with disabilities (Article 6) and refers to ‘multiple discrimination’ in this Article, and also a separate provision on children with disabilities (Article 7) (de Beco, 2017; United Nations, 2006). Another term that is used alongside intersectionality is ‘intersectional discrimination’, which Fredman et al. (2017, p. 11) defined as discrimination

“...which occurs when persons with disabilities suffer discrimination in any form, including direct and indirect discrimination, denial of reasonable accommodation, and harassment, on the basis of disability combined with race, colour, sex, language, religion, political or other opinion, national, ethnic, indigenous or social origin, property, birth, age or other status”.

Intersectionality lends itself as a favourable theoretical framework when investigating how persons with severe communication disabilities can equally participate in court, without any form of discrimination, thereby ultimately eliminating intersectional discrimination (Cramer & Plummer, 2009). Table 2.6 showcases three studies (although not all related to the justice system) that have used intersectionality to highlight the intersectional discrimination of persons with disabilities.

Table 2.6

Studies that have used Intersectionality as a theory

Participants	Aim of study	Findings	Implications for current study
1. People of colour with disabilities (Cramer & Plummer, 2009)	To deconstruct the help-seeking and help-receiving behaviours of persons of colour with disabilities who were abused, by analysing intimate partner violence in social, historical, and political contexts using an intersectionality lens.	Two case examples illuminate the complex interplay of race, gender, accent, immigration status, sexual orientation, disability, and socio-economic status in women’s help-seeking decisions.	Using intersectionality in the current study could assist the researcher to gain a deeper understanding of the complex reasons and issues as to why persons with severe communication disabilities are often denied access to the justice system, and furthermore, what accommodations they should be afforded to redress this human rights violation.
2. Rwandan refugee survivors of sexual and gender-based violence with a communication disability (Marshall & Barrett, 2018).	To report on a literature review of the intersectionality between refugee survivors of sexual and gender-based violence, being a refugee and having a communication disability, and a preliminary investigation of the	For persons with communication disabilities, barriers are likely to occur at each step of preventing and responding to SGBV. Stigmatisation of people with communication disabilities challenges SGBV prevention and support, and they may	When using intersectionality as a theoretical framework, barriers that persons with severe communication disabilities face when needing to access the justice system could be identified in parallel with gaining a greater understanding of the

Participants	Aim of study	Findings	Implications for current study
	situation of refugee survivors of sexual and gender-based violence (SGBV) with a communication disability.	be targeted by SGBV perpetrators. Persons with communication disabilities require support and prevention programmes are desperately needed.	different stages of the court process and what specific court accommodations are needed to participate equally.
3. Women and men with and without disability (Kim et al., 2020)	To examine intersectional discrimination in the employment status of men and women with and without disabilities in the United Kingdom.	Findings indicated that women with disabilities were significantly less likely to be employed and more likely to be economically inactive than men with disabilities or women and men without disabilities.	Historically, persons with severe communication disabilities have been denied access to justice. Using intersectionality in the study could help provide the empirical evidence needed to develop guidelines for court accommodations that could assist these individuals when needing to participate in the court system.

These three studies highlighted firstly, how intersectional discrimination continues to remain a human rights issue, and secondly, how intersectionality can be used as a theoretical framework to examine how human rights violations are currently operating and how they can and should be addressed. For persons with severe communication disabilities who need access to the justice system, intersectional discrimination needs to be recognised and addressed, so that they can participate equally in legal proceedings at all levels and in all roles. A failure to address intersectional discrimination through discrimination law leaves the most vulnerable individuals within minority groups, such as person with severe communication disabilities, struggling for protection and justice (Smith, 2016). Only by recognising intersectional discrimination can progress be made on the road to achieving meaningful transformative equality for persons with severe communication disabilities when accessing the justice system.

More importantly, using intersectionality as a theoretical framework in this study could guide the researcher in examining, clearly and with a robust approach, the court accommodations that persons with severe communication disabilities would need to participate equally and fairly in the court system (Cramer & Plummer, 2009; de Beco, 2017; Thill, 2015). Furthermore, intersectionality theory could assist in the process of developing guidelines for court accommodations for persons with severe communication disabilities that could be used by legal practitioners and relevant stakeholders to support these individuals in their pursuit of access to justice (Marshall & Barrett, 2018).

2.9 Conclusion

Chapter 2 focused on relevant literature dealing with human rights in international law and specifically in the CRPD as a human rights framework. Thereafter, an in-depth discussion transpired on persons with severe communication disabilities and the barriers they experience in the justice system, and the different roles they can occupy were examined. Subsequently, a discussion followed of the regional laws for persons with severe communication disabilities that could assist them to access justice. Participation in the court process was discussed according to an outline of the ‘Ten Points of Participation’ framework. Thereafter, the different primary and secondary stakeholders in the courtroom were summarised, and procedural justice in the courts was discussed together with principles that could be used to assist persons with severe communication disabilities to access the justice system. The chapter concluded with a comprehensive description and application of intersectionality as a theory to ensure the meaningful and equal participation of persons with severe communication disabilities in courts. The literature from Chapter 2 will be used to inform the methodology used in Chapter 3. Specific emphasis will be placed on Phase 1 of the study – the Qualitative Engagement Phase.

CHAPTER 3
PHASE 1: QUALITATIVE ENGAGEMENT PHASE

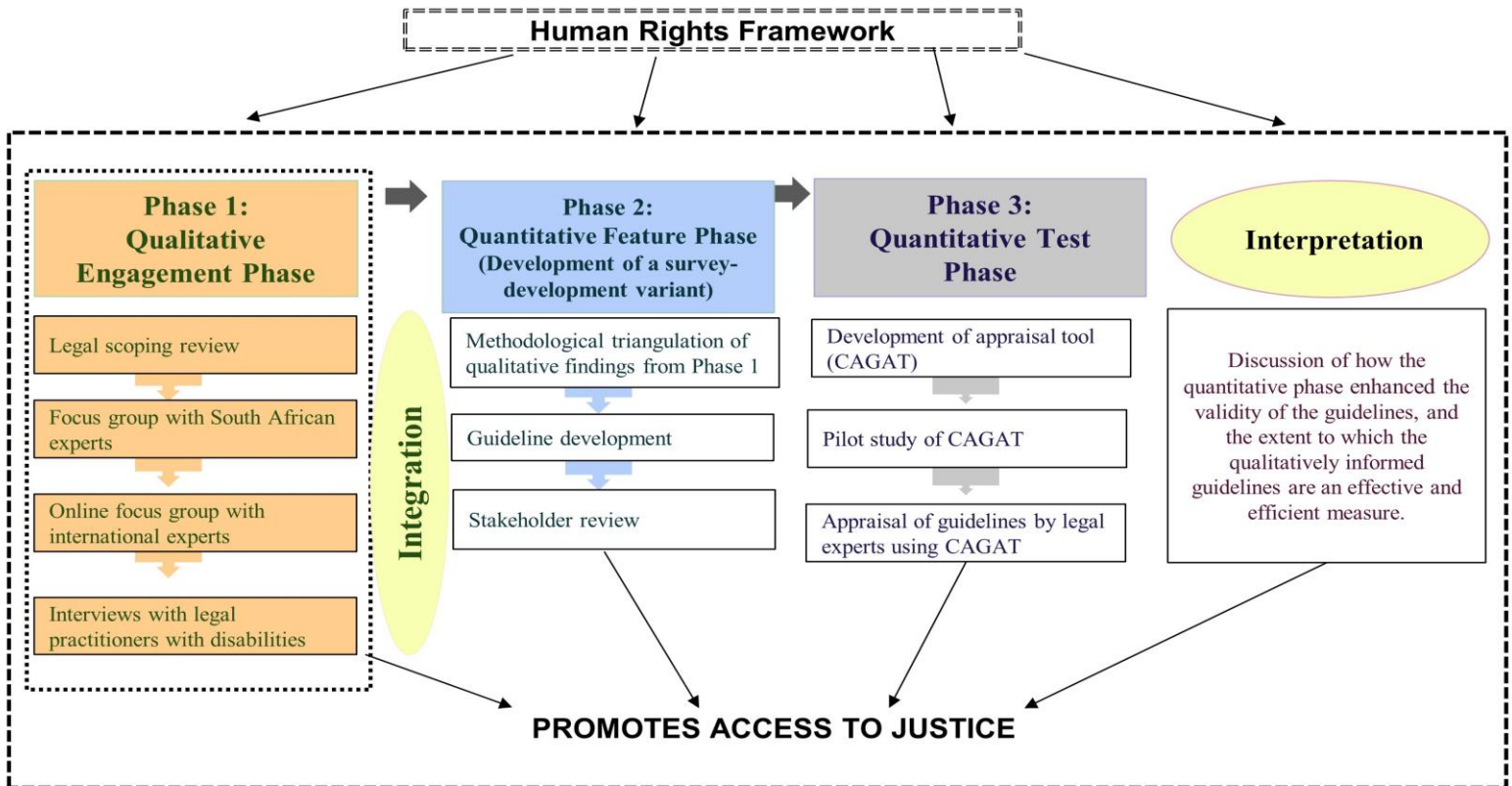
Research methodology, results and discussion

3.1 Introduction

This is the first of three chapters that will explain the research methodology and present the results and discussion of each of the three phases of this research study. Each chapter will discuss the main aim, sub-aims, research methodology and ethical considerations of the specific phase. Chapter 3 focuses on Phase 1, the Qualitative Engagement Phase, Chapter 4 focuses on Phase 2, the Quantitative Feature Phase, and Chapter 5 details the Quantitative Test Phase where the guidelines developed will be appraised. These three chapters should be read in conjunction, as per the diagram shown in Figure 3.1.

Figure 3.1

Social Justice Design for developing Court Accommodations for Persons with Severe Communication Disabilities (using an Exploratory Sequential Mixed Methods Approach)



This chapter starts with the main aim of the research study and the sub-aims of the thesis, after which the research design and ethical considerations for this phase are discussed. Each of the four data sources in Phase 1 is described in detail, namely 1) the legal scoping review; 2) the South African expert focus group; 3) the international online focus group; and 4) the interviews with legal practitioners with disabilities. Chapter 3 concludes with a summary of the findings and main discussion points of Phase 1.

3.2 Aims

3.2.1 Main aim

The main aim of this thesis is to develop and appraise guidelines for court accommodations that should be provided to persons with severe communication disabilities in order to allow their equal participation in the court system and achieve access to justice,

irrespective of their role (witness, defendant or legal practitioner) or country of jurisdiction (nationally – in South Africa – and internationally).

3.2.2 Sub-aims

In order to address the main aims for the study, sub-aims were delineated for each phase. The specific sub-aims of the study were to

- (i) identify and describe the existing court accommodations that could assist persons with severe communication disabilities to achieve access to justice;
- (ii) develop guidelines for court accommodations for persons with severe communication disabilities based on the qualitative findings from sub-aim (i); and
- (iii) effectively appraise the content of the court accommodation guidelines by employing a quality appraisal tool that uses specific domains to do so.

3.3 Research design

A mixed method social justice design consisting of three distinct phases was used to address the aim of the research (Creswell & Plano Clark, 2018). This mixed method design used an exploratory sequential design and human rights framework (namely the CRPD) (Creswell & Plano Clark, 2018). This design was selected as the researcher sought to address issues of social justice through focusing on human rights (Mertens, 2012) and threading a social justice and human rights perspective throughout the research procedures of the study (Creswell & Plano Clark, 2018). The qualitative research in the social justice design allowed a perspective that uncovered the meanings of the individuals' experiences from within a social justice context. This social contextualisation is one of the cornerstones of social justice research (Fassinger & Morrow, 2013). Furthermore, social justice research serves advocacy and policy goals and the quantitative data may be especially persuasive in the policy arena (Fassinger & Morrow, 2013). The researcher noted the value in social justice research by introducing constructs that will draw on specific characteristics or issues that persons with severe communication disabilities may face so that research ultimately becomes more inclusive for these individuals (Creswell & Plano Clark, 2018; Fassinger & Morrow, 2013).

The first strength of using a mixed methods social justice design is that this type of design provided more data related to access to justice for persons with disabilities than quantitative or qualitative research would alone (Mertens, 2012). Secondly, the separate phases

were straightforward to describe, implement and report, leading to greater clarity of the research (Creswell & Plano Clark, 2018). Thirdly, the researcher was able to produce results that could be viewed as credible and relevant by primary and secondary stakeholders as well as policymakers (Ponterotto et al., 2013). Furthermore, the qualitative component of the mixed method study was more likely to ‘give voice’ to and empower persons with severe communication disabilities. The social justice anchor of the research study also lay in the awareness and competence of the researcher rather than with a component of the research method; hence, the researcher ensured that the use of a human rights framework with an emphasis on social justice was incorporated throughout the study (Ponterotto et al., 2013).

The weakness of this design was that it took a considerable amount of time and resources to be implemented, due to the three phases (Creswell & Plano Clark, 2018). However, the research continued to highlight the power of mixed methods research to provide more accurate and comprehensive information through its integration of qualitative and quantitative approaches (Canales, 2013).

In the current study, Phase 1 focused on qualitative data collection and analysis gathered from four data sources, namely the literature (by means of a legal scoping review), two focus groups of experts in the field (nationally and internationally), and email interviews with the target population or primary stakeholders (persons with disabilities). Scoping reviews are a form of knowledge synthesis, which incorporates a range of studies to comprehensively summarise and synthesise evidence with the aim of informing practice, policy and providing direction to future research (Colquhoun et al., 2014). A key disadvantage to conducting a scoping review is that, unlike a systematic review, it does not appraise the quality of evidence in the primary research reports in any formal sense (Arksey & O’Malley, 2005). However in this study, the scoping review methodology that was used was combined with a legal systematic review approach and therefore there was an element of ‘weighting’ that was given to the identified studies in the review (Baude et al., 2017).

Face-to-face and online asynchronous focus groups utilised in Data sources 2 and 3 respectively were also conducted in this phase of the research study. Focus groups are a qualitative and an innovative research method and predominately used to gather perceptions, beliefs, and opinions from a group on a topic of interest (Reisner et al., 2018). The advantages of a face-to-face focus group are that it provides for a more fluid debate and that it is considered to

be easier to follow the discussion within this particular type of setup (Zwaanswijk & Van Dulmen, 2014). Disadvantages of face-to-face focus groups are that they can be bound in time and space by the need to identify, recruit, and assemble a group in a single place for purposes of discussion (Stewart & Shamdasani, 2017). However, this challenge was overcome by the fact that the topic was related to a niche area of research interest, and therefore experts could relatively easily be identified. Furthermore, due to the experts in the face-to-face focus group already knowing each other on a professional level from various professional gatherings (conferences, etc.), good rapport was established quite easily.

One of the advantages of using asynchronous online focus groups (Data Source 3) was that they were more cost effective than traditional face-to-face ones (Lijadi & Schalkwyk, 2015). Furthermore, this method provided participants who resided in different countries and different time zones with a suitable and comfortable alternative of joining the group discussion while participating conveniently at their own time and in their own space (Biedermann, 2018). However, a disadvantage of using asynchronous online focus groups involved its possible effect on the impulsiveness of the participant's responses (Williams et al., 2012). Therefore, close consideration was given to how important participant spontaneity was to the research question, before choosing to use this method. An additional potential disadvantage of the lack of face-to-face interaction in an online focus group was that it could lead to misunderstandings caused by the absence of body language or nonverbal cues (e.g., a smile to indicate a joking comment) (Reisner et al., 2018).

Online email interviews provided an additional qualitative research method used in Data source 4, where information was repeatedly exchanged online between the researcher and participants within a particular timeframe (Ratislavová & Ratislav, 2014). While focus groups generally aim to gather group opinions (Data sources 2 and 3), interviews (Data source 4) gather individual opinions and therefore, in this phase, the researcher obtained group and individual opinions and experiences (James, 2016). The advantages of online email interviews are that they eliminate the boundaries of time and space, prioritise participants' comfort and encourage iterative reflection throughout the interview process (Bowden & Galindo-Gonzalez, 2015). The disadvantage of online email interviews is that participants must have access to the internet and be competent in computer use (Bowden & Galindo-Gonzalez, 2015). However, this was not

problematic as all participants were employed in professional jobs and had their own personal computer and email address.

3.4 Ethical considerations

3.4.1 Researcher positionality statement

The term ‘positionality’ both describes the students’ world view and the position they adopt about the research and its social context (Holmes, 2020). A process of critically reflecting upon “the self” can develop increased insight into how multiple aspects of identity exert an influence on the research study that the student undertakes (Fenge et al., 2019). Please see the researcher positionality statement below:

“Before I present the findings and results of this study, and in the spirit of self-reflexivity, I acknowledge my standpoint as a verbal, South African white woman. My background for the last 15 years has been in communication studies, and specifically AAC methods and strategies and working with persons with communication disabilities. I am aware that I have speech and can use speech, and that there will be a power dynamic during the research process and towards some of the research participants. However, during the whole research process, I will aim to always ensure equality and justice for persons with severe communication disabilities and therefore my positionality is as a disability ally to persons with severe communication disabilities”

3.4.2 Ethical principles

The researcher ensured that clear, ethical principles continually guided her during the research. Table 3.1 shows the ethical principles related to social justice that the researcher adhered to.

Table 3.1

Ethical principles used throughout the study

Research ethics relating to the research	
<p>The principle of non-maleficence (Bryen, 2016; National Disability Authority, 2009; Schröder-Bäck et al., 2014):</p> <ul style="list-style-type: none"> It was important that the participants would not experience humiliation and the researcher ensured that all discussions were open, caring and fair. Thus, the participants were provided with a clear explanation of what topics would be discussed in the study. 	<p>The principle of beneficence (National Disability Authority, 2009; Orb et al., 2000; Schröder-Bäck et al., 2014):</p> <ul style="list-style-type: none"> The participants who were recruited to participate in the study were assured of confidentiality. The researcher did not include any personal identifying information when reporting the data. Identifying information (e.g., names of persons or places) were excluded from publications or presentations.

- There was a possibility that the participants would experience re-traumatisation and that psychological harm could occur. Hence, the researcher consulted with an experienced psychologist, and she was made available for debriefing sessions after data collection for all participants, the researcher and her supervisors. Furthermore, the researcher developed a safety and distress protocol (Appendix 3A) that was followed with all participants (World Health Organization, 2016).
- Individuals with disabilities are considered a vulnerable population and the researcher aimed to gain their trust and cooperation whilst ensuring that their well-being was protected.

The principle of **justice** ((National Disability Authority, 2009; Orb et al., 2000; Schröder-Bäck et al., 2014):

- Participants with disabilities were included in the research and their voices were heard and considered.
- The researcher was constantly guided by a human rights framework and therefore she focused on fairness and equality throughout the research.
- The researcher did not mislead the participants about the research topic and therefore ensured that no form of deception occurred.

The principle of **veracity** (Creswell & Poth, 2018):

- The researcher and supervisors were responsible for the interpretation of the results. Member checking was used before finalising the results to minimise misinterpretation. The researcher also made use of peer debriefing throughout the research by involving peers (doctoral students) to review, interpret and ask questions about the study.
- The researcher furthermore aimed to communicate the results in such a way that potential misunderstanding and misuse was minimised.

However, with their consent, a number of participants (the South African experts) agreed to be named in the acknowledgements in the publications. Furthermore, code numbers were used during data capturing to ensure de-identified data.

- Only the researcher and her supervisors had access to the raw data (transcripts, audio and video recordings).
- All electronic data was stored on a password-protected computer in a de-identified manner.
- Participants were reminded that, for archival purposes and possible future use of data, all data would be in safe keeping at the Centre for AAC at the University of Pretoria for 15 years.

The principle of **autonomy** (Bryen, 2016; National Disability Authority, 2009; Orb et al., 2000; Schröder-Bäck et al., 2014):

- Participants were contacted in their private capacity. All participants were asked to complete and sign a letter of informed consent (Appendix 3B). An information letter (Appendix 3C) outlining the aims of the study, the nature of the involvement of the participants in the study, how the data would be used and the length of time of the study, was attached to the consent letter. Once the participants had given their consent, they were invited to participate in the study without any coercion or deception. The researcher informed the participants what would be expected from them, and they were reminded that their participation was voluntary and that they could withdraw at any time without any negative consequences.

The principle of **researcher bias** (Connelly, 2016; Fassinger & Morrow, 2013):

- In order to avoid researcher bias, the researcher practised ongoing reflection and discussion with her supervisors.
- The researcher also kept an audit trail consisting of detailed notes of her decisions and analysis, and these notes were reviewed by her supervisors. The discussions prevented the researcher's biased perspective on the research.
- The researcher also checked her audit trail against published literature to see if it confirmed and expanded on the research topic.

3.5 Aims for Phase 1

3.5.1 Main aim for Phase 1

The main aim of Phase 1 was to identify and describe the existing court accommodations that could assist persons with severe communication disabilities to achieve access to justice.

3.5.2 *Sub-aims for Phase 1*

In order to address the main aim for Phase 1, sub-aims were delineated. The specific sub-aims for Phase 1 were to identify and describe existing

- (i) international court accommodations in the form of a legal scoping review;
- (ii) court accommodations in the form of a national (South African) focus group with legal experts;
- (iii) international court accommodations in the form of an international expert online focus group; and
- (iv) court accommodations in the form of interviews with legal practitioners with disabilities.

3.6 **Data source 1 – Legal scoping review**

Several of the following paragraphs were adapted from an excerpt of the post-print version of “Court accommodations for persons with severe communication disabilities: A legal scoping review” by White, Bornman, Johnson and Msipa (2020a) published in *Psychology, Public Policy and Law*, a peer-reviewed international journal with a 2.560 5-year impact factor. See Appendix 3D for a copy of the accepted article. Permission was obtained from the editor of the journal to include this paper as part of this PhD thesis (Appendix 3E).

3.6.1 *Aim*

The overall aim of the legal scoping review was to identify what accommodations have been afforded to persons with severe communication disabilities to enable them to participate equally in court without any form of discrimination. The specific objectives were to identify the following:

- The sources that typically document court accommodations for persons with severe communication disabilities
- 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?)
- 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? Which procedural justice component is addressed?)

3.6.2 *Rationale*

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 treaties, as it has been signed by 114 and ratified by 118 countries (United Nations, 2006). Article 13 of the CRPD entitled *Access to Justice* specifically addresses human rights associated with the courts. 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 (Bornman et al., 2016; Dagut & Morgan, 2003; Fitzsimons, 2016; Marinos & Whittingham, 2019; Spaan & Kaal, 2019). Discrimination against persons with severe communication disabilities is recognised as a violation of their inherent dignity and worth. One such important human right that is often violated, is 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 et al., 2012).

3.6.3 *Method*

In order to answer the research question, *What accommodations have been afforded to persons with severe communication disabilities 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 methodology as shown in Table 3.2, which defines a legal scoping review as a review that documents existing evidence of a specific legal topic by describing and examining what has been written about that legal topic. This new methodology can be used 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. It 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. Furthermore, this methodology can assist courts by lending credibility to the process and reducing any perception of bias about their decisions (Baude et al., 2017).

Table 3.2

Development of a new methodology for conducting a legal scoping review

Steps taken in a systematic review (Arksey & O'Malley, 2005; The Joanna Briggs Institute, 2015)	Steps taken in a systematic review of legal doctrine (Baude et al., 2017)	Steps proposed in the new legal scoping review
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 (including quality appraisal of research methodology)		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, summarise 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 3.2 shows that the new methodology proposes a five-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). This is in lieu of the quality appraisal of the methodology included in traditional research-based studies.

3.6.3.1 *Identify and state the research question*

Within a legal scoping review, the research question needed to be clearly articulated, preferably using the PIO (Population, Intervention, Outcome) framework (Aslam & Emmanuel, 2010). This framework guided the scope of the research and facilitated the identification of relevant information as shown in Table 3.2. Therefore, the main research question, *What accommodations (Intervention) have been afforded to persons with severe communication disabilities (Population) to enable them to participate equally in court without any form of discrimination (Outcome)?* was supplemented by three specific subquestions related to this population, irrespective of the country in which they resided:

- (i) Which sources typically document court accommodations for persons with severe communication disabilities?
- (ii) 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?)
- (iii) 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? Which procedural justice component is addressed?)

3.6.3.2 *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. 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 Saffii. Third, a comprehensive and systematic literature search was done in the selected social science and law databases and libraries. Lastly, alerts were set up with Google Scholar to ensure that new literature would be identified and captured.

3.6.3.3 *Make study selection*

This step usually depends on the specific focus of the study. For the current study, we included all publications that were available in English, that had been published between 2006 (adoption of the CRPD) and December 2019, and that 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 3.3), based on the PIO framework mentioned earlier.

Table 3.3

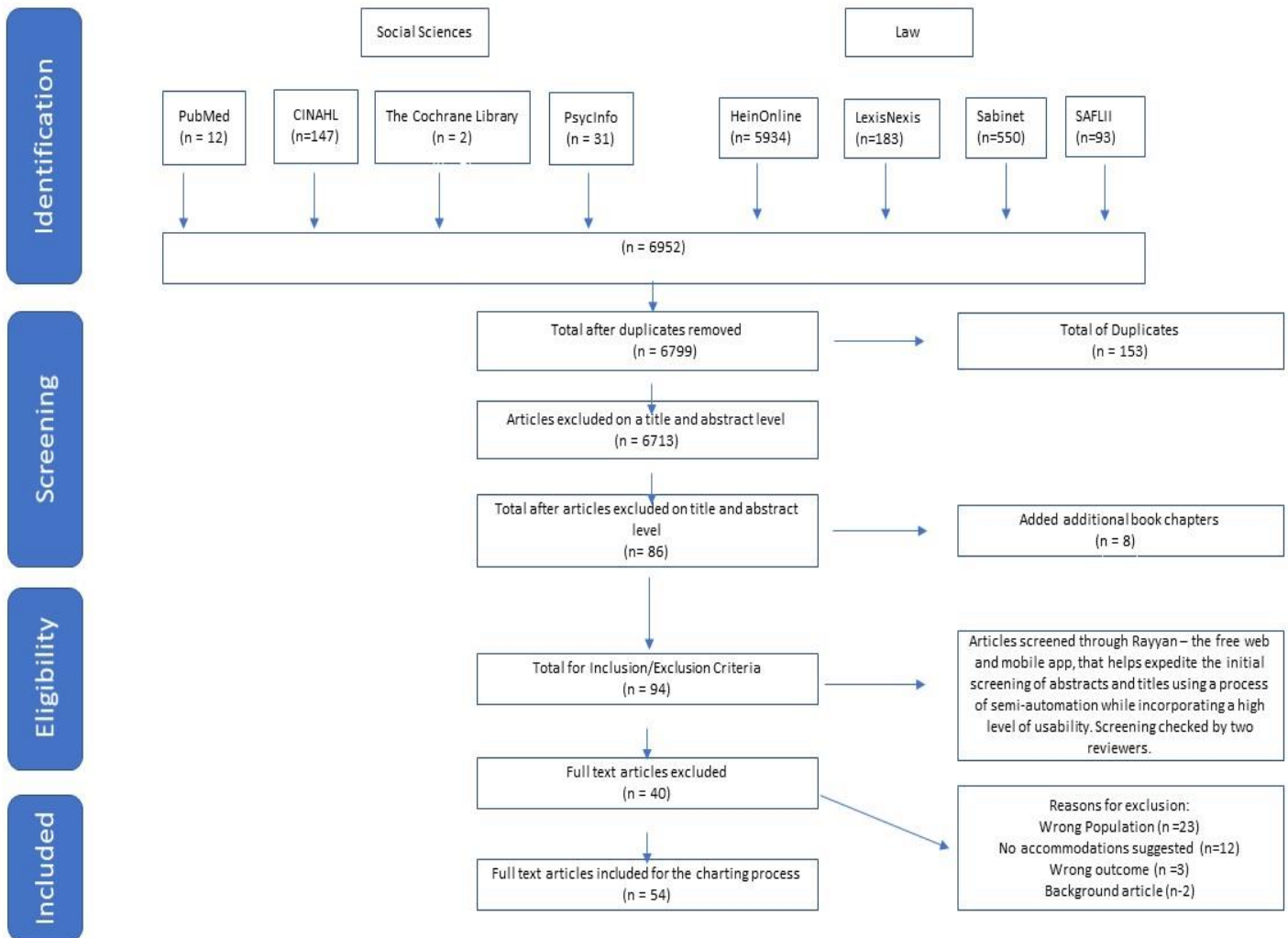
Eligibility criteria based on the PIO framework for including studies in the scoping review

PIO	Inclusion criteria	Exclusion criteria
P	<p>Population: Persons with severe communication disabilities who have either been victims or alleged perpetrators of crime</p> <p>Persons = children and adults Persons with complex communication needs 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 Persons who are visually impaired Persons with sensory impairments Persons with ASD Perpetrators with disabilities Accused with disabilities</p>	<p>Medical conditions – cardiovascular diseases, acquired immune deficiency syndrome (AIDS) / human immunodeficiency virus (HIV), etc. 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). Mental illness is treatable. The vast majority of individuals with mental illness continue to function in their daily lives.”(The American Psychiatric Association, 2020). The current study focused on persons with severe communication disabilities, and hence articles that reported on mental illness, mental disability and intellectual disability in the same article were excluded.</p>
I	<p>Intervention: Court accommodations relevant to communication disability</p> <p>Strategies, communication boards, intermediaries, court preparation officers, training, communication accommodations. Physical accommodations, wheelchair access, child-friendly rooms, separate testifying rooms.</p>	<p>Articles that only described barriers without referring to accommodations. 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.</p>
O	<p>Outcome: Access to justice and participation in court</p> <p>Participation in court proceedings Access to justice</p>	<p>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).</p>

Figure 3.2 gives an outline of the study selection process in accordance with the Preferred Reporting Items for Systematic Review and Meta-Analyses (PRISMA) statement (Moher et al., 2009). Articles were screened through Rayyan, a free web and mobile app that expedites 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 3.2

PRISMA study selection flow diagram



3.6.3.4 Chart and weigh the data

The charting and weighting process involved all four authors of the legal scoping review (White, Bornman, Johnson and Msipa). The first author used the data extraction tool to extract data from each article. 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 (see the footnotes that follow Table 3.4) 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 disabilities. 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 for 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 was used purely for descriptive purposes.

As the legal scoping review focused on criminal law, 'witness' included the term 'victim', as the victim would participate in the justice system as a witness (Beckene et al., 2017). The term 'defendant' included the accused, offender and perpetrator. 'Child' was 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 purpose of the legal scoping review, 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.

3.6.3.5 *Conduct the analysis and report the results*

An inductive coding approach was used to identify, synthesise 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 articles and coming together to summarise 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 et al., 2015) which, for the purpose of this study, were conceptualised 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 to use 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 et al., 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 articles (n = 54) are summarised in Table 3.4.

Table 3.4

Descriptive characteristics of the included articles (in alphabetical order)

General information			Participants					Accommodations			Procedural justice component		
No	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 courtroom setup 	<ul style="list-style-type: none"> • Remove official attire 	<ul style="list-style-type: none"> • Use modified oath • Allow leading questions
2	Beckene, Forrester-Jones &	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 		

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., 2020b).

² Sign language interpreter: Individuals who are qualified in the sign language that the witness/defendant uses (Davidson et al., 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: Fulfils 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

General information			Participants				Accommodations			Procedural justice component			
No	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)
	Murphy (2017)										<ul style="list-style-type: none"> • Testify via live video/ television link • Conduct trial <i>in camera</i> 	<ul style="list-style-type: none"> • Allow video/ pre-recorded evidence • Use video to cross-examine prior to trial 	
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 	<ul style="list-style-type: none"> • Conduct trial <i>in camera</i> • Testify behind a screen 	<ul style="list-style-type: none"> • Remove official attire • Involve an expert professional ⁹ 	<ul style="list-style-type: none"> • Use facilitator (to simplify language, give meaning and to support • Allow linguistic

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 emphasise the need for assisting individuals with severe communication disabilities to tell their version of events.

⁶ Special investigator: An expert with a professional background in psychology, social work, criminology, rehabilitation or special education, and who specialises 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 et al., 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).

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 et al., 2017).

General information			Participants				Accommodations			Procedural justice component			
No	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 an interpreter ⁸ 	<ul style="list-style-type: none"> • Testify outside the courtroom • Allow frequent breaks • Testify not on the witness stand • Testify in the judge's chambers • Testify without the defendant present in the courtroom, and only the defence attorney present 	<ul style="list-style-type: none"> • Involve an expert witness ¹⁰ 	<ul style="list-style-type: none"> • simplification ¹¹
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 	<ul style="list-style-type: none"> • Testify outside the courtroom 	<ul style="list-style-type: none"> • Involve an expert witness 	<ul style="list-style-type: none"> • Allow linguistic simplification

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).

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).

General information			Participants				Accommodations			Procedural justice component			
No	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 anatomical dolls • Obtain a victim impact statement ¹² 	<ul style="list-style-type: none"> • Develop specialised services for persons who use AAC • Conduct a functional assessment of individual 	<ul style="list-style-type: none"> • Film proceedings to review the communication 	<ul style="list-style-type: none"> • 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 relaxed and non- 	-	<ul style="list-style-type: none"> • Use appropriate and proper questioning strategies ¹⁴

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).

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, 2016). However, this technique has been criticised for lack of autonomy and is regarded as having no research evidence (Hemsley et al., 2018).

General information			Participants				Accommodations			Procedural justice component			
No	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)
											adversarial environment		
10	Chester (2018)	Social science journal article	Defendant	Mental; Intellectual	-	-	UK	National	-	<ul style="list-style-type: none"> • 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	-	<ul style="list-style-type: none"> • Use an intermediary 	-	-	<ul style="list-style-type: none"> • Use appropriate and proper questioning strategies • Disallow tag questions • Disallow leading questions
12	Covarrubias (2008)	Law journal article	Defendant	Mental; Intellectual	-	-	US	National	-	-	-	<ul style="list-style-type: none"> • 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	-	<ul style="list-style-type: none"> • Use AAC • Use a sign language interpreter 	<ul style="list-style-type: none"> • 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 	<ul style="list-style-type: none"> • Remove official attire • Use an expert professional • Use an expert witness • Establish court procedures to enable a process for requesting accommodations 	<ul style="list-style-type: none"> • Allow linguistic simplification • Use appropriate and proper questioning strategies • Provide information about the proceedings in plain language, Braille, accessible and child-friendly formats

General information			Participants				Accommodations			Procedural justice component			
No	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)
14	Cusack (2017)	Law journal article	Defendant	Mental; Intellectual	Male	Child	Ireland	National	1	<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"> • Remove official attire • 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,

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).

General information			Participants				Accommodations			Procedural justice component			
No	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)
													<p>especially when discussing technical and abstract issues</p> <ul style="list-style-type: none"> • Use pictures/communication aids to enhance understanding • Use strategies to check the individual is not simply agreeing irrespective of understanding
16	Doak & 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 	<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

General information			Participants				Accommodations			Procedural justice component			
No	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)
18	Fitzsimons (2014)	Law journal article	Witness	-	-	-	Australia Canada UK US	International National	-	-	hearing impairments • 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 devices ¹⁶ • 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"> • Provide real-time captioning of court proceedings • Appoint independent advocate ²¹

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, 2006).

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 themselves (Flynn, 2016). 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, 2016).

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, 2016).

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, 2016).

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

General information			Participants				Accommodations			Procedural justice component			
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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 disorder (ASD); Multiple	-	Child	US	National	1	<ul style="list-style-type: none"> • Use AAC 	<ul style="list-style-type: none"> • Allow Guardian ad Litem 	-	-
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

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, 2016).

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).

General information			Participants				Accommodations			Procedural justice component			
No	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)
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 courtroom 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 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 	-

General information			Participants				Accommodations			Procedural justice component			
No	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) statements as evidence	Understanding (n=58)
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 • Familiarise 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, (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 summarise any information

General information			Participants				Accommodations			Procedural justice component			
No	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)
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 their concentration 	<ul style="list-style-type: none"> • Remove official attire • Allow video/pre-recorded evidence 	<p>the person failed to process</p> <ul style="list-style-type: none"> • Allow person to take written notes • Use appropriate and proper questioning strategies • Disallow tag questions
32	López, Zapata & Martorell (2016)	Social science journal article	Witness	Mental or intellectual	Female	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 & Mbano-Mweso (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 	-	<ul style="list-style-type: none"> • Provide readers to assist with access to information

General information			Participants				Accommodations				Procedural justice component		
No	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)
											that carries stigma and discrimination		
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"> • Allow guides to assist with accessibility • Testify behind a screen • Use CCTV in court • Allow witness support, preparation and profiling programme²³ • Use auxiliary hearing devices 	<ul style="list-style-type: none"> • Involve expert witness 	-
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 and profiling programme 	<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 needs 	-

²³ Witness support, preparation and profiling programme: A specific programme 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 programme can also support the individual to understand and be prepared for what to expect in court (Marinos et al., 2017).

General information			Participants				Accommodations				Procedural justice component		
No	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)
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 the court to interpret and understand a child's needs and disability throughout the process 	<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

General information			Participants				Accommodations			Procedural justice component			
No	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)
39	Musumeci (2005)	Law journal article	Defendant	Mental or intellectual; Hearing	Male	Adult	US	National	5	<ul style="list-style-type: none"> Use a sign language interpreter 	<ul style="list-style-type: none"> Use auxiliary hearing devices Use visual alarms 	-	-
40	Nair (2010)	Law journal article	Defendant; Witness	Mental or intellectual; Communication	Female, Male	Adult	Australia	National	3	-	-	-	<ul style="list-style-type: none"> 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	-	-	-	<ul style="list-style-type: none"> Involve expert witness 	-
42	O'Leary (2016)	Master's thesis	Witness	Mental or intellectual	-	-	Australia, Ireland, Israel, UK	International National	-	<ul style="list-style-type: none"> Use AAC Use an intermediary Give evidence through free narration (no questioning) 	<ul style="list-style-type: none"> Testify via live/television link Allow individualised support 	<ul style="list-style-type: none"> Remove official attire Allow video/pre-recorded evidence 	<ul style="list-style-type: none"> 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	-	<ul style="list-style-type: none"> Use AAC Use an intermediary Give evidence through free narration (no questioning) 	<ul style="list-style-type: none"> Testify via live video/television link 	<ul style="list-style-type: none"> Remove official attire Allow video/pre-recorded evidence 	-
44	Ortoleva (2011)	Law journal article	Witness	Physical	Female	Adult	South Africa	National	1	<ul style="list-style-type: none"> Use AAC Use a sign language interpreter Allow communication in audio, video or other 	<ul style="list-style-type: none"> Ensure physical accessibility Provide materials in Braille or other 	-	-

General information			Participants				Accommodations			Procedural justice component				
No	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)	
45	Padmanabhan (2014)	Book chapter	-	Communication	-	-	India	International National	-	<ul style="list-style-type: none"> Use AAC 	<ul style="list-style-type: none"> electronic form if person has a disability (international criminal court) 	-	-	-
46	Pei, Leung, Jampolsky & Alsbury (2016)	Social science journal article	Witness	Mental or intellectual; Physical	Female Male	Adult	Canada	National	-	-	<ul style="list-style-type: none"> Conduct a functional assessment 	-	<ul style="list-style-type: none"> Allow linguistic simplification 	
47	Pillay (2012a)	Social science journal article	Witness	Mental or intellectual	-	Child	South Africa	National	-	<ul style="list-style-type: none"> Use an intermediary 	<ul style="list-style-type: none"> Use CCTV in court 	-	-	
48	Pillay (2012b)	Social science journal article	Witness	Mental or intellectual	-	Adult	South Africa	National	-	<ul style="list-style-type: none"> Use an intermediary 	-	-	-	
49	Raha & Sengupta (2018)	Social science journal article	Witness	-	Female	-	India	National	-	<ul style="list-style-type: none"> Use an interpreter 	<ul style="list-style-type: none"> Allow the assistance of a person familiar with the witness's manner of communication Allow frequent breaks Involve a qualified and experienced expert to record the child's evidence 	<ul style="list-style-type: none"> Prohibit direct questions by a defence lawyer and prosecutor Film the proceedings 	-	

General information			Participants				Accommodations				Procedural justice component		
No	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)
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 enhance understanding
52	White & Msipa (2018)	Social science journal article	Witness	Communication	-	-	South Africa	International National	-	• Use AAC • Use an intermediary • Use anatomical dolls	• 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	• Involve expert witness	• Allow linguistic simplification • Use appropriate and proper questioning strategies
53	Wicaksana (2017)	Social science journal article	Witness	-	-	-	Indonesia	National	-	• Use a sign language interpreter	• Allow civil society organisation as a support	-	-

General information			Participants				Accommodations			Procedural justice component			
No	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)
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.

3.6.4 Findings

Findings as shown in Table 3.4 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%). A number of 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 regard 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 focused on criminal court proceedings, data referring to the types of court proceedings was not included in Table 3.4.

The 302 identified court accommodations (Sub-question 3) were spread almost equally between the number of procedural justice components that had been mentioned. Approximately a quarter of the publications (n=13; 24%) described 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 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.

3.6.5 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 (Gooding et al., 2016; 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; Carter & Boezaart, 2016). 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 participate effectively and equally in court, but also to facilitate and demystify the court process

(rather than complicate it) (Chester, 2018; Cooper et al., 2018; Cusack, 2017; 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; Geis, 2014). Given the focus of this research on severe communication disability, it is unsurprising that accommodations related to AAC were recommended to be used alongside an intermediary to facilitate and optimise 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 described earlier in the working definition of AAC, many persons with communication disabilities use AAC strategies and systems to communicate (Beukelman & Light, 2020). 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 two cases: *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 *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 allow individuals to use AAC strategies and systems in court, and there were 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 having to be more accommodating and to recognise the diverse communication methods used by persons with severe communication disabilities to facilitate their participation 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 (Bornman, 2014; 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 courtroom (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 highlights the negative impact of the rigid and hostile courtroom 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 was also 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 fulfils – 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 maximise 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 behaviour 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 behaviour 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; Freckelton, 2013; Marinos et al., 2017; White & Msipa, 2018).

Research emphasises 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 question 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 reported 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 to 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 et al., 2016).

This concludes the excerpt of the pre-print version of “Court accommodations for persons with severe communication disabilities: A legal scoping review” by White, Bornman, Johnson and Msipa (2020a).

3.6.6 Conclusion of Data source 1

Data source 1 focused on a perspective of the extant literature regarding specific court accommodations that have been documented worldwide by means of a legal scoping review that enables persons with severe communication disabilities claim their human right to access justice by participating in court in an equal and fair manner. This is an important and complex body of literature that needed to be explored and reviewed to draw out key findings related to court accommodations for persons with severe communication disabilities and to increase the current body of knowledge on this topic. The proposed new methodology for conducting a legal scoping review could guide future studies that aim to document existing evidence of a specific legal topic by describing what has been written about the topic, and how has it been examined and appraised to date.

A total of 302 court accommodations were identified. Different accommodations in court were addressed using the four key components of procedural justice, namely ‘Voice’, ‘Respect’, ‘Neutrality’ and ‘Understanding’. The review identified accommodations for witnesses and defendants equally, and it also mentioned accommodations for legal professionals such a jurors, attorneys and judges. Overall, the accommodations ‘intermediary’ and ‘AAC’, ‘appropriate and

proper questioning strategies’, ‘frequent breaks’, ‘CCTV in court’ and ‘expert witness’ were the most frequently mentioned court accommodations. However, it was important to obtain the perspectives of legal experts, nationally and internationally, on court accommodations. It was also important to include the perspectives of primary stakeholder groups, namely persons with disabilities, and to hear their voice on what court accommodations they feel are important for them to achieve access to justice. By gathering multiple stakeholder perspectives from both the primary and secondary stakeholder groups, a comprehensive list of court accommodations was determined, to be used during the next phase.

The legal scoping review identified that persons with severe communication disabilities often have multiple disabilities and therefore more than one accommodation may be needed to achieve and ensure their equal participation in court. This review also highlighted the fact that there is not a single overarching accommodation that would be universally applicable, and that an individual approach should be used when assisting persons with severe communication disabilities to access the court system. The findings from the legal scoping review were integrated with the other three data sources in this phase and used in the next phase. This strengthened the court accommodations identified. A face-to-face focus group session with South African experts was conducted as the second data source to draw the personal opinions from known legal experts in the field.

3.7 Data source 2: Focus group session with South African experts

Several of the following paragraphs were adapted from an excerpt of the pre-print version of “Transformative equality: Court accommodations for South African citizens with severe communication disabilities” by White, Bornman, Johnson, Tewson and van Niekerk (2020b) printed in the *African Journal of Disability*. See Appendix 3F for a copy of the published article licensed under the Creative Commons Attribution License. Permission was obtained from the journal to include this paper as part of this PhD thesis (Appendix 3G).

3.7.1 Aim

The aim of the national expert focus group was to identify court accommodations, recommended by legal experts, that could assist individuals with severe communication disabilities to achieve justice in the South African court system.

3.7.2 Rationale

Persons with disabilities in South Africa are at greater risk of experiencing violence than their peers without a disability. Recently, a South African study estimated that children with disabilities were 1.5 and 2.1 times more at risk of sexual abuse than their peers without a disability (Artz et al., 2016). Within the sphere of disability, individuals with severe communication disabilities are particularly vulnerable and have an increased risk of becoming victims of abuse (Bornman et al., 2011). Typically, persons without disabilities who were victims of violence or crime turn to their country's criminal justice system to seek justice by reporting the crime to the police and testifying in a court against the accused perpetrator(s). This same process should be available to persons with disabilities (White & Msipa, 2018). However, persons with disabilities are often denied fair and equal treatment before the courts (Flynn, 2013). In principle, South Africa passed the relevant legislation that specifically accommodates victims with disabilities who need to access the court system and that allows their equal participation in all legal proceedings. However, despite such existing foreign and national legislation, persons with communication disabilities and their families still find it difficult and overwhelming to access and participate effectively in the criminal justice system –irrespective of whether the person with disability is a witness or an alleged perpetrator (Bornman et al., 2016).

3.7.3 Method

A qualitative research design was used to conduct a focus group with a panel of legal experts (Creswell & Poth, 2018; Diaby et al., 2015; Jensen et al., 2017). The expert panel was guided by a human rights framework that influenced the study framing, design, data collection and analysis (Skempes et al., 2015).

3.7.4 Participants in the study

As a variety of participants was involved throughout the different phases of this study, a framework was developed for allocating participants numbers. This framework is shown in Appendix 3H.

Participants for Data Source 2 were selected using purposive, non-probability, expert sampling, which is an appropriate tool to use when investigating new research areas (Etikan et al., 2016) – in this case, court accommodations for persons with communication disabilities. Ten potential participants were identified based on their professional experience of working with victims with communication and intellectual disabilities who had been victims of crime, and on

having worked with these individuals during the court process. Of the ten potential participants, eight consented to partake in the focus group. Unfortunately, three experts were unable to attend in person, due to unforeseen personal and logistical reasons. However, since they recognised the value of the study, they inquired if they could do so remotely, in an a-synchronous manner. To optimally benefit from their expertise, it was decided to collect their data via an email interview in which the exact questions that had been asked during the panel discussion, were sent to them. Their responses were analysed and summarised and returned to them for verification as part of member checking. Thereafter, the first author presented their responses (with their consent) in the form of a PowerPoint presentation on the same day as the expert panel discussion. The other five experts attended and participated in the focus group that was hosted at a venue convenient for all involved. The participants all knew each other professionally, which led to rapport and trust being established quickly. Furthermore, all participants had experience of working with persons with disabilities during the legal process.

The participants' biographical details are shown in Table 3.5.

Table 3.5*South African participants' biographic information (N=8)*

Expert number	Age (years)	Gender	Language	Qualifications	Current title and role	Experience (years)	Specific expert experience
Expert 121	68	Female	English	B. Social Work B (Hons) MA PhD	Consultant: Child Rights and Child Protection	30	<ul style="list-style-type: none"> • Pre-court preparation therapy • Post-court therapy for child victims (physical and sexual abuse) • Assessment for the use of the intermediary system
Expert 122	61	Male	English	MA MSc PhD	Associate Professor & Principal Clinical Psychologist	25	<ul style="list-style-type: none"> • Expert witness • Reporting to court on various questions regarding rape complainants with intellectual disability
Expert 123	43	Female	Afrikaans	B Iuris LLB Certificate in DNA evidence	State Advocate and Case Manager; Sexual Offences and Community Affairs Unit (NPA)	20	<ul style="list-style-type: none"> • Public Prosecutor (District and Regional Court) • State Advocate • Case Manager • Sexual Offences and Community Affairs Unit
Expert 124	61	Female	English	Nursing Sciences (Professional Nurse) B Crim (final year)	National Coordinator and Deputy Director: Government court preparation programme	25	<ul style="list-style-type: none"> • Author of first Court Preparation Programme • Researcher who piloted and institutionalised the Victim Impact Statements in the trial process
Expert 125	52	Female	Afrikaans English	B Iuris LLB BA (Hons) LLM LLD	Associate Professor (previously Public Prosecutor)	28	<ul style="list-style-type: none"> • Public Prosecutor for 5.5 years • Prosecutor in specialised sexual offences court • Published author of various manuscripts
Expert 126	61	Female	isiZulu English	M (Clinical Psychology) PhD	Senior Lecturer Clinical Psychologist	18	<ul style="list-style-type: none"> • Assessing survivors of sexual assault who have an intellectual disability
Expert 127	44	Female	English	M Soc Sci (Clinical Psychology)	Principal Clinical Psychologist	18	<ul style="list-style-type: none"> • Forensic mental health examinations of rape survivors with intellectual disabilities in terms of relevant legislation
Expert 128	63	Female	Guajarati English	M (Mental Health) PhD	Director of NGO for abused children	30	<ul style="list-style-type: none"> • Therapeutic intervention with child victims of abuse • Forensic assessments for the courts

3.7.5 *Data collection*

Before recruitment commenced, ethics approval was obtained from the Research Ethics Committee of the University of Pretoria (see Appendix 3I). An email was sent to each participant with full details and instructions about the focus group (Appendix 3C). Once consent had been obtained from the participants (Appendix 3B), the programme for the full-day focus group was sent to them to allow adequate preparation and reflection time. At the beginning of the focus group discussion, the researcher reiterated the topic, aim and purpose of the day and asked each participant to fill out a biographical questionnaire (Appendix 3J). The procedures and timeline were highlighted. Experts were also reminded that their participation was voluntary, and that they were allowed to discontinue at any given time without any negative consequences. Experts were furthermore compensated for direct expenses such as transport and accommodation.

Prior to the focus group discussion, the eight experts had been asked to prepare a presentation of 25-30 minutes on the invited topic to address the following questions:

- (i) Could you briefly discuss your experience with persons with communication disabilities in the criminal justice system?
- (ii) Have you previously successfully asked for accommodations and if so, can you please elaborate?

The experts sent their presentations to the first author who acted as the primary correspondent and chair of the day. The first three presentations were presented by the first author. Each presentation provided a thought-provoking perspective on the invited topic (court accommodations for persons with communication disabilities), identified major trends and made suggestions for further accommodations. In the afternoon, a group discussion (similar to a focus group) followed, in which the following question was discussed: What may facilitate the process for a victim with a communication disability to be able to access and participate on an equal footing in the court system and process?

Apart from the video and audio-recording, the co-supervisor also typed out the full-day's panel discussion to contribute to the trustworthiness of the data. She made a verbatim transcription of both the individual presentations and group discussion, and then audited each transcript against the original audio recording. A total of 20% of the transcriptions were additionally checked by an independent researcher. 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 98%-level of agreement was reached. This rigorous process greatly enhanced the procedural integrity of the transcripts (McLellan et al., 2003).

3.7.6 Data analysis

The researcher used ATLAS.ti 8, a Computer-Assisted Qualitative Data Analysis software (CAQDAS), to conduct a thematic analysis and combined it with an inductive coding approach (Fereday & Muir-Cochrane, 2006). Friese, Soratto and Pires (2018) describe seven phases of conducting a thematic analysis when using a CAQDAS to expand on Braun and Clarke’s (2006) six phases, namely (i) becoming familiar with the data; (ii) generating initial codes; (iii) developing a structured code system; (iv) searching for themes; (v) reviewing themes; (vi) defining and naming themes; and (vii) producing the report. This followed on first trying a deductive approach by using Article 13 (Access to Justice) of the CRPD as a coding framework. However, the latter proved to be an unreliable approach as a stable code structure could not be achieved (Friese et al., 2018).

The data was coded and analysed by the student, after which the supervisor and co-supervisor independently checked the codes and themes to increase inter-coder reliability and agreement of the data (Campbell et al., 2013). The process of initial coding (phase (ii)) resulted in a list of 244 codes. Next, a process of re-reading the coded segments, renaming, splitting and merging codes was conducted, which resulted in a total of 46 codes in the final structured code system (phase (iii)) (Friese et al., 2018).

3.7.7 Findings

Table 3.6 shows the structured code system used for this data source of the study. The bold capital letters present category labels that served as titles, and all data segments were distributed under the subcodes of a category (Friese et al., 2018). The number in the column ‘Grounded’ shows how frequently a code was applied.

Table 3.6
Structured code system for the South African expert focus group

Categories and codes	Definition of category and code	Grounded
Accommodations: Court accommodations, relevant services such as intermediaries or making the court accessible		61

Categories and codes	Definition of category and code	Grounded
• <i>Alternative communication methods/ strategies</i>	Alternative ways of communicating in court by the witness, e.g., AAC, the use of anatomical dolls and alternative strategies (for example, simple questioning techniques)	17
• <i>Intermediary services</i>	Intermediaries and any services related to intermediaries	13
• <i>Expert evidence</i>	The need for and importance of expert evidence to be given in court for witnesses with disabilities	12
• <i>Environment</i>	Physical accommodations, e.g., wheelchair access and environmental adaptations such as a private testifying room (negative and positive examples were included)	10
• <i>Expert support person</i>	A lay or legal assessor to support the magistrate during legal proceedings	5
• <i>Victim impact statements</i>	Explanation and importance of victim impact statements and how they can be used	4
Court preparation programmes: Court preparation offered by government or non-governmental organisations (NGOs)		33
• <i>NGO 1</i>	Process of the court preparation programme at NGO 1	12
• <i>Government</i>	Process of the NPA's Ke Bona Lesedi Court Preparation Programme	11
• <i>NGO 2</i>	Process and description of the court preparation programme at NGO 2	7
• <i>Purpose</i>	Purpose of court preparation for the victim and all involved	3
Court system: Court system and processes, for witnesses and professionals		44
• <i>Equality</i>	Highlighting the term 'equality' in the court system. Persons with disabilities should have the same (equal) rights as their peers and be able to access the court on an equal footing	13
• <i>Challenges</i>	Challenges to access the court system, and the challenges related to the rigid and inflexible procedures and processes that the courts follow	12
• <i>Unrealistic expectations of victims</i>	The court and court officials have unrealistic expectations of the victims with disabilities	9
• <i>Process</i>	The court processes followed (current as well as past processes)	6
• <i>Trust of victims and families in process</i>	Lack of faith in the court system by families and victims who did not find the system beneficial to pursue	4
Law: Specific law regarding access to the court system for persons with disabilities		32
• <i>Specific legislation for persons with disabilities</i>	Specific mention of laws and policies for persons with disabilities – national and foreign law	15
• <i>Reform</i>	Mention of law reform and the importance of law reform	12
• <i>Challenges</i>	Challenges of the law, e.g., law is perceived as dichotomous, which could disempower persons with disabilities	5
Professional experience: Professionals involved in the court process, either on a professional or personal level. Also, statements on how the professional interacts with or responds to the victim with a disability (lack of patience).		95
• <i>Specific training needed</i>	Specific training of professionals who work with persons with disabilities to address aspects such as knowledge, awareness and patience	36
• <i>Responsibilities</i>	Responsibilities of specific professionals in the court system, for example the prosecutor, social worker, police	23

Categories and codes	Definition of category and code	Grounded
• <i>Importance of training</i>	Importance of training of professionals so that victims could access the court system in a fair manner	21
• <i>Work challenges</i>	Challenges faced by professionals in the court system – being overworked, having too large caseloads, etc. – which results in witnesses with a disability not being able to fully access the court system	15
Witness: Comments linked directly to the victim/witness with a communication disability		149
• <i>Level of disability</i>	The type or level of disability of the witness (e.g., intellectual disability, physical disability) and how the level of disability affected the victim’s ability to consent to sexual intercourse	29
• <i>Personal factors</i>	Personal factors related to the witness (language barriers, self-blame, protecting the perpetrator, etc.) that have an impact on his/her access to the court system	23
• <i>Witness competency</i>	Basic competency, truth-lie competency and the ability of the person with a communication disability to testify in court and be a witness	23
• <i>Human rights</i>	Examples of human rights violations affecting the victim’s human dignity and equality; no human respect for the witness/victim	20
• <i>Environmental factors</i>	Any processes or persons other than the witness’s family mentioned in a negative way, which prevented the witness from accessing the court system effectively	19
• <i>Tools, assessments and methods used</i>	Tools, models, assessments and the processes currently used with witnesses in South Africa	16
• <i>Support services</i>	Importance of support services for the witness	7
• <i>Unfair discrimination</i>	Unfair discrimination experienced by the witness	7
• <i>Family</i>	The witness’s family	5

Table 3.7 provides examples of codes (specific quotes from the experts) that emerged from the six main categories.

Table 3.7
Examples of verbatim quotes in specific categories

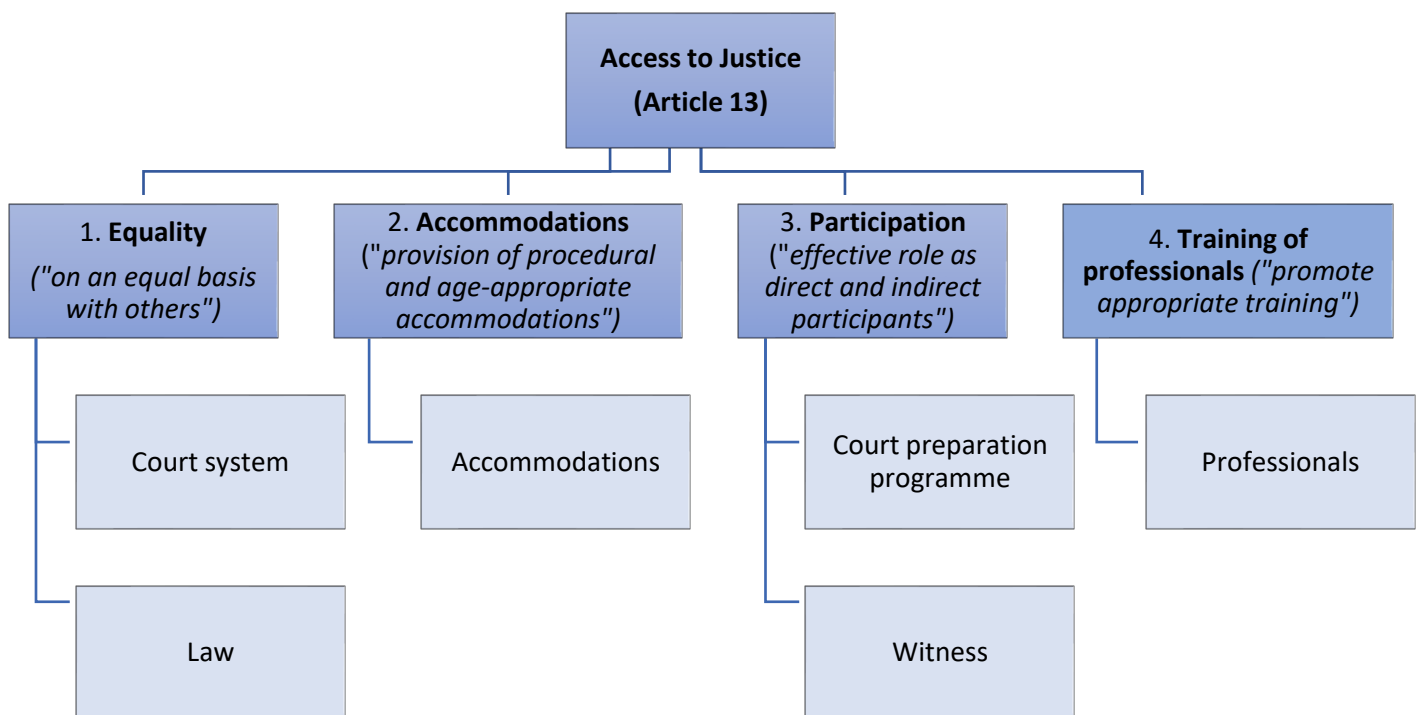
Categories	Verbatim quotes from participants
Accommodations	<i>“We need non-verbal ways of communication that are reliable and valid.”</i>
Court preparation programmes	<i>“It is furthermore the process of empowering the witness or the complainant by familiarising them with information regarding the court environments so that they are not afraid of the unknown, what are they going to face, who they going to face, where they going to face and court processes, legal process and legal terminology and it all has to be age appropriate and how do we address that in terms of their disability? and it’s very helpful when we get a report on what type of disability? what their medical, their mental functioning is, so that you can address that witness or the complainant on that level.”</i>
Court system	<i>“We need a more flexible court system that shows its understanding of the witness’ disability and tries to work with [her] to enable optimal testimony. We need a court system that is disability-friendly, and I don’t believe that our present system is so, especially as it relates to intellectual disability.”</i>
Law	<i>“The Criminal Procedure Act 51 of 1977 (the CPA) provides for a number of protective measures for child and adult witnesses as well as witnesses with disabilities.”</i> <i>“The PREMUDA Act, in section nine and in section six says ‘no person may unfairly discriminate against any person on the grounds of disability including denying or removing</i>

Categories	Verbatim quotes from participants
Professional experience	<p><i>from any person who has a disability, any supporting or enabling facility necessary for their functioning in society and in court'.</i>"</p> <p>"Training is critical."</p> <p>"There is a need for ongoing training."</p> <p>".....training, training, training. And I think that we need to see training as never ending, we can't do training in March and then leave it for another two years. We just have to keep training."</p>
Witness	<p>"With mental disability I have encouraged police/prosecutors and sometimes testified in court, to understand the nature of the disability and how it impacts on the child and evidence. Sometimes I have not been successful and sometimes when the mental disability is profound, the child is unable to describe the offence and then the case only proceeds where there is other evidence e.g., – DNA or a witness."</p>

Next, the authors used Article 13 (Access to Justice) of the CRPD (United Nations, 2006) as a conceptual framework to link categories to themes (Drew et al., 2011; Harpur, 2012). Four main themes were identified, namely equality, accommodations, participation and training of professionals. The themes and related categories are presented in Figure 3.3.

Figure 3.3

Conceptual framework, themes and categories



3.7.8 Discussion

An in-depth discussion of the four themes – equality; accommodations; participation; training of professionals – follows below.

3.7.8.1 Equality

Article 13 specifically mentions the importance of ensuring access to justice for persons with communication disabilities on an ‘equal basis’ with others (United Nations, 2006). The South African court system is not always considered beneficial or easy to pursue as one expert highlighted:

“...people not seeing any value in the criminal justice system because the legal system has never actually benefited them in any way, the whole process of trying to go through the system is just one more big obstacle ... impenetrable obstacle!” (verbatim quote)

If transformative equality is to be achieved, processes and procedures within the court system need to be adapted and modified to enable persons with communication disabilities to participate equally in court. The court and criminal justice system have an important role to play in furthering transformative equality. In order to ensure that it promotes its aims of protecting vulnerable groups such as persons with communication disabilities, the court system is compelled to develop certain criteria to accommodate witnesses with communication disabilities (Fredman, 2005; Lord & Brown, 2011).

The CRPD recognises that laws are not always sufficient to protect the rights of persons with disabilities, and therefore, strategic litigation and law reform are needed to ensure that laws are in line with international human rights standards such as the CRPD (Drew et al., 2011; Flynn, 2013). Some countries have laws that protect and assist witnesses with disabilities to access the court system on an equal basis and these have set a benchmark for other countries, for instance Scotland’s Vulnerable Witnesses Act of 2004, Israel’s Investigation and Testimony Procedural Act (Accommodations for People with Cognitive or Mental Disability) of 2005, and India’s Rights of Persons with Disabilities Act of 2016. Yet, the development of policies and laws historically excluded persons with communication disabilities, which implies that their needs were not adequately addressed. According to Drew et al. (2011), it is essential that persons with communication disabilities are actively involved in the law reform process.

3.7.8.2 Accommodations

The court has a responsibility to ensure fair and equal access for all witnesses, including those with communication disabilities, and certain procedural accommodations could assist the court in achieving transformative equality. When discussing types of accommodations, Msipa (2015, p. 89) puts forward the following strong statement: “In the criminal trial setting, the question should not be whether a person is competent to testify; rather it should be what types of accommodations are required to enable the person to give effective testimony?” The CRPD specifically mentions that provision of procedural and age-appropriate accommodations should be provided to a witness with a communication disability in order to ensure his/her effective access to justice (United Nations, 2006).

(i) *Lay/Legal assessors*

Section 34 of the Magistrates’ Courts Act 32 of 1944 allows for the appointment of assessors in both criminal and civil cases in South Africa. Expert assessors are generally experienced people in law who are advocates or magistrates (Department of Justice and Constitutional Development, 2019). Lerm (2012) explains the rationale for this practice, namely to assist magistrates and judges who are only professionally trained and who frequently lack the expertise and practical knowledge to match that of the experts who would testify in cases before them. Therefore, the use of expert assessors to assist judges and strengthen their competence to judge complex matters was developed. Appointing a legal assessor who is a trained and skilled expert in communication disability could assist the judge or magistrate to understand the witness’s disability, as well as recognise the accommodations that are needed to support this witness to be able to participate and testify in court.

(ii) *Intermediaries*

Since criminal proceedings in court are generally not disability friendly, intermediaries are used to assist both witnesses and perpetrators with communication disabilities during the court process and ultimately to support the witness or perpetrator to participate equally in the court process. This process is similar to the appointment of intermediaries in criminal cases for all witnesses under the biological or mental age of 18 years. An intermediary is a facilitator who assists a witness to testify and give evidence in court. As a result, all communication interaction exchanged between the witness and the court takes place through the intermediary, including examination-in-chief, cross-examination and re-examination (Fambasayi & Koraan, 2018). The

role of the intermediary is to translate the questions from the prosecution and the defence attorney and put them to the witness in a language and terminology that the witness understands (Jonker & Swanzen, 2007).

Foreign case law in England allows the intermediary to assist with questions for cross-examination of the witness, which have been agreed in advance by all parties involved [R v Michael Boxer [2015] EWCA Crim 1684] (The Advocate's Gateway, 2019). This is a strategy that could assist the courts with regard to the cross-examination from the defence.

(iii) *Alternative and Augmentative Communication (AAC)*

AAC strategies and techniques are used by individuals with significant communication disabilities who cannot rely on spoken language alone for communication purposes, for example, persons with cerebral palsy or those with intellectual disability (Beukelman & Light, 2020). Broadly, AAC systems have a binary taxonomy that distinguishes between unaided and aided communication systems. In the case of unaided communication, persons use only their bodies to convey their messages, for example systems with linguistic features such as a formal sign language (e.g., South African Sign Language (SASL) and finger spelling), or systems without linguistic features such as natural gestures, facial expressions and vocalisations (Beukelman & Light, 2020). In South African courts, persons with communication disabilities have been allowed to use unaided communication systems such as informal signs to testify in court (example R v Ranikolo 1954 (3) SA 255 (0)). However, for many persons with severe communication disabilities, for example those with significant physical disabilities and limited movement, the use of unaided communication systems (such as SASL) is not possible.

Aided communication can be defined as systems that require external assistance (e.g., pictures or objects) to produce a message. As with unaided systems, aided systems also fall on the continuum of linguistic features. On the one end of the continuum there would be symbol *sets* (*without* linguistic features) and on the other end symbol *systems* (*with* linguistic features) (Bornman & Tönsing, 2019). Traditional orthography (e.g., letters of the alphabet) is an example of an aided symbol system with linguistic features that would allow literate individuals with a communication disability to generate their own messages. Alphabet letters can also be presented in Braille or Morse code format. Braille, a tactile symbol system for reading and writing that is typically used by blind persons also requires literacy skills and hence the theoretical argument reverts to the issue of the literacy level of individuals with disabilities (Groce & Bakshi, 2009;

Statistics South Africa, 2012). Unfortunately, using aided systems with linguistic features to testify is not applicable to the majority of South Africans with communication disabilities, due to the notoriously high illiteracy rates in the local population (Groce & Bakshi, 2009; Statistics South Africa, 2012).

Blissymbols is a conceptually based graphic symbol system with linguistic rules and markers (Beukelman & Light, 2020). Blissymbols are placed half-way on the aided communication continuum between symbols sets with no linguistic features and symbol systems with linguistic features. Blissymbols have been used successfully in a South African court case (Toefy, 1994). Unfortunately, Blissymbols is not commonly used in South Africa as part of the education system.

The other end of the aided communication continuum consists of symbol sets that contain finite numbers of easily guessable symbols with limited linguistic features. Symbol sets thus consist of a defined number of symbols that have no rules for expansion or generating new words, for example Picture Communication Symbols (PCS). This means that messages can only be compiled by selecting symbols from the pre-selected set (Beukelman & Light, 2020). Symbol sets are particularly useful for non-literate persons, persons with limited literacy skills and preliterate persons. Preliterate persons (young children who have not yet acquired literacy skills or individuals who have not yet been exposed to literacy and who might still acquire literacy skills) often use graphic symbol sets that do not have linguistic features and therefore do not require literacy skills. It is important for preliterate individuals with communication disabilities to have access to alternative means to represent messages and concepts to communicate (Drager et al., 2010).

Therefore, aided AAC systems that do not have linguistic features, such as PCS, may be a viable option in the criminal justice system. For non-literate and preliterate individuals, the vocabulary required to access the court system could be selected and represented in the form of line drawings that could be displayed as a communication board or book. Alternatively, the required vocabulary could be programmed into a specific speech-generating device such as a tablet with specific AAC software (Caron et al., 2016; White et al., 2015).

These systems could assist non-literate, minimally literate, as well as preliterate persons with communication disabilities to participate with others in their environment, as the meanings of many of the symbols and line drawings are easy to understand (Dada et al., 2013). The use of

systems with a set of pre-selected vocabulary in the court system also has specific implications. The vocabulary is selected from a pre-determined symbol set and thus it is not generated, as would be possible when a symbol system such as traditional orthography or Braille was used. These implications could be remedied by adding multiple foils and categories in the pre-determined symbol set (White et al., 2015).

In countries such as England, Wales, Northern Ireland and Scotland, witnesses with communication difficulties are permitted to use both aided and unaided forms of AAC to support their testimony (O’Leary & Feely, 2018). The South African court system needs to formally recognise AAC as a form of communication and giving testimony for witnesses with communication disabilities. Furthermore, provided that the court procedures and rules of evidence are not undermined, this form of accommodation should be allowed in court (Flynn, 2016b).

3.7.8.3 Participation

The CRPD, and specifically its Article 13, highlights the importance of persons with disabilities being active participants as witnesses in the court process (United Nations, 2006). In South Africa, the government and non-profit organisations offer multiple court preparation programmes to empower the witness with disabilities to participate effectively in the court system. Greater awareness needs to be raised and wider education be offered regarding the relevant court preparation programmes, so that persons with disabilities and their families would know whom they can turn to when wanting to access the court system.

The purpose of the Ke Bona Lesedi Court Preparation component offered by the National Prosecuting Authority of South Africa (NPA) is to prepare and empower victims with communication disability (witnesses and their families) for testimony (Tewson, 2017). This skilled and practical intervention is prosecutor guided and aims to empower witnesses to give credible evidence in court. The court preparation officers (CPOs) accompany the witnesses and complainants from beginning to end, encouraging them, teaching them coping mechanisms, referring them for counselling and giving crucial feedback to the prosecutor. They also ensure that the prosecutor knows how to approach a witness with specific communication needs (Tewson, 2017). CPOs, together with the intermediaries, play a critical role in the court process and their role should be advocated in all courts as part of ensuring equal access to justice for witnesses with communication disabilities. CPOs identify the accommodations and special needs

of the witness prior to testimony and consultation with the prosecutor, which ensures that the necessary accommodations are timeously arranged (Tewson, 2017).

A barrier and recurring obstruction to witness participation is the victim's level of disability and ability to be a competent witness. Pillay (2012) strongly argues that every attempt must be made to find reasons why witnesses with intellectual disabilities should be permitted to give evidence, rather than why they should *not* be allowed to testify. Scottish Law addressed this barrier where the Vulnerable Witnesses (Scotland) Act of 2004 legally removed the competence test for vulnerable witnesses. The advantage of removing this test is that it allows the magistrate to determine the witness's reliability, rather than to rely on a test that does not necessarily ensure the truthfulness of their evidence. It also ensures that victims with communication disabilities have the opportunity to be heard (Turner et al., 2016).

3.7.8.4 Training of professionals

The CRPD specifically mentions the importance of training all professionals who work in the court system. Lack of training is consistently labelled as a barrier in the South African court system, as it gives rise to, for example, lack of awareness, lack of patience and lack of knowledge (Bornman et al., 2016). Training of legal professionals has been demonstrated to be effective. For example, a Swedish study that focused on the training of active crime investigators of alleged child abuse who participated in six different half-year courses between 2007 and 2010 showed effective outcomes in shaping the interviewers' behaviour towards better compliance with foreign recognised guidelines (Cederborg et al., 2013). This is just one of many examples of the benefits of specific training programmes for legal professionals. Access to justice can be improved when these professionals can receive the relevant training (Larson, 2014), and this practice should be prioritised in the South African court system.

This concludes the excerpt of the pre-print version of "Transformative equality: Court accommodations for South African citizens with severe communication disabilities" by White, Bornman, Johnson, Tewson and van Niekerk (2020).

3.7.9 Conclusion of Data source 2

The aim of Data source 2 was to identify court accommodations that could assist persons with communication disabilities to participate in the South African court system specifically from the perspective of legal experts. Article 13 of the CRPD (Access to Justice) (United Nations, 2006) was used as a conceptual framework to identify the four main themes, namely

equality, accommodations, participation and training of professionals. The court accommodations that were identified by the South African legal experts were similar to those captured in the legal scoping review. However, Data source 2 identified the role of legal lay assessors and court preparation programmes in the South African context. Data source 2 also highlighted that the defendants with communication disabilities may experience profound disadvantages in preparing and presenting their defence if they are not provided with appropriate accommodations during the court process. The South African experts further highlighted the importance of much needed training for legal practitioners in the court system in order to ensure equality and participation for all. From the in-depth country-specific focus it became clear that a wider, international focus was needed.

International experts from different countries have an important role to play in the identification of court accommodations for persons with severe communication disabilities, and their perspectives on the topic are needed to ensure that a comprehensive universal account of court accommodations can be compiled. Hence, Data source 3 included the perspectives of international legal experts.

3.8 Data source 3: Online focus group with international experts

Several of the following paragraphs were adapted from an excerpt of the pre-print version of “Investigating court accommodations for persons with severe communication disabilities: Perspectives of international legal experts” by White, Johnson and Bornman (2021). See Appendix 3K for a copy of the published article.

3.8.1 Aim

The aim of Data source 3 was to investigate the perspectives of international experts on possible universal court accommodations that could enable persons with severe communication disabilities from across the globe to participate equally in the court system so as to ensure access to justice for them. This was done by applying an international treaty, the CRPD, as the bedrock for this research with a further focus on procedural justice principles.

3.8.2 Rationale

Perspectives of international experts who work in the justice system may be able to suggest valuable and relevant recommendations of court accommodations for persons with

severe communication disabilities, on a global level. When investigating the types of court accommodations that could be provided to persons with severe communication disabilities to ensure access to justice, expert perspectives provide an accessible source of information that can be harnessed relatively quickly to gain opinion and provide knowledge when more traditional research has not been undertaken (Baker et al., 2006). Furthermore, the use of experts in research can be a positive tool when investigating new areas of research, for example court accommodations for persons with severe communication disabilities (Etikan et al., 2016).

3.8.3 Method

The first author moderated an asynchronous online focus group session with a panel of nine international experts, while the second and third authors acted as observers. An asynchronous online focus group is a selected group of individuals (or experts) who volunteered to participate in a moderated structured online discussion to explore a particular topic for the purpose of research (Jensen et al., 2017; Williams et al., 2012). Furthermore, this type of online discussion allows participants to read and reply to each other's postings at a time that suits them (Williams et al., 2012).

The choice of platform for hosting an online focus group is a crucial consideration for this type of methodology to ensure that the participants feel comfortable and safe to share information (Cortini et al., 2019; Johansson, 2019). Three criteria were set for the study platform: it had to ensure the participants' safety and confidentiality; it had to be easy to understand and use; and it had to allow for asynchronous discussion. The learning platform, Blackboard Learn (<http://www.blackboard.com>), was selected as it allowed a degree of customisation and was relatively easy to use by the moderator, observers and participants (Stewart & Shamdasani, 2017). It could also ensure confidentiality and between-participant anonymity, while it was possible to capture the content of the discussion in an easy-to-follow manner (Stewart & Shamdasani, 2017). Adhering to the principles established in a face-to-face focus group, a facilitation script was developed (Tates et al., 2009) that specifically examined participants' perspectives about court accommodations for persons with communication disabilities.

An advantage of asynchronous online focus groups is that it enables access to hard-to-reach populations (e.g., experts) and to a more diverse participant group from a larger geographical area, which is challenging when using traditional research techniques (Reisner et

al., 2018; Skelton et al., 2018). The use of asynchronous online focus groups is particularly advantageous when investigating sensitive topics (such as court accommodations for persons with severe communication disabilities), as it allows the participants to choose which aspects of their experience they feel comfortable disclosing. Online focus groups are also more cost effective than traditional face-to-face ones because there are no costs related to facility rental, equipment and transportation (Lijadi & Schalkwyk, 2015; Stewart & Shamdasani, 2017). Research has also shown that the content was virtually the same between synchronous and asynchronous focus groups, despite obvious differences in the data collection format (Biedermann, 2018; Reisner et al., 2018).

However, a disadvantage of online focus groups is that comments are not elaborated on in detail, as participants might say less when they need to type their responses. It may also take longer to respond, therefore they might only give a shallow response (Biedermann, 2018). Careful attention was thus given to each participant's response, and the moderator asked additional questions if clarity was needed.

3.8.4 Participants

Expert perspectives may provide an accessible source of information that can be harnessed relatively quickly to provide opinions and knowledge when there is a paucity of research evidence regarding a specific topic (Baker et al., 2006). Consequently, when investigating relatively new areas of research, experts can make a significant contribution based on their extensive experience in this specific focus area (Bornman & Naude, 2019; Etikan et al., 2016).

A purposive sampling technique was used to identify participants to ensure that they could be considered experts on the research topic, and that they would be able to provide thick and rich data regarding possible court accommodations (Creswell & Plano Clark, 2018). These experts also had to be practising in a country that is a signatory of the CRPD. When defining an expert, different criteria can be used. For the purpose of the current study, three criteria (as based on Baker et al., 2006) were employed: knowledge (articulated by qualifications and publications in the field of the current study), experience (articulated by work experience with persons with disabilities in the justice system), and influence (articulated by whether they had informed policy or were involved in policy revision) (see Table 3.8). Each of these criteria was then scored, using specific parameters. For example, experience was used, with 'number of years' used as the

proxy. Experience of between 1 and 5 years yielded a score of 1; 6 to 10 years yielded a score of 2; 11 to 15 years a score of 3, and 16 years or more a score of 4 (See Table 3.8 for the scoring that was used for the knowledge and influence criteria.). A minimum score of 7 was required to ensure that potential participants met the minimum criteria for consideration as ‘experts’ related to the specific topic at hand. A total of 16 potential participants were identified, of whom nine consented to participate in the expert online focus group. The seven non-consenting potential participants cited prior commitments, high workload, maternity leave and health challenges. The nine participants were well-known, influential, published scholars in their respective fields. The majority were female, and their ages ranged from 37 to 74 years (average age of 54 years). The participants practised in Australia, Canada, England, Germany, Israel, the USA and Zimbabwe. All participants met the three criteria, with weighted scores for inclusion ranging from seven to 13 points, with an average weighting of 11 points.

Table 3.8*Description of participants in the international online expert focus group (N=9)*

Nr	Gender	Age	First language	Has a disability	Title	Knowledge (qualifications) weighting: Bachelors = 1 Honours = 2 Master's = 3 PhD = 4	Knowledge (publications) weighting: 1 to 5 = 1 6 to 10 = 2 11 to 15 = 3 16+ = 4	Experience (in years) weighting: 1 to 5 = 1 6 to 10 = 2 11 to 15 = 3 16+ = 4	Influence (Informed policy or policy revision) weighting Yes = 1 No = 0	Total weighting score
131	Female	37	Shona	No	Attorney	3	2	2	1	8
132	Female	74	English	No	Professor Emerita (disability)	4	4	4	1	13
133	Female	65	German	No	Professor (Special needs education and rehabilitation)	4	4	4	1	13
134	Female	59	Hebrew	No	Speech Therapist	1	4	4	1	10
135	Female	42	English	Yes, cerebral palsy	Tribunal Member	2	1	3	1	7
136	Female	50	English	No	Associate Professor (Criminology)	4	4	4	1	13
137	Female	44	English	Yes, speech disability	Compliance Officer	3	3	4	1	11
138	Female	61	English	No	Associate	3	3	3	1	10
139	Male	54	English	No	Forensic Psychologist	4	3	3	1	11

3.8.5 Data collection

Before recruitment commenced, ethics approval was obtained from the Research Ethics Committee at the tertiary institution concerned (Ethics approval number: GW20180718HS) (Appendix 3I). The potential participants were emailed letters of informed consent with details about the research topic, a biographical questionnaire to complete (Appendix 3L, 3M and 3N), what was expected of them, as well as information about potential risks and benefits. To ensure confidentiality, each participant was given a unique login name and password with which they could anonymously (between participants) access their discussion group forum for five days, 24 hours a day. The only persons who could be identified by name were the moderator (first author) and observers (second and third authors) who played a similar role as in face-to-face focus groups, for example by asking clarification questions and encouraging group discussions (Williams et al., 2012).

The discussions took place from Monday to Friday with no holidays or public holidays that could influence the frequency of participants' postings (Skelton et al., 2018). Instead of introducing all questions at the start of the online focus group discussion, the facilitation script enabled the moderator to post a question daily, aiming to achieve optimal group discussion as recommended in previous research (Tates et al., 2009). The following four questions were posted:

- (i) Please introduce yourself to the group by referring to your experience with people with communication disabilities in the criminal justice system.
- (ii) Please describe the specific court accommodations that you have asked for/recommended in court.
- (iii) Please describe any specific legislation/laws that you are aware of in your country that can assist a person with a communication disability to equally access the court.
- (iv) In your opinion, what may facilitate the process for a person with a communication disability to be able to access and participate equally in the court system and process?

Although no question was posted on the last day, participants had the opportunity to view all the responses in the discussion thread and review their own responses. Furthermore, all the questions remained open for responses during the whole week. To ensure all participants participated in the online discussion, a reminder was sent to those who had not yet joined the discussion on the second day. Thereafter, apart from one participant (who only responded to two

questions), all the other participants participated daily. On conclusion of the online focus group, the discussions (questions and responses) were exported to Microsoft Word and the original formatting was removed and replaced with standard document formatting. The Word document was emailed to all the participants for verification as part of member checking and to enhance the trustworthiness and credibility of the data (Nowell et al., 2017). The outcomes of the member checking included clarification of countries for example using the term ‘United Kingdom’ and not England or Scotland. A further outcome was the clarification of certain laws and legislations for certain countries.

3.8.6 Data analysis

ATLAS.ti 8, a computer-assisted qualitative data analysis software (CAQDAS), was employed to conduct a thematic analysis, using a deductive coding approach (Braun & Clarke, 2020; Nowell et al., 2017). This deductive thematic analysis approach was selected as it allows for a recursive process, with movement back and forth between different phases involving distinct steps (Braun & Clarke, 2019). First, the authors familiarised themselves with the data by exploring the text of each posting. Next, the text was divided into preliminary codes, based on an existing structured codebook developed from Article 13 of the CRPD (Access to Justice) (White et al., 2020a). Following reflective and critical analysis, the researchers adapted the existing codebook and combined Article 13 with procedural justice principles, which then became auditable evidence to support the trustworthiness of the study (Braun & Clarke, 2020; Tyler, 2008). This deductive type of coding allowed for the text to reflect codes based on the theoretical interests guiding the research. Codes were subsequently grouped within main themes that reflected the most prominent ideas represented in each category (e.g., accommodations related to procedural fairness). The data was coded and analysed by the first author, after which the second and third authors independently checked the codes to increase inter-coder reliability and agreement of the data (Campbell et al., 2013). Thereafter, codes and themes were reviewed, defined and named (Braun & Clarke, 2020).

3.8.7 Findings

This research focuses on specific legislation/laws related to court accommodations that the experts were aware of and that they considered should be made available to persons with severe communication disabilities to facilitate equal participation in the court. As the research questions thus focused on possible facilitators, it might create the incorrect impression that these

accommodations are implemented in court. Theory does not necessarily equate to practice. The findings should therefore be read keeping the research aim in mind, without interpreting the findings to mean that these accommodations are in fact provided and/or implemented.

Four main themes were derived from the data: Accommodations related to procedural fairness; accommodations related to ensuring equality; accommodations related to non-discrimination; and accommodations related to legal practitioners.

Within the theme ‘accommodations related to ensuring equality’, codes that were derived were as follows: treated with respect; understanding the court language; having a voice; and using objective criteria for decision making. Within the theme ‘accommodations related to ensuring equality’, codes that were derived were: follow legal process; international laws that apply; national laws that apply; case law and specific narrative examples that apply; Barriers related to equality; and facilitators related to equality. Within the theme ‘accommodations related to non-discrimination’, the following codes were derived: discrimination based on disability definition; discrimination based on level/type of disability; discrimination based on fitness to stand trial; discrimination based on identification/screening; role of the defendant; roles of the family and legal guardians. Within the theme ‘accommodations related to legal practitioners’, codes that were derived were: importance of legal practitioners’ training; responsibilities of legal practitioners; and no cross-referencing and collaboration between disciplines. (See Appendix 30 for the definitions of codes.)

3.8.7.1 Accommodations related to procedural fairness

Accommodations related to procedural fairness were mentioned the most frequently by the participants. The accommodations were categorised into four specific codes that resonate with the procedural justice constructs: treated with respect; understanding court language; having a voice; and using objective criteria for decision making.

Under the ‘treated with respect’ code, Expert 136 reiterated specific court accommodations that were currently available for persons with severe communication disabilities: *“There are typical accommodations within the criminal law such as testifying behind a screen [and] having a support person.....”*.

Other ‘treated with respect’ accommodations related to procedural fairness that were identified by the experts, included providing extra time for clients who appear literate but still cannot understand letters sent from the court (Expert 137); using a stress ball (Expert 139); and

giving testimony via CCTV camera so that the complainant does not have to testify in the same room as the accused person (Expert 131).

Under the ‘understanding court language’ code, Expert 134 reflected on her professional experience: *“For the people that did have a communication board we usually added vocabulary to their boards, vocabulary that will help them answer questions in the investigation.”*

The ‘having a voice’ code highlighted the use of intermediaries as one of the most frequently used accommodations. Expert 138 specifically highlighted the benefit of this accommodation: *“That said, global interest in the role of [the] intermediary and the many examples of where individuals, children and adults [with disabilities], have been enabled to access justice is greatly encouraging.”*

Other accommodations mentioned included asking whether the witness may be provided with have access to a pen and paper to write their answers down if they do not wish to speak them aloud in court, as well as the use of AAC. The latter included unaided forms of communication (e.g., gestures, fingerspelling and sign language) as well as aided forms (e.g., pictures and written words displayed on communication boards or on speech-generating devices). Expert 134 shared her experience relating to her specific country’s law regarding the use of AAC:

“After application of the Investigation and Testimony Procedural Act (Accommodations for Persons with Mental or Intellectual Disabilities) of 2005, children’s investigators were trained and given new authorisations for special investigations according to the law. The authorisation was developed in such a way so that the investigators themselves are considered a ‘tool of the investigation’ [and] made accessible, which is to say, the investigators learned how to conduct an interview (linguistic simplification, relating to times and quantities, using open and closed questions, etc.). Alongside training, the need arose for additional tools and media that will be at the disposal of the investigator and used at his or her discretion. As such, a special AAC kit was developed, aiding investigations with the assistance of a speech language pathologist funded by the Ministry of Welfare and Social Services, just as translators for sign language have aided in investigations and testimonies for several years.”

Several accommodations were identified by the experts under the code, “using objective criteria for decision making”. For instance, experts mentioned that every investigation should be

recorded by two video cameras, one focusing on the person investigated and one on the communication board; judges and attorneys should not be in formal attire; and the court should have the discretion to forbid a criminal defendant from single-handedly cross-examining a witness with intellectual disabilities.

3.8.7.2 Accommodations related to ensuring equality

Accommodations related to equality that were identified by the experts were important international (the CRPD) and regional (country-specific) laws that could assist persons with severe communication disabilities in their pursuit of justice. Specific regional laws that were mentioned by the participants were from Canada (Criminal Code of Canada); Germany (Guidelines for Criminal and Administrative Summary Fine Proceedings (*Richtlinien für das Straf- und Bußgeldverfahren, RiSTBV*) referring to the German Criminal Code (*Strafgesetzbuch, StGB*); South Africa (Children’s Act 38 of 2005, Criminal Procedure Act 51 of 1977); Israel (Israel’s Investigation and Testimony Procedural Act, Accommodations for Persons with Mental or Intellectual Disabilities, 2005); United Kingdom (Youth Justice and Criminal Evidence Act 1999, The Police and Criminal Evidence Act 1984 (PACE) Code of Practice) and the USA (Americans with Disabilities Act of 1990).

Expert 134 spoke in detail about Israel’s Investigation and Testimony Procedural Act (Accommodations for Persons with Mental or Intellectual Disabilities, 2005) that promotes equality for persons with severe communication disabilities:

“In Israel, there is a very good law for access to justice. People with disabilities have the possibility to be in court with all the accessibility they need, stated by law. The main advantage of this law is that special investigators conduct investigations of people with disabilities in the criminal cases. The investigators are social workers, specialised in investigating people with disabilities. They belong to the ministry of welfare with authority like the police.”

Expert 132 underscored the importance of including a variety of strategies that could be used in terms of transformative equality for persons with severe communication disabilities:

“In my opinion, there needs to be a variety of strategies, with each strategy focused on different stakeholders. National or international legislation that mandates equal opportunity/non-discrimination for people with disabilities, including those who have complex communication needs, in accessing the justice system is a good starting point.”

3.8.7.3 Accommodations related to non-discrimination

Accommodations related to non-discrimination that were highlighted by the experts were procedures that should be put in place that could identify at the earliest point when a person with a communication disability enters the system (Expert 138); developing appropriate questioning techniques for children with intellectual or psychiatric difficulties (Expert 131); and people with severe communication disabilities and their families benefiting from being educated about their legal rights within the criminal justice system (Expert 132). Expert 138 mentioned that:

“England’s Police and Criminal Evidence Act of 1984 makes provision for the support role titled ‘Appropriate Adult’ (Home Office: National Appropriate Adult Network, 2011) which directly benefits defendants with severe communication disabilities who come into contact with the court system. This appropriate adult should be called if the suspect is either younger than 17 years of age or an adult whom the custody sergeant considers to be “mentally disordered or otherwise mentally vulnerable”. Also, an appropriate adult is called to the police station as an important safeguard, providing independent support to defendants to ensure that they understand what is happening at the police station during the police interview (Home Office and National Appropriate Adult Network 2011).”

This support role of the ‘Appropriate Adult’ as a possible accommodation is a positive example of a non-discriminatory practice for defendants and could be of great benefit to vulnerable populations (such as defendants with severe communication disabilities), not only prior to the court, for example at the police station, but also in court.

Expert 131 also described in detail certain accommodations related to non-discrimination that could assist persons with severe communication disabilities to access the court system: detail:

“For instance, the person who conducts the assessment to determine the individual’s communication needs has to understand that it is more than just a matter of a medical diagnosis. What matters most is the individual’s needs relating to communication. Secondly, the needs assessment has to be carried out at the appropriate time, that is at the investigative stage to determine the person’s needs as early as possible.”

3.8.7.4 Accommodations related to legal practitioners

Almost all of the experts highlighted the importance of training legal practitioners regarding disability awareness and knowledge. Expert 132 commented on which specific legal

practitioners should be considered for training: “... *this includes training of judges, attorneys, police and victim’s assistance professionals*”.

3.8.8 Discussion

Court accommodations that highlight procedural justice principles can contribute to feelings of self-worth and satisfaction for persons with severe communication disabilities (Brems & Lavrysen, 2013; White et al., 2020b). There is existing case law where accommodations related to procedural fairness have successfully been implemented. For example:

- Giving testimony via CCTV camera so that the complainant does not have to testify in the same room as the accused, as was used in *Donnelly v Ireland* [1998] 1 IR 321 and in *White v Ireland* [1995] 1 IR 268)
- Employing intermediaries, as was used in *People v Miller*, 530 N.Y.S.2d 490 (City Ct. Rochester City. 1988, *R v Watts*, [2010] EWCA Crim 1824, [2011] 1 Crim LR 58 at 61 and *R (on the application of C) v Sevenoaks Youth Court* [2010] 1 All ER 735
- Utilising AAC, as was done in *R v Watts*, [2010] EWCA Crim 1824, [2011] 1 Crim LR 58 at 61, *Com v. Tavares*, 555 A.2d 199 (Pa. Super. Ct. 1989) and *People v Webb* 157 Misc.2d 474 (1993) 597 N.Y.S.2d 565)

Within the broader disability spectrum, individuals with severe communication disabilities have heightened vulnerabilities associated with the range and severity of their impairments. They may well be disadvantaged by discrimination on the basis of these vulnerabilities when attempting to access the court (Satz, 2008). However, procedural justice principles can guide legal scholars and practitioners on how to combat these discriminatory practices and how to identify accommodations that can be used in court to allow for the ‘voices’ of these individuals to be heard (using a variety of communication modes and means) and for them to be treated with dignity and respect (Bowen & LaGratta, 2014).

A strong connection exists between the principles of procedural justice and the perceived legitimacy given to legal institutions such as the court system (Dorfman, 2017). When individuals believe that they have been treated in a procedurally fair and neutral manner, they are more likely to think highly of the institutions they have dealt with in terms of respect, loyalty, and compliance (Dorfman, 2017). The accommodations related to procedural fairness identified in this research (e.g., the use of intermediaries and AAC) could assist persons with severe communication disabilities to perceive that they are being treated in a fair and neutral manner by

legal practitioners. This could in turn lead to them showing respect and compliance towards the court system in a reciprocal manner.

Another theme extrapolated from the data dealt with accommodations related to ensuring equality. As such, the CRPD provides for transformative equality (Degener, 2016; Goldschmidt, 2017) that not only requires the removal of barriers to inclusion, but also the implementation of positive measures to initiate real change that addresses institutional and State power relations (Degener, 2016b). For transformative equality to be achieved, certain rules, laws and procedures need to be revised and changed to include specific accommodations for persons with communication disabilities so as to enable them to participate effectively in the court system (Flynn, 2016; Minkowitz, 2017). The courts, regardless of country or jurisdiction, need to be transformed so that it no longer remains grounded in historically determined patterns of power that used to exclude people with severe communication disabilities (Minkowitz, 2017). When procedural justice principles such as having a voice, being treated with respect, using objective criteria for decision making, and understanding the court language are used to identify potential court accommodations, research shows that these principles can improve transformative equality among persons with severe communication disabilities (who may have low perceptions of the court system) (Bowen & LaGratta, 2014; Tyler, 2008).

Many countries, other than the ones represented by the experts, also have regional laws that, when enforced, can provide the necessary court accommodations for persons with severe communication disabilities. For example, Sweden's Social Services Act (SFS 2001, p. 453) provides persons with disabilities the right to request a special contact person or support person to assist them with their personal and/or legal matters (Kuosmanen & Starke, 2015). The local Swedish social services can appoint such a contact person, for example, to support persons with severe communication disabilities in their dealings with different authorities such as the court system, based on their individual needs (Kuosmanen & Starke, 2015). Accommodations related to non-discrimination was another theme that emerged from the data. Non-discrimination, together with equality, are considered fundamental principles of the CRPD, and given their interconnectedness with human dignity, form the cornerstones of all human rights (United Nations, 2006). Although not the focus of the current study, the findings showed that discriminatory practices still exist in the court system. Examples that were mentioned include the

lack of early identification of disability, the combining of certain disorders and disabilities under a single umbrella term, and unequal access to the supports in court.

‘Discrimination on the basis of disability’ is defined in the CRPD as “...exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation” (United Nations, 2006, p. 4). The CRPD further highlights that it is the State’s duty to take specific concrete measures to achieve de facto equality and non-discrimination for persons with disabilities (both witnesses and defendants). This is to ensure that they can in fact enjoy all human rights and fundamental freedoms (Committee on the Rights of Persons with Disabilities, 2018).

One such concrete measure that could be taken is to ensure that the assessments of persons with severe communication disabilities are conducted as early as possible in the court process (investigative stage) and that assessments of the individual’s ability should only be made for the purpose of determining what accommodations they need in order to participate effectively in court (Msipa, 2015).

The final theme extrapolated from the data looked at accommodations related to legal practitioners. Article 13 of the CRPD stresses the importance of training legal practitioners by clearly stating the following: “In order to help to ensure effective access to justice for persons with disabilities, States Parties shall promote appropriate training for those working in the field of administration of justice, including police and prison staff” (United Nations 2006, p. 11).

Celik (2017, p. 950), a jurist, explains how the CRPD places persons with disabilities in an empowered position, as their “autonomy needs to be respected and supported through institutions; institutions which owe their very existence for the protection of vulnerability”. This statement also underscores the importance of training legal practitioners across the entire judiciary system, including the courts. This could potentially enable them to support and accommodate individuals with severe communication disabilities as soon as they enter court (White et al., 2018).

A recent study that encouraged police officers to adopt procedural justice policing strategies emphasised respect, neutrality and transparency in the exercise of authority as an

example of also reflecting on what happens prior to court. It also stressed the importance of providing opportunities for citizens to explain their side of events, which proved to be effective as complaints against police were reduced (Wood et al., 2020). Using procedural justice guidelines to train legal practitioners in court accommodations for persons with severe communication disabilities could be just as effective. It will allow these individuals effective access to the court system and ensure that they receive the same treatment as their able-bodied equals.

This concludes the excerpts of the pre-print version of “Investigating court accommodations for persons with severe communication disabilities: Perspectives of international legal experts” by White, Johnson and Bornman (2021).

3.8.9 Conclusion of Data source 3

Data source 3 aimed to investigate the perspectives of international experts on the range of court accommodations globally that could enable persons with severe communication disabilities to participate in the court system so as to ensure access to justice for them. The four themes that were derived were accommodations related to procedural fairness; accommodations related to ensuring equality; accommodations related to non-discrimination; and accommodations related to legal practitioners.

The specific court accommodations that were described in Data source 3 included using intermediaries; allowing AAC and making it available; testifying behind a screen; removing formal attire worn by judges and attorneys such as wigs and gowns; and allowing court discretion to forbid a criminal defendant from single-handedly cross-examining a witness with intellectual disabilities. The importance of using procedural justice principles was also highlighted as these principles can ensure that the process is conducted in a fair and equal way for persons with severe communication disabilities when needing to access the court system. Not only did the international experts highlight that court accommodations should meet the needs of both witnesses and defendants with severe communication disabilities, but when discussing the accommodations they also stated that there is a lack of court accommodations for legal practitioners with disabilities. Therefore, Data source 4 focused on the perspectives and experiences of legal practitioners with disabilities regarding their own participation in the court system.

3.9 Data source 4: Email interviews with legal practitioners with disabilities

Several of the following paragraphs were adapted from an excerpt of the pre-print version of “Giving voice to the voices of legal practitioners with disabilities” by White, Johnson and Bornman (2021). See Appendix 3P for a copy of the accepted manuscript for publication.

3.9.1 Aim

The aim of our study was to describe the perspectives and experiences of legal practitioners with disabilities regarding their participation in the contemporary judiciary system – specifically the court – by exploring both barriers and facilitators. It also aimed to elicit their suggested accommodations from an insider perspective to enhance the participation of persons with disabilities (specifically communication disabilities) in court, regardless of the specific role they occupy (witness, defendant, judge, lawyer, juror).

3.9.2 Rationale

A direct stakeholder group who could provide an insider perspective on court accommodations for persons with severe communication disabilities is legal practitioners with disabilities. However, there is a paucity of research that focuses on these stakeholders (e.g., judges, lawyers, jurors) and how they, despite their disability, access and navigate the court system to perform their professional roles (Flynn, 2016). The scant existing research that includes legal practitioners with disabilities, focuses mostly on the barriers that they experience in their role as legal practitioners. To enhance participation and inclusion in the courts for persons with disabilities, their perspectives should be acknowledged and their voices should be heard (Hall, 2013). Moreover, the inclusion of the authentic voices and experiences of legal practitioners with disabilities will give insight into their experiences of the justice system (Hyun et al., 2014). These insights could also assist in identifying relevant and appropriate court accommodations that are needed for equal participation for all persons with disabilities in court, irrespective of their role (Foster & Hirst, 2020; Hyun et al., 2014).

3.9.3 Methods

In-depth, semi-structured, asynchronous online email (n=6) and telephonic (n=1) interviews were conducted with seven legal practitioners with disabilities from various countries. Initially, only online email interviews were planned for this qualitative research study, but one

participant requested to be interviewed telephonically due to his visual disability. In line with the focus of our study, the researchers were flexible, and they readily accommodated this request.

Online email interviewing is a qualitative research method where information is repeatedly exchanged online between researcher and participant within a particular timeframe (Ratislavová & Ratislav, 2014). The advantages of online email interviews are numerous. They eliminate the boundaries of time and space, make the geographical setting irrelevant, prioritise participants' comfort and encourage iterative reflection throughout the interview process (Bowden & Galindo-Gonzalez, 2015). The accessibility of potential participants despite their geographical setting allowed the researchers to recruit suitable persons from various countries. Online email interviews proved to be a cost-effective form of data collection as time and money for travelling to an interview venue were saved for both participants and researchers. Methodological analysis also proved that asynchronous email interviews are appropriate for use in sensitive and important topics (Hershberger & Kavanaugh, 2017).

Hershberger and Kavanaugh (2017) found that a sub-set of the participants not only preferred email interviews, but they may not have participated in the study if email interviews had not been offered. Furthermore, the flexibility of online email interviews probably aided participation for individuals with disabilities (whether experiencing challenges of physical coordination, mobility or speech), as the textual nature of online interaction affords people with diverse operating techniques the capacity to participate (Bowker & Tuffin, 2004). According to Bowker and Tuffin (2004), using email interviews as an online medium may offer an ideal and equitable environment for conducting research with people with disabilities.

A first potential disadvantage of using online email interviews was the researcher's inability to capture the participants' nonverbal and paralinguistic cues, as would have been possible with face-to-face interviews (Fritz & Vandermause, 2018). However, since participants in the current study had excellent linguistic skills (one of the requirements of their profession), they were able to clearly articulate their responses in writing. A further potential disadvantage was posed by the fact that, after the first introductory email, some participants needed to be sent multiple 'reminder' emails to complete the answers by a certain date, while others asked for an extension because they had limited available time. The researcher coped with this challenge by developing an active professional online relationship with all participants to ensure that they remained in contact and were aware of dates and expectations (e.g., when questions would be

posed and when they would submit their answers) (James, 2016). As a result, a 100% response rate was obtained for all the email interviews.

3.9.4 Participants

Participants were identified through purposive sampling to ensure that they would be able to share their experiences and perspectives as legal practitioners with disabilities (Creswell & Plano Clark, 2018). Only two broad selection criteria were used, as the potential pool of participants was extremely small: Firstly, participants had to be legal practitioners (lawyer, juror, judge, etc.); and secondly, they had to have a disability (no specific type of disability was stated beforehand). In order to elicit a rich and diverse view on the topic, no restrictions were placed in respect of country representation, which implied that participants would have their own unique experience with their specific countries' laws. Seven potential participants were identified through the researchers' professional networks, and these potential participants were asked to nominate other legal practitioners with disabilities whom they were familiar with, thus using a snowball-sampling technique (Creswell & Plano Clark, 2018). This resulted in the identification of two additional potential participants from two more countries. All nine identified participants were recruited, but unfortunately one passed away and one declined participation due to health reasons.

The ages of the remaining seven (who all consented) ranged from 29 to 72 years, with an average age of 50. All participants were male. This fact should not be blamed on the identification or recruitment process but could possibly result from the fact that women with disabilities continue to face barriers to their attaining of professional and jury positions in the judiciary system. It could also possibly be linked to the term 'intersectional discrimination', which highlights the fact that women with disabilities are more likely to face further discrimination because of their gender and disability than men with disabilities or women without disabilities, and they are less likely to be employed (Kim et al., 2020).

Despite the gender homogeneity, the diagnoses of the participants differed. Three had visual impairments, with one each having a hearing impairment, cerebral palsy, facioscapulohumeral muscular dystrophy (FSHD) and one being a stroke survivor. All seven participants used assistive communication devices (dictaphone, screen reader) or mobility devices (wheelchair), and three participants also had support in the workplace in the form of an administrative clerk or note taker. As expected, all the participants had obtained a higher

educational degree. Two participants were lawyers, two were judges, with the remaining participants being professionally labelled as a juror, barrister and advocate. The participants' work experience within the court system ranged from two to 47 years, with an average of 23 years. They had worked in various types of courts, including tribunals, district courts, regional courts, crown courts, magistrate's courts, civil courts, criminal courts, supreme courts, employment tribunal county courts and constitutional courts. The majority of the participants had participated in a court case where the witness or defendant had a disability and had been involved in legislation and law reform activities. Participants varied in nationality and represented four different countries: USA and UK, which both have common law systems, Lesotho, which has a dual legal system consisting of customary and general laws that operate side by side, as well as South Africa, which has a mixed legal system – a hybrid of Roman Dutch civilian law, English common law, customary law and religious personal law. The participants' biographic information is presented in Table 3.9.

Table 3.9*Participant description of legal practitioners with disabilities (N=7)*

<i>Nr</i>	<i>Gender</i>	<i>Age</i>	<i>Disability</i>	<i>Congenital or acquired disability</i>	<i>Use of any specific assistive devices/ support in workplace</i>	<i>Highest educational qualifications</i>	<i>Current position and role</i>	<i>Specific role in judiciary system</i>	<i>Years of work experience in the judiciary system</i>	<i>Types of courts participated/ worked in</i>	<i>Participated in court case of witness / defendant with a disability</i>	<i>Involvement in legislation and law reform activities</i>
141	Male	29	Cerebral palsy	Congenital	Wheelchair	LLM	Chair of Association of Disabled Lawyers Magistrate	Lawyer	2	Tribunals	Yes	Yes
142	Male	61	Facioscapulo-humeral muscular dystrophy (FSHD)	Congenital	Personal administrative clerk, speech-to-speech programme	LLB		Prosecutor, judicial officer	33	District court Regional court	Yes	No
143	Male	55	Hearing disability	Congenital	Human captioning (stenographers), and automatic speech recognition	BSc Honours	Technical delivery manager	Juror	n/a	Crown court	Yes	No
144	Male	37	Visual impairment	Congenital	Job access with speech, Packmate	LLB	Advocate and Executive Director	Advocate	10	Magistrate's court Civil court	No	Yes
145	Male	46	Visual impairment	Congenital	Additional clerk	LLB	Justice	Lawyer and Judge	20	Criminal court Supreme court	Yes	Yes
146	Male	52	Stroke survivor	Acquired	Dictaphone, note taker	Honours in Philosophy degree, bar certificate	Barrister	Barrister	27	Employment tribunal County courts	Yes	Yes
147	Male	72	Visual impairment	Acquired, meningitis at 16 months	Screen reader, Braille note taker, recording equipment	LLB	Judge and justice of constitutional court (retired)	Advocate and Judge	47	Supreme court Constitutional court	Yes	Yes

3.9.5 *Data collection and materials*

Before recruitment commenced, ethics approval was obtained from the Research Ethics Committee at the relevant tertiary institution (Ethics approval number: GW20180718HS) (Appendix 3I). Pre-interview email contact was made by the primary researcher to establish rapport with the potential participants prior to the interviews. All potential participants were emailed a letter of informed consent with details outlining the research topic, what was expected of them, as well as potential risks and benefits (Appendix 3Q and 3R). Precautions were taken to guarantee the confidentiality of their emails and answers, as only the primary researcher had access to the password-protected email platform. A second email contained the biographical questionnaire (Appendix 3S) and was followed by a final email with the interview questions in the body of the email. This was done to accommodate the participants who preferred to respond to the questions within the email rather than to open a separate document attached to the email (Ratislavová & Ratislav 2014). The primary researcher maintained an active online presence and was available to answer any questions or deal with concerns when needed.

The exact same questions asked in the online email interviews were asked in the one telephonic interview. This interview was audio recorded, the answers were transcribed by means of transcription software (Otter.ai), and then the primary researcher audited the transcription against the original audio recording.

To maintain trustworthiness, credibility and rigor, an interview schedule was developed (Fritz & Vandermause, 2018). This schedule started off with an introduction that contained the following question: “Thank you for completing the biographical questionnaire beforehand. However, is there anything in your background that you would like to bring to my attention before I start with the interview questions?”

The next three questions, which reiterated the aim of our study, were as follows:

- (i) In the context of your work as a legal professional/juror, what are the barriers you have personally experienced first-hand as a person with a disability?
- (ii) What were the accommodations (facilitators) that assisted you in your personal work context?
- (iii) What accommodations would you recommend for a person with a communication disability (a person who cannot use speech) to be able to access and participate in court?

The interview concluded with a wrap-up question that asked the participants if they wanted to add anything or expand on any of the answers they had provided. The participants were thanked and assured that they were welcome to contact the first author if they needed further information or assistance.

Once the first author had received each completed email interview, she read all the answers and, if clarity was needed for any answers, she emailed the participants to ask their assistance. This was done to enhance the trustworthiness and credibility of the data (Nowell et al., 2017). The authors also used the technique of prolonged engagement with each participant to ensure the credibility and trustworthiness of the data (Nowell et al., 2017).

3.9.6 Data analysis

The student used ATLAS.ti 8, a computer-assisted qualitative data analysis software program (CAQDAS), to conduct a codebook thematic analysis combined with a deductive coding approach (Braun & Clarke, 2019a; Braun & Clarke, 2020b; Nowell et al., 2017). Thematic analysis was selected as it provides a structured approach to identify themes and patterns in the data that may be used to answer the research question (Braun & Clarke, 2020a). Analysis is a recursive and methodical process, with movement back and forth between different phases (Braun & Clarke, 2020b). The analytic phases in the current study involved distinct steps. Firstly, the student and her supervisors thoroughly familiarised themselves with the data. Secondly, they used an existing structured codebook based on a human rights framework (Article 13 of the CRPD – Access to Justice) (White et al., 2020a) to code the data deductively.

Following reflective and critical analysis, the researcher adapted the existing codebook and combined Article 13 of the CRPD with procedural justice principles (Tyler, 2008) and participation barriers (Beukelman & Light, 2020). This document then became auditable evidence to support the trustworthiness of the study (Braun & Clarke, 2020a). The data was coded and analysed by the student, after which her supervisor and co-supervisor independently checked the codes to increase inter-coder reliability and agreement of the data (Campbell et al., 2013). Themes were subsequently generated from the codes, then reviewed, and lastly, defined and named (Braun & Clarke, 2020b).

3.9.7 Findings

Three main themes were linked to the three questions that were posed: participation barriers that hindered access to justice (linked to Question 1); accommodations related to ensuring equality (linked to Question 2); and accommodations related to procedural fairness (linked to Question 3). Each is described in detail next.

3.9.7.1 Participation barriers that hinder access to justice

Historically, the voices of legal practitioners with disabilities were silenced, suppressed, or ignored; yet their voices should have been regarded as prominent in the exploration of what is occurring in their work environment – the court. They were asked to reflect on the participation barriers that they had experienced from an insider perspective, in order to gauge if their experiences confirm what the existing literature reports. The participation barriers mentioned were analysed using the framework suggested by Beukelman and Light (2020), and they included four different types of barriers, namely policy, practice, knowledge and skills, and attitudinal barriers. Beukelman and Light (2020) classify these barriers collectively as opportunity barriers, as they all imply barriers imposed by others and beyond the control of the individuals with disability themselves (in this case the legal practitioners).

The participants mentioned barriers linked directly to legislative or regulatory decisions that govern certain legal situations, which were classified as policy barriers. Participant 143 spoke specifically about the legislation linked to if a juror was deaf and needed a sign language interpreter in court: *“If the person needs a [sign language] translator then I think that will be a barrier because of the legality where a 13th person cannot be used during the deliberation. The law has to change.”*

Participant 145 spoke in detail about the election versus selection process of judges in the USA:

“... if [state] had appointments and not elections for judges... There’s no way I’d be a judge. No chance that I would be a judge, no chance. And the reason that I feel so strongly about that is because if you had to go in front of a merit selection committee, I don’t think they would ever give someone like me an opportunity.”

Barriers mentioned were linked to procedures or conventions that had become common practice in the judiciary system or community, although these were not actual policies (classified as practice barriers). Participant 141 spoke about the challenge of accessibility he had

experienced: *“Chambers and courts also lack accessibility. This is worse inside court as I have never been at a barrister’s bench that I could access in my wheelchair.”*

Participant 143 shared his experience as a juror and how the court was not prepared or able to accommodate him:

“When I received a letter from the court that I was summoned up to jury service, I asked them to provide captions. They said they didn't know how and would have to get funding. Because of my persistence, they finally got funding to pay for the stenographers (other deaf people would have opted out). This showed the court was ill-prepared and not inclusive.”

Participant 145 reflected on the court system and its practice barriers:

“When you're dealing with the court, even if you're not disabled, it is excruciatingly difficult dealing with the court, even before having a disability it is incredibly daunting and incredibly challenging. [When you] add a speech issue to it, it is only going to make it more difficult... I think that would be one of the most difficult [barriers], because it really hinders your communication abilities, which is a critical element for being able to work with the court system in general.”

Knowledge and skill barriers that hindered access to justice were also mentioned. These barriers were linked directly to the lack of information and skills of a professional, which result in limited opportunities being provided to persons with disability. Participant 141 shared his personal experience owing to the lack of knowledge and skill within the court system: *“I have been told that I will not be able to be a barrister because of my speech impairment, although I am generally understood.”*

Participant 147 shared his thoughts on persons with severe communication disabilities and the lack of knowledge about legal practitioners in the court system: *“Judicial officers, prosecutors and lawyers should be trained to understand that absence of the ability to communicate by speech does not mean the absence of thinking power or any of the attributes of humanity.”*

Participant 144 reflected on the court system and lack of resources, knowledge, and skills of the legal practitioners within the system:

“Courts do not have communication aids to support effective participation of such a person [with a communication disability], his or her evidence may be less valued since

he or she does not give evidence viva voce as required by our Criminal Procedure and Evidence Act; the court may not hear his or her evidence if the evidence is not given via speech. Such persons may not be able to access justice because they may have difficulties in responding to the questions posed in court, they may not be able to cross examine or ask questions verbally.”

Participant 142 commented on his invisible disability diagnosis and how that impacted him as a legal practitioner in the court environment due to the lack of knowledge and skills of his legal peers in the courts:

“My disability is not as obvious as someone who is blind or confined to a wheelchair. My experience in the workplace environment is that some people are sceptical that you actually have a disability; others simply deny that you have a disability at all. This makes it very difficult to claim reasonable accommodation for special needs.”

Most participants mentioned attitudinal barriers that hindered their access to justice. These barriers were linked directly to the attitudes and beliefs held by other professionals or individuals. Participant 147 explained *“The worst barrier was people thinking I had no brains or was some kind of idiot because I was blind.”*

An in-depth discussion by Participant 142 highlighted his personal experience of the negative attitude of the courts and the legal practitioners who are employed in the court system:

“The head of court complained to the Magistrates Commission (the body regulating magistrates in [country name removed]). The secretariat of the commission displayed a very bad attitude to equality. They alleged I was incapable of carrying out my duties as a judicial officer. At that stage I had no administrative assistance and was expected to perform my duties without any assistance. My special needs were not considered.”

One of the underlying principles of the CRPD is “...full and effective participation and inclusion in society” (United Nations 2006, p. 5) for all persons with disabilities. Yet, the legal practitioners involved in our study all highlighted numerous barriers that they had personally experienced in their careers or of which they were aware with respect to other persons with disabilities who wanted to practise in the legal profession. These barriers were in line with those mentioned in the existing literature.

Practice barriers were mentioned most frequently. The insider perspective of the legal practitioners with disabilities added a rich understanding of what transpires in their everyday

workplace: the court. Their insights included aspects such as physical inaccessibility of the courts; lack of resources (e.g., financial assistance); lack of human support (e.g., administrative clerks); inaccessible legal documents; lack of or limited aids and devices (e.g., speech-generating devices). Practice barriers can be addressed by applying the guidelines in the CRPD (United Nations, 2006) and other international documents, for example the International Principles and Guidelines on Access to Justice for Persons with Disabilities (United Nations, 2020). Court accommodations such as wheelchair ramps (Edwards et al., 2012), AAC strategies and methods (Doak & Doak, 2017), and support persons such as administrative clerks (Cremin, 2016) could also assist the legal practitioners with disabilities in the court system.

Furthermore, research has shown that opportunity barriers can be addressed by training legal professionals about disability in the work context, by providing further professional development training programmes, and by including modules about disability in law degrees (Bornman et al., 2016; Flynn, 2016; Foster & Hirst, 2020; Horan, 2011; Larson, 2014). Recommendations suggested in previous reports include raising disability awareness in the initial professional qualification training of law students and accepting disability awareness as a mandatory element of continuing professional development for those working in criminal law (Equality and Human Rights Commission, 2020; United Nations, 2020). Flynn (2016) consistently highlights the importance of clinical legal education and of university-based law clinics serving people with disabilities. Clinical legal education will greatly assist law students to acquire new skills and to gain a deeper understanding of disability rights issues. Moreover, it provides an ideal opportunity to bring the lived experiences of people with disabilities into the university law classroom (Flynn, 2016).

All the barriers mentioned by the participants confirm what the existing literature reports on the barriers experienced by legal practitioners with disabilities when wanting to access the court system (Dorfman, 2016; Flynn, 2016; Foster & Hirst, 2020).

3.9.7.2 Accommodations related to ensuring equality

Accommodations to ensure equality were linked to the second research question, which focused on the accommodations (facilitators) that assisted the legal practitioners in their personal work context. These accommodations were analysed using the CRPD as a human rights framework and included five distinct subthemes: international laws; regional or country-specific

laws; case law that applies; following legal processes (related to case law); facilitators related to equality.

Regarding international law, the CRPD, and more specifically, Article 13 of the CRPD – access to justice – was mentioned numerous times. The United Nations recently published International Principles and Guidelines on Access to Justice for Persons with Disabilities (United Nations 2020) which state: “Everyone should, on an equal basis with others, enjoy the rights to equality before the law, to equal protection under the law, to a fair resolution of disputes, to meaningful participation and to be heard” (United Nations 2020, p. 6). As noted from the findings related to the different barriers, most of the participants experienced discriminatory behaviours and inequality in the legal profession or in the court when they attempted to perform their job. The question that arises is whether a legal practitioner without disability would have been subjected to the same discriminatory practices, for instance having to prove their ability to perform their job (Foster & Hirst, 2020).

The specific regional laws mentioned naturally reflect the laws of the countries represented in our study. Regional laws that were mentioned were largely from South Africa (the Promotion of Equality and Prohibition of Unfair Discrimination Act, 2000) and from the United Kingdom (the Equality Act 2010; the Human Rights Act 1998; the Equal Treatment Bench Book.

Non-discrimination and equality in the legal system, as well as the ability to participate equally is a professional’s human right (United Nations, 1948). Findings from the current study revealed that the majority of participating legal practitioners with disabilities experienced the violation of their human rights during some phase in their career and they were granted only limited accommodations or support to ensure equal participation in their role as legal professionals. However, the findings also showed how the law protected them (albeit through a lengthy process) and allowed for them to obtain the accommodations needed to be able to participate in the court system.

Under the subtheme, ‘Case law that applies’, Participant 142 shared his personal experience (and case law) on how he achieved equality in the workplace after a lengthy and unfair process:

“My special needs were not considered. The prosecution purported to take a decision to cease allocating new trials to my court in October 2003. I sought the assistance initially of the International Commission of Jurists (ICJ) and later... the United Nations Special

Rapporteur of the Independence of Judges and Lawyers (UNSPIJL) to get the prosecuting authority to reverse their decision. I also informed the UNSPIJL that I had a disability. The ICJ intervened without success. The UNSRIJL then sought the assistance of the United Nations Special Rapporteur on the Rights of Persons with Disabilities (UNSRRPD). Together they sent a joint urgent appeal to the [country removed] Government urging them to comply with their obligations under international law, at that time the Declaration of the Rights of Persons with Disabilities. The [country removed] Government then gave an undertaking that they would do so. The Magistrate Commission abruptly halted enquiry into my alleged incapacity to carry out the duties of my office in March 2004. The Magistrates Commission carried out a needs assessment in July 2004. The Commission recommended that the [specific department] assign a personal clerk to me to assist with administrative tasks that I had difficulty performing in November 2004. Despite the fact that I now had a personal clerk to assist me with administrative tasks the prosecuting authority persisted in their refusal to place new trials before my court. I took the prosecuting authority on review to the High Court. The High Court decided in my favour on 16 August 2005.”

Participant 145 also described his professional journey in detail and illustrated the case law or precedent he set. He mentioned how he did not use any specific laws to rely on in his pursuit of access to justice, but did mention working together with the courts and the importance of collaboration within the court system:

“...there were no laws or anything that I kind of relied on ... It was really more just me working with the court to figure out what's the best way we can make this work. Oh, very much so [the court was accommodating], very much so. It was one of those situations where voters had made their determination. So, everybody wanted this to be a success.”

Under the subtheme, ‘Following legal processes’, Participant 145 went on to share his personal reflection on specific legal processes and how he felt he would not have been considered for his specific legal position if it had not been for an election process in his own country:

“I think what they would do is they would say, ‘Wow, it is so inspirational that he wants to be a Supreme Court justice and that's so inspiring because he is blind’ ...and I think they would approach it from that perspective, like, ‘oh wow, that's so great that he wants

to have this position and he's inspiring and all that'. But in the end, I don't think they would give me the job. I think they would probably say after the interview... I think they would probably all go back into a room and they'd probably say, 'You know, that's great that he's accomplished all these things but, he doesn't look like us, he doesn't sound like us, this doesn't look like the kind of person that could probably perform this job.'"

Participant also 145 provided a detailed explanation of the election versus appointment process of judges in his country, and how he perceived this specific court process to have ensured equality for him in being elected as a judge:

"And.... I believe strongly that if [state removed] had used an appointment process, and not an electoral process, I don't think I would have been elected, because I would not have been given the opportunity [as a person with a disability]."

One of the traditional methods of selecting high court judges in the USA is nonpartisan elections where the public votes for the judge. However, the judges are not permitted to advertise themselves as members of particular political parties (Choi et al., 2010). Much controversy and research surround the debate about the appointment versus election of judges (Choi et al., 2010; Iaryczower et al., 2013; Menton, 2009; Ryan, 2005; Skaggs, 2010), and from the quote above, it is clear that Participant 145 was of the opinion that the election process aided his quest for equality in becoming a judge (Choi et al., 2010). More importantly, what the election of this judge underscores, is the evidence that legal practitioners with disabilities have been successfully incorporated into judicial systems, despite sceptical attitudes and barriers against the appointment of persons with disability (Dorfman, 2016).

In line with Participant 145's acknowledgement of how specific USA law and jurisdiction assisted and accommodated him in his pursuit of access to justice as a legal practitioner, there has also been specific law in the other participants' countries that assisted them with equal opportunities and accommodations. Examples are the Promotion of Equality and Prohibition of Unfair Discrimination Act, 2000 (South Africa); the Equality Act 2010 (England) and the Disability Equity Act 2021 (Lesotho), which were recently enacted. All these laws prohibit discrimination on any basis and promote equality for all – including for individuals with disabilities.

Under the subtheme 'Facilitators related to equality', Participant 143 shared his experience on being a juror and how the courts were accommodating towards him as a person

who was deaf: “*However, once I served in the jury service, the court was extremely accommodating with my needs and made sure I had everything I needed*”.

Recently in the UK, the Police, Crime, Sentencing and Courts Bill was proposed and is in the process of becoming an Act (United Kingdom Parliament, 2021). This Bill includes new measures that will allow persons who are deaf to sit on juries in England and Wales for the first time. Current laws ban the presence of a ‘stranger’ in the jury deliberation room, but this will now be revoked and instead, a British Sign Language Interpreter will be allowed into the room (United Kingdom Parliament, 2021). This once again highlights how law reform and new legislations are assisting persons with disabilities to participate equally in the court system and achieve their right of access to justice.

3.9.7.3 Accommodations related to procedural fairness

When asked to reflect on accommodations that they would recommend for a person with a communication disability to enable them to access and participate in court (in response to Question 3), all participants suggested accommodations related to procedural fairness. These accommodations were categorised under four specific subthemes that resonate with the procedural justice principles: being treated with respect; understanding court language; having a voice; and using objective criteria for decision making.

The principle of ‘being treated with respect’ can be defined as an accommodation that can enhance the perception of persons with disabilities that legal professionals in the court system will treat them with respect and dignity, thereby implying courtesy and recognition of the individual and their disability. Respect includes environmental adaptations and accommodations that make up the physical, social and attitudinal environment. Suggestions made by the participants included making courtrooms accessible with microphones (Participant 141) and having a family member or friend who could accompany the person with a communication disability, if the latter is a complainant or witness in a matter (Participant 142).

The principle of ‘understanding of court language’ implies an accommodation that can assist persons with disabilities to understand the language or terminology used in court and how decisions are made. These accommodations focus on the process that will assist the person’s receptive language and whether the person feels the motives of the legal practitioners are trustworthy. Recommendations that were suggested under this principle were to determine (in

appropriate cases) the tribunal or court's method of and approach to cross-examination for all parties involved (the witness, the defendant and the attorney) (Participant 146).

Another accommodation that was mentioned was to allow persons with communication disabilities to write notes to others during the trial process, especially in the case of jurors (Participant 143).

The principle of 'having a voice' includes accommodations that can help persons with disabilities to feel that they have a voice and are being heard. The focus must be on the process that will assist the individual with expressive communication and language to participate in court. Recommendations that were provided included the use of alphabet boards and pictures, as well as the provision of environmental accommodations such as portable or fold-up wheelchair ramps, which may enable persons with communication disabilities to participate effectively in court (Participant 144). Participant 147 also suggested that courts should employ sign language interpreters trained in court procedures on a permanent basis.

The last principle, 'using objective criteria for decision making', requires the legal practitioners to use objective, legitimate criteria for making decisions and to apply fairness in decisions, without allowing personal bias or views to influence their choice or opinion. Participant 143 suggested that the law needs to be changed to allow a 13th person in the deliberation and Participant 147 recommended that people who were deaf and did not know sign language be allowed to write down their version of events.

Principle 7 in *International Principles and Guidelines on Access to Justice for Persons with Disabilities* (United Nations, 2020) highlights the notion that persons with disabilities have the right to participate in the administration of justice on an equal basis with others. This principle further states that it is the responsibility of the courts to ensure the equal participation of persons with disabilities in the court system – as judges, lawyers, prosecutors, witnesses, jurors, experts and court officials – without discrimination.

Over the past decade, numerous commonly used court accommodations for persons with disabilities have been identified and documented (Flynn, 2016; O'Leary, 2016; United Nations, 2020). More recent research focused specifically on court accommodations for persons with severe communication disabilities (White et al., 2020a; White et al., 2020b). However, these accommodations focus predominantly on victims, and to some extent on alleged perpetrators with disabilities, but no attention is given to accommodating the needs of legal practitioners with

disabilities to ensure their full and equal participation in the court system – the workplace in which they have to participate on a daily basis (Flynn, 2016; Foster & Hirst, 2020).

Common workplace accommodations that have been identified for persons with disabilities and that could also apply to legal practitioners with disabilities include adapting work procedures (e.g., having a quiet space to work); allowing frequent breaks to help process and retain information; providing a place to rest to counter possible fatigue; and providing accessible parking facilities, accessible paths, wheelchair ramps and assistive technology (e.g., communication devices) (Chi et al., 2018; Lindsay et al., 2019; McDowell & Fossey, 2015; Nevala et al., 2015). Our findings propose novel accommodations that were recommended by the legal practitioners with disabilities themselves, such as the use of AAC methods of communication, sign language interpreters, support persons, additional administrative clerks, physical adaptations to enhance accessibility, and allowing individuals with disabilities to write down their questions or answers during court proceedings and discussions with other legal professionals. The participants further mentioned that the accommodations they had received in their professional capacity within the court context had assisted them to succeed in their legal careers. Such accommodations included additional administrative clerks, assistive technology (screen readers and communication software), and environmental adaptations (accessible paths and wheelchair ramps).

Article 13 (Access to Justice) of the CRPD clearly states that accommodations should be provided to ensure effective access to justice for persons with disabilities on an equal basis with others (United Nations, 2006). Our study shows that research is increasingly documenting and drawing attention to identified court accommodations for persons with disabilities. It is thus proposed that the court accommodations identified here could support the court system in accommodating legal practitioners with disabilities. More importantly, the accommodations should assist these individuals to participate equally in their judicial role without further delay.

This concludes the excerpts of the pre-print version of “Giving voice to the voices of legal practitioners with disabilities” by White, Johnson and Bornman (2021).

3.9.8 Conclusion of Data source 4

Data source 4 identified three main themes: participation barriers that hinder access to justice; accommodations related to ensuring equality; and accommodations related to procedural

fairness. Unique accommodations mentioned by the legal practitioners were the use of AAC methods of communication; ensuring the use of sign language interpreters when needed; allowing support persons (such as a family member being allowed to go to court with the witness or defendant); providing additional administrative clerks to assist with physical workload; providing physical adaptations to enhance accessibility, such as wheelchair ramps; and allowing individuals with disabilities to write down their questions or answers during court proceedings and during discussions with other legal professionals. It was also highlighted in Data source 4 that the accommodations that the legal practitioners had received in their professional capacity within the court context had assisted them to participate in their legal careers and that the accommodations acted as facilitators in their careers. Such accommodations included the provision of additional administrative clerks, access to assistive technology such as screen readers and communication software, as well as environmental adaptations such as accessible paths and wheelchair ramps. The interviews with legal practitioners highlighted the need for accommodation guidelines for persons with severe communication disabilities in court.

3.10 Trustworthiness: Phase 1

Trustworthiness refers to the degree of confidence in data, interpretation, and methods used to ensure the quality of a study and simply poses the question, “Can the findings be trusted?” (Connelly, 2016; Korstjens & Moser, 2018). Trustworthiness is also a way researchers can convince themselves and readers that their research findings are worthy of attention (Nowell et al., 2017).

Table 3.10 outlines each data source and the strategies used to increase trustworthiness.

Table 3.10

Increasing trustworthiness of Data sources 1, 2, 3 and 4

Strategy	Technique	Application of technique in present research study
		Data source 1 – Legal scoping Review
Selection bias	Used inclusion and exclusion criteria	The inclusion and exclusion criteria and the use of the PRISMA as a protocol in the legal scoping review, reduced ambiguity of results (McDonagh et al., 2013).
Retrieval bias	Used a five-step legal scoping review framework	The researcher used a systematic five-step framework to increase transparency and replicability of results (Peters et al., 2018).

Strategy	Technique	Application of technique in present research study
Transparency and replicability	Meticulous records and audit trail	The researcher kept detailed records and an audit trail of all the steps taken while conducting the scoping review ensured the data could be duplicated under similar circumstances (Noble & Smith, 2015).
Data source 2 – South African expert focus groups		
Credibility	Audio and video recording	The South African expert focus group session was audio and video recorded for verbatim transcription as reviewing the recorded data increases the credibility of the data by ensuring that none of the comments are missed or omitted by the researcher (Nowell et al., 2017). It also assists with transcribing the data in an accurate manner and ensuring no misinterpretation of the data. Credibility was further enhanced by combining the voice and audio recordings with researcher notes to document non-verbal interactions and provide context to the data (Connelly, 2016; Korstjens & Moser, 2018).
	Verbatim transcripts	Verbatim transcripts of the discussions during the focus group were produced in order to reduce bias and increase overall credibility (Polit & Beck, 2014). The researcher transcribed the discussions herself, having first-hand knowledge of both the verbal and non-verbal exchanges with the participants, thus reducing errors due to lack of knowledge by a third party. By creating an exact record of the discussions, data analysis included a complete account of all the factors the participants discussed, ensuring nothing was forgotten or missed (Connelly, 2016; Nowell et al., 2017).
Data source 3 - International focus group		
Credibility	Member checking	The researcher shared the data and interpretations back to the international legal experts. This technique strengthens the data, especially because the researcher and participants look at the data from a different viewpoint (Korstjens & Moser, 2018).
Data source 4 - Interviews with legal practitioners		
Authenticity	Representativeness of participants	The researcher recruited legal practitioners with disabilities and the responses the practitioners provided invited the readers into a genuine experience of the lives being described, and furthermore enabled the readers to develop a heightened sensitivity to the issue being depicted (Polit & Beck, 2014).
Data source 2, 3 and 4		
Credibility	Prolonged engagement	The researcher had a long-lasting engagement with all of the participants from Data sources 2, 3 and 4. The researcher invested sufficient time to become familiar with the participants, to test for misinformation, to build trust, and to get to know the data in order to produce rich data (Connelly, 2016; Korstjens & Moser, 2018; Morse et al., 2002; Nowell et al., 2017)
Dependability	Audit trail	The researcher ensured that the research process was logical, traceable, and clearly documented with an audit trail (Korstjens & Moser, 2018; Nowell et al., 2017).
Reflexivity	Diary	The researcher continuously reflected on her own conceptual lens, on her explicit and implicit assumptions, preconceptions and values, and how they may affect research decisions in Phase 1 of the study (Connelly, 2016; Korstjens & Moser, 2018)c

By following the strategies in Table 3.10 to improve the trustworthiness of the research study, the overall quality and correctness of the data obtained was improved.

3.11 Summary and implications of Phase 1

The first phase of the mixed methods social design consisted of rich, qualitative data from four different data sources (Creswell & Plano Clark, 2018). In the current study, four different data sources included a legal scoping review, a focus group with South African experts, an asynchronous online focus group with international experts, and lastly, interviews with legal practitioners. The published legal scoping review identified 302 court accommodations and paved the way for procedural justice and its principles to become the guiding theory within the human rights framework when identifying court accommodations for persons with severe communication disabilities.

Data source 2, the focus group with South African experts confirmed that the majority of the court accommodations identified in the legal scoping review were relevant. However, the South African experts provided new insight from their country-specific angle. They emphasised that within South Africa, lay assessors and court preparation programmes are in place to assist persons with severe communication disabilities to access the court system, and that documents such as victim impact statements which are provided at the sentencing stage can be used to describe the impact of the offence on the victim. However, the South African experts highlighted the importance of providing training for legal practitioners in the court system in order to ensure equality and participation for all, and they insisted that training on accommodations is required to enable the participation of defendants with disabilities in court.

Data source 3, the asynchronous online focus group with international experts, provided unique perspectives of international experts on the range of court accommodations internationally that could enable persons with severe communication disabilities to participate in the court system to ensure access to justice for them. Once again, the importance of using procedural justice principles was highlighted as these principles were used to identify court accommodations that could be afforded to persons with severe communication disabilities. Not only did the international experts highlight that court accommodations should meet the needs of both witnesses and defendants with severe communication disabilities, but they also underscored that there was a lack of court accommodations for legal practitioners with disabilities.

Lastly, Data source 4 consisted of online email interviews conducted with seven legal practitioners with disabilities in order to obtain a primary stakeholder perspective. This data source showcased unique experiences of legal practitioners in their professional roles in the court

system, but also provided exclusive court accommodations that persons with severe communication disabilities could utilise to access the court system.

All the court accommodations identified in Phase 1 were synthesised and integrated to be used in Phase 2 of the study, the quantitative feature phase (development of the guidelines).

3.12 Recommendations for Phase 2

Despite regional laws (for example the American Disabilities Act 1990, the Disability Act 2005 in Ireland, the Disability Discrimination Act 1992 in Australia), and international treaties such as the CRPD that outline the specific rights for persons with disabilities when needing to access justice, there is still a lack of information and guidance on what type of court accommodations should be afforded to persons with severe communication disabilities. Therefore, developing a set of court accommodation guidelines – presented in an easily accessible format – could be a useful and effective tool to assist persons with severe communication disabilities in court. At the same time, these court accommodation guidelines could also inform and support legal practitioners and other secondary stakeholders with legal decision making while simultaneously bridging the gap between law and practice (Browman et al., 2015; Kredo et al., 2012). Therefore, in Phase 2 of this study, the identified court accommodations would be integrated and triangulated (using methodological triangulation) so as to develop court accommodation guidelines for persons with severe communication disabilities.

3.13 Conclusion

Chapter 3 described Phase 1 of this research, which aimed to identify and describe court accommodations for persons with severe communication disabilities. This was achieved by conducting a legal scoping review, a focus group session with South African experts, an asynchronous online focus group session with international experts, and e-mail interviews with legal practitioners with disabilities.

By employing these four data sources, the researcher was able to gain a more detailed and comprehensive account of court accommodations for persons with severe communication disabilities. All the court accommodations identified would be integrated and triangulated (using methodological triangulation), to allow for the development of guidelines in the next phases of the research study.

CHAPTER 4
**PHASE 2: QUANTITATIVE FEATURE PHASE (DEVELOPMENT OF A SURVEY-
DEVELOPMENT VARIANT)**

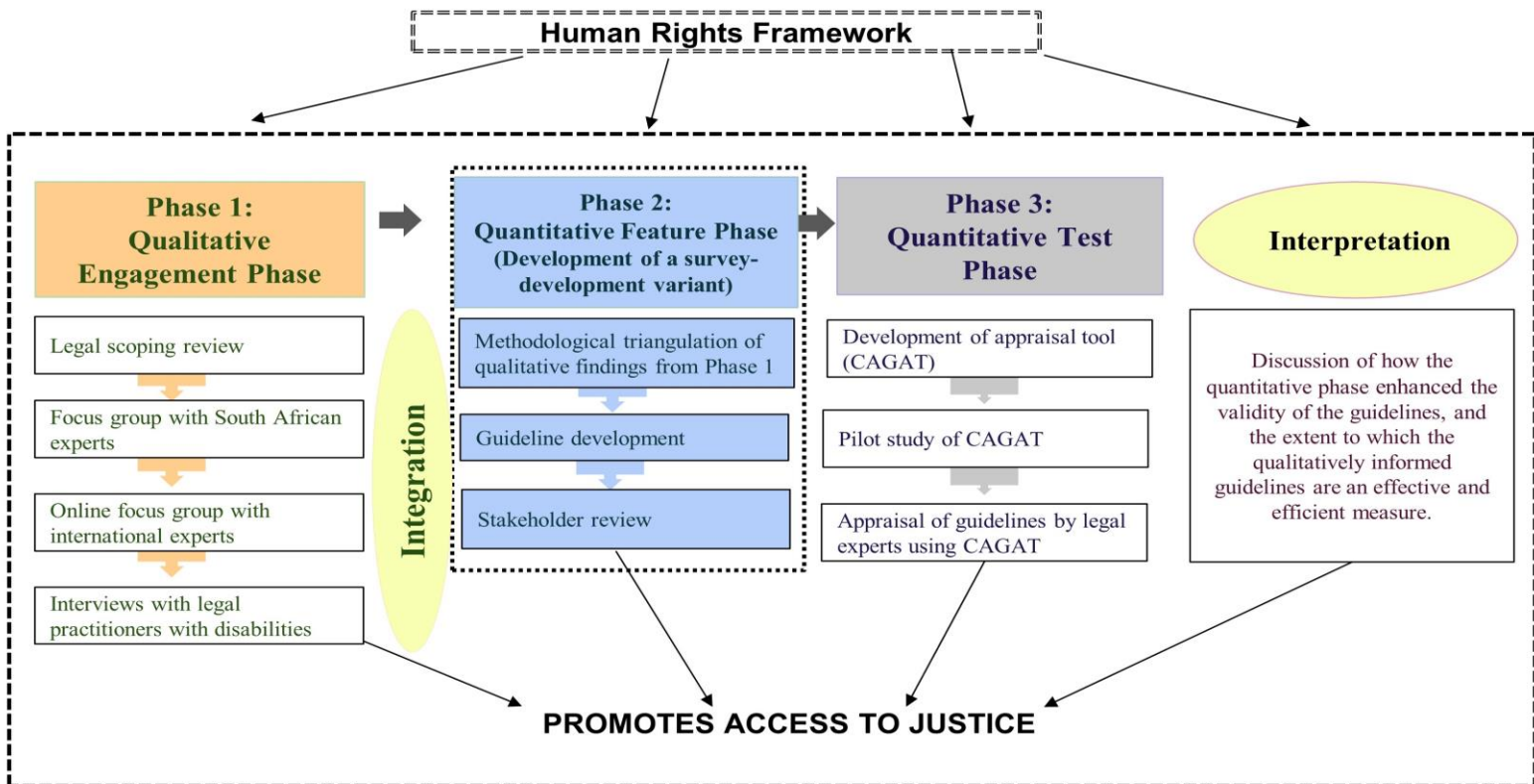
Research methodology, results and discussion

4.1 Introduction

This chapter is the second of three chapters explaining the research methodology, results and discussion of each of the three phases of this research study. Each chapter discusses the main aim and sub-aims for the phase, as well as the research methodology and ethical considerations pertinent to the specific phase. While Chapter 3 focused on Phase 1, the Qualitative Engagement Phase, Chapter 4 focuses on Phase 2, the Quantitative Feature Phase, which stems from the integration of the qualitative results from the preceding phase. Chapter 5 will detail the Quantitative Test Phase, where the guidelines developed in Phase 2 will be appraised. These three chapters should thus be read in conjunction as shown in Figure 4.1, with the emphasis in this chapter on Phase 2.

Figure 4.1

Social Justice Design for developing Court Accommodations for Persons with Severe Communication Disabilities (using an Exploratory Sequential Mixed Methods Approach)



This chapter starts with the main aim as well as the sub-aims specific to Phase 2, followed by the research design and ethical considerations for this phase. Thereafter the development of the guidelines and the stakeholder review are described. Chapter 4 concludes with a summary of the results and the main discussion points of this phase, and discusses the trustworthiness of the data. Recommendations for Phase 3, the Quantitative Test Phase, are also highlighted.

4.2 Aims for Phase 2

4.2.1 Main aim for Phase 2

The main aim of this phase was to develop guidelines for court accommodations for persons with severe communication disabilities that could enable them to participate equally in the court system.

4.2.2 Sub-aims for Phase 2

In order to address the main aim of this phase, sub-aims were delineated for each phase. The specific sub-aims for Phase 2 were to

- (i) develop guidelines for court accommodations for persons with severe communication disabilities based on the integration of qualitative findings from Phase 1, and
- (ii) evaluate the face validity of the guidelines by means of a stakeholder review.

4.3 Research design

This second phase of the mixed methods social justice design – the Quantitative Feature Phase – entailed the integration and triangulation of the qualitative results from Phase 1. Integration involves using the initial qualitative results from Phase 1 to build a new quantitative feature or instrument (Creswell & Plano Clark, 2018). Triangulation was used to increase the confidence in the qualitative findings used in this phase (Carter et al., 2014; Heale & Forbes, 2013). The combination of qualitative findings from the four data sources provided a more comprehensive picture of the results than either data source could do alone (Lambert & Loiselle, 2008). Specifically, data source triangulation was used as the four data sources employed the same qualitative methodology to identify court accommodations for persons with severe communication disabilities (Hussein, 2015). The variant instrument that was developed in Phase 2, also referred to as a survey-development variant, constituted the court accommodation guidelines for persons with severe communication disabilities (Creswell & Plano Clark, 2018). The quality of these court accommodation guidelines are appraised in the final, Quantitative Test Phase (Phase 3) (see Chapter 5).

4.4 Ethical considerations

The researcher ensured that clear, ethical principles continually guided her during the research process (Creswell & Poth, 2018). The same ethical principles that were followed in Phase 1 were followed in Phase 2. Therefore, the principle of non-maleficence (Bryen, 2016; National Disability Authority, 2009; Schröder-Bäck et al., 2014), the principle of beneficence (National Disability Authority, 2009; Orb et al., 2000; Schröder-Bäck et al., 2014), the principle of justice ((National Disability Authority, 2009; Orb et al., 2000; Schröder-Bäck et al., 2014), the principle of autonomy (Bryen, 2016; National Disability Authority, 2009; Orb et al., 2000;

Schröder-Bäck et al., 2014), the principle of veracity (Creswell & Poth, 2018) and the principle of researcher bias (Connelly, 2016; Fassinger & Morrow, 2013) were adhered to throughout Phase 2. These principles have been discussed at length in the first phase of the research study (see Chapter 3, Section 3.3) and will therefore not be repeated.

In Phase 2, the principle of justice was specifically considered as this was important for the development of the guidelines, and more specifically, for conducting the stakeholder review (National Disability Authority, 2009; Orb et al., 2000; Schröder-Bäck et al., 2014). The researcher was constantly guided by the CRPD – the human rights framework – and focused on Article 5 (Equality), Article 13 (Access to Justice) and Article 21 (Freedom of expression and opinion, and access to information) throughout the development of the guidelines in Phase 2 (Orb et al., 2000). Furthermore, to avoid exploitation of the participants with severe communication disabilities in the stakeholder review, the researcher listened to the voices of the participants and maintained an ongoing online presence to assist them with any requests or questions they might have (National Disability Authority, 2009).

4.5 Development of court accommodation guidelines

4.5.1 Introduction

Even though there are a number of legal instruments that exist at international and national levels for persons with disabilities, gaps remain both in law and in practice. Legal practitioners working with persons with severe communication disabilities have been requesting guidance to ensure that the relevant courts accommodations are granted and that they are effectively implemented to ensure access to justice for these individuals (Committee of Ministers of the Council of Europe, 2010; United Nations, 2020). Therefore, developing guidelines is important as it can inform legal decision making while also bridging the gap between law and practice (Browman et al., 2015; Kredo et al., 2012). Furthermore, guidelines are crucial to guide legal practitioners across the justice system in implementing their international obligations to achieve access to justice for persons with disabilities (United Nations, 2020).

Guidelines should be based on up-to-date, high-quality research findings and should be trustworthy and implementable (Browman et al., 2015; Kredo et al., 2012). Furthermore, they should address equality and social value judgements (Vallabi, 2015). Rosenfeld and Shiffman (2009) explain that if the aim is to produce quality-driven, evidence-based guidelines, an efficient

and transparent methodology for action-ready recommendations with multi-disciplinary applicability must be clearly stated (Rosenfeld & Shiffman, 2009). Therefore, when developing guidelines for court accommodations for persons with severe communication disabilities, the aim should be to produce high-quality guidelines. These should be applicable not only to a single individual, but to all individuals with severe communication disabilities (i.e., primary stakeholders), as well as to all relevant legal practitioners and support persons across the justice system (i.e., secondary stakeholders).

4.5.2 Aim

This first section of Phase 2 deals with sub-aim (i) of Phase 2. It firstly attempted to analyse, synthesise and integrate the qualitative data from Phase 1, which included four distinct data sources, namely the legal scoping review, the national and international expert panel, and the interviews with legal practitioners with disabilities. This integration of the qualitative findings was conducted by using methodological triangulation of the four data sources. Secondly, it attempted to develop guidelines for court accommodations to allow persons with severe communication disabilities to participate freely in court on an equal basis with persons without disabilities in a variety of different roles (e.g., witness, defendant or legal practitioner). All the court accommodations extracted from the respective data sources were triangulated using thematic analysis, as shown in Table 4.1.

Thematic analysis was selected as it provides a structured approach to identify themes and patterns in the data that could be used to answer the research question (Braun & Clarke, 2020a). Since analysis is a recursive and methodical process, with movement back and forth between different phases (Braun & Clarke, 2020b), the analytic phases involved distinct steps. The researcher familiarised herself with the data. She used an existing structured codebook based on a human rights framework and procedural justice principles (Article 13 of the CRPD – Access to Justice) (White et al., 2020a) to code the data deductively (Tyler, 2008). This structured code book, which was an outcome of Data source 1, was subsequently used with Data sources 2, 3 and 4 in Phase 1.

In a recommendation for court accommodations, Tyler (2008) emphasises four distinct procedural justice principles: having a voice, being treated with respect, using objective criteria for decision making, and trust/understanding (Bowen & LaGratta, 2014; Brems & Lavrysen, 2013). The ‘having a voice’ principle requires that legal practitioners support persons with severe

communication disabilities to actively participate in court by allowing their ‘voice’ to be heard, irrespective of the means or modes of communication that are used (e.g., gestures, signs, speech-generating devices, writing). The ‘being-treated-with-respect’ principle requires that legal practitioners engage with persons with severe communication disabilities in a respectful manner, thereby implying courtesy and dignity towards them and recognising the individual and their disability. The ‘using-objective-criteria-for-decision-making’ principle requires that legal practitioners use objective, legitimate criteria to make decisions and apply fairness in decisions. Lastly, the ‘understanding-the-court-language’ principle requires that legal practitioners focus on the ability of the individuals with severe communication disabilities to understand the language used in court in order to build trust (Bowen & LaGratta, 2014; Brems & Lavrysen, 2013; Tyler, 2008).

Next, all identified court accommodations were examined and only the accommodations that were explicitly mentioned in a minimum of two of the four data sources (50% or more) were included in the proposed guidelines. Table 4.1 shows the methodological triangulation using thematic analysis of the court accommodations, and the last column indicates the court accommodations that were included in the guidelines.

Table 4.1

Methodological triangulation of court accommodations using thematic analysis

Theme	Legal scoping review ¹	National experts ²	International experts ³	Legal practitioners with disabilities ⁴	Accommodation that will be included in guidelines
Having a voice	<ul style="list-style-type: none"> • Allow AAC • Use intermediaries • Use sign language interpreters • Interpreters • Use an AAC toolkit • Use a victim impact statement • Use a deaf relay interpreter • Use an independent communication support worker • Allow qualified expert to record child’s evidence • Allow a civil society organisation as a support • Identify a family member or close friend who can assist in court • Give evidence through free narration (no questioning) • Allow communication in audio, video or other electronic form • Use anatomical dolls • Allow communication enhancements • Involve a special investigator • Use facilitated communication • Use speech-to-speech transmittal in order to testify 	<ul style="list-style-type: none"> • Allow AAC • Use intermediaries • Use a victim impact statement 	<ul style="list-style-type: none"> • Allow AAC • Use intermediaries • Use an AAC toolkit 	<ul style="list-style-type: none"> • Allow AAC • Use sign language interpreters 	<ul style="list-style-type: none"> • Allow AAC ^{1, 2, 3, 4} • Use intermediaries ^{1, 2, 3} • Use sign language interpreters ^{1, 4} • Use a victim impact statement ^{1, 2} • Use an AAC toolkit ^{1, 3}
Being treated with respect	<ul style="list-style-type: none"> • Allow a support person • Allow an additional clerk (for legal practitioners) • Allow guides to assist with accessibility • Allow Guardian ad Litem (Children) and Next friend (Adult) • Allow McKenzie friend • Allow a familiar person in the court to interpret and understand child’s needs and disability • Allow support animal • Allow stuffed animal • Testify behind a screen • Testify via live video/television link • Testify outside the courtroom • Conduct trial <i>in camera</i> • Use CCTV in court • Testify not on the witness stand • Testify in the judge’s chambers 	<ul style="list-style-type: none"> • Allow a support person • Allow witness, support, preparation and profiling programme 	<ul style="list-style-type: none"> • Allow a support person • Allow frequent breaks • Testify behind a screen • Testify via live video/television link • Conduct a functional assessment of individual • Testify without the defendant present in the courtroom, 	<ul style="list-style-type: none"> • Allow a support person (additional administrative clerk) • Ensure physical accessibility 	<ul style="list-style-type: none"> • Allow a support person ^{1, 2, 3, 4} • Allow witness, support, preparation and profiling programme ^{1, 2} • Allow frequent breaks ^{1, 3} • Testify behind a screen ^{1, 3} • Testify via live video/television link ^{1, 3} • Conduct a functional assessment of individual ^{1, 3} • Testify without the defendant present in the courtroom, and only the defence attorney present ^{1, 3} • Testify not on the witness stand ^{1, 3}

Theme	Legal scoping review ¹	National experts ²	International experts ³	Legal practitioners with disabilities ⁴	Accommodation that will be included in guidelines
	<ul style="list-style-type: none"> • Testify without the defendant present in the courtroom, and only the defence attorney present • Allow enough and extra time to testify • Allow frequent breaks • Make information accessible for those with visual and hearing impairments • Use auxiliary hearing devices • Modify the courtroom setup • Conduct informal court proceedings in a relaxed and non-adversarial environment • Allow extra time to testify • Allow materials in Braille and other accessible formats • Provide one-on-one assistance to follow the proceedings • Allow additional time for pauses (to help with concentration and attention) • Address witness by name to ensure his/her concentration • Relook terminology that carries stigma and discrimination • Use visual alarms • Provide separate courts outside of the regular court • Conduct a functional assessment of individual • Ensure physical accessibility • Develop specialised services for persons who use AAC • Allow witness, support, preparation and profiling programme • Allow individualised support 		<ul style="list-style-type: none"> • and only the defence attorney present • Testify not on the witness stand • Testify in the judge’s chambers • Testify outside the courtroom 		<ul style="list-style-type: none"> • Testify in the judge’s chambers ^{1, 3} • Testify outside the courtroom ^{1, 3} • Ensure physical accessibility ^{1, 4}
Using objective criteria in decision making	<ul style="list-style-type: none"> • Involve expert professional • Involve expert witness • Remove official attire • Allow video/ pre-recorded evidence • Use video to cross-examine prior to trial • Establish court procedures to enable a process for requesting accommodations • Prohibit personal cross-examination by accused or defendant • Allow sworn depositions in court • Film the court proceedings to review the communication • Allow out-of-court testimony • Appoint an Amicus Curiae • Use out-of-court statements as evidence 	<ul style="list-style-type: none"> • Involve expert witness • Involve expert professional • Allow a legal/lay assessor 	<ul style="list-style-type: none"> • Remove official attire • Keep tone of legal professional’s voice neutral • Prohibit personal cross-examination by accused or defendant 	<ul style="list-style-type: none"> • Allow procedural changes in the courtroom (allow a 13th person in the jury – sign language interpreter) 	<ul style="list-style-type: none"> • Involve expert witness ^{1, 2} • Involve expert professional ^{1, 2} • Remove official attire ^{1, 3} • Prohibit personal cross-examination by accused or defendant ^{1, 3}

Theme	Legal scoping review ¹	National experts ²	International experts ³	Legal practitioners with disabilities ⁴	Accommodation that will be included in guidelines
Understanding the court language	<ul style="list-style-type: none"> • Use pre-sentence reports to make suggestions to the court about the individual's need • Prohibit direct questions by a defence lawyer and prosecutor • Use modified oath • 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 • Regularly check understanding, particularly if defendant or witness has poor language ability • Allow the interpreter time to interpret in the consecutive mode where possible • Use pictures/ communication aids to enhance understanding • Use facilitator (to simplify language, give meaning and to support) • Disallow tag questions • Disallow leading questions • Use strategies to check the individual is not simply agreeing without understanding • Provide real-time captioning of court proceedings • Appoint independent advocate • Explain court processes to the defendant in an accessible way • Familiarise defendant/witness with and explain the legal process and court procedures • Use trusted source for information (understanding) • Use pacing and repetition (understanding) • Explain concepts in easy, graphic, and concrete terms • Allow counsel to recap and summarise any information the person failed to process • Allow person to take written notes • Provide readers to assist with access to information • Forbid protracted questioning of children • Forbid continuances that cause needless delay of the trial • Allow assistance by an expert or support person to explain the court process 	<ul style="list-style-type: none"> • Use pictures/ communication aids to enhance understanding 	<ul style="list-style-type: none"> • Use appropriate and proper questioning strategies • Allow linguistic simplification • Use pictures/ communication aids to enhance understanding • Use facilitator (to simplify language, give meaning and to support) 	<ul style="list-style-type: none"> • Use appropriate and proper questioning strategies • Allow linguistic simplification • Use pictures/ communication aids to enhance understanding 	<ul style="list-style-type: none"> • Use appropriate and proper questioning strategies ^{1,3,4} • Allow linguistic simplification ^{1,3,4} • Use pictures/ communication aids to enhance understanding ^{1,2,3,4} • Use facilitator (to simplify language, give meaning and to support) ^{1,3}

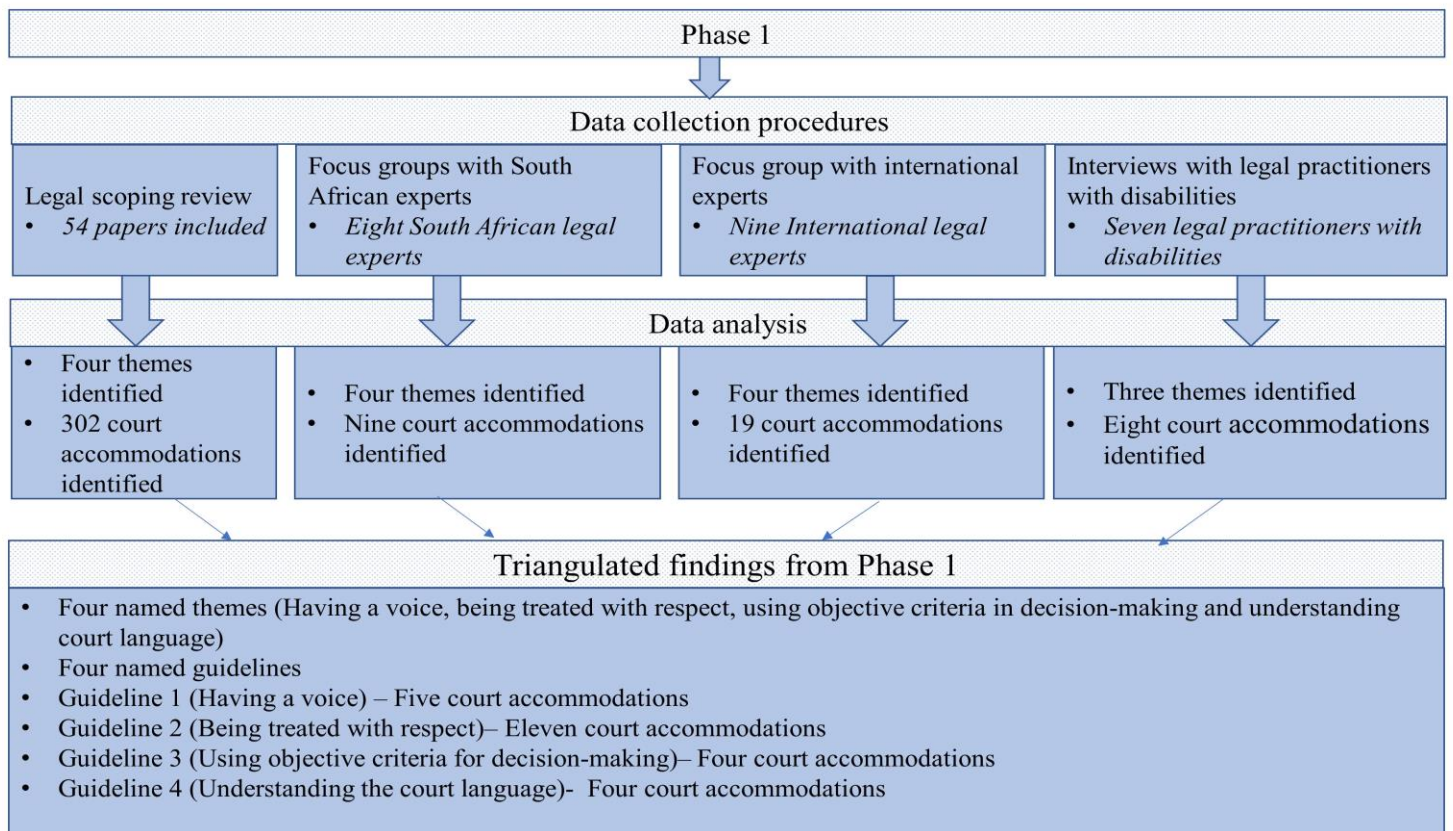
*Note: 1=Data source 1; 2= Data source 2; 3= Data source 3 and 4= Data source 4.

Many of the court accommodations are not exclusive and could thus be classified under more than one theme. It was therefore deemed necessary to develop a set of operational definitions (Appendix 3O) to ensure consistency during the process of triangulating the qualitative findings. For example, the definition of ‘Remove official attire’ was classified under the ‘Using-objective-criteria-in-decision-making’ theme in Data source 1; ergo it was classified this way across all four data sources.

The triangulated data was checked for reliability by two inter-raters independently. The findings were then compared, and inter-rater reliability was calculated. Discrepancies were noted and revised where necessary. The following formula was used to calculate agreement:
$$\text{agreement} : \frac{\text{number of agreements}}{\text{number of agreements} + \text{disagreements}} \times \frac{100}{1}$$
 (Hallgren, 2012). A 96%-level of agreement was reached. Other important aspects that each data source highlighted were (a) participation, (b) training relevant legal practitioners, and (c) law reform and changes in legal procedures and processes. Hence these aspects were also included in the development of the guidelines. The data collection procedures, data analysis and triangulated findings from Phase 1 are summarised and illustrated in Figure 4.2.

Figure 4.2

Summary of data collection, data analysis and triangulated findings from Phase 1



From Figure 4.2 and Table 4.1 it is thus clear that the legal scoping review identified the most different and extensive court accommodations, while the national and international focus group and interviews with legal practitioners produced a comparable amount of court accommodations. This could have been due to the sample size of the participants in Data sources 2, 3 and 4 – each sample size had less than 12 participants which means there was a controlled (yet credible) amount of court accommodations that were recommended. Data source 1 acted as the bedrock with subsequent data sources being used to confirm, expand and clarify these qualitative findings.

The triangulation of findings from Phase 1 was conducted not only to identify and analyse court accommodations for persons with severe communication disabilities, but also to show the greater validity and credibility of the findings from all four these data sources (the legal scoping review, the South African and international expert focus groups and the interviews with the legal practitioners). The methodological triangulation of the data provided a better understanding of court accommodations for persons with severe communication disabilities and assisted the researcher to make sense of all the data and information that

emerged from Phase 1. It also allowed the researcher to better interpret the findings of Phase 1.

4.5.3 Results and discussion

When developing guidelines, it is recommended that an existing framework be used to guide the process (Sullivan et al., 2018; World Health Organization, 2014). As discussed in the previous section, a human rights framework using procedural justice guidelines as themes was used to triangulate and integrate the court accommodations for persons with severe communication disabilities (United Nations, 2020). Furthermore, the six principles suggested by Rosenfeld and Shiffman (2009) that are presented in Table 4.2 were considered during the drafting of the guidelines. According to Rosenfeld and Shiffman (2009), it is important to follow certain principles and recommendations to produce quality-driven, evidence-based guidelines and to use efficient and transparent methodology for action-ready recommendations with multi-disciplinary applicability.

Table 4.2

Principles for developing guidelines

Guideline consideration (Rosenfeld & Shiffman, 2009; Valliabi, 2016)	Application to the proposed guideline document
1. <u>Quality-driven</u> : Quality improvement should be at the forefront of guideline development, using current best available scientific evidence and multidisciplinary consensus to prioritise recommendations.	It is stated clearly in the court accommodation guideline document that the recommended guidelines stem from four different data sources, namely a legal scoping review (White et al., 2020a), a focus group session with South African experts (White et al., 2020b), an online focus group session with international experts and interviews with legal practitioners with disabilities. These results were combined onto one corpus, and all accommodations mentioned by at least two data sources were included. This highlights the importance of the guidelines being quality driven, as they result from the input of a variety of different stakeholders.
2. <u>Evidence-based</u> : Guidelines should be supported with the best available research evidence identified through a systematic literature review or scoping review.	A novel legal scoping review methodology that identified court accommodations for persons with severe communication disabilities was conducted, as mentioned in the court accommodation guidelines (White et al., 2020a). This review identified a total of 54 papers, resulting in 302 accommodations being mentioned. Using an inductive coding approach, these accommodations were categorised according to the four components of the procedural justice framework: respect, voice, understanding, and neutrality. Accommodations with the highest frequency count were the use of intermediaries, permitting AAC, ensuring appropriate and proper questioning strategies, allowing frequent breaks, including closed-circuit television (CCTV) in court, and using expert witnesses.
3. <u>Efficient-transparent</u> : Guideline users should be enabled to link recommendations to the corresponding level of evidence, benefit the harm-cost relationship, and strengthen the roles and values of the relevant stakeholders' preferences in decision making.	The recommended court accommodation guidelines were clearly presented, and each section outlined. Page 1 consisted of the purpose, the development and the intended use of the guidelines. Page 2 consisted of the four guidelines, with clear, bullet-pointed recommendations presented under each guideline. Important definitions such as 'a person with a severe communication disability' and 'holistic approach' were explained. On the final page, page 3, additional resources, links to case law, cost relationship and acknowledgements were clearly stated and presented.

Guideline consideration (Rosenfeld & Shiffman, 2009; Valliabi, 2016)	Application to the proposed guideline document
5. <u>Action-ready</u> : Recommendations should tell guideline users what to do, to whom, under what specific circumstance, and use unambiguous language that facilitates implementation and measurement.	The recommended guidelines for court accommodations logically and overtly explain who the draft guidelines are intended for (persons with severe communication disabilities) and include detailed recommendations under each guideline. These recommendations act as action points that guide practice. It is also specified that persons with severe communication disabilities can fulfil a variety of different roles in courts namely as witnesses, defendants or as legal practitioners.
6. <u>Multi-disciplinary</u> : All stakeholders (e.g., target population, guidelines users) should be part of the development and implementation processes.	The four data sources included a variety of stakeholders from different professional backgrounds as well as from different countries that had ratified the CRPD. The recommended guidelines of court accommodations for persons with severe communication disabilities included experts in the field and legal practitioners with disabilities. In cases where experts were used (Data sources 2 and 3), the term ‘expert’ was clearly defined, using objective criteria.

The four procedural justice principles (having a voice, being treated with respect, using objective criteria for decision making, and understanding the court language) (Tyler, 2008) extracted from the data, were used to steer the development of the guidelines. Thereafter, the four guidelines were developed and the corresponding accommodations under each guideline were placed as recommendations under the relevant themes. Four guidelines were developed and their corresponding accommodations to enable persons with severe communication disabilities equal participation in the court system and achieve access to justice, are discussed next.

4.5.3.1 *Guideline 1*

The person should be allowed to use their preferred ‘voice’ – irrespective of the communication method or mode – throughout the whole legal process (from the start of the court proceedings until the completion thereof). The following court accommodations could assist the persons with severe communication disabilities to use their ‘voice’, and were mentioned by at least two data sources:

- Use an intermediary
- Use AAC methods and strategies
- Use a sign language interpreter
- Use an AAC toolkit
- Use a victim impact statement

4.5.3.2 *Guideline 2*

The person should be shown respect and treated with dignity by all persons involved throughout the legal process. The following court accommodations were mentioned by at

least two data sources and could assist these persons with severe communication disabilities in being shown respect:

- Allow a support person
- Allow support, preparation and profiling programmes (court preparation programmes) for the witness
- Allow frequent breaks
- Testify behind a screen
- Testify via live video/television link
- Conduct a functional assessment of the individual's needs
- Testify without the defendant present in the courtroom, and only the defence attorney present
- Testify not on the witness stand
- Testify in the judge's chambers
- Testify outside the courtroom
- Ensure physical accessibility

4.5.3.3 *Guideline 3*

The person should feel that all decisions are being made in a fair and neutral way throughout the whole legal process. The following court accommodations were mentioned by at least two data sources and could assist these persons with severe communication disabilities in being shown fairness in court:

- Involve expert professional
- Involve expert witness
- Remove official attire
- Prohibit personal cross-examination of the witness (with disability) by accused or defendant if they are self-representing

4.5.3.4 *Guideline 4*

The person should feel that all legal practitioners can be trusted and that their decisions are easy to understand and in the person's best interest. The following court accommodations were mentioned by at least two data sources and could assist persons with severe communication disabilities in experiencing feelings of trust:

- Use appropriate and proper questioning strategies

- Use linguistic simplification, for example editing and processing of both written and spoken information to ensure that it is simple, clear and easy to understand
- Use pictures or communication aids to enhance understanding (receptive language)
- Use a facilitator (to simplify language, to give meaning and to support the individual)

The layout of the first draft of the guidelines, its headings and information that was included are presented in Table 4.3. This table also shows the specific aspects that were addressed.

Table 4.3*Headings and information included in the draft guidelines*

Headings included	Information included
1. Purpose of the draft guideline document (p. 1)	<p>These guidelines describe the court accommodations that should be made available to persons with severe communication disabilities to allow them to access the legal system (e.g., via criminal, civil, or family court). The guidelines are designed to support persons with severe communication disabilities, their family members, legal practitioners, and support persons. The role of the court accommodations is to assist these persons to participate in their specific role as a witness, defendant or as a legal practitioner throughout the legal process. The aim of providing accommodations to the said person is to assist them in achieving their human right of access to justice, without discrimination and inequality. The guidelines have been developed using a human rights framework based on the Convention on the Rights of Persons with Disabilities (CRPD) (2006) with specific focus on Article 13 – Access to Justice, and Article 21 – Freedom of expression and opinion, and access to information. (*Links are attached to Article 13 and Article 21. By clicking on the links, you will be able to access the articles.)</p>
2. How the guidelines were developed (p. 1)	<p>The guidelines are based on information from four data sources:</p> <ol style="list-style-type: none"> 1. A legal scoping review of court accommodations 2. An expert focus group session with South African experts 3. An expert online focus group session with international experts 4. Interviews with legal practitioners with disabilities <p>Please click on the top two data sources for the published papers. Together, these four data sources form part of the study entitled, “Accommodating persons with severe communication disabilities in court: Using a holistic approach to guide key role-players”. Please cite these guidelines as follows:</p> <p style="padding-left: 40px;">White, R. M. (2021). “Accommodating persons with severe communication disabilities in court: Using a holistic approach to guide key role-players”. Unpublished doctoral thesis, University of Pretoria, Pretoria, South Africa</p>
3. How the guidelines should be used / implemented? (p. 1)	<p>The definition of a ‘person with a severe communication disability’ is highlighted in the text box on the left. The four guidelines are a general set of recommendations for court accommodations for persons with severe communication disabilities to enable them to participate in the legal system, thereby ensuring their access to justice.</p> <p>It is important to acknowledge that persons with disabilities are not all the same in their receptive and expressive communication skills, and styles as well as their needs and support requirements may differ. Therefore, each person ought to be treated with respect and dignity using an individualistic approach. There is no ‘one-size-fits-all’ accommodation, and accommodations should be tailored to the needs and specific skills of the individual.</p>
4. Defining the target population (i.e., ‘persons with severe communication disability’) (p. 2)	<ul style="list-style-type: none"> • A person who cannot make their wants or needs known by using spoken communication (speech or writing). • A person who may or may not have difficulty in understanding certain words and when being spoken to. • Severe communication disabilities can be associated with developmental disability such as intellectual disability, cerebral palsy or autism spectrum disorder, or can be acquired for example by a brain injury, stroke and motor neuron disease.
5. Guideline 1: The person should be allowed to use their ‘voice’ by using a communication method or mode of their preference	<p>The CRPD highlights that every person with a disability should be allowed to participate in a meaningful and equal way in any legal proceedings that concern them, whether as a witness, defendant or legal practitioner. The following court accommodations could assist the individual to use their ‘voice’:</p> <ol style="list-style-type: none"> 1. Use an intermediary 2. Use augmentative and alternative communication (AAC) methods 3. Use a sign language interpreter 4. Use an AAC toolkit

Headings included	Information included
throughout the whole legal process (p. 2)	5. Use a victim impact statement (for victims)
6. Guideline 2: The person should be shown respect and treated with dignity by all persons involved throughout the whole legal process (p. 2)	<p>The CRPD highlights the importance of respect for persons with disabilities. Dignity is provided to persons with disabilities when they are treated in a courteous manner and when they are recognised as individuals. Respect includes environmental adaptations and accommodations that make up the physical, social and attitudinal environment. Court accommodations that could assist these individuals in being shown respect:</p> <ol style="list-style-type: none"> 1. Allow a support person 2. Allow witness, support, preparation and profiling programme (court preparation programme) 3. Allow frequent breaks 4. Testify behind a screen 5. Testify via live video/television link 6. Conduct a functional assessment of individual 7. Testify without the defendant present in the courtroom, and only the defence attorney present 8. Testify not on the witness stand 9. Testify in the judge's chambers 10. Testify outside the courtroom 11. Ensure physical accessibility
7. Guideline 3: The person should feel that all decisions are being made in a fair and neutral way throughout the whole legal process (p. 3)	<p>The courts and legal practitioners should ensure to use objective, legitimate criteria for making decisions and applying fairness in decisions when a person with a communication disability needs to access and participate in the court. Personal bias or views that could influence choice or opinion should not be allowed. Court accommodations that could assist the individual in being shown fairness in court:</p> <ol style="list-style-type: none"> 1. Involve expert professional 2. Involve expert witness 3. Remove official attire 4. Prohibit personal cross-examination by accused or defendant themselves in cases where they represent themselves
8. Guideline 4: The person should feel that all legal practitioners can be trusted and that their decisions are easy to understand and in the person's best interest (p. 3)	<p>The courts and legal practitioners should ensure that court accommodations can support the receptive language (understanding) of the person with a communication disability and the person should feel that the courts' motives are trustworthy. Court accommodations that could assist the individual in experiencing feelings of trust:</p> <ol style="list-style-type: none"> 1. Use appropriate and proper questioning strategies 2. Use linguistic simplification, for example editing and processing written and spoken information to ensure that it is simple, clear and easy to understand 3. Use pictures/communication aids to enhance understanding 4. Use a facilitator (to simplify language, to give meaning and to support the individual)
	<p>Additional court accommodations that were identified in the legal scoping review can be accessed <i>here</i>.</p>
	<p>For further explanation and definitions of the above-mentioned accommodations, see Appendix 1.</p>
9. A holistic approach to court accommodations (p. 3)	<p>These guidelines and the specific accommodations mentioned are not intended as an exhaustive list but meant to assist legal practitioners in making available court accommodations for persons with severe communication disabilities. The accommodations alone will not assist persons with communication disabilities in accessing justice. As suggested in research (see Appendix 2) a combination of court accommodations, a cross-disciplinary approach from all practitioners involved in the legal proceedings (e.g., judges, prosecutors, lawyers, social workers, expert witnesses, court officials), as well as their knowledge, skills, attitudes and training will impact</p>

Headings included	Information included
	the process and should therefore be considered to achieve access to justice for persons with severe communication disabilities.
10. Additional Resources (p. 4)	<p>The United Nations (2020) has released and identified international principles and guidelines on access to justice for persons with disabilities, which can be accessed <i>here</i>.</p> <p>Domestically, the United Kingdom and Australia’s judiciary systems have published Equal Treatment Bench Books, which are guides for judicial officers and suggest steps that could increase participation by all parties, including persons with severe communication disabilities. (Click <i>here</i> for access).</p> <p>For examples of case law involving persons with disabilities and the use of intermediaries, frequent breaks, CCTV, AAC and simple questioning strategies, click <i>here</i>.</p>
11. Acknowledgements (p. 4)	<p>Thank you to the following persons:</p> <ul style="list-style-type: none"> - All the legal experts who contributed to the data sources, in South Africa and internationally, for sharing their precious time and invaluable knowledge and expertise. - All the legal practitioners with disabilities who contributed to Data source 4, shared their personal experiences and provided an insider perspective. - The stakeholders with and without disabilities who evaluated the clarity of the guidelines.
12. International implications (p. 4)	<p>The implementation of the guidelines and recommended court accommodations has cost implications. In many judicial systems (particularly those in low- and middle-income countries), limited resources and services are available for persons with severe communication disabilities. Accommodations such as an intermediary or sign language interpreter cost money, but others such as removal of official attire do not, and therefore all court accommodations should be judged on an individual basis. The main aim of this document is to assist and support these individuals (and their families) – who often find themselves excluded from the legal system – to participate effectively and meaningfully, and ultimately, to realise their human right of access to justice.</p>
13. Final and last comments (p. 4)	<ul style="list-style-type: none"> - These guidelines stem from the PhD study of Robyn White, with Prof. Juan Bornman as her supervisor and Dr Ensa Johnson as co-supervisor (all from the Centre for Augmentative and Alternative Communication, University of Pretoria). - Financial support from the University of Pretoria, the National Institute of Humanities and Social Sciences (NIHSS) and the South African Humanities Deans Association (SAHUDA) enabled this research. The views from these institutions have not influenced the content of the guidelines in any way. - There were no competing interests from any participants, experts, or researchers during the development of these guidelines.

4.6 Stakeholder review

4.6.1 Introduction

Stakeholder reviews are particularly valuable when applying unprecedented research instruments such as custom-designed guidelines (Zailinawati et al., 2006), in this case for court accommodations for persons with severe communication disabilities.

4.6.2 Aim

This section of Phase 2 deals with Sub-aim (ii). The main objective of the stakeholder review was to evaluate the proposed guidelines in terms of feasibility, readability, consistency of style and formatting, and the clarity of the language used (Junyong, 2017; Taherdoost,

2016; Zailinawati et al., 2006). The stakeholder review thus tested the face validity of the guidelines (Taherdoost, 2016) and stakeholders were asked to comment on the aspects mentioned above that impacted the clarity of presentation of the guidelines (Rosenfeld & Shiffman, 2009).

4.6.3 Participants

Ideally, participants who closely resemble the targeted study population (in this case persons with severe communication disabilities) should be recruited to partake in the stakeholder review (Burton & Mazerolle, 2011).

4.6.3.1 Recruitment and selection criteria

Participants were identified using a purposive sampling technique (Creswell & Plano Clark, 2018) to ensure that they were literate persons with severe communication disabilities in accordance with the aim of this stakeholder review. This sampling technique was necessitated by the fact that the potential pool of participants was relatively small. The participants were identified through the professional networks of the researcher and her supervisors. Nine potential participants were identified, of whom six consented to take part in the stakeholder review. Because all the participants had a severe communication disability, they closely resembled the targeted population who would possibly benefit from and use the court accommodation guidelines.

4.6.3.2 Participant description

The biographic information of the six participants who consented is presented in Table 4.4.

Table 4.4*Participant's biographical information for stakeholder review (categorised by age)*

Participant number	Age	Gender	Country	Type of disability	Acquired or congenital	Use of assistive devices	Highest educational level	Employment
211	26	Male	South Africa	Cerebral palsy	Congenital	Yes, mobile technology	High school certificate	Yes, part-time
212	30	Female	South Africa	Cerebral palsy	Acquired	Yes, speech-generating device	High school certificate	Yes, part-time
213	34	Female	South Africa	Speech disability	Acquired	Yes, communication device	High school certificate	Yes, part-time
214	45	Male	England	Physical and speech disability	Acquired	Yes, communication device	BSc (Honours) degree, Honorary doctorate	Yes, self-employed
215	63	Male	United States	Cerebral palsy	Congenital	Yes, communication device	BA degree	Yes, full-time
216	66	Female	Australia	Cerebral palsy	Congenital	Yes, communication device	LLB and BA degree	Yes, part-time

*BSc - Bachelor of Sciences, BA - Bachelor of Arts, LLB - Bachelor of Laws

From Table 4.4 it is clear that there was an equal gender split with the average age being 44 years old. All the stakeholders had a communication disability, all had obtained an education certificate or degree (on various levels) and all were employed. Half of the participants stated that they had had a personal experience with the legal system.

4.6.4 Data collection

Prior to data collection, email contact was made to establish rapport with the potential participants and invite them to take part. All potential participants who showed interest were emailed a letter of informed consent with details outlining the research topic, what was expected of them, as well as potential risks and benefits (Appendix 4A and 4B). Precautions were taken to guarantee the confidentiality of their emails and answers, as only the researcher had access to the password-protected email platform. A third email was sent, containing instructions, the court accommodation guidelines (Appendix 4C), and a link to the stakeholder survey, presented in Qualtrics. The Qualtrics survey contained an informed consent section, biographic questions and the online survey questions (Appendix 4D). The participants were asked to read the proposed court accommodation guidelines (Appendix 4C) and then to complete the stakeholder survey. The researcher maintained an active online presence in accordance with best practice guidelines for online surveys (Carpenter et al., 2019) and was available to answer any potential questions or address concerns when needed.

4.6.5 Materials

4.6.5.1 Online survey

The online stakeholder survey was created on the Qualtrics platform. Qualtrics was used because it is a well-known, commercially available survey software that is routinely used in online survey research. It allows researchers to build and embed their own content into the platform (Carpenter et al., 2019). Additionally, the researcher's university had an active research account with Qualtrics, thus making the platform available at no cost to the researcher. The participants were requested to complete the online survey after reading the original 4-page guidelines (Table 4.3).

The online survey had five questions in total – four multiple questions and one open-ended question. Table 4.5 explains what component was assessed and evaluated, the justification and the question asked in the online survey.

Table 4.5*Components assessed and questions asked in stakeholder review online survey*

Components assessed	Justification	Question included in online survey	Item response/scale
Feasibility of the guidelines document			
1. The practicality of the guideline document is relevant.	The guidelines are feasible and important to establish the target population for the study (Burton & Mazerolle, 2011).	Did you find the guidelines practical? (For example, do you think the guidelines would be useful for persons with severe communication disabilities, their families and other relevant parties?)	Yes/Unsure/No
Layout and visual representation			
2. The flow of the guideline document is clear.	The structure and flow of the guidelines are important to give readers a comfortable and informative experience when reading through them (Burton & Mazerolle, 2011).	Was there consistency in the style and formatting of the guidelines? (For example, were the text and headings easy to follow?)	Yes/Unsure/No
Layout of survey items			
3. Grammar, spelling and language are clear in the guideline document.	Correct grammar and spelling can assist participants in reading the guidelines easily (Taherdoost, 2016).	Was the language used clear and easy to understand?	Yes/Unsure/No
General aspects			
4. Length of guideline document is appropriate.	The guideline document must be of such a length that readers can read through it within an acceptable time (Taherdoost, 2016).	Was the length of the guideline document appropriate? (For example, was it the right number of pages and words?)	Yes/Unsure/No
Further suggestions			
5. Further suggestions.	Suggestions from participants are needed to enhance confidence in and the face validity of the guideline document (Kennedy et al., 2019).	Is there anything you would like to add or any comment you wish to make regarding the guideline document?	Open-ended question

4.6.5.2 Guidelines

The guideline document that was sent to the participants is presented as screenshots in Table 4.6 and can be viewed in Appendix 4C.

Table 4.6

First draft guidelines

Pages	Content
Page 1: Purpose and development of the guidelines How to use the guidelines	<div data-bbox="493 407 1562 579" style="background-color: #fff9c4; text-align: center;"><h2>Court Accommodations for Persons with Severe Communication Disabilities</h2></div> <div data-bbox="493 617 928 1738" style="background-color: #e1f5fe; border-radius: 15px; padding: 10px; margin: 10px 0;"><p>This is where an illustration will go – that is why this block it is empty. Still awaiting on the illustrator.</p></div> <p style="text-align: center;"><u>Purpose</u></p> <p>These guidelines describe the court accommodations that should be made available to persons with severe communication disabilities to allow them to access the legal system (criminal, civil, family court etc). These guidelines are designed to support persons with severe communication disability, their family members, legal practitioners, and support persons.</p> <p>The role of the court accommodations is to assist these individuals with severe communication disabilities to participate in their specific role in the legal system (this role can be as a witness, defendant or a legal practitioner). The aim of providing accommodations to the said individuals is to assist these individuals in achieving their human right of access to justice, without discrimination and inequality. These guidelines have been developed using a human rights framework based on the Convention on the Rights of Persons with Disabilities (CRPD) (2006) with specific focus on Article 13 – Access to Justice and Article 21 - Freedom of expression and opinion, and access to information. (*There are links attached to Article 13 and Article 21. By clicking on the links above, this will assist you in accessing the articles.)</p> <p style="text-align: center;"><u>Development of the guidelines</u></p> <p>These guidelines are based on information from four data sources that form part of the study entitled, "Accommodating persons with severe communication disabilities in court: Using a holistic approach to guide key role-players". The four data sources include the following:</p> <ol style="list-style-type: none">1. A legal scoping review of court accommodations2. An expert focus group with South African experts3. An expert online focus group with international experts4. Interviews with legal practitioners with disabilities. <p>Please click on the top two data sources for the published papers.</p> <p>Although these guidelines are copyright protected, they may be reproduced freely for non-profit purposes acknowledging the source: <i>White, RM (2021). Accommodating persons with severe communication disabilities in court: Using a holistic approach to guide key role-players. Unpublished thesis, University of Pretoria, Pretoria, South Africa.</i></p> <p style="text-align: center;"><u>How to use the guidelines</u></p> <p>The definition of a "person with a severe communication disability" is highlighted in the text box on pg. 2. These four guidelines are a general set of recommendations for court accommodations for persons with severe communication disabilities to enable them to participant in the legal system, thereby ensuring access justice. It is important to acknowledge that persons with disabilities are not all the same in their receptive and expressive communication skills, and styles may differ as well as their needs and support requirements. Therefore, each person ought to be treated with respect and dignity using an individualistic approach. There is no "one size fits all" accommodation.</p>

Page 2:
Definition of a person
with a disability
Guidelines 1 and 2
with specific
accommodations
mentioned under each

Who is a person with a severe communication disability?

- A person who cannot make his/her wants or needs known by using spoken communication (speech).
- A person who has difficulty in understanding certain words and when being spoken too.
- A person's disability can be congenital (from birth) (e.g., cerebral palsy, autism spectrum disorder, visual impairment).
- A person's disability can be acquired (e.g., traumatic brain injury, stroke, motor neuron disease).

Guideline 1: The person should be allowed to use their "voice" using a communication method or mode of their preference throughout the whole legal process.

The CRPD highlights that every person with a disability should be allowed to participate in a meaningful and equal way in any legal proceedings that concern them, whether as a witness, defendant or legal practitioner. Some court accommodations that could assist the individual in being able to use their "voice" are:


1. Use an intermediary
2. Use augmentative and alternative communication (AAC) methods*
3. Use a sign language interpreter
4. Use a language interpreter
5. Use an AAC toolkit
6. Use a victim statement (for victims)
7. Use a deaf relay interpreter
8. Use an independent communication support worker
9. Give evidence through free narration (without questioning in between)
10. Allow communication in audio, video or other electronic form

For further explanation and definitions of the above-mentioned accommodations, please see [Appendix 1](#).


Guideline 2: The person should be shown respect and treated with dignity by all persons involved throughout the legal process.

The CRPD highlights the importance of respect for persons with disabilities. Dignity is provided to persons with disabilities when they are treated in a courtesy manner and when they are recognised as individuals. Respect includes environmental adaptations and accommodations that make up the physical, social and attitudinal environment. Court accommodations that could assist these individuals in being shown respect are:

1. Testify behind a screen
2. Testify via live video/television link
3. Use CCTV in court
4. Conduct trial *in camera*
5. Testify outside courtroom or familiar environment
6. Testify not on the witness stand
7. Testify in the judge's chambers
8. Modify the court-room setup
9. Testify without the defendant present in the courtroom, and only the defence attorney present
10. Use a support person
11. Allow an additional clerk (for legal practitioners)
12. Allow Guardian ad Litem (children) and Next friend (adult)
13. Allow McKenzie friend
14. Develop specialized services for persons who use AAC
15. Allow support animal
16. Allow an object that acts as a comforter where appropriate (e.g., stuffed animal)
17. Conduct a functional assessment of individual
18. Ensure physical accessibility
19. Allow enough and extra time to testify
20. Allow frequent breaks
21. Make information accessible for those with visual and hearing impairments
22. Use auxiliary hearing devices
23. Allow additional time for pauses (to help with concentration and attention)

Additional court 'respect' accommodations were identified in the legal scoping review and can be accessed here (please click on icon) .

For further explanation and definitions of the above-mentioned accommodations, please see [Appendix 1](#).

Pages	Content
Page 3: Guidelines 3 and 4 with specific accommodations under each A holistic approach to court accommodations	<div style="background-color: #e0e0e0; padding: 10px; margin-bottom: 10px;"> <p style="text-align: center;">Guideline 3: The person should feel that all decisions are being made in a fair and neutral way throughout the whole legal process.</p> </div> <p>The courts and legal practitioners should ensure to use objective, legitimate criteria for making decisions and applying fairness in decisions when a person with a communication disability needs to access and participate in the court. Personal bias or views that could influence choice or opinion should not be allowed. Court accommodations that could assist the individual in being shown fairness in court are:</p> <ol style="list-style-type: none"> 1. Involve expert professional 2. Involve expert witness 3. Appoint an Amicus Curiae 4. Allow video/ pre-recorded evidence 5. Allow out-of-court testimony 6. Allow sworn depositions in court 7. Use video to cross-examine prior to trial 8. Film the court proceedings to review the communication 9. Use pre-sentence reports to make suggestions to the court about the individual's need 10. Remove official attire 11. Prohibit personal cross-examination by accused or defendant 12. Prohibit direct questions by a defence lawyer and prosecutor 13. Establish court procedures to enable a process for requesting accommodations <p>For further explanation and definitions of the above-mentioned accommodations, please see Appendix 1.</p> <div style="background-color: #e0e0e0; padding: 10px; margin-bottom: 10px;"> <p style="text-align: center;">Guideline 4: The person should feel that all legal practitioners can be trusted and that their decisions are easy to understand and, in the person's best interest.</p> </div> <p>The courts and legal practitioners should ensure that court accommodations can support the person with a communication disability's receptive language (understanding) and the person should feel that the courts motives are trustworthy. Court accommodations that could assist the individual in experiencing feelings of trust are:</p> <ol style="list-style-type: none"> 1. Allow judicial officers' intervention 2. Allow the language interpreter time to interpret in the consecutive mode where possible 3. Use modified oath 4. Allow linguistic simplification 5. Use appropriate and proper questioning strategies 6. Provide information about the proceedings in plain language, braille, accessible and child-friendly formats 7. Regularly check understanding, particularly if witness or defendant has poor language ability 8. Use pictures/communication aids to enhance understanding 9. Provide real-time captioning of court proceedings <p>Additional court accommodations that were identified in the legal scoping review can be accessed here (please click on icon) .</p> <p>For further explanation and definitions of the above-mentioned accommodations, please see Appendix 1.</p>

A holistic approach to court accommodations

These guidelines and the specific accommodations mentioned are not intended as an exhaustive list but rather to assist legal practitioners in making available court accommodations for persons with severe communication disabilities, the accommodations alone will not assist persons with communication disabilities in accessing justice. As suggested in research (please see [Appendix 2](#)) a combination of court accommodations, a cross-disciplinary approach from all practitioners involved in the legal proceedings (e.g. judges, prosecutors, lawyers, social workers, expert witnesses, court officials etc.), as well as their knowledge, skills, attitudes and training will impact on the process and should therefore be considered, so that access to justice for persons with severe communication disabilities can be achieved.

Pages	Content
Page 4: Additional resources Acknowledgements International implications	<div style="display: flex; justify-content: space-between;"> <div style="width: 45%; border: 1px solid #ccc; border-radius: 15px; padding: 10px; background-color: #e6f2ff;"> <p style="text-align: center;"><u>Additional Resources</u></p> <ul style="list-style-type: none"> ❖ The United Nations (2020) has released and identified international principles and guidelines on access to justice for persons with disabilities, these guidelines can be accessed here (please click here). ❖ Domestically, the United Kingdom and Australia's judiciary systems have published Equal Treatment Bench Book's, which are guide's for judicial officers and suggests steps that could increase participation by all parties, including persons with severe communication disabilities. Please click here for access. ❖ For examples of case law involving persons with disabilities and the use of intermediaries, frequent breaks, CCTV, AAC and simple questioning strategies please click here. ❖ For important definitions such as: Persons who use AAC and persons who are hard of hearing please click here. </div> <div style="width: 45%; border: 1px solid #ccc; padding: 10px;"> <p style="text-align: center;">Acknowledgements</p> <p>Thank you to the following persons:</p> <ul style="list-style-type: none"> ❖ All the legal experts who participated in the data sources, in South Africa and internationally, for sharing their limited time and invaluable knowledge and expertise. ❖ All the legal practitioners with disabilities who participated in data source 4 and shared their vital experiences and providing an insider perspective. ❖ The stakeholders with severe communication disabilities who evaluated the feasibility and clarity of the guidelines. <p style="text-align: center;">International Implications</p> <p>The implementation of any guideline has cost implications and the recommended court accommodations also do. In many judicial systems (particularly those in low- and middle-income countries) there may be limited resources and services readily available for persons with severe communication disabilities. Some accommodations for example, an intermediary or sign language interpreter, has cost implications, but other accommodations such as removal of official attire does not, and therefore should be judged on an individual basis.</p> <p>The main aim of this document is to assist and support these individuals (and their families) who often find themselves excluded from the legal system to be able to participate effectively and meaningfully, and ultimately, for them to equally realize their human right – access to justice.</p> </div> </div> <div style="margin-top: 20px; background-color: #fff9c4; border-radius: 15px; padding: 10px;"> <p>* These guidelines stem from the PhD thesis of Robyn White, with Prof. Juan Bornman as her supervisor and Dr Ensa Johnson as her co-supervisor (from the CAAC, The University of Pretoria). Financial support from the National Institute of Humanities and Social Sciences (NIHSS) and the South African Humanities Deans Association (SAHUDA) enabled this research. The views from both these institutions have not influenced the content of these guidelines.</p> <p>*There were no competing interests from any participants, experts, or researchers during the development of these guidelines.</p> <p>*If the document is printed, it is advised that all appendices in this document be printed alongside this guideline document.</p> <p>* Please cite these guidelines as follows: <i>White, RM (2021). Accommodating persons with severe communication disabilities in court: Using a holistic approach to guide key role-players. Unpublished doctoral thesis, University of Pretoria, Pretoria, South Africa</i></p> </div>

Table 4.6 presented the content of the first draft of the court accommodation guidelines.

4.6.6 Data analysis

Descriptive statistics were conducted for Questions 1 to 4 and data obtained from the last open-ended question was addressed in Table 4.7.

4.6.7 Results

For Questions 2 to 4, the majority of the six participants (n=5) agreed that the feasibility, readability, consistency of style and formatting, and the clarity of the language used in the guidelines were relevant and appropriate. One participant who disagreed said that the language used was not clear and suggested that clearer definitions and explanations be given. This participant illustrated the point by suggesting that an explanation be given of who constitute persons with severe communication disabilities (i.e. candidacy) and it be explicitly stated that these individuals have limited expressive abilities. Moreover, an explanation should be added as to why persons who are deaf sometimes do not fall in this category.

The open-ended question, Question 5, focused on feedback, while suggestions for the guidelines produced a wide range of recommendations such as the following:

- Possibly changing the layout and numbering of points
- Adding an additional category for persons using AAC as persons with significant expressive disabilities
- Inserting an explanation of why those who are deaf or hard of hearing are not necessarily included in the same category as persons who use AAC
- Explaining why accommodations should be tailored to the person, and listing ‘emotional supports’ as appropriate for some individuals but not for everyone
- Including the appendices whenever the document was to be physically printed
- Adding a few images

Five of the six participants gave comments and feedback that highlighted the engagement of the stakeholders.

4.6.8 Discussion and recommendations

All the suggestions that were provided in the stakeholder review were accepted and the guidelines were edited accordingly. Table 4.7 outlines these suggestions and how they were integrated into the draft court accommodations guideline document.

Table 4.7*Suggestions and changes made to guidelines*

Suggestions made in stakeholder review	Changes made in draft guideline document
Changing the layout of the document and the numbering of points	The researcher consulted with an online formatting expert and followed her advice. The layout of the document was changed from portrait to landscape to make the reading experience easier for the reader. This change also condensed the document from four to three pages.
Adding an additional category for persons who use AAC as persons with significant expressive disabilities	A definition of a person who uses AAC was added in the secured Google drive folder under the heading and folder 'Important definitions'.
Inserting an explanation of the position of persons who are deaf or hard of hearing in terms of the guidelines	A definition and further comments regarding a person who is deaf or hard of hearing were added in the secured Google drive folder under the heading and folder 'Important definitions'. It was important to eliminate the common misconception that all persons who are deaf typically rely on sign language (Dagut & Morgan, 2003). Despite a long history of advocating for their needs, recent research suggests that many persons who are deaf may have not had the opportunity to learn formal sign language (Davidson et al., 2015). Furthermore, persons who are deaf may have multiple physical disabilities and therefore not be able to use sign language as a communication method (Dagut & Morgan, 2003).
Explaining why accommodations must be tailored to the specific person	A sentence was added under the section, 'How to use these guidelines'. Individualisation of accommodations and support measures are crucial in order for persons with severe communication disabilities to participate equally in court (Ortoleva, 2011b).
Listing 'emotional supports' (such as stuffed animal toys) as appropriate for some individuals, but not for everyone	A sentence was added next to this accommodation stating, 'where appropriate or age appropriate', as persons with severe communication disabilities could include children too.
Including the appendices whenever the document was physically printed	The guidelines were intended to be published online; however, a sentence was added on the last page of the document indicating that whenever the document was to be physically printed, the appendices had to be printed too.
Adding a few images	A large print image was added on the first page of the draft guideline document.

Table 4.6 highlighted the suggestions and changes that emerged from the stakeholder review. These were incorporated into the final court accommodation guideline document that was appraised in Phase 3. The final guidelines are presented in Table 4.8 and can be viewed in Appendix 4E.

Table 4.8

Final guidelines to be used in Phase 3

Content

Court Accommodations for Persons with Severe Communication Disabilities



Illustration done by Nicci Nathanson

Purpose

These guidelines describe the court accommodations that should be made available to persons with severe communication disabilities to allow them to access the legal system, for example criminal-, civil-, and family court. These guidelines are designed to support persons with severe communication disabilities, their family members, legal practitioners, and support persons. The role of the court accommodations is to assist these individuals to participate in their specific role as a witness, defendant or as a legal practitioner throughout the legal process.

The aim of providing accommodations to the said individuals is to assist these individuals in achieving their human right of access to justice, without discrimination and inequality.

These guidelines have been developed using a human rights framework based on the Convention on the Rights of Persons with Disabilities (CRPD) (2006) with specific focus on [Article 13 – Access to Justice](#) and [Article 21 - Freedom of expression and opinion, and access to information](#).

(*There are links attached to Article 13 and Article 21. By clicking on the links above, this will assist you in accessing the articles.)

Development of the guidelines

These guidelines are based on information from four data sources:

1. [A legal scoping review of court accommodations \(this includes in depth detail of the methodology, selection criteria, strengths, and limitations\)](#)
2. [An expert focus group with South African experts](#)
3. An expert online focus group with international experts
4. Interviews with legal practitioners with disabilities.

Together these four data sources form part of the study entitled, “Accommodating persons with severe communication disabilities in court: Using a holistic approach to guide key role-players”.

Please cite these guidelines as follows:
White, RM (2021). Accommodating persons with severe communication disabilities in court: Using a holistic approach to guide key role-players. Unpublished doctoral thesis, University of Pretoria, Pretoria, South Africa

Please click on the top two data sources for the published papers.

Who is a person with a severe communication disability?

- ❑ A person who cannot make their wants or needs known by using spoken communication (speech or writing).
- ❑ A person who may or may not have difficulty in understanding certain words and when being spoken too.
- ❑ Severe communication disabilities can be associated with developmental disability such as intellectual disability, cerebral palsy, autism spectrum disorder or can be acquired for example brain injury, stroke and motor neuron disease.

How to use the guidelines

The definition of a “person with a severe communication disability” is highlighted in the text box on the left. These four guidelines are a general set of recommendations for court accommodations for persons with severe communication disabilities to enable them to participate in the legal system, thereby ensuring access justice.

It is important to acknowledge that persons with disabilities are not all the same in their receptive and expressive communication skills, and styles may differ as well as their needs and support requirements. Therefore, each person ought to be treated with respect and dignity using an individualistic approach. There is no “one size fits all” accommodation, and therefore accommodations must be tailored to the needs and specific skills of the individual.

Guidelines for court accommodations for persons with severe communication disabilities

1

The person should be allowed to use their “voice” using a communication method or mode of their preference throughout the whole legal process.

The CRPD highlights that every person with a disability should be allowed to participate in a meaningful and equal way in any legal proceeding that concern them, whether as a witness, defendant or legal practitioner.

Court accommodations that could assist the individual in being able to use their “voice” are:

1. Use an intermediary
2. Use augmentative and alternative communication (AAC) methods
3. Use a sign language interpreter
4. Use an AAC toolkit
5. Use a victim statement (for victims)

2

The person should be shown respect and treated with dignity by all persons involved throughout the legal process.

The CRPD highlights the importance of respect for persons with disabilities. Dignity is provided to persons with disabilities when they are treated in a courtesy manner and when they are recognised as individuals. Respect includes environmental adaptations and accommodations that make up the physical, social and attitudinal environment.

Court accommodations that could assist these individuals in being shown respect are:

1. Allow a support person
2. Allow witness, support, preparation and profiling program (court preparation programme)
3. Allow frequent breaks
4. Testify behind a screen
5. Testify via live video/television link
6. Conduct a functional assessment of the person
7. Testify without the defendant present in the courtroom, and only the defence attorney present
8. Testify not on the witness stand
9. Testify in the judge’s chambers
10. Testify outside the courtroom
11. Ensure physical accessibility

3

The person should feel that all decisions are being made in a fair and neutral way throughout the whole legal process.

The courts and legal practitioners should ensure to use objective, legitimate criteria for making decisions and apply fairness in decisions when a person with a communication disability needs to access and participate in the court. Personal bias or views that could influence choice or opinion should not be allowed.

Court accommodations that could assist the individual in being shown fairness in court are:

1. Involve an expert professional
2. Involve an expert witness
3. Remove official attire
4. Prohibit personal cross-examination by accused or defendant themselves in cases where they represent themselves.

4

The person should feel that all legal practitioners can be trusted and that their decisions are easy to understand and in the person’s best interest.

The courts and legal practitioners should ensure that court accommodations can support the person with a communication disability’s receptive language (understanding) and the person should feel that the courts motives are trustworthy.

Court accommodations that could assist the individual in experiencing feelings of trust are:

1. Use appropriate and proper questioning strategies.
2. Use linguistic simplification, for example editing and processing written and spoken information to ensure that it is simple, clear and easy to understand.
3. Use pictures/communication aids to enhance understanding.
4. Use a facilitator (to simplify language, to give meaning and to support the individual).

Additional court accommodations were identified in the legal scoping review and can be [accessed here \(please click here\)](#). For further explanation and definitions of the above-mentioned accommodations, [please click here](#).

A holistic approach to court accommodations for persons with severe communication disabilities

A holistic approach

These guidelines and the specific accommodations mentioned are not intended as an exhaustive list but rather to assist legal practitioners in making available court accommodations for persons with severe communication disabilities, the accommodations alone will not assist persons with communication disabilities in accessing justice.

As suggested in research, ([please click here](#)) a combination of court accommodations, a cross-disciplinary approach from all practitioners involved in the legal proceedings (e.g., judges, prosecutors, lawyers, social workers, expert witnesses, court officials etc.), as well as their knowledge, skills, attitudes, and training will impact on the process and should therefore be considered, so that access to justice for persons with severe communication disabilities can be achieved.

Furthermore, emphasis must be placed on the importance of law reform and changes in legal procedures and processes as highlighted in all four data sources mentioned above.

Additional resources

- The United Nations (2020) has released and identified international principles and guidelines on access to justice for persons with disabilities, these guidelines can be accessed here ([please click here](#)).
- Domestically, the United Kingdom and Australia's judiciary systems have published Equal Treatment Bench Books, which are guides for judicial officers and suggests steps that could increase participation by all parties, including persons with severe communication disabilities. [Please click here for access.](#)
- For examples of case law involving persons with disabilities and the use of intermediaries, frequent breaks, CCTV, AAC and simple questioning strategies please [click here](#).
- For important definitions such as: Persons who use AAC and persons who are hard of hearing [please click here](#).

International implications

The implementation of any guideline has cost implications and the recommended court accommodations also do. In many judicial and legal systems (particularly those in low- and middle-income countries) there may be limited resources and services readily available for persons with severe communication disabilities. Some accommodations for example, an intermediary or sign language interpreter, has cost implications, but other accommodations such as removal of official attire does not, and therefore accommodations should be judged on an individual basis.

The main aim of these guidelines is to assist and support individuals with severe communication disabilities (and their families) who often find themselves excluded from the legal system to be able to participate effectively and meaningfully, and ultimately, for them to equally realize their human right – access to justice.

Acknowledgements

Thank you to the following persons:

- All the legal experts who participated in the data sources, in South Africa and internationally, for sharing their limited time and invaluable knowledge and expertise.
- All the legal practitioners with disabilities who participated in data source 4 and shared their personal experiences and providing an insider perspective.
- The stakeholders with severe communication disabilities who evaluated the feasibility and clarity of the guidelines.

Funding

These guidelines stem from the PhD thesis of Robyn White, with Prof. Juan Borrmann as her supervisor and Dr Ensa Johnson as her co-supervisor (from the CAAC, The University of Pretoria). Financial support from the University of Pretoria, the National Institute of Humanities and Social Sciences (NIHSS) and the South African Humanities Deans Association (SAHUDA) enabled this research. The views from these institutions have not influenced the content of these guidelines.

Additional information

There were no competing interests from any participants, experts, or researchers during the development of these guidelines.

If the document is printed, it is advised that all links added in this document be printed alongside the guideline document.

Table 4.8 contains the final guidelines that would be used in the final phase of the study, the Quantitative Test Phase.

4.7 Trustworthiness: Phase 2

Trustworthiness refers to the degree of confidence in the data and its interpretation, and according to Connelly (2016), specific strategies are applied to ensure the quality of a qualitative study in terms of its authenticity, credibility, dependability, confirmability and reflexivity and transferability. Authenticity can be defined as the extent to which the researcher completely showed a range of different experiences and realistically conveyed a picture of the participants' lives (Connelly, 2016). Credibility can be defined as the degree of confidence in the truth of the findings and in the researcher's interpretation of the data (Polit & Beck, 2014), while dependability is the stability of the qualitative findings over time (Connelly, 2016; Korstjens & Moser, 2018; Nowell et al., 2017). Reflexivity is the process of critical self-reflection about oneself as researcher (Korstjens & Moser, 2018) and transferability can be defined as the degree to which the results of the qualitative findings can be transferred to other contexts or settings involving other participants (Korstjens & Moser, 2018; Polit & Beck, 2014). Table 4.9 outlines the strategies that were used to increase trustworthiness in Phase 2.

Table 4.9

Increasing trustworthiness in Phase 2

Strategy	Technique	Application of technique in present research study
Authenticity	Representativeness of participants	The researcher recruited persons with severe communication disabilities as primary stakeholders who had to review the guidelines (Polit & Beck, 2014).
Credibility	Member checking	The researcher conducted a stakeholder review and shared the data and guidelines with persons with severe communication disabilities (being the primary stakeholders in this research study). This strengthened the data, especially because the researcher and the primary stakeholders were able to look at the data and guidelines from a different viewpoint (Korstjens & Moser, 2018).
Credibility	Prolonged engagement	Phase 2 was characterised by the researcher's long-lasting engagement with the data (which commenced in Phase 1). By investing sufficient time in and becoming familiar with the data and the guideline development process, the researcher was able to produce rich data (Connelly, 2016; Korstjens & Moser, 2018; Morse et al., 2002; Nowell et al., 2017).
Credibility	Methodological triangulation	The researcher gained a better understanding of court accommodations for persons with severe communication disabilities by making a methodological triangulation of the qualitative findings (Hussein, 2015). This triangulation assisted the researcher to make sense of all the data and information that emerged from Phase 1 and allowed her to better interpret the findings from Phase 1 (Carter et al., 2014).

Strategy	Technique	Application of technique in present research study
Dependability	Audit trail	The researcher ensured that the research process was logical, traceable, and clearly documented by means of an audit trail (Korstjens & Moser, 2018; Nowell et al., 2017).
Reflexivity	Research diary	The researcher continuously reflected on her own conceptual lens, explicit and implicit assumptions, preconceptions and values, and how they may affect research decisions in Phase 2 of the study. She also noted her own biases towards the court accommodation guidelines, preferences, and preconceptions (Polit & Beck, 2014). The researcher constantly shared these reflexive notes with her supervisors to be held accountable for her own researcher biases (Connelly, 2016; Korstjens & Moser, 2018). Furthermore, through online discussion groups PhD peers were consulted about decisions, procedures and interpretations in developing the court accommodation guidelines. The feedback that was provided in this way helped to enhance the trustworthiness of Phase 2.
Transferability	Detailed description of data analysis	See Section 4.5 – Development of court accommodation guidelines

By following the strategies discussed above to improve the trustworthiness of Phase 2, the overall quality and correctness of the data obtained were improved.

4.8 Summary and implications of Phase 2

The main aim of Phase 2 was to integrate the qualitative data obtained in Phase 1 and to present them in the format of court accommodation guidelines. This was achieved by conducting methodological triangulation of the qualitative findings from Phase 1. A primary stakeholder review was conducted to test the face validity of the guidelines. The results of the stakeholder review indicated that the feasibility, readability, consistency of style and formatting, and the clarity of the language used in the guideline document were appropriate. Valid and relevant suggestions were provided by the stakeholders and implemented to improve the face validity of the guidelines for data collection in Phase 3. The stakeholder review highlighted how important it was to evaluate the feasibility, readability, consistency of style and formatting, and the clarity of the language used in measuring instruments. Therefore, the instrument used in Phase 3 (CAGAT) would also be piloted before main data collection commenced.

The court accommodation guidelines were developed by integrating the qualitative data obtained from the four distinct data sources in Phase 1 (i.e. the legal scoping review, the South African and international expert panels, and the interviews with legal practitioners with disabilities) using a methodological triangulation approach and thematic analysis. Accommodations that were mentioned by at least two or more data sources were included in the

court accommodation guidelines as recommendations under each guideline. Four distinct guidelines were developed using procedural justice principles (having a voice, being treated with respect, using objective criteria for decision making, and understanding the court language) as a guiding framework. Thereafter, a stakeholder review was conducted (with a sample of participants who represented the primary stakeholders) in order to evaluate the appearance of the guideline document in terms of its feasibility, readability, consistency of style and formatting, and the clarity of the language used in the document. Results from the stakeholder review indicated that although the proposed guidelines were appropriate and relevant, some changes were recommended to further enhance these aspects. The suggestions and changes were implemented, and the final court accommodation guidelines were prepared for Phase 3 – the Quantitative Test Phase.

4.9 Recommendations for Phase 3

It was important to appraise the guidelines so that they could be seen as a valid and applicable resource by both primary and secondary stakeholders, and so that the recommendations suggested would be seen as meeting criteria related to quality and being evidence-based. Appraised court accommodation guidelines could also assist relevant stakeholders in knowing which court accommodations should be made available for persons with severe communication disabilities when needing to access the court system.

4.10 Conclusion

This chapter started with the analysis and methodological triangulation of the qualitative data from the four data sources employed in Phase 1 (legal scoping review; South African expert panel; international expert panel; online interviews with legal practitioners with disabilities). Next, the data was formally integrated into a single corpus, using procedural justice principles as the guiding framework. Thereafter, the findings were used to develop guidelines for court accommodations for persons with severe communication disabilities. A stakeholder review that was conducted with a primary stakeholder sample to evaluate the face validity of the guidelines agreed that the feasibility, readability, consistency of style and formatting, as well as the clarity of the language used in the document were appropriate and relevant. Suggestions were implemented and the guidelines would be appraised in the third and final phase of the study.

CHAPTER 5
PHASE 3: QUANTITATIVE TEST PHASE
Research methodology, results and discussion

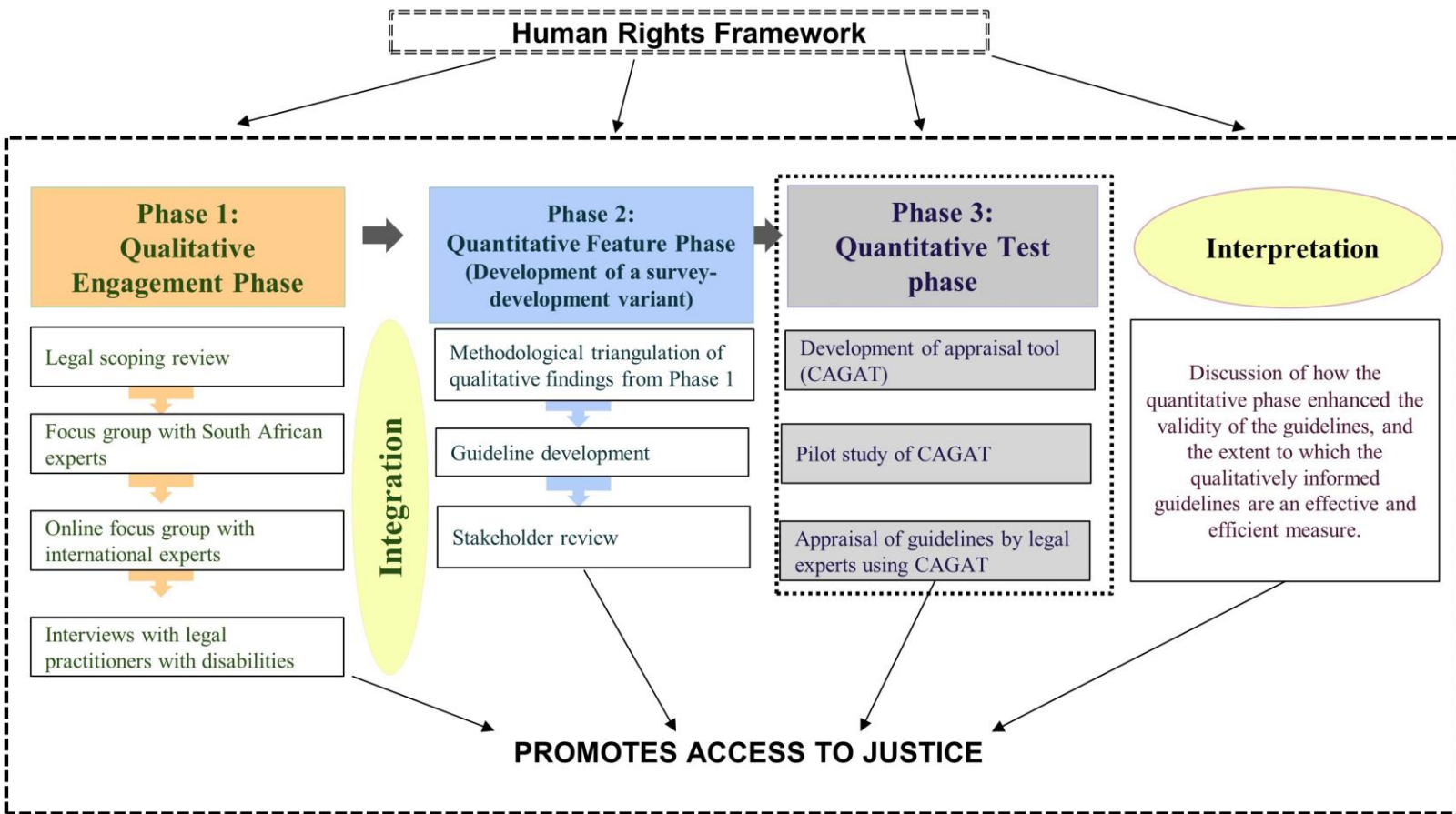
5.1 Introduction

To achieve their full potential and maximise their effectivity in assisting with policy and legal decisions, the said guidelines had to be developed using robust and rigorous methods (Brouwers et al., 2017; Brouwers et al., 2010; Browman et al., 2015; Qaseem et al., 2012). The quality of the guidelines was to be appraised to prove that potential biases as a result of the guideline development process have been addressed adequately, that the recommendations within the guidelines are both internally and externally valid, and that there is confidence in the feasibility of the guidelines for practice (Brouwers et al., 2017).

Chapter 5 is the final of three chapters explaining the research methodology and results, and discussing each of the three phases of this thesis. Each chapter discussed the main aim, as well as the sub-aims, research methodology and ethical considerations pertinent to the specific phase. Chapter 3 focused on Phase 1, the Qualitative Engagement Phase, which entailed qualitative data collection, while Chapter 4 focused on Phase 2, the Quantitative Feature Phase, which was concerned with the development of court accommodation guidelines for persons with severe communication disabilities, which stems from the integration and triangulation of the qualitative results from Phase 1. Chapter 5 now details Phase 3, where the guidelines developed in Phase 2 are appraised by using the custom-designed Court Accommodations Guideline Appraisal Tool (CAGAT). Phase 3 uses quantitative data and is also the final phase of the social justice exploratory sequential mixed method design employed in this thesis. As indicated earlier, Chapters 3, 4 and 5 should be read in conjunction as each phase builds on the preceding phase in a sequential manner (see Figure 5.1).

Figure 5.1

Social Justice Design for developing Court Accommodations for Persons with Severe Communication Disabilities (using an Exploratory Sequential Mixed Methods Approach)



Chapter 5 starts with a discussion of the main aim, the sub-aims and the research design specific to Phase 3 and presents the ethical considerations for this phase. It discusses the development of the CAGAT (the custom-designed tool for appraising the guidelines) and the pilot study and continues with the data collection, which entails legal expert practitioners employing the custom-designed CAGAT to appraise the developed and recommended court accommodation guidelines from Phase 2. The chapter concludes with a summary of the results and main discussion points from this phase.

5.2 Aims for Phase 3

5.2.1 Main aim

The main aim of Phase 3 was to effectively appraise the content of each of the four court accommodation guidelines by employing a quality appraisal tool that uses specific domains (Brouwers et al., 2010).

5.2.2 Sub-aims

To address the main aim of this phase, three sub-aims were delineated:

- (i) Adapt and refine an existing framework – the Appraisal of Guidelines for Research and Evaluation (AGREE II) – to appraise the quality of the newly developed court accommodation guidelines
- (ii) Enhance the face validity of the custom-developed tool – the Court Accommodation Guideline Appraisal Tool (CAGAT) based on the original AGREE II
- (iii) Appraise the quality of the recommended guidelines using the CAGAT in the format of an online survey with expert practitioners

5.3 Research design

The social justice research design used in this study adopted an exploratory sequential mixed methods approach. The study employed a descriptive research design and used a survey that made no attempt to manipulate the participants or their opinions on the developed and recommended court accommodation guidelines. Instead, the aim was simply to describe their opinions as they naturally existed (Mertler, 2015; Ruel et al., 2018). Survey research, which follows a systematic method of gathering information from (a sample of) individuals to describe their opinions on a specific topic (e.g. court accommodations for persons with severe communication disabilities), was well suited to the current study (Joye et al., 2017; Mertler, 2015).

The strengths of survey research are that it enables data collection from a relatively large number of individuals, allows for generalisability, and is versatile both in terms of what can be investigated and how (i.e., the various types of questions) (Joye et al., 2017; Ruel et al., 2018). A limitation of survey research is its relatively low response rates (Mertler, 2015), which often depend on the nature of the study, the potential participants' interest in the topic, the length of the questionnaire, and the population being studied (Mertler, 2015). Research over the past decade

has shown that one way in which response rates can be increased is by delivering surveys using electronic modes, in which case response rates of 40% to 75% are deemed acceptable (Mertler, 2015; Sauermann & Roach, 2013).

5.4 Ethical considerations

The researcher ensured that clear, ethical principles continually guided her during the research process (Creswell & Poth, 2018). The same ethical principles that were followed in Phases 1 and 2 were adhered to in Phase 3. These principles were discussed at length in the first phase of the research study (see Chapter 3, Section 3.4).

In Phase 3, the principle of researcher bias was specifically considered, as this is pertinent to guidelines appraisal (Connelly, 2016; Fassinger & Morrow, 2013). To address researcher bias and eliminate it as far as possible, the researcher practised ongoing reflection and discussion with her supervisors. She also consulted the relevant literature to gauge whether the results were converging with the existing body of knowledge (i.e., showing an overlapping picture), complimenting it (i.e., building a richer picture), or diverging from it (i.e., showing a different picture). The researcher furthermore kept an audit trail of detailed notes of her decisions and analysis and these notes were reviewed by her supervisors. Furthermore, peer group discussions with fellow PhD candidates were held online (Connelly, 2016), multiple coders were used for the data (Nowell et al., 2017) and the results were verified against the previous phases (Morse et al., 2002). Collectively, these strategies prevented bias stemming from only the researcher's perspective on the research.

5.5 Participants

5.5.1 Recruitment and selection criteria

To ensure continuity and prolonged engagement with the data, which has a positive impact on the trustworthiness of data (Connelly, 2016), participants were selected based on the same selection criteria as in Phase 1 (Data sources 2, 3 and 4). This means that participants had to be recognised experts in the field of disability and/or the court system, with written language proficiency in English. Purposive sampling was used to recruit participants for the online survey. This ensured that they had deep and rich knowledge and experience with the legal system and persons with disabilities, which would enhance the quality of the data provided (Onwuegbuzie & Collins, 2007).

5.5.2 Participant description

The researcher identified the relationship between the quantitative and qualitative samples as identical (Collins, 2015; Onwuegbuzie & Collins, 2007; Onwuegbuzie & Corrigan, 2014), meaning that the experts who participated in Phases 1 and 2 of the research design were asked to participate again in Phase 3. However, in an attempt to increase the sample size for the quantitative phase, the researcher also invited new participants who met the selection criteria to take part in the online survey. Purposive sampling was used to recruit the new participants. An invitation was extended to 52 new participants as well as to the 23 participants who had participated in Phases 1 and 2. In total, 75 potential participants were invited to read the developed and recommended court accommodation guidelines and complete the online survey (CAGAT). Information about Phase 3 was provided to potential participants, detailing the aims of the research, what was expected from them in terms of time commitment, as well as potential risks and benefits. This enabled participants to make an informed decision regarding their involvement. Four participants responded and declined to participate as they felt they were not qualified to comment on the topic. However, two of those participants opted to suggest alternative experts who were contacted and who agreed to participate. A total of 36 participants (48%) consented and completed the survey. This percentage is generally regarded as an acceptable response rate for electronic surveys (Baruch & Holtom, 2008; Mertler, 2015; Sauermann & Roach, 2013).

Table 5.1

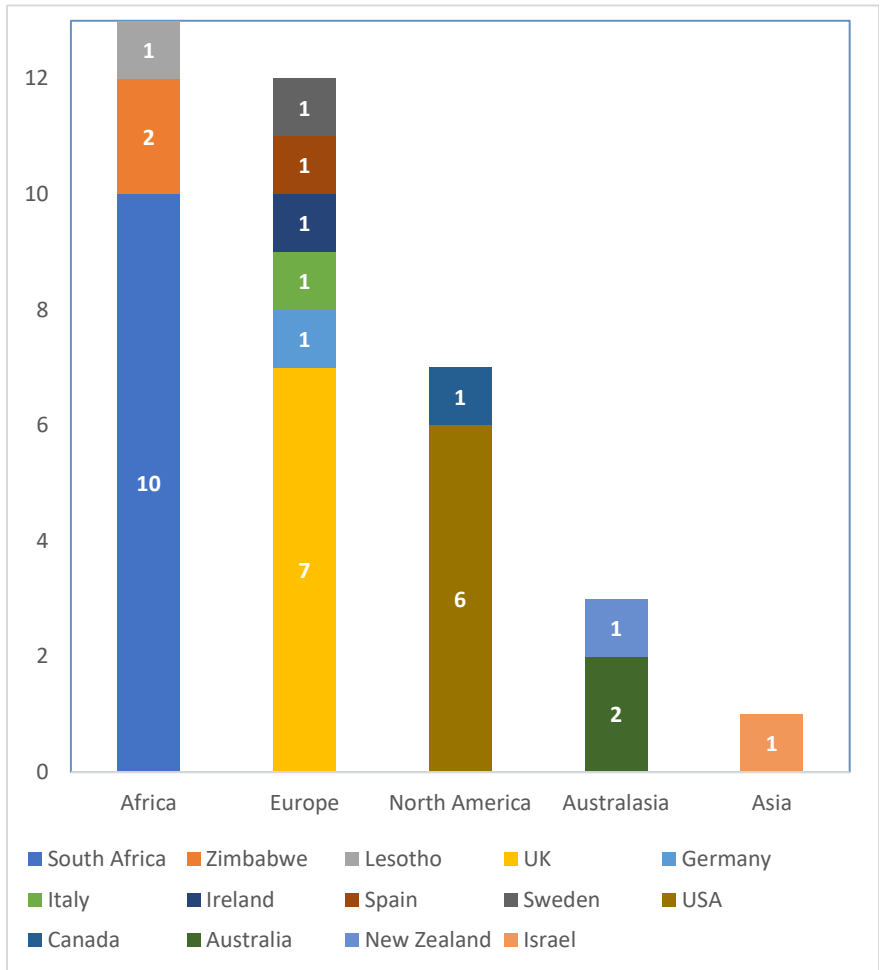
Descriptive criteria of participants in Phase 3 (N=36)

Description	Results (N=36)												
<p>Age The ages of the participants ranged from 26 to 75 years, with an average age of 51 years old. As expected, most participants tended to be older, given the fact that they were selected based on their experience. More than two thirds of the participants were above the age of 40 years, and this attested to the fact that all the participants had been working professionally in the topic field for an extended period of time.</p>	<table border="1"><thead><tr><th>Age Group</th><th>Percentage</th></tr></thead><tbody><tr><td>26 - 29 years</td><td>3%</td></tr><tr><td>30 - 39 years</td><td>31%</td></tr><tr><td>40 - 49 years</td><td>11%</td></tr><tr><td>50 - 59 years</td><td>22%</td></tr><tr><td>60 + years</td><td>33%</td></tr></tbody></table>	Age Group	Percentage	26 - 29 years	3%	30 - 39 years	31%	40 - 49 years	11%	50 - 59 years	22%	60 + years	33%
Age Group	Percentage												
26 - 29 years	3%												
30 - 39 years	31%												
40 - 49 years	11%												
50 - 59 years	22%												
60 + years	33%												
<p>Disability status Seven (19%) of the participants stated that they had a disability themselves. Two participants stated that they had a visual impairment, while one each described their disability as ankylosing spondylitis, cerebral palsy, hearing impairment, stroke and partial paraplegia.</p>	<table border="1"><thead><tr><th>Disability Status</th><th>Percentage</th></tr></thead><tbody><tr><td>Yes, have a disability themselves</td><td>19%</td></tr><tr><td>No, do not have a disability themselves</td><td>81%</td></tr></tbody></table>	Disability Status	Percentage	Yes, have a disability themselves	19%	No, do not have a disability themselves	81%						
Disability Status	Percentage												
Yes, have a disability themselves	19%												
No, do not have a disability themselves	81%												

Description**Results (N=36)**

Countries and nationalities represented

The majority of the participants were South African (n=10), and this could be directly linked to the fact that this study emanated from South Africa. Although the study did not specifically aim to recruit participants from across the globe, participants represented five of the seven continents of the world, namely: Asia, Africa, Australasia, Europe and North America. The specific countries represented per continent are shown in the bar graph, indicating further variety in terms of countries. This spread in jurisdiction resulted in diverse opinions from participants and strengthened the confidence in the feasibility of the developed and recommended court accommodation guidelines for practice.

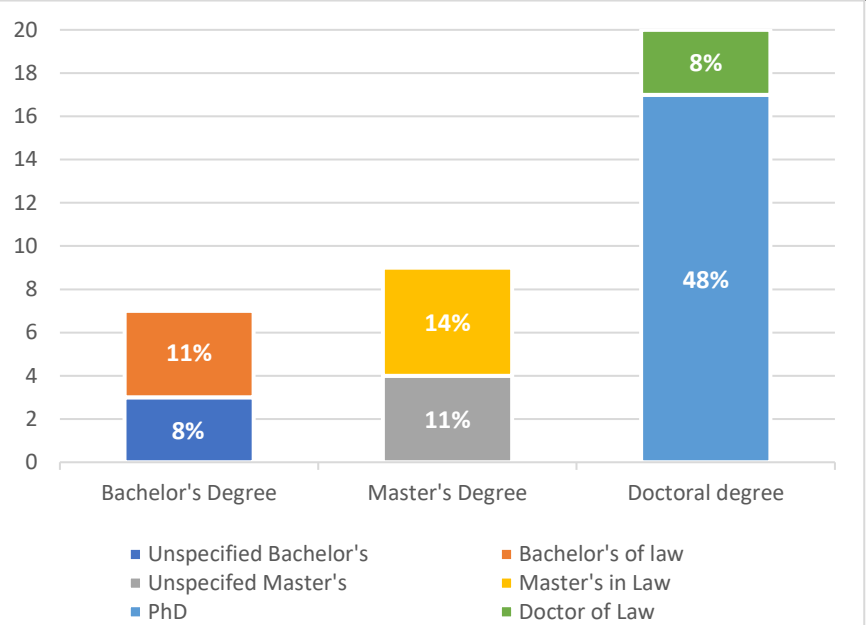


Description

Results (N=36)

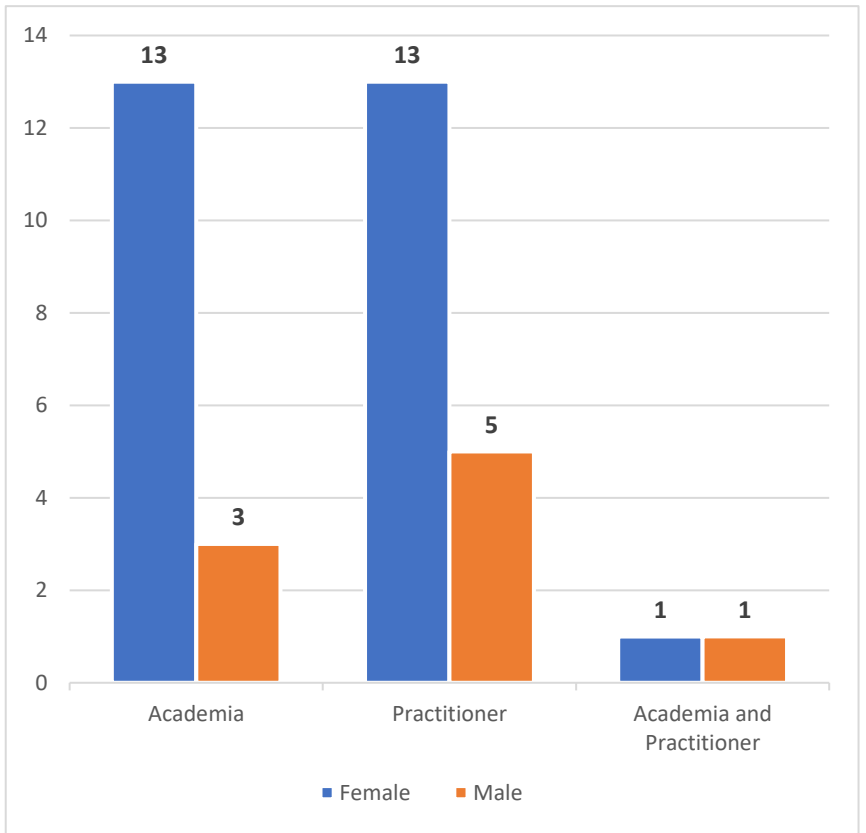
Qualifications

Participants' academic qualifications ranged from bachelor's degrees to doctoral degrees. More than half of the participants (56%) held doctorates (comprising of 17 PhDs and three Doctor of Law (LLD) degrees), while 25% had master's degrees (comprising five Master of Law (LLM) degrees and four unspecified master's degrees) and 19% had bachelor's degrees (comprising three general B degrees and four Bachelor of Law (LLB) degrees). The qualification results confirmed their knowledge base and status as experts.



Gender and current work role

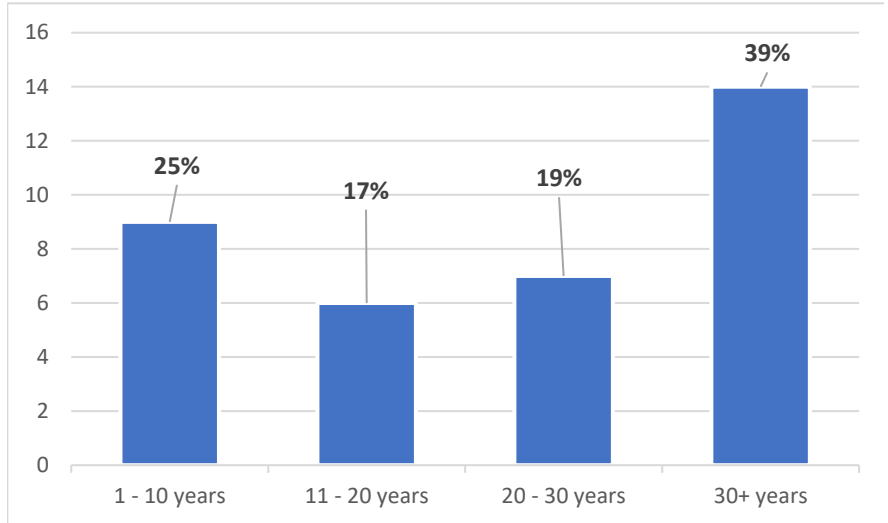
The majority of participants (75%, n=27) were female. Half of the female participants (51%, n=14) were practitioners such as speech language therapists, social workers and nurses, which tend to be female-dominated professions (Collins, 2019; Halper et al., 2019; Litosseliti & Leadbeater, 2013). The male participants were practising lawyers (11%, n=4), three males worked in academia, one male was a forensic psychologist and registered intermediary, and the other male was a clinical psychologist and associate professor. Almost half (44%, n=16) of the participants were working in academia (for example as professors, lecturers or researchers) at the time of data collection (January-February 2021). The other half were working in a clinical capacity, for example, as defence attorneys, directors of organisations, speech therapists or clinical psychologists. One male and one female (6%) stated that they worked equal hours in academia and clinically.



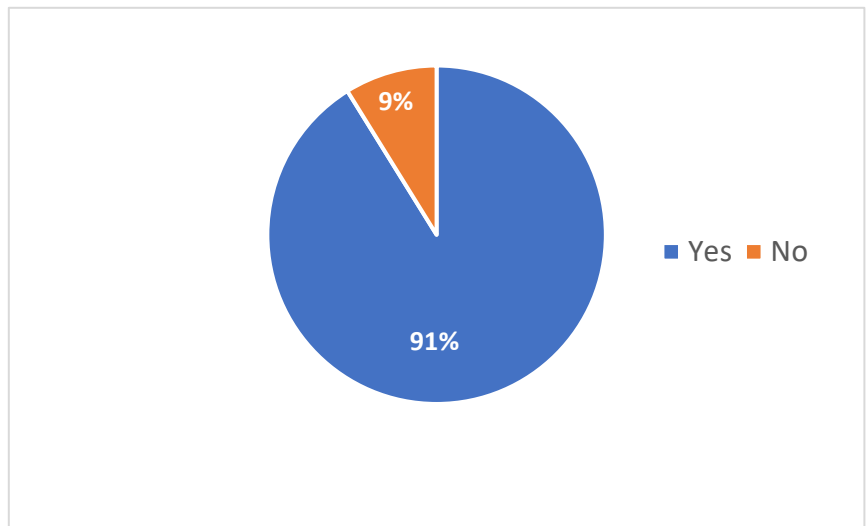
Description**Results (N=36)**

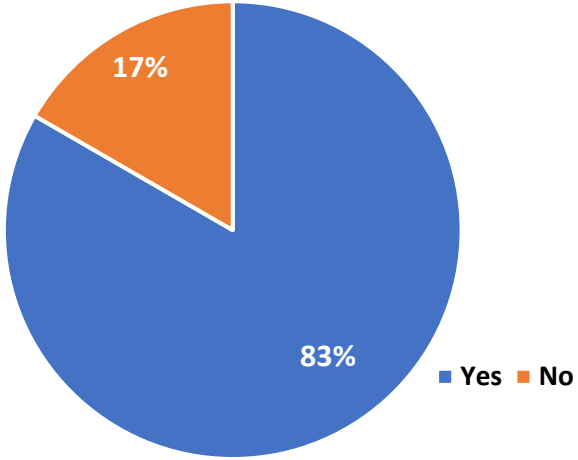
Experience (total number of years)

More than a half (58%) of the participants had more than 20 years' work experience, of whom 39% had more than 30 years' work experience – attesting to their extensive experience, knowledge and skill of the subject topic. The average work experience of the participants who had 1 to 10 years working experience (n=9) was 7 years.

**Work experience with persons with disabilities**

Almost all of the participants (91%) had direct work experience with persons with disabilities. This attested to their ability to appraise the developed and recommended court accommodation guidelines appropriately and in a reflective manner. The remaining three participants who indicated that they did not have direct contact with persons with disabilities, all stated that they had research and academic experience with persons with disabilities and the legal system.



Description	Results (N=36)						
<p>Clinical/practical experience with persons with disabilities who have come into contact with the legal system</p> <p>A total of 83% of the participants had practical/clinical experience and had assisted persons with disability in a variety of roles, e.g., as an intermediary, defence attorney, expert witness, or forensic psychologist. A large portion of the participants were also experienced researchers in the area who had practical/clinical experience. However, six participants stated that they wished to be transparent and honest by acknowledging that their experience in terms of disability and the legal system was exclusively research-driven, and that their responses should be interpreted against this backdrop.</p>	 <table border="1"> <caption>Data for Pie Chart</caption> <thead> <tr> <th>Response</th> <th>Percentage</th> </tr> </thead> <tbody> <tr> <td>Yes</td> <td>83%</td> </tr> <tr> <td>No</td> <td>17%</td> </tr> </tbody> </table>	Response	Percentage	Yes	83%	No	17%
Response	Percentage						
Yes	83%						
No	17%						

5.6 Material and equipment

Sub-aim 1 of Phase 3 focused on adapting and refining the Appraisal of Guidelines for Research and Evaluation (AGREE II) framework to judge the quality of the newly developed court accommodation guidelines. The extensive revisions resulted in a custom-designed tool, namely the CAGAT, which was then embedded in Qualtrics for data collection. Both the CAGAT and Qualtrics are next described as part of the material and equipment section.

5.6.1 Development of the CAGAT

Multiple stakeholder groups have proposed standards for appraising the quality of guidelines, including (but not limited to) the Institute of Medicine (IOM) in the USA, the WHO, the National Institute for Health and Clinical Excellence, the Scottish Intercollegiate Guidelines Network, and the National Health and Medical Research Council (Qaseem et al., 2012). However, these proposed standards mostly focus on the health sciences, with a paucity of proposed standards for appraising the quality of guidelines in the social sciences (which include the legal system). The developed and recommended court accommodation guidelines for persons with disabilities were the focus of the current thesis.

One such tool, the AGREE (Appraisal of Guidelines, Research and Evaluation) II framework, was developed to inform recommendation guidelines for health sciences by an international team of guideline developers and researchers, known as the AGREE collaboration. This collaboration was established in 2003 with the specific aim to create a generic instrument for clinical practice guidelines, to assess the process of development and to report this process in the guidelines (Brouwers et al., 2017). Based on rigorous methodologies, the collaboration's efforts resulted in the AGREE II instrument, which consists of 23 items across six quality domains (Brouwers et al., 2017). As stated by the AGREE developers and researchers, the AGREE II can be used by other researchers by incorporating the concepts of the AGREE II tool into their own procedural documents, development protocols and reporting templates (Brouwers et al., 2010). Therefore, when basing the quality domains on evidence (namely scope and purpose, stakeholder participation, rigor of development, applicability, clarity of presentation and editorial independence), the AGREE tool is applicable to any guideline development due to its over-arching nature (Brouwers et al., 2017). Although the AGREE tool is based on health-related guidelines, the domains may be of use as a first approach to inform and analyse guidelines in other disciplines, such as law. This was confirmed during a personal email exchange between me and a researcher at the AGREE Scientific Research office (Pamela Velásquez, personal communication, 29 October 2020) (see Appendix 5A).

The six quality domains from the AGREE II tool were therefore used as a framework to refine and adapt a new quality appraisal tool, namely the CAGAT. Each of the six domains and the 23 items in the AGREE II tool were evaluated, and subsequently adapted and refined to address the scope of the proposed guidelines for court accommodations for persons with severe communication disabilities. This process was guided by the human rights framework and procedural justice principles, which formed the overarching theoretical framework of this study (White et al, 2020a; White et al., 2020b).

As mentioned earlier, the CAGAT consists of six quality domains as suggested by Brouwers et al. (2017), namely scope and purpose, stakeholder participation, rigor of development, applicability, clarity of presentation and editorial independence, with 17 items for the guideline appraisal process. Six items were excluded as they focused specifically on health-related items and the future updates of the guidelines, for example “the health question covered by the guideline is specifically described”. One item, “a procedure for updating the guideline is

provided”, was also excluded as it was beyond the scope of this doctoral study. The CAGAT concludes with an ‘overall assessment’ domain which consists of two items. Table 5.2 presents each domain, the number of items per domain, as well as the domain purpose.

Table 5.2

CAGAT domain conceptualisation

Domain	Items	Purpose of domain
Domain 1: Scope and purpose	Items 1-2	Domain 1 tries to capture the overall aim of the guideline document, the specific questions, and the target population, conceptualised as scope and purpose.
Domain 2: Stakeholder involvement	Items 3-5	Domain 2 focuses on the extent to which the guideline document was developed by the appropriate stakeholders and if the guideline document represented the views of its intended target population (i.e., primary stakeholders).
Domain 3: Rigor of development	Items 6-11	Domain 3 examines the process used to gather and synthesise the evidence and the methods to formulate the recommendations (court accommodations for persons with severe communication disabilities) for the guideline document.
Domain 4: Clarity of presentation	Items 12-13	Domain 4 focuses on the language, terminology, structure, and format of each guideline.
Domain 5: Applicability	Items 14-15	Domain 5 focuses on the likely barriers to and facilitators of implementing the guidelines, as well as the resource implications of applying the guidelines.
Domain 6: Editorial independence	Items 16-17	Domain 6 tries to ensure transparency in terms of the formulation of recommendations and attempts not to make them unduly biased with competing interests.
Overall assessment	Items 18-19	This over-arching domain includes the rating of the overall guideline document and whether it would be recommended for use in the legal system.

Table 5.3 now justifies each of the CAGAT’s items (from number 1 to 19), across the six domains in detail. It also highlights the response scale that was used.

Table 5.3*CAGAT item development*

Nr	Item (question)	Justification	Rating / Response scale
Domain 1 – Scope and purpose			
1	The overall objective of the guidelines was specifically described.	The objective of the guidelines should be clearly described and the benefits from this guideline should be specific to the problem or topic.	Likert scale: 1 = Strongly disagree 7= Strongly agree
2	The population for whom the guideline is intended was specifically described.	A clear description of the population should be included, highlighting both the nature and severity of the disability.	Likert scale: 1 = Strongly disagree 7= Strongly agree
Domain 2 – Stakeholder involvement			
3	The guideline development process included individuals from different stakeholder groups.	A clear description should be given of all the participants across different stakeholder groups who were involved.	Likert scale: 1 = Strongly disagree 7= Strongly agree
4	Views and perspectives were sought from stakeholders (including persons with disabilities) who would benefit from the guidelines.	Information and perspectives from relevant stakeholders (persons with disabilities) should inform the development of the guidelines and be mentioned as such.	Likert scale: 1 = Strongly disagree 7= Strongly agree
5	The individuals who will benefit from the guideline document were clearly defined.	The individuals who will benefit from the guideline should be clearly defined allowing the reader to immediately determine if the guideline is relevant to them.	Likert scale: 1 = Strongly disagree 7= Strongly agree
Domain 3 – Rigor of development			
6	Systematic methods were used to search for evidence.	Details were provided of the strategy used to search for evidence, for example search terms, databases, etc.	Likert scale: 1 = Strongly disagree 7= Strongly agree
7	The criteria for selecting the evidence were clearly described.	Criteria for including/excluding evidence identified were provided.	Likert scale: 1 = Strongly disagree 7= Strongly agree
8	The strengths and limitations of the body of evidence were clearly described.	Statements highlighting the strengths and limitations of the evidence were provided.	Likert scale: 1 = Strongly disagree 7= Strongly agree
9	The methods for formulating the draft guidelines were clearly described.	A description was provided of the methods used to formulate the guidelines and how final decisions were arrived at.	Likert scale: 1 = Strongly disagree 7= Strongly agree
10	The international implications were considered during formulation of the draft guidelines.	The guideline document considered the international implications.	Likert scale: 1 = Strongly disagree 7= Strongly agree
11	There was an explicit link between the recommendations (court accommodations) and the supporting evidence.	A clear description was provided of the explicit link between the draft guidelines and the supporting evidence.	Likert scale: 1 = Strongly disagree 7= Strongly agree
Domain 4 – Clarity of presentation			

Nr	Item (question)	Justification	Rating / Response scale
12	The recommendations (court accommodations under each guideline) were specific (or clearly specified).	Under each guideline, concrete and precise descriptions were included of what court accommodations are relevant for the stakeholders, as informed by the body of evidence.	Likert scale: 1 = Strongly disagree 7= Strongly agree
13	The recommendations (court accommodations under each guideline) were easily identifiable.	Users were easily able to find the most relevant court accommodations and these recommendations addressed the main aim.	Likert scale: 1 = Strongly disagree 7= Strongly agree
Domain 5 – Applicability			
14	The guideline provided advice on how the court accommodations can be put into practice.	Additional materials and resources were given and could be easily accessed by the different stakeholders.	Likert scale: 1 = Strongly disagree 7= Strongly agree
15	The potential resource implications of applying the court accommodations were considered.	Additional costs, equipment or services that were needed to implement the recommended court accommodations were provided and clearly stated.	Likert scale: 1 = Strongly disagree 7= Strongly agree
Domain 6 – Editorial independence			
16	The funders who enabled this research were mentioned. Their views did not influence the content of the developed guidelines.	It was explicitly stated that the views and interests of the funding body did not influence the final recommendations.	Likert scale: 1 = Strongly disagree 7= Strongly agree
17	Competing interests were recorded.	It was explicitly stated that there were no competing interests during the development of the guidelines.	Likert scale: 1 = Strongly disagree 7= Strongly agree
Overall assessment			
18	Rate the overall quality of the guideline.	The overall assessment requires the user to make a judgement as to the quality of the guideline, taking into account the appraisal items considered in the assessment process.	Likert scale: 1 = extremely poor 6 = exceptional
19	I would recommend this guideline for use.	The overall assessment requires the appraisal to make a judgement as to the quality of the guideline, taking into account the appraisal items considered in the assessment process.	Likert scale: Yes = 3 Yes with modifications =2 No = 1

Note: Likert-scale: 1 = strongly disagree; 2 = disagree; 3 = somewhat disagree; 4 = neither agree nor disagree; 5 = somewhat agree; 6 = agree; 7 = strongly agree.

For the purpose of this research study, and to eliminate the repetition of certain domains and items, only Domain 4 appraised each of the four guidelines individually:

- **Guideline 1:** The person should be allowed to use their ‘voice’ by using a communication method or mode of their preference.
- **Guideline 2:** The person should be shown respect and treated with dignity by all persons involved throughout the legal process.

- Guideline 3: The person should feel that all decisions are made in a fair and neutral way throughout the legal process.
- Guideline 4: The person should feel that all legal practitioners can be trusted and that their decisions are easy to understand and, in the person's best interest.

The remaining domains all appraised the recommended guidelines as a whole. All the domains and items were entered into the online platform, Qualtrics, in the form of a survey in preparation for the next sub-aim, the pilot study. This online survey began with a biographic section and used biographic questions similar to those included in Phase 1 – with a slight adaptation in terms of linguistic formulation.

5.6.2 Qualtrics

The CAGAT was embedded into Qualtrics, an online tool for creating, distributing and analysing surveys and their subsequent results (Ginsberg, 2011). As explained in Phase 2, Qualtrics was selected due to a number of reasons, including the fact that it is a well-known, commercial survey software application that allows researchers to build and embed their own surveys – thereby heightening its applicability and usefulness. Additionally, the university where the researcher was enrolled as a PhD candidate, holds an active Qualtrics research account, thus making it available to students at no additional cost (Carpenter et al., 2019).

5.6.3 Pilot study of the CAGAT

5.6.3.1 Aim

The aim of the pilot study was to conduct a pre-test of the online material, the CAGAT, by focusing specifically on its face validity. In other words, the researcher attempted to make a subjective assessment of the presentation and relevance of the tool to determine whether the included items appeared to be relevant, reasonable, unambiguous and clear (Oluwatayo, 2012; Taherdoost, 2016). This was also done to discover potential issues with the material prior to the main data collection for Phase 3, so that the researcher could take corrective action to improve the material and the research process, thereby increasing the likelihood of success of the main data collection for Phase 3 (Persaud, 2010; Zailinawati et al., 2006).

5.6.3.2 Recruitment and selection criteria

Skilled persons either in the field of study (in this case individuals with experience in legal practice and severe communication disability) or in the proposed methodology (in this case

individuals with experience of online surveys) were recruited to participate in the pilot study. Due to the small global pool of experts in the field of study (i.e., legal and/or disability practitioners), a decision was made to recruit them all as prospective participants for the data collection related to guideline appraisal. The members of the latter group (participants with experience in the proposed methodology) were selected to rate the face validity of the tool (CAGAT) for its intended use as part of the pilot study (Oluwatayo, 2012). Purposive sampling was used to recruit participants for the pilot study to ensure that they had the necessary knowledge and skills in online platforms and survey development (Onwuegbuzie & Collins, 2007). The pilot study participants participated only in this phase of the research.

5.6.3.3 Participant description

The biographic information of the 12 pilot study participants is presented in Table 5.4.

Table 5.4

Biographical information of participants in pilot study (N=12)

Nr	Age in years	Gender	Highest educational qualifications	Number of years' work experience	Experience with online work
311	37	Male	Master's degree in finance	16-20 years	Uses online tools and surveys for research.
312	34	Female	Honours degree in communication and media studies	11-15 years	Does content development, wireframing, user experience design, social media management.
313	42	Male	Master's degree in physics IT, data and cyber security	21-25 years	Oversees cyber security for a large organisation with substantial online services for both staff and customer use. Responsible for online security learning.
314	38	Male	Bachelor's in economics Chartered accountant	11-15 years	Directs an online intelligence systems division.
315	35	Female	Honours degree in philosophy	11-15 years	Conducts user research, tests software and designs online content and software.
316	63	Female	Honours degree in science Postgraduate certificate in education	25 years and above	Manages online teaching content and delivery for an international school.
317	39	Female	Master's degree in music	16-20 years	Develops and delivers online training content.
318	50	Female	Honours degree in psychology Chartered accountant	21-25 years	Manages online work, training, content delivery and data analysis.
319	35	Male	Master's in business administration	11-15 years	Builds online programmes focused on technology education and the use of technology-related products.
320	37	Female	Master's degree in science	11-15 years	Does platform management, email marketing, online work management, survey development, webinar hosting.
321	32	Female	PhD in science	1-5 years	Develops online surveys.
322	35	Male	Master's in engineering	11-15 years	Manages online work.

*PhD – Doctor of Philosophy

More than half of the participants were female (n=7), with an average age of 40 years across the whole group (range of 32-63 years of age). All the participants held at least a Bachelor's degree qualification, with 92% having obtained either an Honours degree (n=4), a Master's degree (n=6) or a PhD (n=1). Two participants had obtained their chartered accountancy qualifications. Half of the participants (n=6) had 11 to 15 years' work experience, two had 16 to 20 years' work experience and a further two had 21 to 25 years' work experience. One participant had over 25 years' work experience and one had less than 5 years' work experience. In accordance with the requirements, all the participants had vast online work experience. At the time of the pilot study, all participants were employed and therefore working actively in the online field. When the profiles of the pilot study participants were considered, it became evident that they were able to make meaningful recommendations that would positively impact the instrument and method suggested for use in the main data collection for Phase 3.

5.6.3.4 Data collection procedures for pilot study

Prior to data collection, email contact was made to establish rapport with all potential participants. Next, they were emailed a letter of information outlining the research topic (Appendix 5B), what was expected of them, as well as potential risks and benefits. Precautions were taken to guarantee the confidentiality of their emails and responses as only the researcher would have access to the password-protected email platform. A second email was sent which contained instructions and the two Qualtrics links – one for the online CAGAT (Appendix 5C) and one for the questionnaire that contained the pilot study questions (Appendix 5D). The Qualtrics survey contained an informed consent section, biographic questions and the online survey questions (Appendix 5D). The participants were asked to first access and read the guidelines and then complete the CAGAT, before completing the pilot study questionnaire. The researcher maintained an active online presence and was available to answer any questions or address concerns when needed.

5.6.3.5 Materials for pilot study

In order to determine the face validity of the CAGAT, a pilot study questionnaire was developed. The participants were requested to complete the online pilot Qualtrics survey after reading the guidelines and completing the CAGAT. The components that were assessed included

the technical aspects of the survey, the layout and visual representation of the survey, the layout of survey items and general aspects (Oluwatayo, 2012).

The online pilot questionnaire had a total of twelve questions, of which 11 were yes/no questions and one was an open-ended question. Table 5.5 explains the development of the pilot questionnaire by highlighting what component was assessed and evaluated, the justification thereof, as well as the specific question included and the response item.

Table 5.5

Pilot study questionnaire conceptualisation and layout

Component assessed	Justification	Question included in online survey	Item response/scale
Technical aspects			
1) Accessibility and ease of opening the survey link	It is important that the survey link is accessible and can be accessed easily (Kennedy et al., 2019).	Did the link to the CAGAT work effectively?	Yes/No
2) Accessibility via different devices (laptops, mobile phones, etc.)	The survey link should be easily accessible from a variety of different devices to obtain robust results (Kennedy et al., 2019).	Did the link work effectively on your specific device (laptop, mobile phone, etc.)? Please specify or expand.	Yes/No (with comment box)
3) Accessibility via different browsers (e.g., Safari, Google Chrome, Internet Explorer)	It should be easy to open the link from a variety of browsers to obtain robust results (Kennedy et al., 2019).	Did the link work effectively from your specific web browser on your device (for example Google Chrome, Internet Explorer, Safari, etc.)?	Yes/No (with comment box)
Layout and visual representation			
4) Item sequencing and flow	The structure and flow of the survey are important to ensure that participants will find it easy to complete (Burton & Mazerolle, 2011).	Is the flow of the items in the CAGAT presented in a logical and easy-to-read format?	Yes/No
5) Layout optimisation (e.g., in a vertical or horizontal display)	The layout of the response items in the survey is important so that participants will find completing it straightforward (Burton & Mazerolle, 2011).	Is the layout of the response items in the CAGAT (the 7-point Likert scale) appropriate?	Yes/No
Layout of survey items			
6) Clarity of items	The instructions of the survey should be clear and adequate to enable participants to complete it easily and without confusion (Broder et al., 2007).	Are the questions and items on the CAGAT clearly instructed and logically ordered?	Yes/No
7) Clarity of instructions	The instructions of the survey should be clear and appropriate to enable the participants to complete it easily and without confusion (Broder et al., 2007).	Are the instructions on the CAGAT clearly formulated and well ordered?	Yes/No

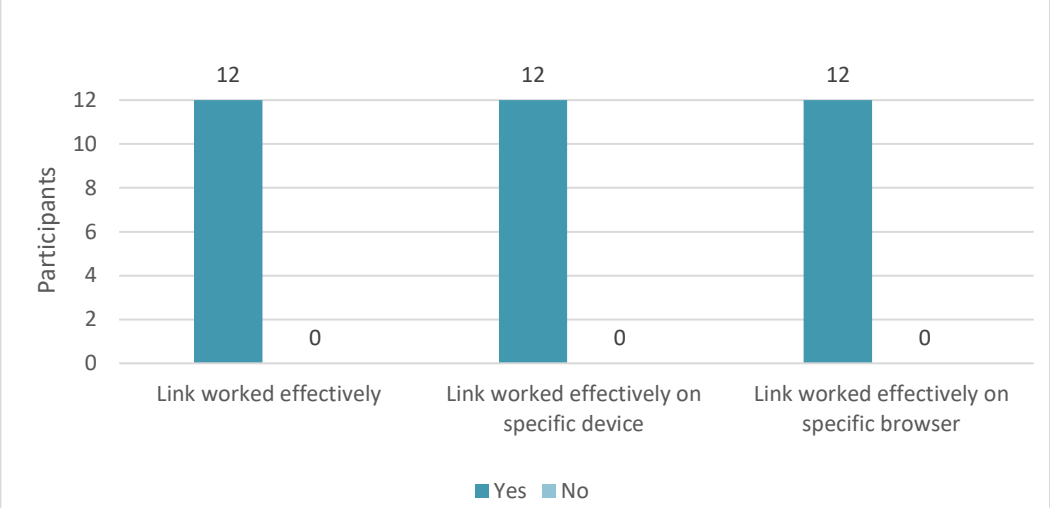
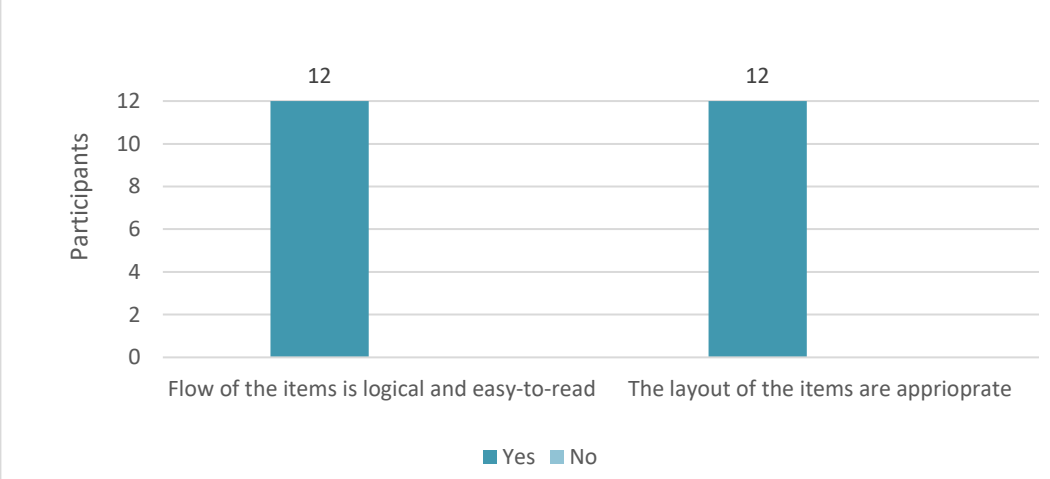
Component assessed	Justification	Question included in online survey	Item response/scale
8) Grammar and spelling	Correct grammar and spelling can assist participants to complete the survey easily (Taherdoost, 2016).	Did you notice any spelling or language errors?	Yes/No
General aspects			
9) Completing time requirements	The time required to complete the survey is important and the participants should feel that the survey can be completed within an acceptable time (Taherdoost, 2016).	Was the length of the CAGAT appropriate?	Yes/No
10) The number of items in the CAGAT is appropriate to comprehensively answer the purpose of the research	The number of items in the survey is important as it influences the length of time it will take to complete the survey (Taherdoost, 2016).	Are the number of items in the CAGAT appropriate?	Yes/No
11) Visual layout in terms of line spacing	The line spacing and appearance of the survey should be refined so that it can be completed effortlessly (Oluwatayo, 2012).	Was the line spacing used in the CAGAT sufficient enough to allow for easy reading?	Yes/No
Further suggestions			
12) Further suggestions	Suggestions from participants are needed to enhance the confidence in and the face validity of the survey (Kennedy et al., 2019).	Are there any comments, suggestions or feedback regarding the CAGAT you would like to add?	Open-ended question

To examine the face validity of the survey, a dichotomous scale was used with categorical options of ‘Yes’ and ‘No’, which indicated whether the participants agreed or disagreed with the specific item (Taherdoost, 2016). However, comment boxes and one open-ended question at the end of the online questionnaire were included for participants to comment on specific items, wording or formatting issues that had caused possible confusion or that they considered redundant (Broder et al., 2007).

5.6.3.6 Results and discussion

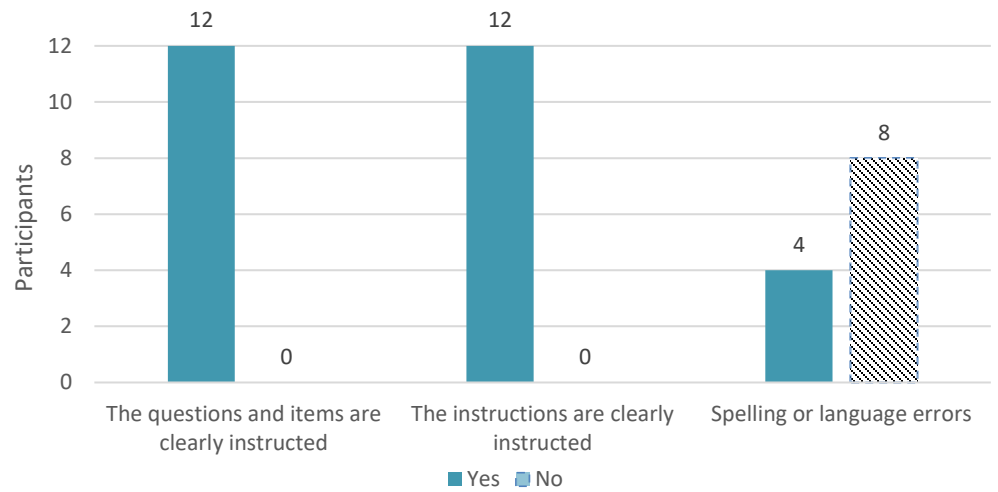
Results for Questions 1 to 12 are presented in Table 5.6.

Table 5.6
Results from pilot study

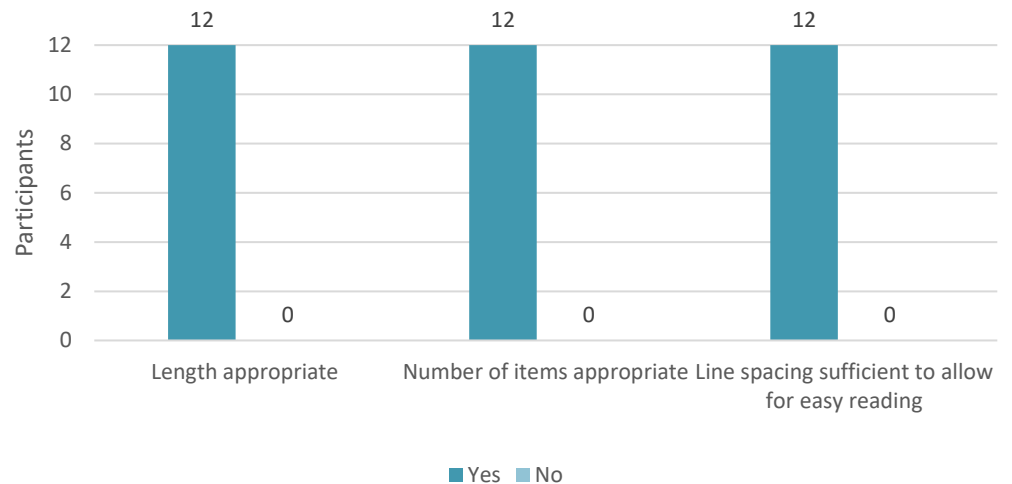
Discussion	Results												
<p>Regarding technical aspects, all the participants agreed that the link worked effectively, and that it also worked effectively on their specific device and specific web browser. No changes were thus required or recommended.</p>	<p style="text-align: center;">Technical aspects</p>  <table border="1" data-bbox="516 346 1560 850"> <caption>Technical Aspects Data</caption> <thead> <tr> <th>Category</th> <th>Yes</th> <th>No</th> </tr> </thead> <tbody> <tr> <td>Link worked effectively</td> <td>12</td> <td>0</td> </tr> <tr> <td>Link worked effectively on specific device</td> <td>12</td> <td>0</td> </tr> <tr> <td>Link worked effectively on specific browser</td> <td>12</td> <td>0</td> </tr> </tbody> </table>	Category	Yes	No	Link worked effectively	12	0	Link worked effectively on specific device	12	0	Link worked effectively on specific browser	12	0
Category	Yes	No											
Link worked effectively	12	0											
Link worked effectively on specific device	12	0											
Link worked effectively on specific browser	12	0											
<p>Specific devices were used when the survey was accessed.</p> <p>Specific web browsers were used to access the survey.</p>	<p>Seven participants (58%) accessed the CAGAT from their Windows laptops, three (25%) from their mobile phones and two (17%) from their MacOS laptops, implying that a variety of devices was used. Hence no changes to accommodate specific devices were required.</p> <p>Eleven participants (92%) accessed the CAGAT using Google Chrome, while one used Safari. Both browsers worked effectively and hence no changes were required.</p>												
Layout and visual representation													
<p>All participants agreed that all the items in the CAGAT were presented in a logical and easy-to-read format and that the layout of the response items in the CAGAT (the 7-point Likert scale) was appropriate. No changes were recommended to the final layout of the CAGAT.</p>	 <table border="1" data-bbox="516 1060 1560 1535"> <caption>Layout and Visual Representation Data</caption> <thead> <tr> <th>Category</th> <th>Yes</th> <th>No</th> </tr> </thead> <tbody> <tr> <td>Flow of the items is logical and easy-to-read</td> <td>12</td> <td>0</td> </tr> <tr> <td>The layout of the items are appropriate</td> <td>12</td> <td>0</td> </tr> </tbody> </table>	Category	Yes	No	Flow of the items is logical and easy-to-read	12	0	The layout of the items are appropriate	12	0			
Category	Yes	No											
Flow of the items is logical and easy-to-read	12	0											
The layout of the items are appropriate	12	0											

Discussion

All the participants agreed that the layout of the items and accompanying instructions were clear and well ordered, requiring no changes. However, four participants noted spelling, typing or language errors. All of these comments were noted and corrected as shown in Table 5.7.

Results**Layout of survey items****General aspects**

Regarding the general aspects of the CAGAT, all participants agreed that the length of time required for completing the CAGAT as well as the number of items were appropriate. Furthermore, the line spacing used in the CAGAT was sufficient to allow for easy reading. No changes were recommended for the final CAGAT.



For the majority of the questions, the participants agreed that the technical aspects and visual representation of the survey, the layout of survey items and general aspects of the survey were satisfactory. Four participants (33%), however, raised concerns over spelling and grammatical errors, which needed to be addressed prior to the main study. Specific suggestions that were made by the participants and changes that were implemented are shown in Table 5.7.

Table 5.7*Suggestions and changes made to the CAGAT*

Recommendations from pilot study	Changes made to the CAGAT
Enlarge the text boxes for comments.	The size of all the text boxes for comments and feedback was increased and changed to the 'essay' format on Qualtrics.
Edit and correct grammatical errors in the consent box.	Changes and edits were made in the consent box, and grammar and language mistakes were corrected.
Add numbers in the biographic questions box.	Numbers were added to the questions in the biographic question box for Questions 1 to 10.
Change date of birth/ age to one option and have a date selector.	Changed date of birth (Question 1) to a single text entry to be able to enter only date of birth, not age.
Highlight the domains in the survey so that they stand out.	All domains were highlighted and changed to bold type face.
Reduce the height of the Likert scale so that it does not take up the whole screen on a laptop.	The layout of the Likert scale was changed from a vertical to a horizontal one to accommodate different devices.
Add a back button to allow participants to change or return to an answer if wanted to.	A back button was added on each page of the CAGAT survey.
Delete brackets around 'Guidelines' in Domain 4, as this is an important aspect of the survey.	All brackets around 'Guidelines' were removed in Domain 4 and changed to bold type face for emphasis.
Rephrase the views of the funding body in Domain 5, as it seems difficult to judge.	This item was rephrased as, "The funders who have enabled this research were mentioned. Their views did not influence the content of the developed guidelines".

5.6.3.7 Conclusion from pilot study

The aim of the pilot study was to evaluate and test the CAGAT and assess the proposed online method of data collection. This was done to discover difficulties prior to the data collection for Phase 3 so that the researcher could take corrective action to improve the research process. Participants in the pilot study agreed that the accessibility, layout and format of the survey was appropriate. Constructive comments in the form of recommendations were given resulting in changes to the CAGAT. The complete edited CAGAT in the format of the Qualtrics online survey is presented in Appendix 5C.

5.7 Data collection

All potential participants were emailed a letter with clear information outlining the research topic, what was expected of them, as well as potential risks and benefits, in order to ensure that they could make an informed decision about consenting to participate (Appendix 5E). Precautions were taken to guarantee the confidentiality of their emails and responses as only the researcher had access to the password-protected email platform. The email contained specific instructions which outlined the two things expected from them as participants, namely: i) to read

the guideline document that was attached to the email (Appendix 4E) and ii) to click on the Qualtrics survey link (the CAGAT) that was embedded in the email. They then had to complete the survey and rate the quality of the guidelines they had read. The Qualtrics survey contained the informed consent, biographical questions and the online survey questions (Appendix 5C).

The researcher indicated that the participants had a two-week period to complete the survey, with the majority of the participants completing the survey within the expected time frame. A reminder email was sent out one week after the initial email to try and increase the response rate. Three participants asked for an extension, citing work commitments and health challenges as reasons. Thereafter, these participants completed the survey in a timely manner. The researcher maintained an active online presence and answered all questions or addressed concerns (mostly logistical in nature) when needed.

5.8 Data analysis

In keeping with the selected research design (Creswell & Plano Clark, 2018; Mertler, 2015), and to ensure that the research questions of this phase were answered, three statistical methods were applied for data analysis, namely descriptive statistics, inferential statistics (t-tests and chi-square tests); and thematic analysis of the qualitative data (feedback and comments) that was obtained from the CAGAT.

5.8.1 Descriptive statistics

Descriptive statistics were concerned with analyses that summarise, describe, and allow for the presentation of data in ways that make them easier to understand. In this study the measures of central tendencies, i.e., the mean, mode and median, were applied to summarise the results into meaningful information, while measures of dispersion such as standard deviation and skewness were applied to assess the variation between participants' responses.

5.8.2 Inferential statistics

5.8.2.1 One sample t-test

A one sample t-test was used for testing the mean value of the distribution and to determine statistical significance, with $p < 0.05$ being regarded as statistically significant and $p < 0.001$ as statistically highly significant. The t-test was used specifically to assess the difference in participants' responses across the six different domains addressed in the CAGAT (Bettany-Saltikov & Whittaker, 2014). The study used a 7-point Likert scale (1 = strongly disagree; 2 =

disagree; 3 = somewhat disagree; 4 = neither agree nor disagree; 5 = somewhat agree; 6 = agree; and 7 = strongly agree). Thus, in this case, the reference point was 4 to assess if the majority of participants agreed (score of 5, 6, 7) or if they disagreed (scores of 1, 2, 3) with the statements provided in the CAGAT. For the overall assessment, a 6-point Likert scale was used to determine the overall quality of the guidelines (1 = poor; 2 = fair; 3 = good; 4 = very good; 5 = excellent and 6 = exceptional).

5.8.2.2 *Pearson chi-square test*

A chi-square test provides evidence of association or no association between two categorical variables (Bettany-Saltikov & Whittaker, 2014). In this study, the researcher conducted a Pearson chi-square test to determine the level of association between certain biographic and demographic variables of the participants and their responses under each of the six domains related to the guidelines.

5.8.2.3 *Thematic analysis*

A reflexive thematic analysis was used to code the qualitative feedback and comments. This approach was used as the researcher embraced an interpretative, reflexive process in which the coding was open and organic, with ‘themes’ being the final outcome (Braun & Clarke, 2020a). Firstly, the researcher familiarised herself with the data. Secondly, the data was coded inductively and analysed by the researcher, after which two coders (the study supervisors) independently checked the codes to increase inter-coder reliability and agreement of the data. Thereafter, themes were generated from the codes, these themes were reviewed, and lastly, they were defined and (re)named.

5.9 Results

The participants were asked to appraise the quality of the guidelines. The results for each domain start with the overall assessment and appraisal of the guidelines before each of the six domains is described in more detail.

Due to the relatively small sample size, a t-test that manages small sample sizes was used. A p -value of 0.000000000 was rounded off to $p < 0.000$, as this value is confidently correct even when comparing the results of the t-test value against the t-test critical value. This p -value shows strong evidence to conclude that the difference between participants’ responses who agreed and disagreed in different domains was significant (de Winter, 2013; Thiese et al., 2016).

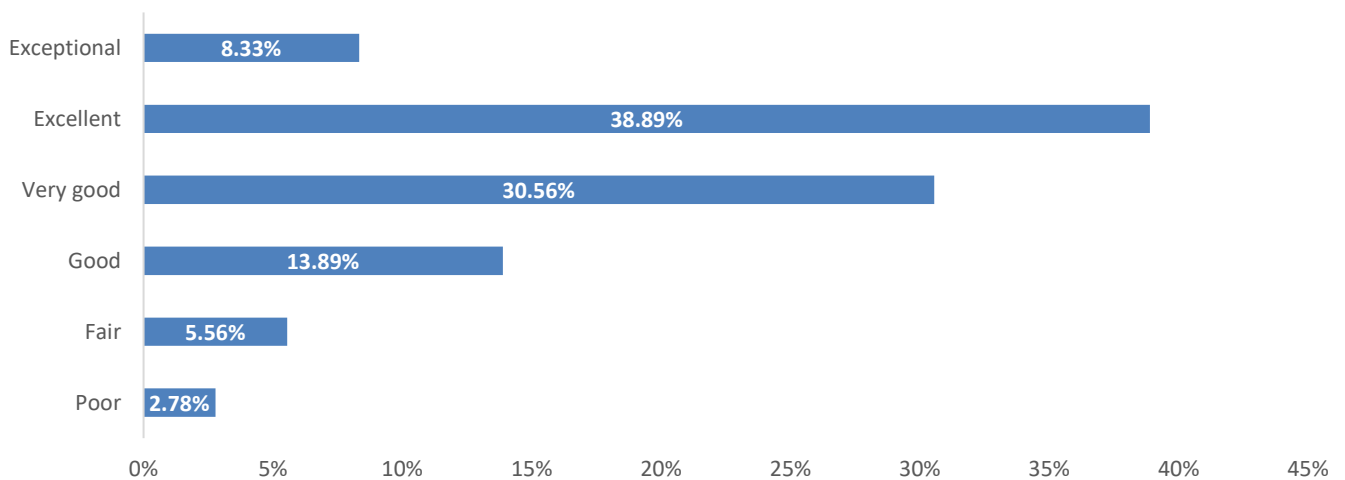
5.9.1 Overall assessment

5.9.1.1 Rate the overall quality of the guideline

Figure 5.2. shows the participants' responses regarding the overall assessment and quality of the guidelines.

Figure 5.2

Overall quality of guidelines (N=36)



From Figure 5.2 it is clear that 91% of the participants rated the developed and recommended court accommodation guidelines as positive (ranging from good to exceptional, with most focusing on excellent (38.89%) and very good (30,56%)), while only two participants (5.56%) rated the quality as fair, and one participant rated it as poor. The mean value for this result was 5.222 (standard deviation = 1.149), yielding a $p=0.000$, which is statistically highly significant on the 99% level of confidence ($p < 0.001$).

In this study, a human rights framework was employed, and the recommended guidelines were developed with a specific focus in mind (Degener, 2016) – ensuring access to justice for persons with severe communication disabilities through recommending the use of specific court accommodations. The logic of the developed and recommended court accommodation guidelines was based on the assumption that if the developed guidelines were appraised, they could achieve their full potential and maximise their effectivity by assisting in making policy and legal decisions to accommodate persons with severe communication disabilities when they are exercising their right to access to justice (Brouwers et al., 2017; Brouwers et al., 2010; Browman

et al., 2015; Qaseem et al., 2012). Furthermore, appraising the quality of the guidelines would secure assurance that the potential biases of the guideline development had been addressed adequately, that the recommendations are both internally and externally valid, and more importantly, that they are feasible for practical use in the court system (Brouwers et al., 2017).

As the developed and recommended court accommodation guidelines were appraised overall as being of high quality, they can serve as a trustworthy and reliable resource (Brouwers et al., 2017; Qaseem et al., 2012). Therefore, they can be considered a resourceful tool for practitioners in assisting persons with severe communication disabilities in the legal system – and more specifically in court – to ensure that their basic human right of access to justice (as stipulated in Article 13 of the CRPD) is met.

It is also important to highlight that the potential benefits of guidelines are directly equivalent to their effectiveness (Brouwers et al., 2017; Rosenfeld & Shiffman, 2009). The guidelines for court accommodations for persons with severe communication disabilities could potentially benefit persons with severe communication disabilities to access the court system, whether as a witness, defendant or legal practitioner, as they were generally regarded as being of high quality.

5.9.1.2 Recommending the guideline document

Table 5.8 shows the participants’ responses to the question of whether they would recommend the guideline document to other legal practitioners.

Table 5.8

Responses about recommending the guidelines (N=36)

Statement	Response options			N	Mean	Std dev	p-value
	Yes	Yes, with modifications	No				
I would recommend this guideline document	freq 17	18	1	36	1.556	0.558	0.000**
	% 47%	50%	3%	100%			

Std dev – Standard deviation

* statistically significant on the 95% level of confidence ($p < 0.05$)

** statistically highly significant on the 99% level of confidence ($p < 0.001$)

Almost all the participants stated that they would recommend the guidelines: 47% would do so without any further modifications and 50% with some modifications. Only one participant

stated that they would not recommend these guidelines in their current format. The participants who suggested modifications, as well as the one who would not recommend the guidelines, provided a range of suggestions and expert commentary in terms of how the guideline document could be modified. The suggestions were coded into different themes using reflexive thematic analysis.

This resulted in three specific main themes:

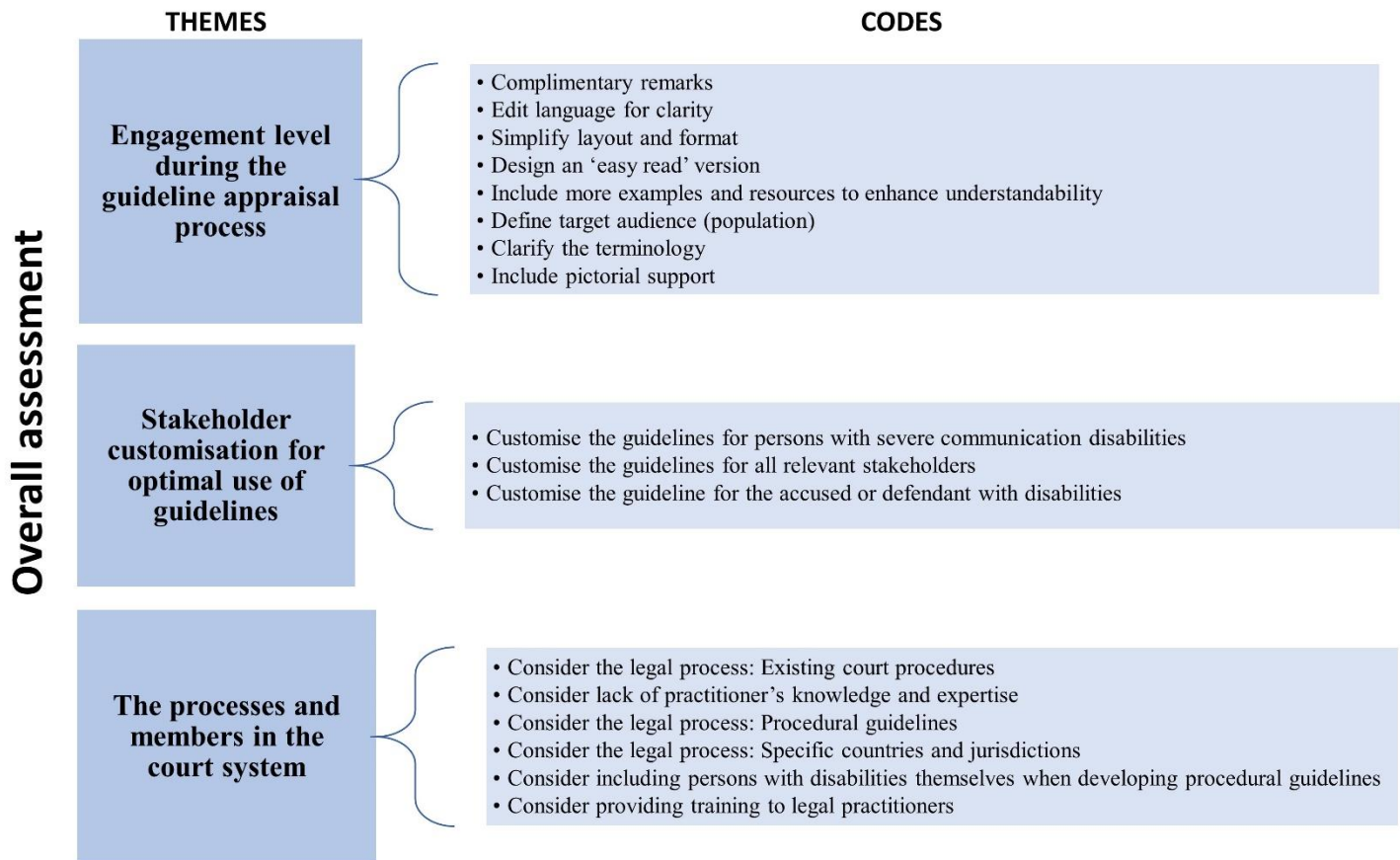
- (i) Engagement level during the guideline appraisal process
- (ii) Stakeholder customisation for optimal use of guidelines
- (iii) The processes in and members of the court system

Many codes were repetitive in certain domains (all statements and codes can be found in Appendix 5F); however, the researcher focused on the most important codes that the participants were highlighting in each domain.

Figure 5.3 shows the themes and the codes that were generated in the overall assessment.

Figure 5.3

Thematic analysis for the overall assessment of guidelines



Participant 365 commented on the overall assessment of the guidelines:

“Thank you for the opportunity to look at this document and for your work on this important issue. It was very interesting. Depending on the jurisdiction, I think that one of the issues with some of the accommodations may be how the accommodations interact with rights that defendants in criminal cases have. There may also be issues with whether judges and other court personnel have the knowledge, skills, or access to resources, etc. to be able to implement some of the accommodations.”

Participant 345 also commented on the overall quality of the guidelines and offered suggestions for modifications:

“A very good attempt to produce a useful blueprint. Given the complexity of the area and the different procedural traditions of various countries, consideration should be given to

narrowing the application of the guidelines to one specific country. This will ensure that they can be meaningfully tailored to make an impact in the chosen jurisdiction, and they will be of persuasive authority in other countries who can learn from them and adapt them accordingly.”

Participant 350 suggested that ‘easy read’ versions of the guidelines be designed, and that pictorial support be included to enhance its reach for stakeholders such as persons with severe learning disabilities, “*This is a useful and interesting idea. I would support the idea of an easy read format to accompany it as the text will not be accessible for people with severe learning disabilities, using PhotoSymbols or similar.*”

These comments are important to note as they highlight the lack of ‘easy read’ and accessible formats of documents in the court system for persons with severe communication disabilities (Beqiraj et al., 2017). The CRPD acknowledges and defines the term ‘universal design’ as “the design of products, environments, programmes and services to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design” (United Nations, 2006, p. 4). All legal documents, including court accommodation guidelines for persons with severe communication disabilities, should take universal design into consideration and therefore, an ‘easy read’ and accessible format of the guidelines should be considered for future research. Universal design was discussed earlier in more detail (see Chapter 2).

5.9.2 Domain 1: Scope and purpose

Domain 1 focused on the scope and purpose of the guidelines and contained two specific questions as shown in Table 5.9. In this table, as well as in the subsequent tables that report on Domains 2 to 6, responses indicating that the participants agreed with the statement (scores of 5, 6, 7) are shaded in a darker colour, while the disagree responses (scores of 1, 2, 3) are shaded in a lighter colour. The reference point (a score of 4) is not shaded. Both of these questions related to Domain 1 were statistically highly significant on the 99% level of confidence ($p < 0.001$).

Table 5.9*Responses related to Domain 1: Scope and purpose (N=36)*

Statements		Strongly disagree	Dis-agree	Some-what disagree	Neither agree nor disagree	Some-what agree	Agree	Strongly agree	Mean	Std dev	p-value
The overall objective of the guidelines was specifically described.	freq	0	1	1	0	1	13	20	6.333	1.095	0.000**
	%	0%	3%	3%	0%	3%	36%	55%			
The population for whom the guidelines are intended was specifically described.	freq	0	1	1	1	4	13	16	6.083	1.180	0.000**
	%	0%	3%	3%	3%	11%	36%	44%			
Average			3%	3%	1%	7%	36%	50%			

Std dev – Standard deviation

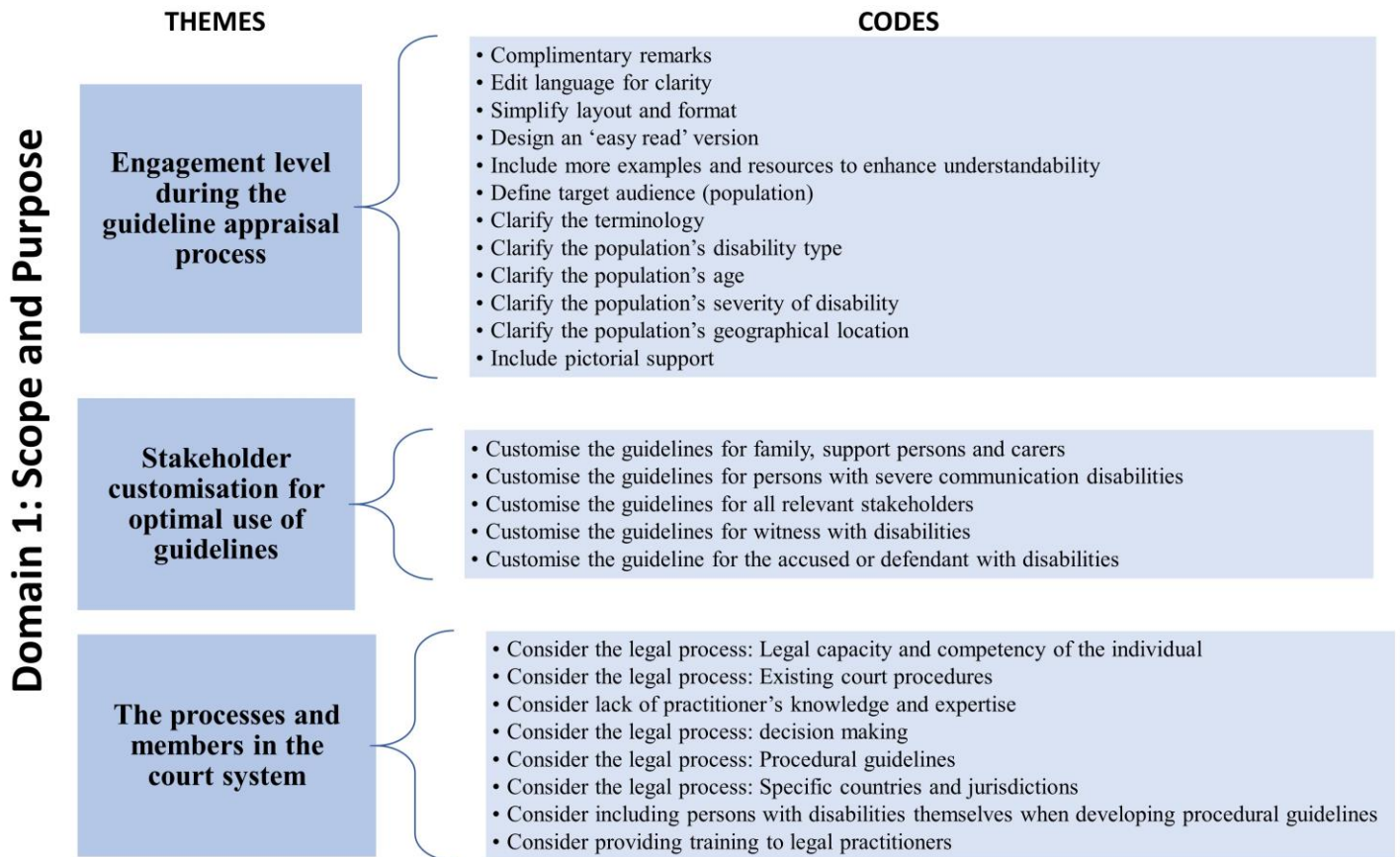
* statistically significant on the 95% level of confidence ($p < 0.05$)** statistically highly significant on the 99% level of confidence ($p < 0.001$)

The participants overwhelmingly agreed that the overall objective of the guideline was specifically described (94%), while only 6% disagreed or somewhat disagreed with this statement. Similarly, the majority (91%) agreed that the target population (i.e. the population for whom the guidelines were intended) was specifically described compared to the 6% who disagreed and the one participant (3%) who was undecided.

On average, the majority of participants (93%) agreed with the scope and purpose of the guidelines (Domain 1). Despite this high agreement, all three themes were identified from the thematic analysis of the qualitative feedback comments made by the participants when justifying their responses. The themes were the same as the ones identified in the thematic analysis of the overall guidelines, but the codes differed. Figure 5.4 shows the themes and the codes that were identified in Domain 1.

Figure 5.4

Thematic analysis for Domain 1: Scope and purpose



Participants provided in-depth and specialist suggestions and commentary to support and justify their opinions under the first theme “Engagement level during the guideline appraisal process”. Many participants requested more clarity and editing in terms of the definition of a person with a severe communication disability (i.e. what constitutes a severe communication disability). Participant 351 who hails from the UK used his/her professional experience as a basis for commenting on the definition of persons with severe communication disabilities:

“The document refers to accommodations for ‘severe’ communication difficulties. In our experience in the UK, this is inappropriate – the word ‘severe’ should be omitted because, for example: a) it is difficult for the justice system to apply this definition. In our experience (where the English Home Office and Ministry of Justice misinterpreted intermediary legislation on its introduction is applying only to the

most extreme cases) will encourage justice system professionals to apply the guidance only to the most obvious and extreme cases, b) even 'severe' communication difficulties may be hidden, c) even people with communication needs which may not be perceived as 'severe' are disadvantaged in the conventional approaches of the justice system, including cross-examination".

Beukelman and Light (2020, p. 5) suggest an alternative definition by referring to 'a person with complex communication needs', highlighting that these individuals include all age groups and socio-economic, ethnic and racial backgrounds. They further define these individuals as having a wide range of communication needs and capabilities, and requiring adaptive support to communicate effectively because their spoken and/or written communication is either temporarily or permanently inadequate to meet all their communication needs. Camilleri and Pedersen (2019) also used the term 'persons with complex communication needs' in a recent report and further elaborated on Beukelman and Light's definition by adding that complex communication needs are often associated with persons who are nonverbal. However, historically, terms such as 'persons with severe communication disabilities' have been used in the disability field. For many years the American Speech-Language-Hearing Association (ASHA) has used the term 'persons with severe disabilities', and in their document, *Guidelines for meeting the communication needs of persons with severe disabilities* suggested "... helping persons with severe disabilities communicate effectively" (The National Joint Committee for the Communication Needs of Persons with Severe Disabilities, 1992, p. 41). Ogletree (2017) defined 'persons with severe disabilities' as persons of all ages who require significant and ongoing support for the achievement of objectives in the areas of education, community integration, employment, self-determination and health and welfare.

A clearer definition of the population for whom the guidelines are intended, is indeed needed. This stems not only from confusion around the term in the medical and therapeutic sciences, but also from the legal practitioners and other stakeholders in the court system not knowing how to apply the provided definition in the guideline document. However, the challenge around clearer definitions of 'who a person with a severe communication disability is', has once again highlighted the fragmentation between the various professional disciplines and stakeholders, and the lack of a multidisciplinary approach within the legal system (Fitzsimons, 2016; Marinos & Whittingham, 2019). Many intermediaries, therapists and social workers within the legal system are able to define who a person with a severe communication disability is and can share this

knowledge with other legal professionals such as lawyers, attorneys and judges (Hepner et al., 2015; Holness & Rule, 2018). Furthermore, Ericson and Perlman (2001) noted that persons with developmental disabilities are also likely to be in a disadvantaged position because they lack the understanding of the legal terminology and processes intrinsic to legal proceedings. Therefore it is important for the legal definitions and terminology to be clear and in an ‘easy read’ format for all persons involved in the legal proceedings.

Having acknowledged the importance of a clear definition that uses unambiguous terminology, the aim of the guidelines should, according to the CRPD (United Nations, 2006), always be to assist the person who may have communication difficulties to communicate effectively and equally in court. Hence, the focus should not be on who is ‘entitled’ to court accommodations (Lord & Brown, 2011), but rather on what court accommodations are available for persons with severe communication disabilities to enable them to communicate effectively and participate equally in court.

“Stakeholder customisation of guidelines for optimal use” was highlighted numerous times, and participants mentioned the different roles that persons with severe communication disabilities may take on in the legal system (e.g. a witness, a defendant or a legal practitioner). In addition to customisation for the different roles, participants also suggested customisation based on the specific target group. For example, the development of an ‘easy read’ version of the guidelines that is further enhanced by adding pictorial supports, should be considered for persons with severe communication disabilities and their families, carers and support persons (Guider, 2017). Participant 336 suggested: *“The guidelines were designed for legal practitioners, to my understanding. A companion guide for persons with severe communication disabilities and their support persons (including carers) should be developed in easy read.”*

Other suggestions included developing the guidelines in separate guideline documents that are specially aimed at different stakeholder groups such as legal practitioners, witnesses with disabilities, and defendants with disabilities, as the legal process can be different for each role (Cremin, 2016). Participant 344 explained this in detail:

“This document appears to be primarily considering the needs of complainants/witnesses (although it states it is about defendants too). In my experience, many people on both sides of the court may present with difficulties. Actually, we sometimes assist the same individuals who in one matter might be the ‘victims’ and in other matters, the ‘accused’.

Has the situation of the accused/defendants also been considered, as that didn't come across very strongly in the recommendations provided? I think the style of this document is difficult to follow for anyone who is not a well-educated professional – words like 'thereby', 'said individuals', etc are complex and a much easier to understand style could perhaps be useful here. I doubt it would be understood by anyone with a communication difficulty themselves but is an appropriate 'communication accessible' version being considered? I'm not sure that family members or non-legal professionals themselves would be able to understand the document which might be fine, as they might not be the intended audience, but I think that reviewing the style and considering how it might be easier to understand might enable the document to be useful to a potentially broader audience.”

Participant 344 responded to the questions about the scope and purpose of the guidelines, as captured in the third theme (Figure 5.4):

“The boundaries of accommodations are not clear.... rules of evidence still apply and accommodations must abide by them. The crux is how to apply accommodations in ways which adhere by the core principles of evidence law and do not violate the rights of the other side. There is a great need to delineate what's within and what's outside of the boundaries, otherwise judges, lawyers, and police investigators will push back (and rightly so). For example, the neutrality of intermediaries, that they cannot speak for the person, how not to lead the witness, etc. -- are essential. If the guidelines are intended for everyone (it wasn't clear to me to whom they are intended) then they lack that aspect.”

This participant also highlighted the importance of using intermediaries to support persons with severe communication disabilities to access the court system. Intermediaries can assist in providing access to justice to witnesses and defendants who were previously excluded from the system (Plotnikoff & Woolfson, 2015). Moreover, intermediaries can contribute to the fairness of the trial process for witness and defendants with severe communication disabilities as they can provide creative ways to facilitate ‘best evidence’ (Plotnikoff & Woolfson, 2015). In countries such as England and Wales, there are witness intermediary schemes that include the details of registered and qualified intermediaries (Ministry of Justice, 2020). A registered intermediary is a self-employed communication specialist who supports witnesses with communication difficulties to give evidence to the police and to the court in criminal trials (Ministry of Justice, 2020; Plotnikoff & Woolfson, 2015). Their assistance is what often differentiates whether a witness is able to give

evidence or not. Registered intermediaries can also be contacted for assistance when the witness or defendant has a communication disability (Plotnikoff & Woolfson, 2015). These kinds of legal roles should be clearly defined in the guideline document, and more importantly, customise the guidelines for specific legal practitioner stakeholder groups, for example, intermediaries.

5.9.3 Domain 2: Stakeholder involvement

Domain 2 contained three questions focusing on stakeholder involvement as shown in Table 5.10. The findings for all three questions were statistically highly significant on the 99% level of confidence ($p < 0.001$).

Table 5.10

Responses related to Domain 2: Stakeholder involvement (N=36)

Statements		Strong-ly dis-agree	Dis-agree	Some-what dis-agree	Neither agree nor dis-agree	Some-what agree	Agree	Strong-ly agree	Mean	Std dev	p-value
The guideline development process included individuals from different stakeholder groups.	freq	0	0	0	3	4	13	16	6.167	0.941	0.000**
	%	0	0	0	8%	11%	36%	44%			
Views and perspectives were sought from stakeholders (including persons with disabilities) who would benefit from the guidelines.	freq	0	1	0	5	6	15	9	5.694	1.167	0.000**
	%	0	3%	0	14%	17%	41%	25%			
The individuals who will benefit from the guideline document were clearly defined.	freq	1	0	1	1	1	15	17	6.167	1.254	0.000**
	%	3%	0%	3%	3%	3%	41%	47%			
Average		1%	1%	3%	8%	10%	39%	38%			

Std dev – Standard deviation

* statistically significant on the 95% level of confidence ($p < 0.05$)

** statistically highly significant on the 99% level of confidence ($p < 0.001$)

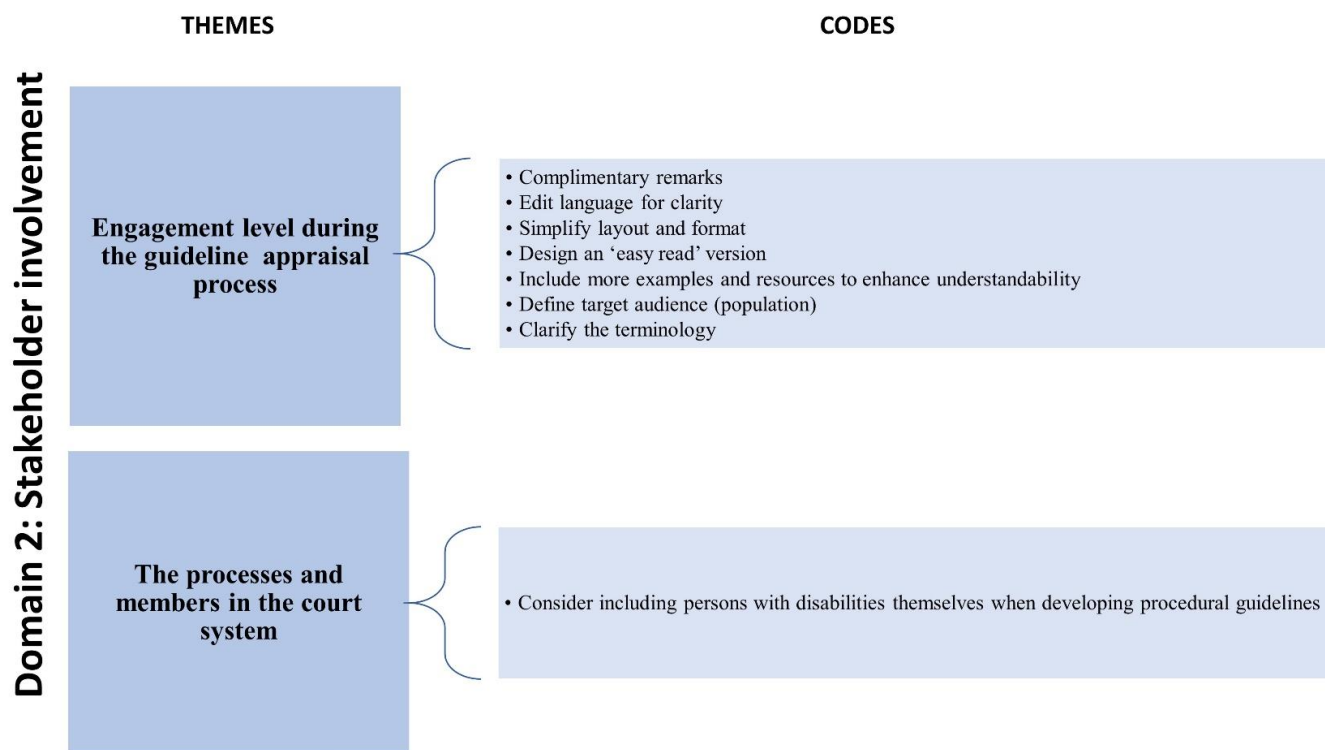
On average, the majority of participants (87%) agreed (to different degrees) with the three questions in Domain 2 regarding the involvement of stakeholders in the development of the guidelines, whereas a small percentage disagreed (5%) or were undecided (8%). In addition, 91% agreed that the guideline development process included individuals from different stakeholder

groups, and 95% agreed that the views and perspectives from stakeholders who would benefit from the guidelines (i.e., persons with disabilities) had been sought. Furthermore, 92% agreed that the individuals who would benefit from the guideline document had been clearly defined.

Following the thematic analysis of the additional comments provided by responses in relation to Domain 2, it was found that although participants focused on the theme “Engagement level during the guideline appraisal process”, one code was mentioned that was related to “the processes and members of the court system” (see Figure 5.5).

Figure 5.5

Thematic analysis for Domain 2: Stakeholder involvement



Participant 350 focused on the need for an ‘easy read’ version of the guideline document:

“I’m not sure how you got feedback from stakeholders with severe communication disabilities as the document states – as the document is quite densely packed and written at quite an advanced level. Were the stakeholders with severe expressive communication difficulties but high cognitive level of functioning therefore high receptive language? Which would be quite different from stakeholders who have difficulties with both expressive and

receptive language due to e.g. severe learning disability. This group I imagine would find it hard to access this document and would need an easy read version produced with symbols/images and fewer words.”

Within the theme “The processes in and members of the court system”, Participant 353 suggested “*Just to follow up with persons with disabilities where possible around their experiences*”, while Participant 345 commented:

“It is not clear from the guidance document that the guidelines were drawn up in contemplation of feedback from persons with lived experience of severe communication disability. The national expert panel does not appear to have included such an individual and we do not have access to the composition of the international panel. This is not an issue in itself but it might be useful to state this point clearly (perhaps in a footnote) if it is indeed the case that the work did not empirically engage with persons with lived experience of this condition.”

These were important suggestions and comments from the participants regarding the involvement of more persons with disabilities in the development of the court accommodation guidelines, which is in line with the adage of disability organisations from across the globe: “Nothing about us without us” (Stack & McDonald, 2014; Walmsley & Johnson, 2003; Zhang, 2017). Although legal practitioners with disabilities were included, the voices of a witness or a defendant with a disability who had already come into contact with court system would have further strengthened and benefited the development of the guideline document (Camilleri & Pedersen, 2019; Talbot, 2008). A more concerted effort should be made to provide opportunities for persons with disabilities who have come into contact with the court system to have their say in terms of court accommodation guidelines, as this would lead to greater transparency about how their voices are included in shaping these important guidelines (Thill, 2015). Likewise, the participation of persons with disabilities in the development of court accommodation guidelines also puts decision-making power into their hands and positively impacts agency (Thill, 2015).

5.9.4 Domain 3: Rigor of development

Domain 3 contained six questions related to the rigor with which the guidelines were developed, and their results are shown in Table 5.11. It is noteworthy that all six questions were statistically highly significant on the 99% level of confidence ($p < 0.001$).

Table 5.11*Responses related to Domain 3: Rigor of guideline development (N=36)*

Statements		Strongly disagree	Disagree	Some-what disagree	Neither agree nor disagree	Some-what agree	Agree	Strongly agree	Mean	Std dev	p-value
Systematic methods were used to search for evidence.	freq	0	0	1	6	2	13	14	5.917	1.180	0.000**
	%	0%	0%	3%	17%	6%	36%	39%			
The criteria for selecting the evidence were clearly described.	freq	0	1	1	10	3	12	9	5.417	1.360	0.000**
	%	0	3%	3%	28%	8%	33%	25%			
The strengths and limitations of the body of evidence were clearly described.	freq	0	2	3	9	5	14	3	4.972	1.362	0.000**
	%	0	6%	8%	25%	14%	39%	8%			
The methods for formulating the guideline document were clearly described.	freq	0	0	1	6	5	14	10	5.722	1.137	0.000**
	%	0	0	3%	17%	14%	39%	28%			
The international implications were considered in formulating the guideline document.	freq	0	1	2	6	4	16	7	5.472	1.298	0.000**
	%	0	3%	6%	17%	11%	44%	19%			
There is an explicit link between the recommendations (court accommodations) and the supporting evidence.	freq	0	2	1	7	4	17	5	5.333	1.331	0.000**
	%	0	6%	3%	19%	11%	47%	14%			
Average		0%	3%	4%	20%	11%	40%	22%			

Std dev – Standard deviation

* statistically significant on the 95% level of confidence ($p < 0.05$)** statistically highly significant on the 99% level of confidence ($p < 0.001$)

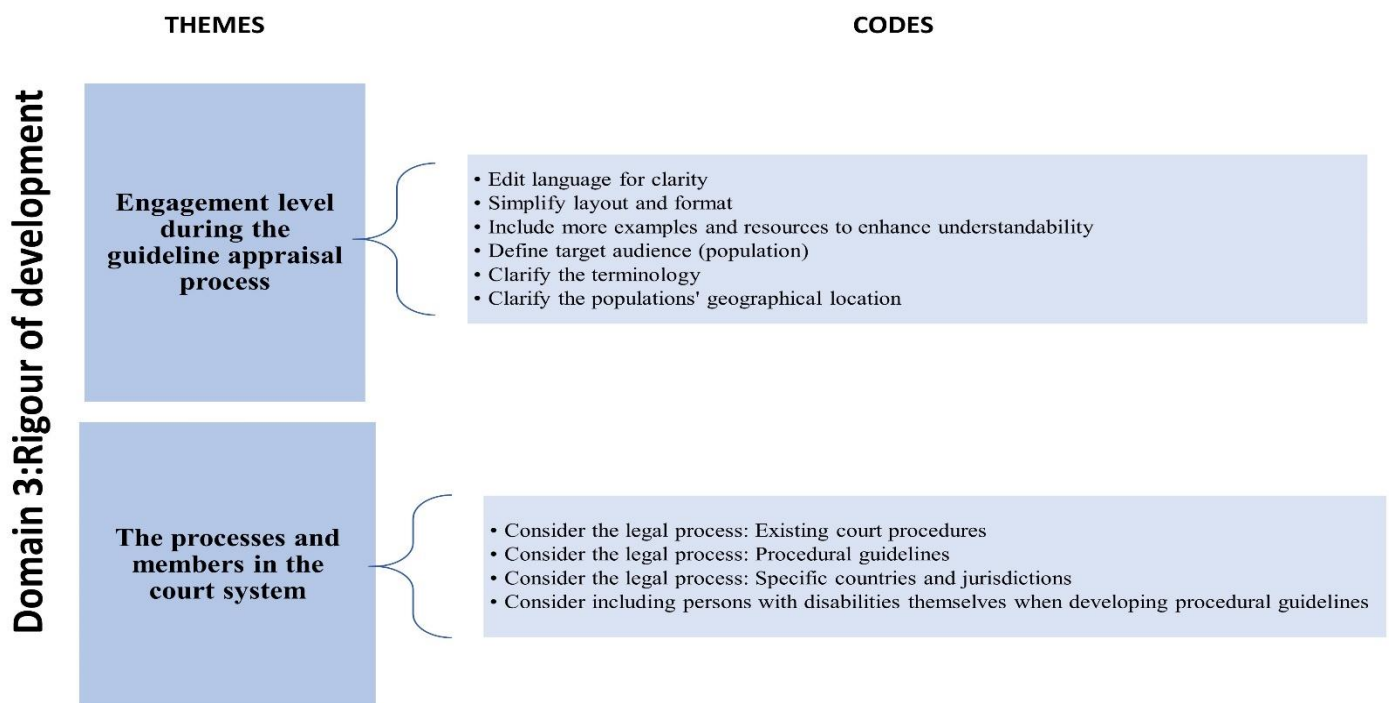
Despite the fact that all six questions were statistically highly significant, this was the section where participants on average showed the smallest agreement (73%) with the statement concerning the rigor of development of the guideline document. However, only a small percentage disagreed (7%), while a fifth of the participants (20%) were undecided. Across all six domains, this undecided response seemed to be a tendency for Domain 3, Domain 4 (18%), Domain 5 (20%) and Domain 6 (28%). This is in contrast with the first two domains where Domain 1 had a 1% undecided response and Domain 2 an 8% undecided response.

An equal majority of participants (81%) agreed that systematic methods were used to search for evidence, and that the international implications had been considered in formulating the guidelines. Altogether 72% agreed that there was an explicit link between the recommendations (court accommodations) and the supporting evidence. Only approximately two thirds of participants agreed with the other statements related to the rigor of development, namely that the criteria for selecting the evidence (66%), the strengths and limitations of the body of evidence (61%) and the methods for formulating the guideline document had been clearly described (61%).

In analysing the qualitative comments related to Domain 3, the responses showed a variety of codes that pointed to two themes, namely “engagement level during the guideline appraisal process” and “the processes in and members of the court system”. Figure 5.6 shows the themes and the codes that were identified in Domain 3.

Figure 5.6

Thematic analysis for Domain 3: Rigor of development



Within the first theme, “Engagement level during the guideline appraisal process”, Participant 338 commented on the need for editing the language used to describe the guidelines so as to ensure better clarity:

“I think the ‘how’ is very clear, but the ‘why’ (e.g., why did you select the specific methods, or specific population) as well as the strengths and limitations of the approach that you used could be more clearly described in this document, if that is information that you think would be valuable to include in it. I will however say that I didn't notice that information about this was lacking when reading the guidelines, so it might be a case of having limited space and therefore choosing to not include some information.”

One way to increase the trustworthiness of guidelines during the guideline development process is to make certain that a systematic review of the evidence has been conducted (Qaseem et al., 2012). For the purpose of the current study, a systematic legal scoping review of court accommodations for persons with severe communication disabilities mentioned in the literature was conducted as a first step towards the development of court accommodation guidelines (White et al., 2020a). However, due to the length of the review, all the evidence could not be included in the guidelines and a hyperlink was attached to the legal scoping review in the guideline document for easy access (The Adapted Collaboration, 2009). Some participants did perhaps not access the link and hence were unaware that more information was provided to enhance understandability and prove that a systematic review had indeed been conducted.

Within the second theme, “The processes and members of the court system”, Participant 354 focused on the legal processes and the specific countries and jurisdiction that should be considered to strengthen the rigor of the guideline development:

“The international relevance could be specified in the document, especially since the involvement of a South African focus group is highlighted and perhaps a perception among some quarters that this might mean it is only relevance in the South African context when actually the CRPD link means it is relevance across international contexts.”

This comment is in line with suggestions proposed by Flynn (2016), namely that international guidelines should typically be read in conjunction with a specific country’s laws and jurisdiction. The United Nations (2020) recently released endorsed international principles and guidelines on access to justice for persons with disabilities, stating that: “Persons with disabilities are entitled to enjoy the standards contained in all previously adopted international

and regional human rights instruments that are relevant to justice systems, access to justice and, more generally, the administration of justice on an equal basis with others without discrimination” (United Nations, 2020, p. 8).

Regardless of a person’s country of residence and the specific justice system that has jurisdiction, every person with a severe communication disability is entitled to enjoy all human rights, including access to justice (White et al., 2020a). Therefore, the currently developed court accommodations guidelines could be used as a resource that could assist these individuals and other stakeholders, irrespective of their specific countries, to access justice and participate equally in their court system.

5.9.5 Domain 4: Clarity of presentation

Domain 4 was the largest domain as participants were required to answer eight questions in total – two related to each of the four guidelines:

- **Guideline 1:** The person should be allowed to use their “voice” using a communication method or mode of their preference.
- **Guideline 2:** The person should be shown respect and treated with dignity by all persons involved throughout the legal process.
- **Guideline 3:** The person should feel that all decisions are being made in a fair and neutral way throughout the whole legal process.
- **Guideline 4:** The person should feel that all legal practitioners can be trusted and that their decisions are easy to understand and, in the person’s best interest.

Participant responses are shown in Table 5.12. The findings for all eight questions were statistically highly significant on the 99% level of confidence ($p < 0.001$).

Table 5.12*Responses related to Domain 4: Clarity of guideline presentation (N=36)*

Statements		Strongly disagree	Disagree	Some-what disagree	Neither agree nor disagree	Some-what agree	Agree	Strongly agree	Mean	Std dev	<i>p-value</i>
The recommendations (court accommodations) under GUIDELINE 1, “The person should be allowed to use their ‘voice’ by using a communication method or mode of their preference throughout the whole legal process”, are specific (or clearly specified).	freq	0	0	1	4	0	11	20	6.25	1.105	0.000*
	%	0%	0%	3%	11%	0%	31%	55%			
The recommendations (court accommodations) under GUIDELINE 1 (please see description above) are easily identifiable.	freq	0	0	1	5		16	14	6.028	1.108	0.000*
	%	0%	0%	3%	14%	0%	44%	39%			
The recommendations (court accommodations) under GUIDELINE 2, “The person should be shown respect and treated with dignity by all persons involved throughout the legal process”, are specific (or clearly specified).	freq	0	0	0	6	0	13	17	6.1389	1.073	0.000*
	%	0%	0%	0%	17%	0%	36%	47%			
The recommendations (court accommodations) under GUIDELINE 2 (please see description above) are easily identifiable.	freq	0	0	0	7	0	12	17	6.0833	1.131	0.000*
	%	0%	0%	0%	20%	0%	33%	47%			
The recommendations (court accommodations) under GUIDELINE 3, “The person should feel that all decisions are being made in a fair and neutral way throughout the whole legal process”, are specific (or clearly specified).	freq	0	0	2	7	0	9	18	5.944	1.351	0.000*
	%	0%	0%	6%	19%	0%	25%	50%			
The recommendations (court accommodations) under GUIDELINE 3 (please see description above) are easily identifiable.	freq	0	1	2	6	0	10	17	5.861	1.457	0.000*
	%	0%	3%	6%	17%	0%	27%	47%			

Statements		Strongly disagree	Disagree	Some-what disagree	Neither agree nor disagree	Some-what agree	Agree	Strongly agree	Mean	Std dev	<i>p-value</i>
The recommendations (court accommodations) under GUIDELINE 4, “The person should feel that all legal practitioners can be trusted and that their decisions are easy to understand and, in the person’s best interest”, are specific (or clearly specified).	freq	1	0	0	8	0	11	16	5.861	1.437	0.000*
	%	3%	0%	0%	22%	0%	31%	44%			
The recommendations (court accommodations) under GUIDELINE 4 (please see description above) are easily identifiable.	freq	1	0	0	8	0	12	15	5.833	1.424	0.000*
	%	3%	0%	0%	22%	0%	33%	42%			
Average		0%	1%	0%	2%	18%	0%	33%	46%		

Std dev – Standard deviation

* statistically significant on the 95% level of confidence ($p < 0.05$)

** statistically highly significant on the 99% level of confidence ($p < 0.001$)

On average, 79% of participants agreed with the clarity of guideline presentation, 3% disagreed and 18% were undecided. When considering all four specific guidelines, the largest agreement occurred for Guideline 1, with 87% of the participants agreeing that court accommodations related to “Allowing the person to use their ‘voice’ by using a communication method or mode of their preference throughout the whole legal process” were specific. In total, 83% agreed that the recommendations regarding “The person should be allowed to use their ‘voice’ by using a communication method or mode of their preference throughout the whole legal process” were easily identifiable, while 11% and 14% respectively were undecided and 3% disagreed.

The second largest agreement occurred in respect of the court accommodations under Guideline 2, with 83% of the participants agreeing that the court accommodations related to “The person should be shown respect and treated with dignity by all persons involved throughout the legal process” were specific. Altogether 80% also agreed that recommendations regarding “The person should be shown respect and treated with dignity by all persons involved throughout the legal process” were easily identifiable, while 19% and 17% respectively were undecided.

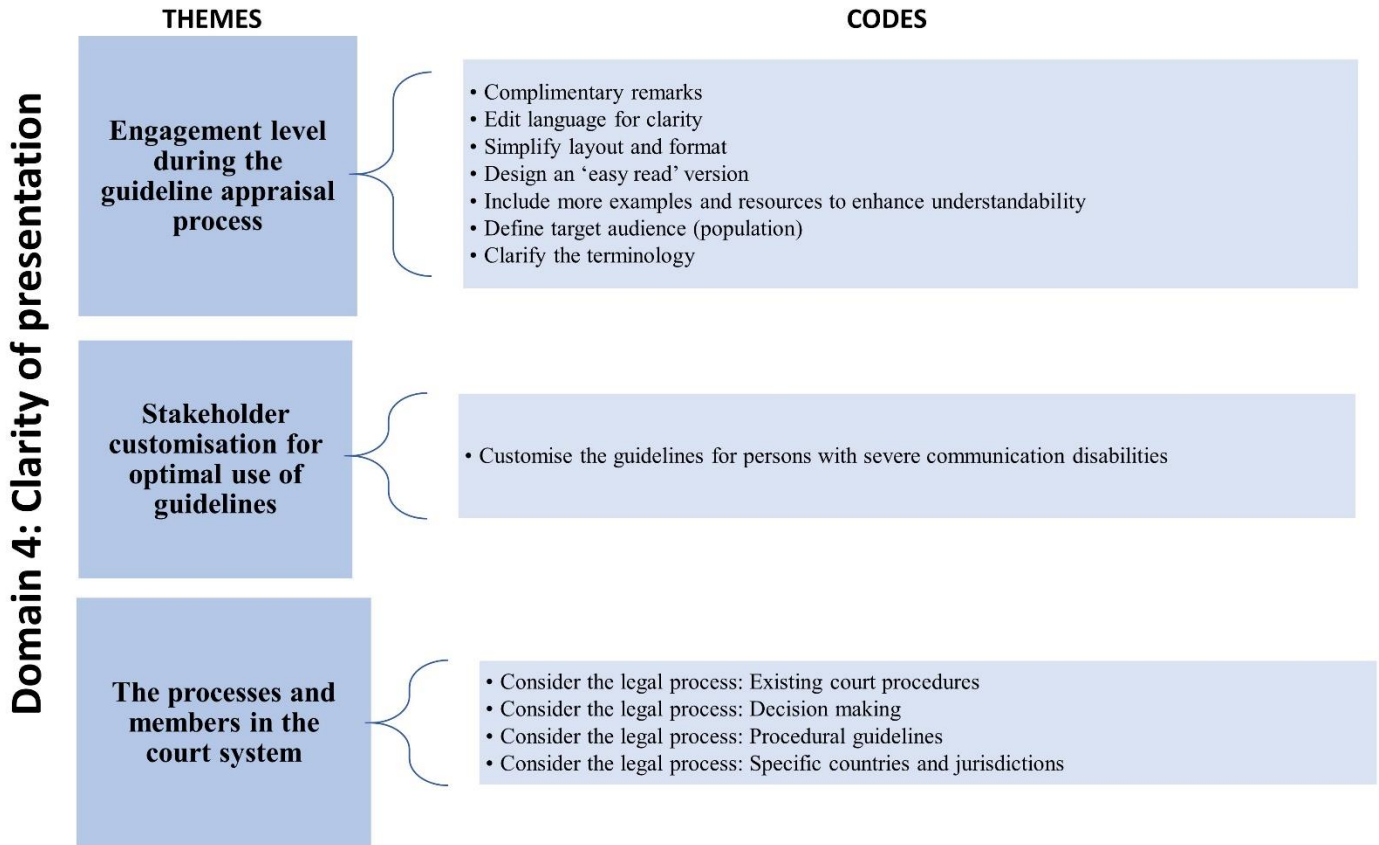
The third largest agreement (75%) was related to the court accommodations under Guideline 3, with 75% of the participants agreeing that the court accommodations related to “The person should feel that all decisions are being made in a fair and neutral way throughout the whole legal process”, and 74% agreeing that ‘The person should feel that all decisions are being made in a fair and neutral way throughout the whole legal process’ were easily identifiable. This was also the category where participants were undecided (19% and 17% respectively) and 6% disagreed.

The least agreement was related to the court accommodations under Guideline 4, with 75% of the participants agreeing that the court accommodations related to “The person should feel that all legal practitioners can be trusted and that their decisions are easy to understand and, in the person’s best interest”, were specific. The accommodations related to “The person should feel that all legal practitioners can be trusted and that their decisions are easy to understand and, in the person’s best interest”, were considered easily identifiable, while 22% of the participants were undecided about and 3% disagreed with both statements.

When codes and subsequent themes were generated from the qualitative feedback related to Domain 4, a wide variety of responses were noted, which reflected the three different themes and 12 codes as shown in Figure 5.7.

Figure 5.7

Thematic analysis for Domain 4: Clarity of presentation



One pertinent comment made by Participant 336 regarding Domain 4 was coded under the first theme “Engagement level during the appraisal process”. This comment focused on the term ‘best interest’ and suggested that the use of ‘best interest’ should be reconsidered in the guidelines:

“A person's best interests is usually a term utilised for children. It should be avoided in relation to adults with disabilities as it can be seen as patronising. Also, the legal term ‘best interests’ has a particular meaning where another person makes decisions for that person. Adults with disabilities should make decisions for themselves or be supported to exercise their legal capacity to do so. Rethink the use of the term ‘best interests’.”

This participant further highlighted that the term ‘best interest’ is being ‘phased out’. The CRPD uses the terms ‘will and preferences’ and the legal scholar Celik (2017) notes that in cases

of adults with disabilities the ‘will and preferences’ of persons with disabilities should be favoured above the potentially paternalistic, authoritarian ‘best-interest’ principles.

Comments made by Participant 339 related to Domain 4, generated under the second theme, “Stakeholder customisation for optimal use of guidelines”, emphasised the importance of customising the guidelines for a specific audience.

“The audience of your guideline should be clearly specified, and the language adapted accordingly. For example, a magistrate or judge can receive a guideline document which would have to be simplified if given to the people at reception in the court.”

Participant 345 also described specific terms such as ‘fairness’, and once again emphasised the importance of acknowledging different jurisdictions:

“The third principle concerning ‘fairness’ is somewhat vague. It is based on a court user subjectively interpreting the procedure as being fair – this may be impossible to achieve (as it is contingent on convincing a court user’s uncontrollable opinion). Also, the notion of fairness may differ depending on the status of the person with a disability – what is fair for a victim is different to what is fair for an accused. The accused has the benefit of a presumption of innocence, a right to silence etc. Consideration should be given to rewording this guideline so as to make it clear that it only refers to matters with the judge’s/prosecutor’s/court service’s control and that you do not wish to guarantee fairness in all aspects of the trial (this would be impossible in a jury trial, for instance, where a judge has no control over the verdict). Consider therefore limiting this guideline to the treatment of requests for special measures (i.e. that the judiciary will consider all requests for accommodation objectively). With respect to Guideline 1, it is also worth noting that in many common law countries (which subscribe to an adversarial model of justice), it may not be possible for a victim to have a “voice” at trial. They will only get to speak if summoned as witnesses. In these jurisdictions, victims often only get to speak at the post-trial stage when an offender is being sentenced.”

Bowen and LaGratta (2014) unpack the concept ‘fairness’ and refine it to ‘procedural fairness’ in the court context, where they explain that regardless of the role of the person with disability (defendant, witness or victim), how they are treated has a direct impact on their perception of the legal process and their ongoing likelihood of complying with court orders and the law generally. The authors go on to state, “It is not enough to be fair; citizens must perceive

that the process is fair” (Bowen & LaGratta, 2014, p. 2). Fairness can be achieved by the courts for all individuals with severe communication disabilities in the court system, regardless of their role, as it is not always about whether the outcome was fair, but also about whether the required court accommodations were offered or suggested during the process of the trial (Bowen & LaGratta, 2014; Tyler, 2008).

Participant 345 shared more comments related to Domain 4 and discussed the ‘adversarial model of justice’ within the theme, “The processes and members of the court system”:

“With respect to Guideline 1, it is also worth noting that in many common law countries (which subscribe to an adversarial model of justice), it may not be possible for a victim to have a ‘voice’ at trial. They will only get to speak if summoned as witnesses. In these jurisdictions, victims often only get to speak at the post-trial stage when an offender is being sentenced.”

However, even with many countries that follow a common law legal system, the focus should be on the human rights of persons with disabilities. Moreover, if a country has ratified (or is a signatory of) the CRPD, the focus should be on transformative equality, which allows persons with a severe communication disability to be granted procedural accommodations that can facilitate their participation, irrespective of their role (defendant, witness or victim) or the stage of the legal proceedings (pre-trial, trial or post-trial).

5.9.6 Domain 5: Applicability

Domain 5 was a smaller domain and contained only two questions, both of which yielded results that were statistically highly significant on the 99% level of confidence ($p < 0.001$) (see Table 5.13).

Table 5.13*Responses related to Domain 5: Applicability of the guidelines (N = 36)*

Statements		Strongly disagree	Disagree	Some-what disagree	Neither agree nor disagree	Some-what agree	Agree	Strongly agree	Mean	Std dev	p-value
The guideline document provides advice on how the court accommodations can be put into practice.	freq	0	3	2	6	0	8	17	5.639	1.710	0.000*
	%	0%	8%	6%	17%	0%	22%	47%			
The potential resource implications of applying the court accommodations were considered.	freq	1	1	1	8	0	13	12	5.556	1.576	0.000*
	%	3%	3%	3%	22%	0%	36%	33%			
Average		1%	6%	4%	20%	0%	29%	40%			

Std dev – Standard deviation

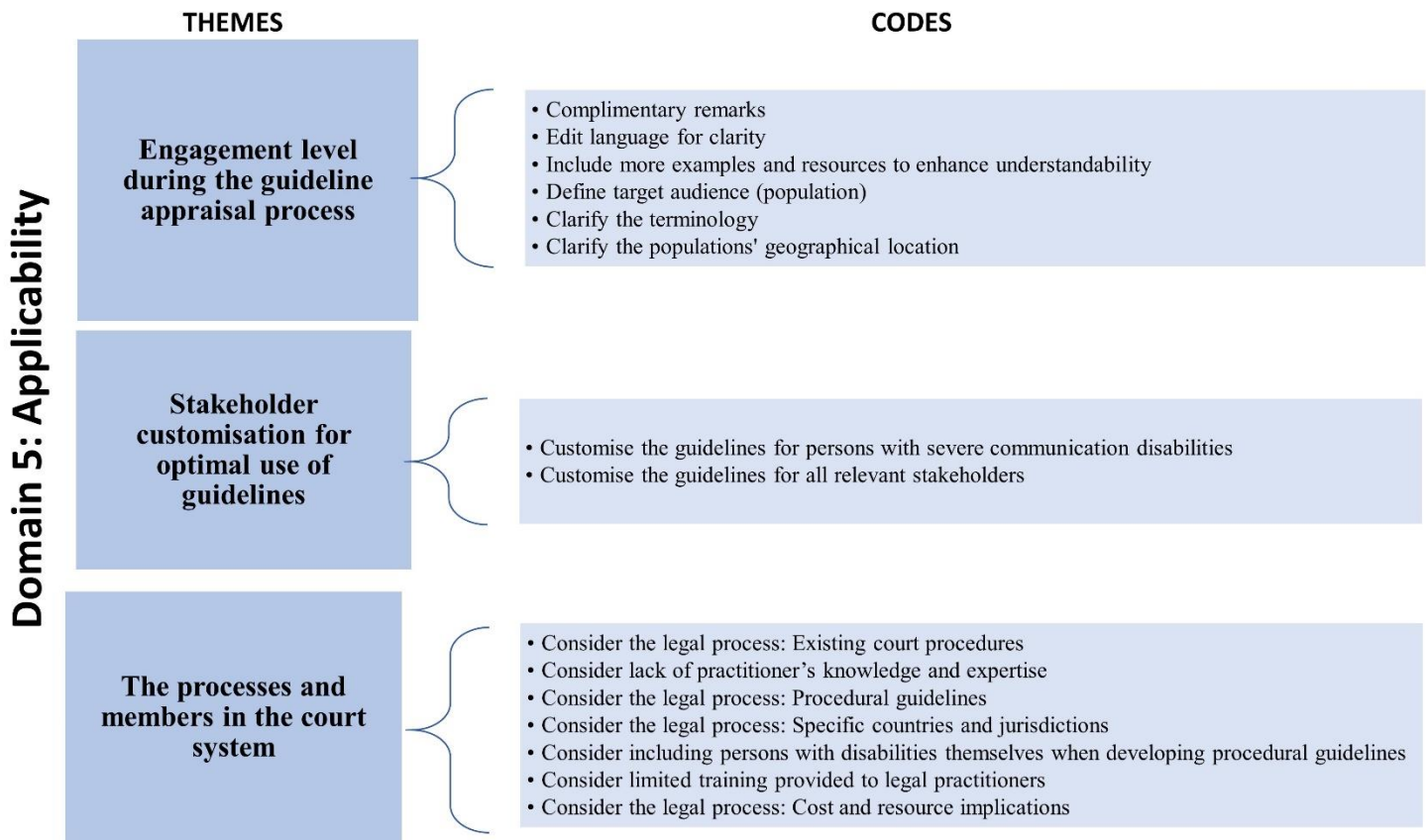
* statistically significant on the 95% level of confidence ($p < 0.05$)** statistically highly significant on the 99% level of confidence ($p < 0.001$)

On average, 69% of participants agreed on the applicability of the guidelines, while 20% were undecided and 11% disagreed. Most participants (69%) agreed that the guidelines provided advice on how the court accommodations can be put into practice, while 14% disagreed and 17% were undecided. A similar percentage (69%) agreed that the potential resource implications of applying the court accommodations had been considered, with a smaller percentage disagreeing (9%) but a larger percentage being undecided (22%).

When the qualitative comments made by participants related to Domain 5 were analysed, they represented a wide variety of codes, which were organised into three main themes. Figure 5.8 presents the themes and the codes that were generated in Domain 5.

Figure 5.8

Thematic analysis for Domain 5: Applicability



Within the first theme, “Engagement level during the guideline appraisal process”, Participant 352 highlighted the following:

“The guideline is clear on what should be done, but more is needed on the how. That doesn't mean to say that it's not an important document, it is; however, more is needed to develop the question of 'how' it will be applied.”

The reality is that guidelines will always need to be utilised alongside the individual’s preferences, the legal professionals’ experience and expertise, and the specific country’s jurisdiction and court’s available resources and accommodations (Gagliardi & Brouwers, 2012). The court accommodation guidelines were developed to guide and assist persons with severe communication disabilities (primary stakeholders) and those who work alongside them (secondary stakeholders). The ‘how’ to implement the court accommodation guidelines will need to be determined by a multi-disciplinary approach and address the individual’s specific needs.

Participant 355 shared thoughts on customisation of the recommendations in the guidelines to each individual's specific needs, which was within theme 2 (Figure 5.8):

"I think it is important, as the document notes, that these are guidelines and best practices, and that it is important to take an individualised approach and tailor these recommendations to the specific needs of the individual."

Participants frequently mentioned the importance of training the legal practitioners who work with persons with disabilities in the court system (Theme 3, Figure 5.9). Participant 343 reflected on the importance of the training of legal practitioners:

"I think that an important resource to be considered is the ongoing training, both initial and refresher training, required for all members of the judiciary, all lawyers and all court staff. It is a big project that will require expertise to both write and deliver the training programme."

Participant 357's comment correspond with that mentioned by Participant 343 and includes concerns regarding the lack of training and the limited knowledge of legal practitioners:

"I think police, legal and justice professionals need to know how to recognise a potential communication disability (many are invisible) and when and how to have a communication intermediary engaged to assess and define the supports that a person needs. I don't think they have sufficient knowledge and skill to provide these supports in high-risk situations."

Likewise, Participant 362 shared apprehension about the capabilities of the relevant legal practitioners when reflecting on Domain 5:

"Applicability worries me. For persons, especially children, [even] without disabilities the court process and context is seldom ideal in terms of an enabling environment, and I do not believe are always protected adequately when they come to court to testify despite our legislation and the spoken commitment of government. There will be a need to train all court officials on the accommodation (both practical and figurative) on these guidelines and to assist in the development of an empathic, facilitating and supportive approach."

Training of legal practitioners in all phases of the judiciary process is an ongoing topic that has been consistently reported on over the last two decades (Archer & Hurley, 2013; Bornman et al., 2016; Camilleri & Pedersen, 2019; Gulati et al., 2020; Hayes, 2007; Horan,

2015; Howard et al., 2015; Larson, 2014; Morrison et al., 2019; Nair, 2009; O’Mahony, 2012; Talbot, 2012; Viljoen et al., 2021; White et al., 2020b). Larson (2014) presents a detailed account of various law schools internationally that offer training on disability law (for example, the National University of Ireland, Galway, has an LLM programme in International and Comparative Disability Law and Policy). Beqiraj et al. (2017) also provide an overview of various countries that provide mandatory training for their legal practitioners who work with persons with disabilities. With more disability training programmes becoming available for legal practitioners, these programmes – in conjunction with available resources such as the developed court accommodation guidelines – could be the successful formula to ensure that persons with severe communication disabilities are able to participate equally in court.

5.9.7 Domain 6: Editorial independence

The final domain, Domain 6, also comprised only two questions, both of which yielded results that were statistically highly significant on the 99% level of confidence ($p < 0.001$), as shown in Table 5.14.

Table 5.14

Responses related to Domain 6: Editorial independence of the guidelines (N= 36)

Statements		Strongly disagree	Disagree	Some-what disagree	Neither agree nor disagree	Some-what agree	Agree	Strongly agree	Mean	Std dev	p-value
The funders who enabled this research were mentioned. Their views did not influence the content of the developed guidelines.	freq	0	0	0	10	0	11	15	5.861	1.246	0.000*
	%	0%	0%	0%	28%	0%	31%	42%			
Competing interests were recorded.	freq	0	0	0	10	0	12	14	5.833	1.231	0.000*
	%	0%	0%	0%	28%	0%	33%	39%			
Average		0%	0%	0%	28%	0%	32%	40%			

Std dev – Standard deviation

* statistically significant on the 95% level of confidence ($p < 0.05$)

** statistically highly significant on the 99% level of confidence ($p < 0.001$)

Although no participants disagreed with either of these two questions, on average just more than a quarter (28%) were undecided about the editorial independence of the developed guidelines,

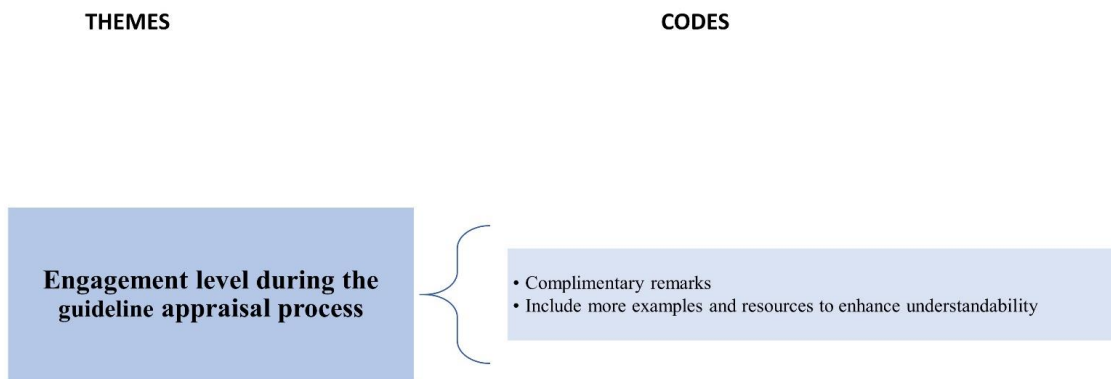
while 72% were in agreement. The majority of participants (73%) agreed that the funders who had enabled this research were mentioned and felt that their views did not influence the content of the developed guidelines, while 72% agreed that competing interests had been recorded.

From the analysis of the qualitative comments related to Domain 6, only one theme emerged, “Engagement level during the guideline appraisal process” containing two codes. Figure 5.9 shows the theme and the codes that were generated in Domain 6.

Figure 5.9

Thematic analysis for Domain 6: Editorial independence

Domain 6: Editorial independence



Considering the qualitative comments from participants related to editorial independence, they mostly focused on providing more information and resources within the guideline document. For instance, Participant 346 mentioned, “*Regarding the 1st question - funders were mentioned, but I am unable to comment on the 2nd statement other than that it was stated to be so*”.

Transparency is key when developing guidelines, as the aim is to develop trustworthy and authentic guidelines; therefore, all relevant information regarding funders and competing interests must be presented (Brouwers et al., 2017). Although this information was mentioned in the guideline document, a clearer and more detailed statement could have been made to confirm that

no there were no competing interests in the process of developing the court accommodation guidelines and that the views of the funders did not influence the guideline development.

5.9.8 Impact of demographic variables on the six different domains

Three demographic and biographic variables (i.e., nationality, working experience and current work role) were tested in relation to the six different domains of the CAGAT. A chi-square test was used to determine the impact of these variables on how the participants scored the different domains of the CAGAT. Results are shown in Tables 5.16, 5.17 and 5.18 respectively.

5.9.8.1 Nationality (or country of practice)

A Pearson chi-square test was conducted using the variable, ‘nationality (country of practice)’, which included the following countries: Australia, Canada, Germany, Ireland, Israel, Italy, Lesotho, New Zealand, South Africa, Spain, Sweden, UK, USA and Zimbabwe. The results are presented in Table 5.15.

Table 5.15

Comparing the association between country where participants practise and items across the six domains (N= 36)

Domain	Pearson chi-square	df	p-value
Domain 1: Scope and purpose			
The overall objective of the guidelines was specifically described.	59.631	60	0.489
The population for whom the guidelines are intended for were specifically described.	48.271	75	0.993
Domain 2: Stakeholder involvement			
The guideline development process included individuals from different stakeholder groups.	70.829	45	0.008*
Views and perspectives from stakeholders (including persons with disabilities) who would benefit from the guidelines were sought.	55.893	60	0.626
The individuals who will benefit from the guideline document were clearly defined.	127.416	75	0.000**
Domain 3: Rigor of development			
Systematic methods were used to search for evidence.	44.626	60	0.931
The criteria for selecting the evidence were clearly described.	62.473	75	0.849
The strengths and limitations of the body of evidence were clearly described.	63.396	75	0.828
The methods for formulating the guideline document were clearly described.	60.869	60	0.444
The international implications were considered in formulating the guideline document.	80.825	75	0.302
There is an explicit link between the recommendations (court accommodations) and the supporting evidence.	87.326	75	0.156
Domain 4: Clarity of presentation			

Domain	Pearson chi-square	df	p-value
The recommendations (court accommodations) under GUIDELINE 1, “The person should be allowed to use their ‘voice’ by using a communication method or mode of their preference throughout the whole legal process”, are specific (or clearly specified).	41.335	45	0.628
The recommendations (court accommodations) under GUIDELINE 1, “The person should be allowed to use their ‘voice’ by using a communication method or mode of their preference throughout the whole legal process”, are easily identifiable.	35.775	45	0.836
The recommendations (court accommodations) under GUIDELINE 2, “The person should be shown respect and treated with dignity by all persons involved throughout the legal process”, are specific (or clearly specified).	31.150	30	0.408
The recommendations (court accommodations) under GUIDELINE 2, “The person should be shown respect and treated with dignity by all persons involved throughout the legal process”, are easily identifiable.	30.176	30	0.457
The recommendations (court accommodations) under GUIDELINE 3, “The person should feel that all decisions are being made in a fair and neutral way throughout the whole legal process”, are specific (or clearly specified).	44.562	45	0.490
The recommendations (court accommodations) under GUIDELINE 3, “The person should feel that all decisions are being made in a fair and neutral way throughout the whole legal process”, are easily identifiable.	54.758	60	0.667
The recommendations (court accommodations) under GUIDELINE 4, “The person should feel that all legal practitioners can be trusted and that their decisions are easy to understand and, in the person’s best interest”, are specific (or clearly specified).	33.211	45	0.903
The recommendations (court accommodations) under GUIDELINE 4, “The person should feel that all legal practitioners can be trusted and that their decisions are easy to understand and, in the person’s best interest”, are easily identifiable.	34.700	45	0.866
Domain 5: Applicability			
The guideline document provides advice on how the court accommodations can be put into practice.	66.494	60	0.263
The potential resource implications of applying the court accommodations were considered.	63.385	75	0.828
Domain 6: Editorial independence			
The funders who have enabled this research were mentioned. Their views did not influence the content of the developed guidelines.	31.327	30	0.399
Competing interests were recorded.	30.374a	30	0.447
Overall guideline assessment			
Please rate the overall quality of the guideline document.	63.806	75	0.818
I would recommend this guideline document.	26.157	30	0.667

Std dev – Standard deviation

* statistically significant on the 95% level of confidence ($p < 0.05$)

** statistically highly significant on the 99% level of confidence ($p < 0.001$)

The results for only two of the 19 items showed statistical significance – both in Domain 2, ‘Stakeholder’s involvement’. The p-value for the item “The individuals who will benefit from the guideline document were clearly defined” was highly significant on the 99% level of confidence ($p = 0.000$), while for the item “The guideline development process included individuals

from different stakeholder groups” it was statistically significant on the 95% level of confidence ($p=0.008$). There is thus enough evidence to suggest an association between the country where the participants practise and stakeholder involvement, as both of the significant items were related to this domain. However, this result should be interpreted with caution, as the Cronbach alpha value for Domain 2 was 0.69 (see Table 5.18). The p-values for no other items were found to be statistically significant.

These associations could be linked to the fact that each country has its own legislation and jurisdiction that every so often make it difficult for persons with severe communication disabilities to participate equally in the legal system (Bornman et al., 2016; Camilleri & Pedersen, 2019; Cremin, 2016; Dagut & Morgan, 2003; Fitzsimons, 2016a; Kermit et al., 2011; Kuosmanen & Starke, 2015; Spaan & Kaal, 2019; White et al., 2015). The developed and recommended court accommodation guidelines offered an all-encompassing, international lens that included stakeholders from different continents and countries (through the legal scoping review, international focus group and interviews with legal practitioners) and these guidelines could be utilised by all persons with severe communication disabilities and relevant legal practitioners, internationally. The purpose of the guidelines, which use the CRPD as a framework, was to promote access to justice for all persons with severe communication disabilities in court, irrespective of their role and irrespective of the specific countries’ laws and jurisdictions (Chan et al., 2012; Lansdown, 2012; Minkowitz, 2017). Furthermore, the CRPD has globally been ratified by 182 countries and has perhaps become the most far-reaching of human rights instruments insofar as it outlines a framework for its obligations to take root – not only in law, but more broadly, in domestic society (Lord & Stein, 2009).

5.9.8.2 Work experience

A Pearson chi-square test was conducted to compare the participants’ total work experience as a variable categorised into six intervals (i.e., 1-5 years of experience; 6-10 years of experience; 11-15 years of experience; 16-20 years of experience; 21-25 years of experience; 26 years of experience or more), across the six domains of the guidelines. The majority of participants (42%, $n=15$) were categorised under 26 years’ work experience and more (see Table 5.1). Results are presented in Table 5.16.

Table 5.16*Comparing the association between work experience and domains (N=36)*

Domain	Pearson chi-square	df	p-value
Domain 1: Scope and purpose			
The overall objectives of the guidelines were specifically described.	20.243	20	0.443
The population for whom the guidelines are intended for were specifically described.	18.655	25	0.813
Domain 2: Stakeholder involvement			
The guideline development process included individuals from different stakeholder groups.	11.389	15	0.725
Views and perspectives from stakeholders (including persons with disabilities) who would benefit from the guidelines were sought.	16.300	20	0.698
The individuals who will benefit from the guideline document were clearly defined.	14.725	25	0.948
Domain 3: Rigor of development			
Systematic methods were used to search for evidence.	24.196	20	0.234
The criteria for selecting the evidence were clearly described.	27.270	25	0.343
The strengths and limitations of the body of evidence were clearly described.	27.841	25	0.315
The methods for formulating the guideline document were clearly described.	27.589	20	0.120
The international implications were considered in formulating the guideline document.	23.975	25	0.521
There is an explicit link between the recommendations (court accommodations) and the supporting evidence.	26.363	25	0.388
Domain 4: Clarity of presentation			
The recommendations (court accommodations) under GUIDELINE 1, “The person should be allowed to use their ‘voice’ by using a communication method or mode of their preference throughout the whole legal process”, are specific (or clearly specified).	12.090	15	0.672
The recommendations (court accommodations) under GUIDELINE 1, “The person should be allowed to use their ‘voice’ by using a communication method or mode of their preference throughout the whole legal process”, are easily identifiable.	11.444	15	0.721
The recommendations (court accommodations) under GUIDELINE 2, “The person should be shown respect and treated with dignity by all persons involved throughout the legal process”, are specific (or clearly specified).	9.719	10	0.466
The recommendations (court accommodations) under GUIDELINE 2, “The person should be shown respect and treated with dignity by all persons involved throughout the legal process”, are easily identifiable.	13.131	10	0.216
The recommendations (court accommodations) under GUIDELINE 3, “The person should feel that all decisions are being made in a fair and neutral way throughout the whole legal process”, are specific (or clearly specified).	16.114	15	0.374
The recommendations (court accommodations) under GUIDELINE 3, “The person should feel that all decisions are being made in a fair and neutral way throughout the whole legal process”, are easily identifiable.	24.395	20	0.226
The recommendations (court accommodations) under GUIDELINE 4, “The person should feel that all legal practitioners can be trusted and that their decisions are easy to understand and, in the person’s best interest”, are specific (or clearly specified).	17.110	15	0.312
The recommendations (court accommodations) under GUIDELINE 4, “The person should feel that all legal practitioners can be trusted and that their decisions are easy to understand and, in the person’s best interest”, are easily identifiable.	19.610	15	0.187
Domain 5: Applicability			

Domain	Pearson chi-square	df	p-value
The guideline document provides advice on how the court accommodations can be put into practice.	16.984	20	0.654
The potential resource implications of applying the court accommodations have been considered.	31.696	25	0.167
Domain 6: Editorial independence			
The funders who have enabled this research were mentioned. Their views did not influence the content of the developed guidelines.	10.031	10	0.438
Competing interests were recorded.	8.827	10	0.549
Overall guideline assessment			
Please rate the overall quality of the guidelines.	39.616	25	0.032*
I would recommend this guideline document.	5.749	10	0.836

Std dev – Standard deviation

* statistically significant on the 95% level of confidence ($p < 0.05$)

** statistically highly significant on the 99% level of confidence ($p < 0.001$)

Only one of the 19 items across the six domains was statistically significantly associated with work experience, as the overall quality of the developed and recommended court accommodation guideline document was rated on the 95% level of confidence ($p=0.032$). Table 5.17 shows that there is enough evidence to suggest an association between work experience and rating of the overall quality of the guideline document. When looking at the specific association, it is evident that the majority of participants, who had 26 years of work experience or more, rated the overall quality of the guidelines positively. This could be linked to the fact that the participants with 26 or more years of work experience had possibly not come into contact with specific court accommodation guidelines for persons with severe communication disabilities in their previous years of work in this specific field, and therefore they rated the overall quality of the guidelines as high (see Figure 5.2) (Camilleri & Pedersen, 2019; Fitzsimons, 2016; Larson, 2014; White et al., 2020a). Many participants mentioned in their feedback and commentary (see Section 5.9.1: Overall assessment of guidelines) that there was much need for court accommodation guidelines in the legal system. Furthermore, participants with work experience of 26 years or more mentioned not only the lack of resources and information, but also the lack of training and knowledge of the legal practitioners (Archer & Hurley, 2013; Bornman et al., 2016; Gulati et al., 2021; Howard et al., 2015). Possibly, these participants also noticed the importance and relevance of such guidelines as a useful resource for all stakeholders dealing with persons with severe communication disabilities in the court.

5.9.8.3 Current work role

The researcher also conducted a Pearson chi-square test to determine the association between the participant's work role – being in academia, being in practice, and being in both academia and practice – across the six domains. None of the 19 items were statistically significant on the 95% level of confidence, and hence the results are not further displayed.

5.10 Reliability and validity: Phase 3

5.10.1 Reliability

Reliability can be defined as the extent to which the results of a study are consistent over time and accurately represent the total population under study (Golfashani, 2003; Oluwatayo, 2012). Reliability can also be measured by determining Cronbach alpha values, which indicate the internal consistency of a survey (Taherdoost, 2016). According to Taherdoost (2016), the most appropriate measure of reliability is obtained when making use of a Likert scale. Cronbach alpha values between 0.6 and 0.7 are generally interpreted as being questionable; between 0.7 and 0.8 they are acceptable, between 0.8 and 0.9 they are good, and values larger than 0.9 are excellent (Multon & Coleman, 2012). Table 5.17 shows the results of the CAGAT measured by the Cronbach alpha test.

Table 5.17

Internal consistency (reliability) of the CAGAT

Domains	Description	Cronbach alpha	Internal consistency
Domain 1	Scope and purpose	0.87	Good
Domain 2	Stakeholder involvement	0.69	Questionable
Domain 3	Rigor of development	0.90	Excellent
Domain 4	Clarity of presentation	0.94	Excellent
Domain 5	Applicability	0.70	Acceptable
Domain 6	Editorial independence	0.76	Acceptable
Average	Reliability	0.81	Good

This study showed that there was good to excellent internal consistency across the different domains of the CAGAT, except for Domain 2 ($\alpha=0.69$). The fact that the Cronbach alpha values were bordering on the acceptable range might indicate that there were not enough questions (only three) included in this domain. Thus, if more relevant items had been included in this domain, the alpha value might have increased (Multon & Coleman, 2012). Some other domains had only two items and yielded better Cronbach alpha values. It can thus be concluded

that the CAGAT had acceptable to excellent internal consistency and that it achieved the aim that it was intended for.

Reliability of this data was also seen in the fact that the scores from the participants were consistent, logical and expected (Creswell & Plano Clark, 2018). The participants furthermore showed a high level of engagement with the CAGAT and the majority of participants provided detailed and extensive comments and feedback to justify their choice of ranking, thus further increasing the reliability of Phase 3. A total of 113 qualitative comments were made in the CAGAT, confirming the rich engagement from the legal experts.

5.10.2 Validity

Validity is defined as the degree to which an instrument actually measures what it purports to measure, or how well a test or a meaning instrument fulfils its function (Golfashani, 2003; Oluwatayo, 2012). To ensure the validity of quantitative data, specific data analysis methods were used, including descriptive statistics, which assisted to visualise patterns through quantifiable frequencies and percentages. Inferential statistics were applied to assist the researcher to reach conclusions about the statistical significance of the results, using chi-square and t-test analysis. These scientific methods ensured that the study achieved what it intended to do.

Face validity of the CAGAT was strengthened as it was assessed for appearance, layout and format in the pilot study (Taherdoost, 2016). Content validity of the CAGAT was also examined as the tool was checked by a statistician (after the pilot study) before it was distributed to the participants for further validation (Taherdoost, 2016).

5.11 Summary of the results and main discussion points from Phase 3

The synopsis of the results is as follows:

- The overall assessment of the guidelines was rated positively (ranging from good to exceptional, with the majority being rated as excellent and very good).
- Almost all the participants (97%) stated that they would recommend the guidelines: 47% without any further modifications and 50% with some modifications.
- The participants who suggested modifications provided a range of suggestions and expert commentary in terms of how the guideline document could be modified. The suggestions

were coded using reflexive thematic analysis, and these codes were then grouped into three main themes:

- (i) Engagement level during the guideline appraisal process
 - (ii) Stakeholder customisation for optimal use of guidelines
 - (iii) The processes and members of the court system
- On average, the majority of participants (93%) agreed with the scope and purpose of the guidelines (Domain 1). Qualitative comments that were made under this domain involved suggestions for the development an ‘easy read’ version of the guidelines and for a clearer definition of a person with a severe communication disability.
 - On average, the majority of participants (87%) agreed with stakeholder involvement in the development of the guidelines (Domain 2). Qualitative commentary from this domain mainly focused on the importance of enhanced involvement of persons with disabilities in the development of the court accommodation guidelines, and the importance of highlighting their ‘voice’. Only persons with disabilities who fulfilled the role of legal practitioners with disabilities were included. Persons with disabilities who had been witnesses or defendants were not included due to logistical reasons, and this is a shortcoming that should be addressed in future research.
 - On average, the majority of participants (73%) agreed with the rigor of development of the guideline document (Domain 3). Qualitative commentary from this domain focused on editing the language used in the guidelines to ensure better clarity, and the importance of focusing on the specific country’s laws and jurisdiction.
 - On average, 79% of participants agreed with the clarity of presentation in the development of the guidelines (Domain 4). Qualitative commentary from this domain focused mainly on the use of certain terms such as ‘best interest’, customising the guidelines for specific audiences such as the families of persons with severe communication disabilities, and bearing each country’s court system and law (common law vs civil law vs religious law) in mind.
 - On average, 69% of participants agreed with the applicability of the guidelines (Domain 5). Qualitative commentary from this domain mainly focused on the importance of training all legal practitioners.

- On average, 72% of the participants agreed on the editorial independence of the guidelines (Domain 6). Qualitative commentary from this domain mainly focused on providing more information and resources within the guidelines document.
- The correlation between two items, namely “The individuals who will benefit from the guideline document were clearly defined” and the item “The guideline development process included individuals from different stakeholder groups” was statistically significant when comparing the country where participants were practising and comparing the items across the domains. There was thus enough evidence to suggest an association between experts’ country of practice and the two items that are both related to stakeholder involvement; however, a low Cronbach alpha value was calculated for this domain, which indicates that the internal consistency of the correlation was questionable.
- One item, namely “The rating of the overall quality of the guideline document” showed a statistically significant association with participants’ work experience. There was enough evidence to suggest an association between participants who had 26 years of work experience or more, and their rating of the overall quality of the guideline document, with more experience yielding a higher overall quality rating.

The results discussed in Chapter 5 provided evidence that the court accommodation guideline document was appraised as being of a high quality and an excellent resource. Further findings provided a plentiful number of modifications and suggestions that could improve the quality and effectiveness of the court accommodation guideline document.

Appropriate methodologies and rigorous strategies in the guideline development process were important for the successful implementation of the proposed recommendations (Brouwers et al. 2017). Therefore, the court accommodations identified in this study establish a useful, trustworthy and effective resource to assist persons with severe communication disabilities, their families and relevant legal professionals when accessing the court system and, in particular, when seeking access to justice.

5.12 Conclusion

This chapter discussed and interpreted the research results based on the aims of Phase 3 of the study, which were to appraise the quality of the recommended court accommodation guidelines. The researcher described the development of the CAGAT, the custom-designed tool for the

quantitative guideline appraisal, as well as the pilot study that was conducted to strengthen its validity. This was followed by a discussion of the data collection for Phase 3, which entailed expert practitioners employing the CAGAT to appraise the guidelines developed in Phase 2. Thereafter, statistical methods were applied and the results for each domain were shown and discussed. A discussion followed on the overall association between the six domains and three specific variables, namely nationality, years of work experience of the participants and their current work role. Chapter 5 concludes with a discussion of the reliability and validity of the data in this phase.

The next (and final) chapter will outline the study implications for legal practice, provide an evaluation of the study and offer recommendations for further research.

CHAPTER 6

CONCLUSIONS AND RECOMMENDATIONS

6.1 Introduction

The main aim of this thesis was to develop and appraise guidelines to accommodate persons with severe communication disabilities in court so as to allow their equal participation in the court system and thereby achieving access to justice (irrespective of their role – witness, defendant or legal practitioner). Chapter 6 presents a summary of the results according to the three phases of the mixed-method social justice design (sequential exploratory design) used in this study. This is followed by a description of the legal implications of the study results for legal practice. Next, the study is evaluated by discussing its strengths and limitations, and finally, recommendations for further research are suggested.

6.2 Summary of the results and conclusions

The summary of results presented below is organised according to the three different phases set out in the research design of the thesis.

6.2.1 *Qualitative Engagement Phase with four distinct data sources*

Phase 1, the Qualitative Engagement Phase, commenced with a legal scoping review to map the landscape regarding court accommodations for persons with severe communication disabilities in the extant literature. This innovative methodology combined and crossed the legal and social sciences, thus making a novel methodological contribution to the thesis. The legal scoping review involved a systematic search through specific databases and research platforms and spanned a particular period, starting in 2006 (the year when the CRPD was adopted). The review aimed to select and synthesise the results of relevant research to determine the current status of court accommodations for persons with severe communication disabilities, based on the best available research evidence. Using this systematic methodology as opposed to a classic literature review provided more vigorous evidence than anecdotes or personal opinion, making it ideally suited as the first data source to be used in this thesis.

The 54 publications included in the review identified a total of 302 different accommodations that represented various components of the procedural justice framework. More

than half of these accommodations mentioned were related to ‘respect’ (62%) (in subsequent data sources expanded to ‘treated with respect’) followed by a quarter related to ‘voice’ (27,40%) (in subsequent data sources expanded to ‘having a voice’). The remainder of the accommodations related to ‘understanding’ (19,47%) (in subsequent data sources expanded to ‘understanding court language’) and ‘neutrality’ (15,51%) (in subsequent data sources expanded to ‘using objective criteria for decision making’). Court accommodations with the highest frequency count were the use of intermediaries and permitting AAC (both which are related to the ‘having-a-voice’ construct); ensuring appropriate and proper questioning strategies (related to the ‘understanding-court-language’ construct); allowing frequent breaks and allowing CCTV in court (both related to the ‘treated-with-respect’ construct), and lastly, using expert witnesses (linked to the ‘using-objective-criteria-for-decision-making’ construct).

The legal scoping review also identified that persons with severe communication disabilities often have multiple disabilities and therefore they may need more than one accommodation to achieve and ensure equal participation in court. The review highlighted the fact that no single accommodation (i.e., the proverbial ‘one size fits all’) would be universally applicable and its findings resulted in a publication by White et al. (2020a) (Appendix 3D).

In order to supplement the legal scoping review, an expert focus group session was conducted as a second data source to elicit personal opinion from known practitioners in the field. The focus group aimed to identify court accommodations that could be recommended to assist individuals with severe communication disabilities in a specific country of jurisdiction, namely South Africa. The South African focus was due to the fact that the study and research aim originated from there. Using a single country perspective allowed for an in-depth understanding of the phenomenon before branching out to obtain a broader international perspective.

The data obtained in the face-to-face focus group session with South African experts was analysed using Article 13 (Access to Justice) of the CRPD as a human rights framework, and four themes were identified: equality, accommodations, participation, and training of professionals. Specific court accommodations to accommodate persons with severe communication disabilities that were identified in this data source were the use of intermediaries, permitting AAC, the use of the national court preparation programme, allowing the use of legal lay assessors, and permitting the use of victim impact statements in court. Additionally, it was highlighted that the defendants with communication disabilities may experience profound

disadvantages in preparing and presenting their defence if they are not provided with appropriate accommodations during both the pre-trial and trial processes. The South African experts further highlighted the importance of much needed training for legal practitioners in the court system in order to ensure equality and participation for all. They also indicated that training on accommodations was required by defendants with disabilities to enable their fair participation in court. This data source (South African experts) resulted in a publication (White et al., 2020b) (Appendix 3F).

From the in-depth and country-specific focus it became clear that a broader, global focus was needed, in line with the reach of the CRPD. Hence, an online international expert focus group constituted the third data source. This online focus group aimed to investigate possible universal court accommodations that could enable persons from across the globe with severe communication disabilities (irrespective of role) to participate equally in the court system, thereby ensuring access to justice for them. Through thematic analysis, four themes were identified in the data:

- (i) Accommodations related to procedural fairness
- (ii) Accommodations related to ensuring equality
- (iii) Accommodations related to non-discrimination
- (iv) Accommodations related to legal practitioners

The specific court accommodations that were described by participants included using intermediaries; allowing AAC and making it available; testifying behind a screen; removing formal attire worn by judges and attorneys such as wigs and gowns; and allowing court discretion to forbid a criminal defendant from single-handedly cross-examining a witness with intellectual disabilities. Not only did the international experts highlight that court accommodations should meet the needs of both witnesses and defendants with severe communication disabilities, they also stated that there is a lack of court accommodations for legal practitioners with disabilities. This data source resulted in a publication by White et al. (2021) (Please see Appendix 3K).

The outcome of Data source 3 led to the formation of the fourth and final data source as part of the qualitative phase. This source included online interviews with seven legal practitioners with disabilities who described their unique perspectives and experiences of participation in the judiciary system as a person with a disability themselves. The practitioners

were also asked to suggest court accommodations for persons with disabilities – from their specific insider perspective – which flavoured their contributions in a unique manner. Three themes were conceptualised from the data they provided:

- (i) Participation barriers that hinder access to justice
- (ii) Accommodations related to ensuring equality
- (iii) Accommodations related to procedural fairness

Unique accommodations mentioned by the legal practitioners were the use of AAC methods of communication; ensuring the use of sign language interpreters when needed; allowing support persons (e.g., a family member being allowed to go to court with the witness or defendant); providing additional administrative clerks to assist with physical workload; providing physical adaptations to enhance accessibility (such as portable wheelchair ramps); and allowing individuals with disabilities to write down their questions or answers during court proceedings and during discussions with other legal professionals. These participants also mentioned that the accommodations they had received in their professional capacity within the court context had assisted them to develop their legal careers and these accommodations acted as facilitators in their careers. Such accommodations included the provision of additional administrative clerks; access to assistive technology such as screen readers and communication software; and environmental adaptations such as accessible paths and wheelchair ramps. More importantly, the interviews with legal practitioners highlighted the need for accommodation guidelines for persons with severe communication disabilities in court, ensuring disability training for all legal practitioners in the court system, and access to relevant resources such as accessible legal documents and screen readers. This data source resulted in an accepted manuscript for publication (White et al., 2021)(Please see Appendix 3P).

The data from Phase 1 led to the integration and triangulation of the qualitative data from the four data sources in Phase 2, which resulted in the development of appropriate court accommodation guidelines.

6.2.2 *Quantitative Feature Phase – Development of court accommodation guidelines*

Even though Phase 1 revealed a number of legal instruments that exist at national (South African) and international levels to accommodate persons with disabilities in court, gaps remain both in law and in practice. Legal practitioners who work with persons with severe communication disabilities have tirelessly been requesting guidance to ensure that court

accommodations are granted and effectively implemented, to ensure that access to justice can be achieved for these individuals. Therefore, developing guidelines is important as it can inform legal decision making while also bridging the gap between law and practice – which formed part of the second phase of the study.

The second phase of this social justice design was the integration and triangulation of the qualitative results from Phase 1's four data sources (legal scoping review; South African expert focus group; online international expert panel; online interviews with legal practitioners with disabilities). Phase 2 can also be described as the Quantitative Feature Phase during which a survey-development variant was developed. Integration involved triangulating the qualitative findings from the Qualitative Engagement Phase to build a new feature (in this case, guidelines to support both primary and secondary stakeholders when accommodating persons with severe communication disabilities in court) that could be appraised quantitatively. The four procedural justice guidelines (voice, respect, neutrality and understanding) (Tyler, 2008) extracted from the data were used to steer the development of the four guidelines:

- (i) *Guideline 1* – The person should be allowed to use their preferred 'voice', irrespective of the communication method or mode, throughout the whole legal process.
- (ii) *Guideline 2* – The person should be shown respect and be treated with dignity by all persons involved, throughout the legal process.
- (iii) *Guideline 3* – The person should feel that all decisions are being made in a fair and neutral way, throughout the whole legal process.
- (iv) *Guideline 4* – The person should feel that all legal practitioners can be trusted, that their decisions are easy to understand and that they are in the person's best interest.

Guidelines were evaluated by persons with severe communication disabilities (as relevant primary stakeholders) in terms of feasibility, readability, consistency of style and formatting, and clear, appropriate and relevant language. Suggestions offered by the persons with severe communication disabilities were implemented and integrated into the guidelines for court accommodations, which were appraised in the third and final phase of the study.

6.2.3 Quantitative Test Phase

Phase 3, the Quantitative Test Phase, aimed to appraise the recommended court accommodation guidelines. Thirty-six legal experts used a custom-developed appraisal tool, the CAGAT, based on an existing framework, namely the AGREE II for this purpose. Overall, the

four guidelines were rated as being of very good and even excellent quality. Nearly half of the legal experts stated that they would recommend the guidelines as they are, and the other half stated they would recommend the guidelines with modifications. Only one expert stated that he/she would not recommend the guidelines.

As the quality of the guidelines was appraised, there was a clear indication that all four guidelines can be deemed trustworthy for implementation in the court system. However, the findings also suggested that the guidelines should be modified to some extent for the specific roles (such as witness with a disability, accused with a disability, legal practitioner with a disability), for the relevant primary stakeholders (i.e., persons with severe communication disabilities), for the relevant secondary stakeholders (such as judges, advocates, intermediaries) and also for the specific country and jurisdiction.

Furthermore, the results suggested that most persons with severe communication disabilities, their families and support persons, and the legal practitioners who work with these individuals, do not always know how or where to access court accommodations. Thus, the developed guidelines could be a useful and trustworthy resource that could assist both primary and secondary stakeholders in their pursuit of justice. The support and high engagement of all 78 participants (legal experts, disability advocates and participants with disabilities themselves) throughout the three phases of the research, reflect the importance and significant global demand for court accommodation guidelines for persons with severe communication disabilities. Throughout this thesis, participants echoed that guidelines stipulating specific accommodations for persons with disabilities who needed to access the court system were generally lacking from global judicial systems (despite individual ‘pockets of excellence’ in certain jurisdictions). There was general consensus that such guidelines could be positively used to assist persons with severe communication disabilities when exercising their human right of access to justice, as articulated in Article 13 of the CRPD.

6.3 Implications for legal practice

The main implication that this thesis has for legal practice is that the accommodations developed and appraised in this thesis can serve as a useful, trustworthy and effective resource to assist persons with severe communication disabilities, globally, when accessing the court system. Furthermore, the four guidelines that have been formulated as a 3-page easy-to-read English document are readily available and can be used by persons with severe communication

disabilities who are wanting to access the justice system. The guideline document, which provides recommended court accommodations in detail, could immediately provide the essential information that persons with severe communication disabilities need to participate equally in court. The guidelines could empower persons with severe communication disabilities to make more informed legal choices and to consider their personal needs and preferences in selecting the best option for if or when they need to access the court system.

An additional and key clinical implication of the guidelines is that they can support persons with severe communication disabilities by influencing public policy and law reform. The court accommodation guidelines call attention to under-recognised social justice issues, limited legal services and accommodations, and they highlight human rights violations that impact persons with severe communication disabilities. Legal services or court accommodations that were not previously offered to persons with severe communication disabilities (or that were lacking in their offering) may be made available as a response to the newly developed guidelines. The court accommodation guidelines were developed with the intent to promote procedural justice and fairness in order to advocate for more effective and appropriate delivery of legal services and for accommodations for persons with severe communication disabilities.

The support and willingness of all the participants – including legal experts with and without disability – to actively participate in this research and offer continued advice and opinions beyond this thesis, show the importance they attribute to this research topic. Their participation also highlights how the developed and appraised court accommodation guidelines could assist not only persons with severe communication disabilities, but also legal practitioners and other stakeholders who support these individuals in their pursuit of access to justice. This is a further indication of how the human rights of persons with severe communication disabilities are being put in the spotlight by this research and stresses the significance of the human right of access to justice.

All secondary stakeholders (such as lawyers, social workers or trained intermediaries) could also benefit from using these guidelines to assist them when working with persons with severe communication disabilities who wish to participate in the court system. The court accommodation guidelines can improve the quality of their legal decisions, as they offer recommendations of what court accommodations are available and can support persons with severe communication disabilities if they are uncertain about how to proceed. As the court

accommodation guidelines are based on a critical appraisal of scientific evidence (evidence-based guidelines), this process clarified which court accommodations are of proven benefit and documented the quality of the supporting data.

The court accommodation guidelines can furthermore support and assist the families of persons with severe communication disabilities who may find themselves in stressful and overwhelming situations when wanting to assist and support their loved ones who may need to access the court system. The guidelines can enable such families to make informed legal decisions and equip them with the knowledge of which court accommodations are available for persons with severe communication accommodations. Thus, they will enable the families and activate equal and fair participation of persons with severe communication disabilities in court.

6.4 Evaluation of the study

The section below provides an evaluation of the study by discussing its strengths and limitations.

6.4.1 Strengths

The use of the mixed methods social justice design produced results that, firstly, could be beneficial and useful to persons with severe communication disabilities in their pursuit of accessing justice and that, secondly, are viewed as credible by legal professionals, relevant stakeholders and policy makers (Creswell & Plano Clark, 2018).

The legal scoping review that formed part of the first data source in Phase 1 (see Appendix 3D) developed a new methodology for conducting a legal scoping review. This could guide future studies that aim to document existing evidence of a specific legal topic by describing what has been written about the topic, and how it has been examined and appraised to date. Furthermore, this proposed methodology 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. As such, it could assist courts by lending credibility to the process and reducing any perception of bias about their decisions, thereby assisting and strengthening legal practice.

The global spread of participants extended the reach of the current study and ensured that diverse perspectives were included. Participants represented five of the seven continents, and this provided the study with a unique blend of knowledge and perspectives about court accommodations for persons with severe communication disabilities. Moreover, the researcher's

engagement with legal practitioners with disabilities to explore their professional and personal experiences in the court system also provided the study with an in-depth insight into the court system as a workplace context.

The study included the voices of persons with disabilities themselves across all three phases to highlight the insider perspective. When developing and appraising guidelines, the target audience for whom they are intended should be included throughout the process. The inclusion of persons with disabilities themselves supported and benefited the overall quality of the guidelines by ensuring that they addressed the most pertinent issues faced by persons with disabilities when trying to access the judiciary system (Farmer & Macleod, 2011; Hall, 2013). Moreover, and more importantly, the suggestions made by persons with disabilities were considered and ‘listened’ to (Thill, 2015) and thus a short accessible format of the guidelines has been developed and is now readily available (see Appendix 4E). This focus could potentially act as a trigger for sustainable change to afford and employ court accommodations for the population of persons with disabilities. The accessible format of the guidelines provides a list of court accommodations that were grouped into four thematic categories (presented as four distinct guidelines), rather than a simple list of the accommodations – which would hamper the readability and feasibility of the guidelines in legal practice.

During the appraisal of the guidelines, the 36 legal experts provided a total of 113 qualitative comments in addition to their quantitative scoring of the guidelines, which attests to their rich engagement with the topic at hand. The overall assessment of the guidelines was positive (ranging from good to exceptional, with the majority of the experts rating the guidelines as excellent and very good). Almost all the participants (97%) stated that they would recommend the guidelines: 47% would do so without any further modifications and 50% with some modifications. These results are encouraging and suggest that the guidelines for persons with severe communication disabilities could be used as an effective and trustworthy resource in the court system. The court accommodation guidelines can act as a useful starting point to allow persons with severe communication disabilities access to the court system in an equal manner, irrespective of the individual’s role (witness, defendant or legal practitioner). It can also provide a solid basis for further adaptations and modifications to meet the diverse needs of this heterogeneous population.

6.4.2 *Limitations*

This study in hand focused on the CRPD (UN, 2006) as a human rights framework. However, despite its wide global reach, not all countries have ratified the CRPD. Even though the CRPD has been one of the most quickly adopted international human rights treaties, with the goal of upholding and protecting the rights of persons with disabilities in all countries (July 2021), 32 countries have to date not yet ratified it. Therefore, the court accommodation guidelines, with its foundations in the CRPD may not be regarded as applicable in some countries, which will negatively impact its reach.

For the purposes of this study, all the participants had to have a general comprehension of spoken and written English, which obviously had exclusion implications for the non-English-speaking world. The literature accessed (including the legal scoping review) also included English literature only. Important information and literature published in other languages were therefore not included in this study.

A small pool of countries were represented throughout the study, and therefore, a true international reflection of court accommodations for persons with severe communication disabilities cannot be claimed. It must be noted that each country's laws and jurisdiction differ, and therefore the guidelines for court accommodations mentioned in this study should be considered and interpreted in line with the specific laws of each country.

Although most participants across the different stages of the study were female, the legal practitioners who participated in the interviews were all male legal practitioners with disabilities. This might indicate that more men (with or without disabilities), compared to women, are practising law – as was highlighted in a recent study that reported that women are still largely underrepresented in the judiciary system (Gill & Eugenis, 2019). The absence of women participants in the fourth data source highlighted the fact that women with disabilities may continue to face barriers to their attainment of professional and jury positions in the judiciary system (Lodovici & Orlando, 2017; Women Enabled International, 2019). This underscores the importance of the intersectionality theory that was used to guide the human rights framework in this study.

No voices of witnesses or defendants with severe communication disabilities who had been in contact with the court system themselves were included in this study. Including their voices and perspectives could have produced rich data and might have offered a different

perspective. For example, the voices of defendants would have provided an insider perspective on the importance of the evidence they give and of their responses to cross-examination. It could also explain how the court accommodation guidelines could assist them in understanding crucial terms such as ‘guilty’, which is of great importance for a defendant to be able to accurately give his/her plea.

6.5 Recommendations for future research

The current study focused on only one stage of the legal process, namely attending and participating in court. Future research could focus on accommodations needed for other stages of the legal process, such as before the trial (i.e., providing a statement; preparations for court) and thereafter (i.e., counselling; prison reform programmes).

Future research could also focus on developing custom-designed disability training programmes for legal practitioners as part of their continuing professional development – with the express input from legal practitioners with disabilities. These training programmes should focus on the human rights of persons with disabilities and its nexus with procedural justice principles to demonstrate how persons with severe communication disabilities could participate equally in court, based on the accommodations identified in this thesis. At the same time, the development of educational modules and graduate courses on disability for legal scholars and students could be investigated to raise awareness of the challenges faced by persons with disabilities in accessing the court system (whether as a witness, defendant or legal practitioner).

Comparative studies, linked to how the developed guidelines can be domesticated to support and strengthen specific country legislations and jurisdictions, could expand global knowledge and insights into this topic and contribute to a broader adoption of certain accommodations.

Furthermore, the guidelines should be customised to accommodate the specific roles of persons with communication disabilities in court, for example, as witness, defendant or legal practitioner, as these roles all have different requirements in the legal process. For example, a defendant with a severe communication disability would need to understand and have access to the court language that speaks about the right to a fair trial and fitness to plead, and to vocabulary such as ‘guilty’ or ‘innocent’. This defendant furthermore needs to understand what it means to testify. The guidelines could also be customised for the different groups of stakeholders, namely primary stakeholders (witness, defendant and families) and secondary

stakeholders (the judge, the jury and lawyers). In order to ensure greater accessibility of the guidelines in line with Article 21 of the CRPD, other formats of multimedia could be explored, such as infographics, pictographics and videos. Examples can be found at these websites: <https://www.up.ac.za/research-matters/article/2801944/giving-a-voice-to-persons-with-disabilities>, <https://www.viva-sa.co.za/about/projects/sexual-violence-prevention/rape-response-protocol>.

Since the court accommodation guidelines were developed in English, translation into other global languages is recommended. A rigorous blind-back translation method must be used, and the process should possibly start with the other five official languages of the United Nations, namely Arabic, Chinese, French, Russian and Spanish (United Nations, 2021c), in order to broaden the guidelines' reach.

The CAGAT produced rich and informative data and responses from the participants during the appraisal process. Future research could refine the CAGAT for appraisal of the quality of other guidelines, e.g., guidelines for providing a statement to the police or for victim impact statements for persons severe communication disabilities.

6.6 Conclusion

Chapter 6 presented the conclusions based on the results of this study. The practical implications of the court accommodation guidelines for persons with severe communication disabilities were discussed, while the strengths and limitations of the study were highlighted in an attempt to evaluate it. Finally, recommendations were suggested for future research to add to the existing body of knowledge on court accommodations for persons with severe communication disabilities.

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APPENDICES

Appendix 3A

Safety and distress protocol	
*Note that a trained psychologist will be hired as part of the research team and be available to provide debriefing sessions and support whenever participant distress is detected or identified.	
Possible distress or event	Required action
No distress is detected by the researcher.	Before and after each interview or focus group/panel discussion, the researcher reminds all participants that a trained psychologist is available for debriefing sessions, should this be necessary.
During the interview or focus group/panel discussion, the researcher detects that the participant is in distress.	The researcher suspends the interview and asks the participant if he/she would like to take a break. In the case of a panel discussion, the researcher asks the distressed participant to step out of the panel discussion for a few minutes.
	The researcher approaches the participant after the short break and discusses the options to continue with the interview or panel discussion, or to opt out of the research altogether.
	If the participant agrees to continue with the interview or to re-join the focus group/panel discussion, the researcher reminds him/her that she will resume her role as the researcher. Should the participant feel distressed again, the process can be stopped once more. It can even be discontinued altogether.
On conclusion of the interview or focus group/panel discussion, the researcher detects that the participant is in distress.	The researcher asks the participant if he/she would like to have a debriefing session with the trained psychologist. The researcher then sets up the debriefing session at a time that is convenient for the participant.

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REPLY SLIP: South African expert focus group

Please submit electronically to PhD student at: [REDACTED]

Name of Expert: _____

Title or Profession: _____

Contact Details: Phone: _____
Email: _____

Project Title: **Accommodating persons with severe communication disabilities in court: Using universal design principles to guide key role-players**

PhD student: Robyn White, M.AAC
Email [REDACTED]

Supervisors: Prof. Juan Bornman – [REDACTED]
Dr. Ensa Johnson – [REDACTED]

I, _____, (full names and surname) hereby:

- Agree that participation is voluntary and that I have the right to withdraw from this study should I wish to do so for any reason whatsoever without providing any explanation and without any negative consequences;
- Understand that there is a psychologist who is part of the research team and I can contact her during the research for debriefing sessions.
- Understand that I will at no stage during the research process be exposed to any harmful situations;
- Understand that the content of the data and information will be handled with confidentiality and used for research purposes, to write a PhD thesis; conference presentations, journal articles, only;
- Understand that the data will be stored for a period of 15 years in a safe place at the Centre for AAC, University of Pretoria for 15 years for archival purposes for future use of data.
- The electronic data will be protected in a password protected file

(Please X your preferred option)

I give consent to participate in the study	I do not give consent to participate in the study
--	---

Signature of Expert

Date

Upon completion, I would like to obtain a copy of the PhD thesis: Yes ____ No ____

Centre for Augmentative and Alternative
Communication, Room 2-36, Com path
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Fakulteit Geesteswetenskappe
Lefapha la Bomotho



15 August 2018

Dear Expert

SAVE THE DATE: 27 September 2018 (09:00am – 15:00pm)

REQUEST TO TAKE PART IN A RESEARCH PROJECT AS AN EXPERT IN A NATIONAL EXPERT PANEL DISCUSSION

I am a PhD student in Augmentative and Alternative Communication (AAC) at the Centre for Augmentative and Alternative Communication (CAAC) at the University of Pretoria in South Africa. In partial fulfilment for the requirements of this degree; I am required to conduct a research project. I would appreciate your consent to participate in this research as a member of a national expert panel discussion.

Research topic: Accommodating persons with severe communication disabilities in court: Using universal design principles to guide key role-players

Rationale for the study: One billion people in the world experience some form of disability, and disability prevalence is higher for developing countries such as South Africa. Two studies funded by the World Health Organisation (WHO) recently confirmed the high international figures for prevalence and risk of violence against adults and children with disabilities. One group within the sphere of persons with disabilities who are particularly vulnerable at becoming victims of crime are those individuals with severe communication disabilities. One way of reducing the risk of remaining a victim of crime is for victims to participate in the legal proceedings and testify in court as a witness.

Aim of the study: The main aim of this study is to identify and describe the court accommodations that should be provided by key role-players in the criminal justice system, using universal design principles, in order to accommodate persons with severe communication disabilities who have been victims of crime.

You have been identified as one of the 100 experts in South Africa invited for this study, because of your vast amount of experience and knowledge about disability law and rights.

What will be expected from you as a participant of the national expert panel discussion: You will be expected to attend a full day panel discussion on the on Thursday, the 27th September (09:00 – 16:00) at the Centre for Augmentative and Alternative Communication at the University of Pretoria in Pretoria, South Africa. Lunch and refreshments will be provided. The questions and discussion will be around your experiences and knowledge on court accommodations for persons with communication disabilities who have been victims of crime.



Each of the 10 (subject to change) experts will be asked to present a 15-minute presentation on their experiences and knowledge. Thereafter, these presentations, with your consent, will be collated for an accredited publication, with mention of each expert notably in the publication, if you so wish. If you do not want to be part of the publication, you may indicate it as such. This will be discussed at length on the day.

The provisional programme for the day will look as follows (subject to change slightly):

Time	Action	By Whom
09:00 – 09:30	Welcome, introductions and instructions	Researcher
09:30 – 12:00	Each expert will introduce themselves and will be given 15 minutes to discuss their experience and knowledge in terms of people with communication disabilities, the criminal justice system and court accommodations	The Experts (Researcher will facilitate the discussion)
12:00 – 13:00	Lunch and refreshments	Lunch will be provided in the courtyard at the CAAC.
13:00 – 14:00	The researcher will ask the panel the following question, “ <i>What do you think are the challenges or barriers professionals face when a victim with a communication disability has to access the court system?</i> ” Discussion to follow.	The Experts (Researcher to facilitate the discussion)
14:00 – 15:30	The researcher will ask the panel the following question, “ <i>What may facilitate the process for a victim with a communication disability to be able to access and equally participate in the court system and process?</i> ” Discussion to follow	The Experts (Researcher to facilitate the discussion).
15:30 – 16:00	Final comments, thank you’s and closure	The experts and the researcher

Please note a day fee of R1038.00 according to the University of Pretoria’s set amount will be paid to each expert.

Risks and benefits of participants: You may withdraw at any time from this expert panel discussion study without any negative consequences. If you agree to volunteer to consent to participate in this discussion, your confidentiality will be ensured. Furthermore, the content of the data will be handled with confidentiality and apart from the publication (which will be discussed on the day), the data will be used only for research purposes, conference presentations, journal articles and to write a thesis. Documents will be in safekeeping at the Centre for AAC, University of Pretoria for 15 years for archival purposes and for future use of data. Should the need arise and you experience any potential distress related to the research, there is a psychologist who is



part of the research team and who can provide debriefing sessions. Please contact the researcher who will assist you and set up a session

If you require further information after reading this document, please feel free to contact me on the details below:

PhD Candidate:	Mrs. Robyn White
Contact details:	[REDACTED] email address)
Project supervisor	Prof. Juan Bornman, Director
Contact details:	[REDACTED] (email address)
Project co-supervisor	Dr. Ensa Johnson, Lecturer
Contact details:	[REDACTED] (email address)

We trust that you will agree that on the importance of this research project to help persons with communication disabilities be able to access justice on an equal basis, and thus, assist these victims of crime on their journey from victim to survivor. We would appreciate your willingness to participate in this research project.

Kind regards

Robyn White
Researcher

Prof. Juan Bornman
Supervisor

Dr. Ensa Johnson
Co-supervisor

Psychology, Public Policy, and Law

Court Accommodations for Persons With Severe Communication Disabilities: A Legal Scoping Review

Robyn White, Juan Bornman, Ensa Johnson, and Dianah Msipa

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Court Accommodations for Persons With Severe Communication Disabilities: A Legal Scoping Review

Robyn White, Juan Bornman, Ensa Johnson, and Dianah Msipa
University of Pretoria





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 was developed. Search terms were entered into 8 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 4 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 closed-circuit television (CCTV) in court, and using expert witnesses.

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

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 21st 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 nondiscrimination 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, Bornman, Johnson, Tewson, & van Niekerk, 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

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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 do not proceed to court, and when they do, they experience difficulty with understanding the complex maze of rules and practices that make up the court proceedings, they experience difficulty with testifying and giving evidence, (Bornman, White, Johnson, & Bryen, 2016; Dagut & Morgan, 2003; 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, Olley, & Hedge, 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, Cumming, Strnadová, Lee, & Trofimovs, 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, judgment 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 Institute for Statistics, 2018).

Persons with severe communication disabilities are a heterogeneous group and can include individuals with profound physical, intellectual, sensory, or socioemotional disabilities, but who share a common characteristic: an inability to rely on spoken language to make their needs and wants known (Hourcade, Everhart Pilotte, West, & Parette, 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 & Mirenda, 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, that is, orally (Kilcommins, Edwards, & Harold, 2013; White & Msipa, 2018).

Globally, the discrimination against persons with disabilities is recognized 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, Langan, & Shand, 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 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, e.g., 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, Interven-

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
<ol style="list-style-type: none"> 1. Identify a research question 2. Identify studies 3. Make study selection 4. Chart the data 5. Collate, summarize and report the results 6. Consult with stakeholders 	<ol style="list-style-type: none"> 1. State the question 2. Define the sample of cases 3. Explain the weighting 4. Conduct the analysis and state the conclusion 	<ol style="list-style-type: none"> 1. Identify and state the research question 2. Identify and define the studies related to legal cases, laws and treaties 3. Make study selection 4. Chart and weigh the data (e.g. in terms of recency, citation frequency, precedential status) 5. Conduct the analysis and report the results

tion, 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 subquestions 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

Table 2
Eligibility Criteria Based on the PIO Framework for Including Studies in This Scoping Review

PIO	Inclusion criteria	Exclusion criteria
<u>P</u>	<p><u>Population: Persons with severe communication disabilities who have either been victims or alleged perpetrators of crime</u></p> <p>Persons = children and adults Persons with complex communication needs 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 Persons who are visually impaired Persons with sensory impairments Persons with autism spectrum disorder (ASD) Perpetrators with disabilities Accused with disabilities</p>	<p>Medical conditions—cardiovascular diseases, AIDS/HIV, etc. Mental health illness that is treated with medication and defined as “. . . health conditions involving changes in emotion, thinking or behavior (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). Mental illness is treatable. The vast majority of individuals with mental illness continue to function in their daily lives.” (American Psychiatric Association, 2020). 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.</p>
<u>I</u>	<p><u>Intervention: Court accommodations relevant to communication disability</u></p> <p>Strategies, communication boards, intermediaries, court preparation officers, training, communication accommodations. Physical accommodations, wheelchair access, child-friendly rooms, separate testifying rooms.</p>	<p>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.</p>
<u>O</u>	<p>Participation in court proceedings Access to justice</p>	<p><u>Outcome: Access to justice and participation in court</u></p> <p>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).</p>

Note. PIO = population, intervention, outcome.

sensitive search strategy was adopted, which aimed to identify as much diverse and potentially relevant material as possible (Orellana, Manthorpe, & Tinker, 2020). 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 Safflii. 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.

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 semiautomation while incorporating a high level of usability (Ouzzani, Hammady, Fedorowicz, & Elmagarmid, 2016).

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 in the legend to Table 3) 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 ema-

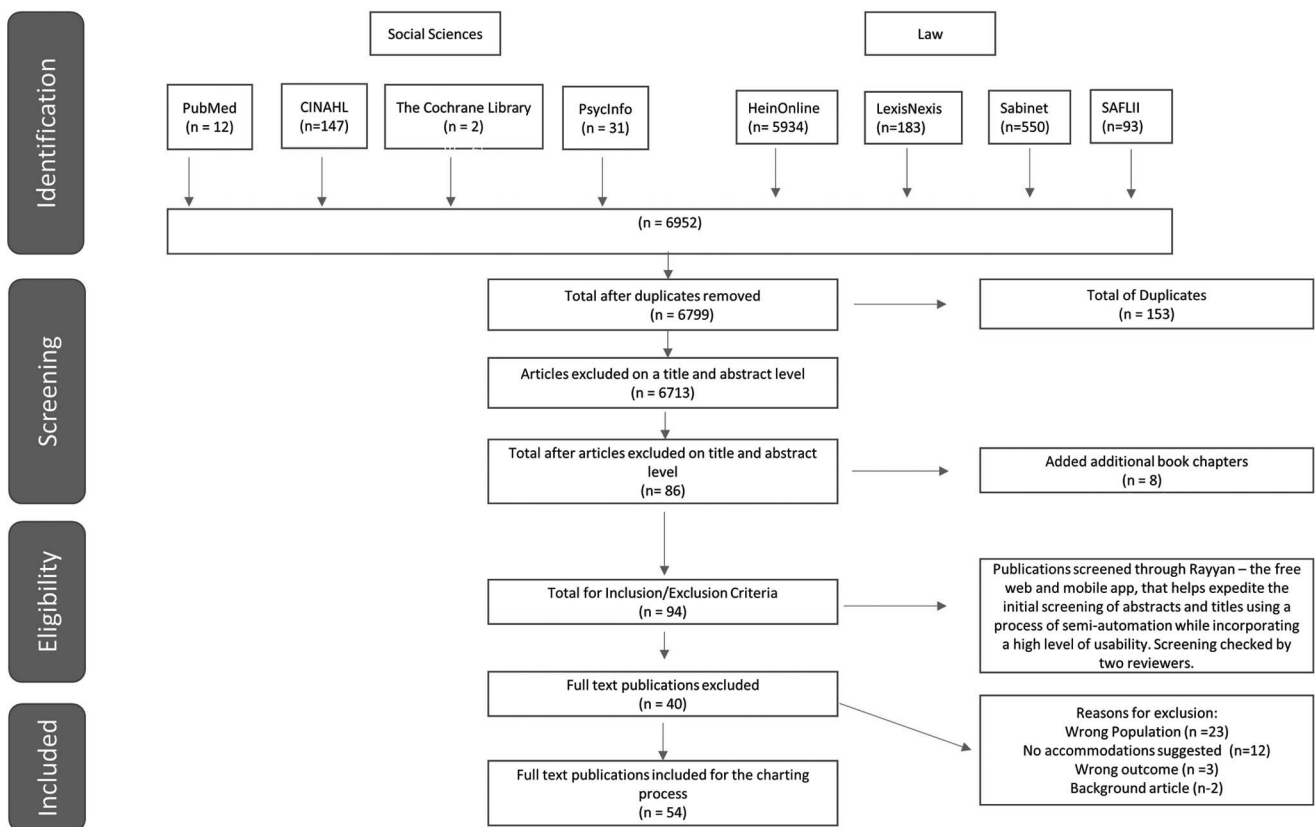


Figure 1. PRISMA study selection flow diagram.

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Table 3
Descriptive Characteristics of the Included Publications (in Alphabetical Order)

No.	Author(s) & year	General information			Participants			Accommodations			Procedural justice component		
		Type of source	Court role	Type of disability	Gender	Age	Country	International/National law	Specific cases ^a	Voice (n = 83)	Respect (n = 114)	Neutrality (n = 47)	Understanding (n = 58)
1	Backstrom (2015)	Law journal article	Defendant; Witness	—	—	—	United States	National	—	<ul style="list-style-type: none"> • Use AAC¹ • Use a sign language interpreter² • Allow communication enhancements 	<ul style="list-style-type: none"> • Ensure physical accessibility³ • Allow support person⁴ • Allow support animal • Allow stuffed animal • Modify the courtroom setup 	<ul style="list-style-type: none"> • Remove official attire • Allow video/pre-recorded evidence • Use video to cross-examine prior to trial • Allow video/pre-recorded evidence 	<ul style="list-style-type: none"> • Use modified oath • Allow leading questions
2	Beckene, Forrester-Jones, and Murphy (2020)	Social science journal article	Witness	Mental; Intellectual	Female	Adult	United Kingdom	National	—	<ul style="list-style-type: none"> • Use an intermediary⁵ 	<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 • Allow video/pre-recorded evidence 	
3	Benedet and Grant (2012)	Law journal article	Witness	Mental; Intellectual; Physical; Multiple	Female	Adult	Australia Canada New Zealand South Africa United Kingdom	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 courtroom • Use closed-circuit TV (CCTV) in court 	<ul style="list-style-type: none"> • Allow support person • Testify behind a screen • Testify via live video/television link • Testify outside courtroom • Use closed-circuit TV (CCTV) in court 	<ul style="list-style-type: none"> • Allow judicial officers' intervention
4	BenZeev, Lerner, and 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 investigator⁶ • Use AAC • Use AAC toolkit⁷ • Use an interpreter⁸ 	<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 • Testify without the defendant present in the courtroom, and only the defense attorney present 	<ul style="list-style-type: none"> • Remove official attire • Involve an expert professional⁹ • Involve an expert witness¹⁰ 	<ul style="list-style-type: none"> • Use facilitator (to simplify language, give meaning and to support) • Allow linguistic simplification¹¹

(table continues)

Table 3 (continued)

No.	Author(s) & year	General information			Participants			Accommodations			Procedural justice component		
		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)
5	Berryessa (2017)	Social science Journal article	Defendant; Witness	Autism spectrum disorder (ASD)	—	—	United States	National	—	—	—	—	
6	Bornman (2014)	Book chapter	Witness	Communication	—	—	South Africa	International; National	—	<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 • Involve an expert witness • Film proceedings to review the communication 	<ul style="list-style-type: none"> • Allow linguistic simplification • Use appropriate questioning strategies 	
7	Bryen (2014)	Book chapter	Witness	Communication	—	—	United States	International; National	1	<ul style="list-style-type: none"> • Use AAC • Use an intermediary 	—	—	
8	Bryen and Wickman (2014)	Book chapter	Witness	Physical; Communication Autism spectrum disorder (ASD)	Female	Child Adult	United States	National	7	<ul style="list-style-type: none"> • Use AAC • Use interpreter language interpreter • Use sign language • Use facilitated communication¹³ 	—	<ul style="list-style-type: none"> • Allow leading questions 	
9	Carter and Boezaart (2016)	Law journal article	Witness	—	—	Child	South Africa	International National	—	<ul style="list-style-type: none"> • Ensure physical accessibility • Use CCTV in court • Conduct informal court proceedings in a relaxed and nonadversarial environment 	—	<ul style="list-style-type: none"> • Use appropriate and proper questioning strategies¹⁴ 	
10	Chester (2018)	Social science journal article	Defendant	Mental; Intellectual	—	—	United Kingdom	National	—	<ul style="list-style-type: none"> • Use an intermediary 	—	—	
11	Cooper, Dando, Ormerod, Mattison, Marchant, Milne, and Bull (2018)	Law journal article	Defendant; Witness	Mental; Intellectual; Physical; Autism spectrum disorder (ASD)	—	—	United Kingdom	National	—	<ul style="list-style-type: none"> • Use an intermediary 	—	<ul style="list-style-type: none"> • Use appropriate and proper questioning strategies • Disallow tag questions • Disallow leading questions 	
12	Covarrubias (2008)	Law journal article	Defendant	Mental; Intellectual	—	—	United States	National	—	—	<ul style="list-style-type: none"> • Use an expert professional 	—	

(table continues)

Table 3 (continued)

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 ^a	Voice (n = 83)	Respect (n = 114)	Neutrality (n = 47)	Understanding (n = 58)
13	Cremn (2016)	Social science journal article	Defendant; Witness	—	—	—	Argentina, Azerbaijan, China, Costa Rica, Croatia, Dominican Republic, Ecuador, Hungary, Mexico, Peru, Turkmenistan	International National	—	<ul style="list-style-type: none"> • Use AAC • Use a sign language interpreter 	<ul style="list-style-type: none"> • 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 	<ul style="list-style-type: none"> • Remove official attire • Use an expert professional • Use an expert witness • Establish court procedures to enable a process for requesting accommodations 	<ul style="list-style-type: none"> • 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	<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"> • Remove official attire • Allow video/pre-recorded evidence • Prohibit personal cross-examination by accused or defendant • Allow sworn depositions in court 	
15	Davidson Kovacevic, Cave, Hart, and 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.

(table continues)

Table 3 (continued)

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 ^a	Voice (n = 83)	Respect (n = 114)	Neutrality (n = 47)	Understanding (n = 58)
16	Doak and Doak (2017)	Law journal article	Witness	Mental; Intellectual; Physical; Communication	Female	Child	United Kingdom	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 accessibility Ensure physical video/television link Use CCTV in court 	<ul style="list-style-type: none"> Remove official attire Allow video/pre-recorded evidence 	<ul style="list-style-type: none"> Use pictures/communication aids to enhance understanding Use strategies to check the individual is not simply agreeing irrespective of understanding Allow judicial officers' intervention Use appropriate and proper questioning strategies Allow judicial officers' intervention Provide information about the proceedings in plain language, braille, accessible and child-friendly formats
17	Edwards, Harold, and 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 Allow video/pre-recorded evidence Allow out-of-court testimony 	<ul style="list-style-type: none"> Make accessible for those with visual and hearing impairments Use auxiliary hearing devices 	<ul style="list-style-type: none"> Remove official attire 	
18	Fitzsimons (2016)	Law journal article	Witness	—	—	—	Australia Canada United Kingdom United States	International National	—	—	—	—	—
19	Flynn (2016)	Book chapter	Defendant; Witness; Plaintiff; Juror	Mental or intellectual; Physical; Communication	Female; Male	Child; Adult	Bulgaria Ireland South Africa United Kingdom United States	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 Allow Guardian ad Litem (Children)¹⁷ Allow Next friend (Adult)¹⁸ Allow McKenzie friend¹⁹ 	<ul style="list-style-type: none"> Appoint an Amicus Curiae²⁰ Appoint independent advocate²¹ 	<ul style="list-style-type: none"> Provide real-time captioning of court proceedings Appoint independent advocate²¹

(table continues)

Table 3 (continued)

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 ^a	Voice (n = 83)	Respect (n = 114)	Neutrality (n = 47)	Understanding (n = 58)
20	Flynn and 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	Freckleton (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 disorder (ASD); Multiple	—	Child	United States	National	1	• Use AAC	• Allow Guardian ad Litem	—	—
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, and 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, and 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 courtroom 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 accessible way

Table 3 (continued)

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 ^a	Voice (n = 83)	Respect (n = 114)	Neutrality (n = 47)	Understanding (n = 58)
26	Guider (2017)	Law journal article	Witness	Mental or intellectual	Female	Adult	United States	National	—	—	• Use CCTV in court	• Use out-of-court statements as evidence	• —
27	Hepner, Woodward, and Stewart (2015)	Social science journal article	Defendant; Witness	Mental or intellectual	—	—	Australia	International; National	—	• Use AAC • Use an intermediary	• Allow support person • Testify behind a screen • Testify outside courtroom • Conduct trial <i>in camera</i> • Use CCTV in court	• Remove official attire	• Use appropriate and proper questioning strategies • Familiarize defendant/witness with and explain the legal process and court procedures • Use trusted source for information (understanding) • Use pacing and repetition (understanding)
28	Holness and Rule (2018)	Social science journal article	Witness	Mental or intellectual; Communication	—	—	South Africa	International; National	2	• Use AAC • Use AAC toolkit • Use an interpreter • Use a sign language interpreter	—	—	• —
29	Johnson, Blume, Paavola, and Vann (2017)	Law journal article	Defendant	Mental or intellectual	—	—	United States	National	—	—	—	• Involve expert professional • Involve expert witness	• —
30	Lafortune and Dichristina (2012)	Law journal article	Witness	Mental or intellectual	—	—	United States	National	—	—	• Allow frequent breaks • Allow additional time for pauses (to help with concentration and attention)	• Involve expert witness	• Explain concepts in easy, graphic, and concrete terms • Allow counsel to recap and summarize any information the person failed to process • Allow person to take written notes
31	Larcher (2014)	Book chapter	Witness	Communication	—	—	United Kingdom	National	1	• Use AAC • Use an intermediary	• 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	• Remove official attire • Allow video/pre-recorded evidence	• Use appropriate and proper questioning strategies • Disallow tag questions
32	López, Zapata, and Martorell (2016)	Social science journal article	Witness	Mental or intellectual	Female; Male	Child; Adult	Spain	International; National	29	• Use an intermediary	• Testify behind a screen • Testify via live video/television link	—	• Use appropriate and proper questioning strategies <i>(table continues)</i>

Table 3 (continued)

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 ^a	Voice (n = 83)	Respect (n = 114)	Neutrality (n = 47)	Understanding (n = 58)
33	Malunga, Kanyongolo, and Mbano-Mweso (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, and 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 and profiling program³ Use auxiliary hearing devices 	<ul style="list-style-type: none"> Involve expert witness 	—
35	Marinos, Griffiths, Robinson, Gosse, Fergus, Stromski, and 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 witness Involve expert witness Use presence reports to make suggestions to the court about the individual's need 	—
36	Marinos and 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) Allow frequent breaks 	—	—
37	Msipu (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"> Use appropriate and proper questioning strategies 	—	<ul style="list-style-type: none"> Use appropriate and proper questioning strategies

(table continues)

Table 3 (continued)

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)
38	Murphy (2014)	Law journal article	Witness	Mental or intellectual; Communication	Female	Child Adult	United States	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 the court to interpret and understand a child's needs and disability throughout the process Use auxiliary hearing devices Use visual alarms 	<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
39	Msumeci (2005)	Law journal article	Defendant	Mental or intellectual; Hearing	Male	Adult	United States	National	5	<ul style="list-style-type: none"> Use a sign language interpreter 			
40	Nair (2010)	Law journal article	Defendant; Witness	Mental or intellectual; Communication	Female, Male	Adult	Australia	National	3				<ul style="list-style-type: none"> Allow judicial officers' intervention Use appropriate and proper questioning strategies
41	O'Donnell and Gross (2012)	Social science journal article	Defendant	Mental; Intellectual		Child	United States	National				<ul style="list-style-type: none"> Involve expert witness 	
42	O'Leary (2016)	Master's thesis	Witness	Mental or intellectual			Australia, Ireland, Israel, United Kingdom	International National		<ul style="list-style-type: none"> Use AAC Use an intermediary Give evidence through free narration (no questioning) 	<ul style="list-style-type: none"> Testify via live/television link Allow individualized support 	<ul style="list-style-type: none"> Remove official attire Allow video/pre-recorded evidence 	<ul style="list-style-type: none"> Use pictures/communication aids to enhance understanding
43	O'Leary and Feely (2018)	Social science journal article	Witness	Mental or intellectual			Australia, Ireland, Israel, UK	International; National		<ul style="list-style-type: none"> Use AAC Use an intermediary Give evidence through free narration (no questioning) 	<ul style="list-style-type: none"> Testify via live video/television link 	<ul style="list-style-type: none"> Remove official attire Allow video/pre-recorded evidence 	

(table continues)

Table 3 (continued)

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)
44	Oroleva (2011)	Law journal article	Witness	Physical	Female	Adult	South Africa	National	1	<ul style="list-style-type: none"> • Use AAC • Use a sign language interpreter • Allow communication in audio, video or other electronic form if person has a disability (international criminal court) • Use AAC 	<ul style="list-style-type: none"> • Ensure physical accessibility • Provide materials in braille or other accessible formats 	—	—
45	Padmanabhan (2014)	Book chapter	—	Communication	—	—	India	International; National	—	—	—	—	—
46	Pei, Leung, Jamposky, and Alsbury (2016)	Social science journal article	Witness	Mental or intellectual; Physical	Female; Male	Adult	Canada	National	—	—	<ul style="list-style-type: none"> • Conduct a functional assessment 	—	<ul style="list-style-type: none"> • Allow linguistic simplification
47	Pillay (2012a)	Social science journal article	Witness	Mental or intellectual	—	Child	South Africa	National	—	<ul style="list-style-type: none"> • Use an intermediary 	<ul style="list-style-type: none"> • Use CCTV in court 	—	—
48	Pillay (2012b)	Social science journal article	Witness	Mental or intellectual	—	Adult	South Africa	National	—	<ul style="list-style-type: none"> • Use an intermediary 	—	—	—
49	Raha and Sengupta (2018)	Social science journal article	Witness	—	Female	—	India	National	—	<ul style="list-style-type: none"> • Use an interpreter 	<ul style="list-style-type: none"> • 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 	<ul style="list-style-type: none"> • Prohibit direct questions by a defense lawyer and prosecutor • Film the proceedings 	—
50	van den Anker, Dalhuisen, and Stokkel (2011)	Student paper	Defendant	Mental or intellectual	Male	Child	France Germany Netherlands United Kingdom United States	International National	—	<ul style="list-style-type: none"> • Interpreter 	—	—	<ul style="list-style-type: none"> • Allow assistance by an expert or support person to explain the court process
51	Vanny, Levy, and Hayes (2008)	Social science journal article	Defendant	Mental or intellectual	Female; Male	Child	Australia	National	—	—	—	—	<ul style="list-style-type: none"> • Use pictures/communication aids to enhance understanding

(table continues)

Table 3 (continued)

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 ^a	Voice (n = 83)	Respect (n = 114)	Neutrality (n = 47)	Understanding (n = 58)
52	White and 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, and Robins (2015)	Social science journal article	Defendant	Mental or intellectual	Male	Adult	United States	National	—	—	<ul style="list-style-type: none"> Allow Guardian ad Litem Identify a family member or close friend who can assist the court 	—	—

^a 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 justice in the form of case studies or stories. Cases related to witness competency were excluded.

¹ AAC = Alternative and augmentative communication: 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 United States and British Sign Language (BSL) in the United Kingdom.

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.

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 (BenzZeev et al., 2014).

⁷ AAC Toolkit: A communication toolkit that includes both low and high technology aided communication systems (as described earlier) and user manuals (BenzZeev 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).
- 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).
- 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, 2016). However, this technique has been criticized for lack of autonomy and is regarded as having no research evidence (Hemsley et al., 2018).
- 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 nonverbal signs (Davidson et al., 2015).
- 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).
- 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 themselves (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 provides 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).
- 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).
- ²³ Witness support, preparation, and profiling program: A specific program developed in Liverpool (United Kingdom) 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).

nate 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; e.g., family, civil, etc.), witness includes the term *victim*, as the victim will participate in the justice system as a witness (Beckene, Forrester-Jones, & Murphy, 2020). The term *defendant* will include the accused, offender, and perpetrator. Child is defined as an individual below the age of 18 years (United Nations, 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 interrater 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:

- (a) 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.
- (b) Respect: The perception of a person with severe communication disabilities that legal professionals will treat them with respect and dignity, thereby implying courtesy toward 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).
- (c) 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.
- (d) 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 3.

Findings

Findings as shown in Table 3 are described according to the three subquestions. 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 (U.S.; $n = 15$, 28%); Australia ($n = 12$, 22%); the United Kingdom (U.K.; 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 3.

The 302 identified court accommodations (Subquestion 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 closed-circuit television (CCTV) in court were both mentioned 11 times (9.6%), followed by physical accessibility and testifying via live video/TV 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 (10 times or 21.7%), admission of video-recorded evidence recorded pretrial (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 to 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 inter-

national 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*, 1988; 530 N.Y.S.2d 490 (City Ct. Rochester Cty); Publication 3 (*R v Watts*, [2010] EWCA Crim; 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. First, the intermediary should communicate questions put to the person with the communication disability in a clear and understandable format. Second, the intermediary should relay the answers given by this person in reply to all questions put by any party (attorney, prosecutor, judge). Third, 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, Woodward, & Stewart, 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 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, 1 Crim LR 58 at 61, *Commonwealth v. Tavares*, 1989, 555 A.2d 199 (Pa. Super. Ct.) as mentioned in publication 3, and (b) *People v Webb* (1993) 157 Misc.2d 474 597 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 (Ben-Zeev, Lerner, & Klein, 2014), from South Africa (White et al., 2015) and from the U.K. (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 (Publications 15, 25, 30, and 49). Persons with severe communication disabilities often have comorbidities. 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 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, 2015).

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. First, 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. Second, 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, Griffiths, Fergus, Stromski, & Rondeau, 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 (United Nations, 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). 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 gray 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 contrib-

ute 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 reoffending 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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Appendix 3E - Permission from Editor of Psychology, Public Policy & Law

Robyn Wilson White [REDACTED]

Permission to add to my thesis - Court accommodations for persons with severe communication disabilities: A legal scoping review

2 messages

Robyn White [REDACTED] >
To: "Michael E. Lamb" [REDACTED]

Thu, Jun 24, 2021 at 11:06 AM

Dear Prof Lamb,

I hope you are doing well.

I am not sure if you remember however I conducted this legal scoping review as part of my PhD thesis (<https://psycnet.apa.org/record/2020-84199-001>) and would like to ask permission to add it to my thesis and include it as an appendix, please. I am in the final stages of completing my thesis now.

Your feedback would be greatly appreciated.

Thank you in advance.

Kind regards,
Robyn White**ORCID iD**<https://orcid.org/0000-0002-6119-9063>

ResearchGate

<https://www.researchgate.net/profile/Robyn-White-2>**Michael Lamb** [REDACTED] >
To: Robyn White [REDACTED]

Thu, Jun 24, 2021 at 1:38 PM

Congratulations.

Yes, that's fine. Just be sure to comply with APA's rules regarding duplication/dissemination/credit.

Best wishes

Michael

Michael E Lamb

Emeritus Professor of Psychology and Fellow, Sidney Sussex College

University of Cambridge

Editor Psychology, Public Policy & Law-- [REDACTED]






[REDACTED]

@PsychPPLaw

[Quoted text hidden]

Transformative equality: Court accommodations for South African citizens with severe communication disabilities

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Background: Persons with disabilities are generally at greater risk of experiencing violence than their peers without a disability. Within the sphere of disability, individuals with severe communication disabilities are particularly vulnerable and have an increased risk of being a victim of abuse or violence and typically turn to their country's criminal justice system to seek justice. Unfortunately, victims with disabilities are often denied fair and equal treatment before the court. Transformative equality should be pursued when identifying accommodations in court for persons with communication disabilities, as the aim should be to enable such individuals to participate equally in court, without barriers and discrimination.

Objectives: This research aimed to identify court accommodations recommended by legal experts, which could assist individuals with severe communication disabilities in the South African court.

Method: A qualitative design was used to conduct a discussion with a panel of legal experts.

Results: Using Article 13 (Access to Justice) of the Convention on the Rights of Persons with Disabilities (CRPD) as a human rights framework, four themes were identified: equality, accommodations, participation and training of professionals.

Conclusion: Foreign and national law clearly prohibits discrimination against persons with communication disabilities because of their disability and state that they should be given fair and equal access to the court system. For transformative equality to be achieved, certain rules and laws need to be changed to include specific accommodations for persons with communication disabilities so that they may be enabled to participate effectively in court in the criminal justice system.

Keywords: communication disability; access to justice; human rights; South Africa; court accommodations.

Introduction and background

Persons with disabilities are at greater risk of experiencing violence than their peers without a disability.

Globally, children with disabilities are three to four times more likely to experience violence than their peers without disability (World Health Organization 2015). Recently, a South African study also estimated that children with disabilities were 1.5 and 2.1 times more at risk of sexual abuse than their peers without a disability (Artz et al. 2016). In an American study that compared 9086 women with and without a disability, results showed that 39% of the women who had been raped in the 12 months preceding the survey had a disability at the time of the rape (Basile, Breiding & Smith 2016). Another American study that reported on 21 615 respondents and their victimisation found that 26.6% of women with disabilities reported sexual violence compared with 12.4% of women without disabilities (Mittra, Mouradian & Diamond 2011). This trend was also observed in American men, as 13.9% of men with disabilities reported sexual violence compared with 3.7% of men without disabilities (Mittra et al. 2011).

Within the sphere of disability, individuals with severe communication disabilities are particularly vulnerable and have an increased risk of becoming victims of abuse (Bornman, Bryen, Kershaw & Ledwabe 2011). This may be because of the fact that they are unable to shout or call for help, or because perpetrators often seek out vulnerable individuals who they perceive as being unable to

verbalise their victimisation to family members or key legal role players such as the police and court officials (White, Bornman & Johnson 2015). For example, in a systematic review of 21 557 adults with disabilities, the prevalence of recent violence was 24.3% in persons with mental illnesses, 6.1% in those with intellectual impairments and 3.2% in those with non-specific impairments (Hughes et al. 2012). In another meta-analysis, from a total of 14 721 children with disabilities, the prevalence of recent violence was 26.7% for combined violence, 20.4% for physical violence and 13.7% for sexual violence (Jones et al. 2012).

Typically, persons without disabilities who were victims of violence or crime turn to their country's criminal justice system to seek justice by reporting the crime to the police and testifying in a court against the accused perpetrator(s). This same process should be available to persons with disabilities (White & Msipa 2018).

However, persons with disabilities are often denied fair and equal treatment before the courts (Flynn 2013).

When persons with communication disabilities try to report their victimisation, the police – through ignorance of the disability – may often mistakenly decide that the victim will not meet the legal requirements of being a competent witness in court, and hence, they fail to proceed appropriately and lawfully (Archer & Hurley 2013; Viljoen 2018).

Equally important, offenders with intellectual and mental disabilities may also struggle with communication challenges, which could have a negative impact on their pursuit of access to justice (Capri et al. 2018).

Offenders with communication disabilities are also vulnerable to exploitation and being influenced and professionals in the court system should be aware of the vulnerabilities of this population (Capri et al. 2018).

Legal representatives of both victims and perpetrators must be able to respond appropriately to maintain the fairness and dignity of the court system (Salekin, Olley & Hedge 2010). Nonetheless, a comprehensive focus on perpetrators is beyond the scope of this study.

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) jurisprudence is of use to understand equality and non-discrimination obligations in conditions of systemic power inequality (e.g. the court system) (United Nations 1988). The CEDAW Committee identified three types of obligations: formal equality (equal treatment as a matter of law), substantive equality (measures to equalise the enjoyment of human rights) and transformative equality (measures to remove the causes of inequality) (Minkowitz 2017). Formal equality is needed to have equal status as members of society, substantive equality is needed to proactively redistribute power and resources, and transformative equality is needed to transform

opportunities, institutions and systems so that they are no longer grounded in historically determined paradigms of power (Minkowitz 2017). For the purpose of this article, the focus will be on transformative equality.

Transformative equality recognises the need to change rules and laws to include different perspectives and not only dominant views and experiences (Goldschmidt 2017). As such, it targets certain structures and systems (including the court system) for change through introducing a variety of positive measures for persons with disabilities (Degener 2016). An international rights treaty that emphasises transformative equality for persons with disabilities is the Convention on the Rights of Persons with Disabilities (CRPD) (United Nations 2006).

The CRPD was inspired by international treaties to promote and support the human and legal rights of all persons with disabilities (United Nations 2006). To date, this treaty has been signed and ratified by 46 African countries including South Africa, who ratified it in 2007. Goldschmidt (2017) highlights the five principles of the CRPD which are equality, accessibility, autonomy, participation and inclusion. Furthermore, these principles of the CRPD reflect the four dimensions of substantive equality which are redressing disadvantage (the redistributive dimension); addressing stigma, stereotyping, prejudice and violence (the recognition dimension); facilitating voice and participation (the participative dimension); and accommodating difference, including through structural change (the transformative dimension) (Fredman 2005).

Article 13 of the CRPD specifically reports on 'Access to Justice' and states that:

[A]ll 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 2006:11)

The provision of procedural and age-appropriate accommodations is distinguishable from the term 'reasonable accommodation' in that procedural accommodations are not limited by disproportionality (Committee on the Rights of Persons with Disabilities 2018). 'Reasonable accommodations' can be defined as appropriate modifications and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment on an equal basis with others, of all human rights (United Nations 2006). Procedural accommodation is the recognition of different communication methods of persons with communication disabilities to be able to participate in court. Age-appropriate accommodations may consist of providing information about available mechanisms to bring complaints forward and using age-appropriate and simple language (Committee on the Rights of Persons with Disabilities 2018).

Article 13 further states that:

[I]n order to help to ensure effective access to justice for persons with disabilities, States Parties shall promote appropriate training for those working in the field of administration of justice. (United Nations 2006:11)

In addition, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa was adopted in 2018 with South Africa being one of the signatories. In this protocol, Article 13 addresses the 'Right to Access Justice' and also highlights that state parties should ensure that persons with disabilities have access to justice on an equal basis with others, including through the provision of appropriate (age and gender) and procedural accommodations (African Union 2018).

In principle, South Africa has passed the relevant legislation that specifically accommodates victims with disabilities who need to access the court system and that allows equal participation in all legal proceedings. For example, Section 9 of the South African Constitution foregrounds equality and states that '[e]veryone is equal before the law and has the right to equal protection and benefit of the law, including persons with disabilities'. *The Promotion of Equality and Prevention of Unfair Discrimination Act* 4 of 2000 likewise emphasises that no one should be discriminated against on the ground of disability and underscores that 'failing to eliminate obstacles that unfairly limit or restrict persons with disabilities from enjoying equal opportunities or failing to take steps to reasonably accommodate the needs of such persons' is unconstitutional. Persons with a communication disability may therefore not be discriminated against in a court of law because of their inability to communicate, and key role players in the court system should provide court accommodations to assist such individuals to be able to communicate and testify in court (The Constitution of the Republic of South Africa, 1996).

Despite existing foreign and national legislation, persons with communication disabilities and their families still find it difficult and overwhelming to access and participate effectively in the criminal justice system, irrespective of being a witness or an alleged perpetrator (Bornman et al. 2016). This could be because of the limited and constrained resources, accommodations and support offered to persons with communication disabilities who need to access the court system (Fitzsimons 2016). Flynn (2016) highlights three distinct inaccessible features in the court system that unfairly affect persons with disabilities: (1) the physical infrastructure that refers to architectural features such as staircases instead of ramps that act as environmental barriers; (2) procedural barriers that refer to when persons with disabilities cannot understand the court procedures and communicate effectively with the key role players in the court system; and (3) evidentiary barriers that refer to non-adapted rules of evidence and procedures to facilitate effective participation of persons with communication disabilities as witnesses.

In an attempt to overcome physical barriers, South African law emphasises that physical accommodations should be provided to a person with a communication disability as highlighted in the *Criminal Procedure Act* 51 of 1977 (CPA), which states that upon application by the state and in accordance with the provisions of the relevant sections in the CPA, such witnesses may testify in a room equipped with a closed-circuit television system.

South African law further provides for the appointment of an intermediary for a person with a communication disability, as highlighted in the *Criminal Law (Sexual Offences and Related Matters) Amendment Act* 32 of 2007. It is stated that:

[W]henver criminal proceedings are pending before any court and it appears to such court that it would expose any witness under the biological or mental age of eighteen years to undue mental stress or suffering if he or she testifies at such proceedings, the court may, subject to subsection (4), appoint a competent person as an intermediary in order to enable such witness to give his or her evidence through that intermediary.

Another procedural accommodation mentioned in the CPA relates to language accommodations, as it is recommended that the appointed intermediary for persons with communication disabilities should be conversant with the language of the witness. The use of sign language (and a qualified sign language interpreter), as well as other means of communication methods, should be provided for. In the CPA, Section 161(2) states that the expression 'viva voce' shall, in the case of a 'deaf and dumb witness' (terminology used in the Act), include sign language and, in the case of a witness younger than 18 years (including a mental age below 18 years), include demonstrations, using anatomical dolls, gestures or any other form of non-verbal expression.

Furthermore, *the Children's Act* 38 of 2005 (which applies to all children, including victims with communication disabilities who are younger than 18 years old and appearing in a children's court) also mentions appropriate questioning techniques that may be used in the court system (this does not apply to the criminal courts). However, to date no specific guidelines have been developed as to how these differential questioning techniques should be employed (Carter & Boezaart, 2016).

For justice to be served for persons with disabilities, the South African criminal justice system must consider developing alternative methods that (1) enable witnesses with disabilities to fully partake as a witness, (2) include the admissibility of earlier statements made by the victims in place of their court testimony and (3) reduce the so-called discriminatory procedure of subjecting these witnesses to psychological examinations in an attempt to provide evidence that they are competent to give testimony (Pillay 2012). Evidentiary barriers were addressed in foreign law in Israel by the *Investigation and Testimony Procedural Act* 2005, which facilitates court testimony of persons with mental and cognitive disabilities – whether victim, witness or offender (Ziv 2007). The individual is allowed to give evidence in a modified court procedure and the Act requires that

comprehensive accommodations be provided to persons with disabilities (Ziv 2007). However, Flynn (2016) cautions that the adaptation of the rules of evidence and procedures in criminal cases involving persons with disabilities may have the potential to be highly disputed.

Accommodating a witness with communication disabilities during the court process should be prioritised, as the evidence of such witness is usually essential for a successful conviction in the criminal court. It is particularly important that a fair trial process should be encouraged through the provision of additional supports, as well as through the adaptation of the rules of evidence and procedure (Benedet & Grant 2012). These accommodations are in line with the prescriptions of the CRPD, which specifically mentions in Article 13 that 'procedural and age-appropriate accommodations' should be provided to enable persons with communication disabilities to fully participate in the legal proceedings (Ortoleva 2011; United Nations 2006).

In summary, the aim of this research was to identify court accommodations, recommended by legal experts, that could assist individuals with severe communication disabilities to achieve justice in the South African court system.

Research method and design

Study design

A qualitative research design was used to conduct a discussion with a panel of legal experts (Creswell & Poth 2018; Diaby et al. 2015; Jensen et al. 2017). The expert panel was guided by a human rights framework that influenced the study framing, design, data collection and analysis (Skempes, Stucki & Bickenbach 2015).

Participants in the study

Participants were selected using purposive, non-probability, expert sampling, which is a positive tool to use when investigating new research areas (Etikan, Musa & Alkassim 2016) – in this case, court accommodations for persons with communication disabilities. Ten potential participants were identified based on their professional experience of working with victims with communication and intellectual disabilities who had been victims of crime and the fact that they had worked with these individuals during the court process. Of the 10 potential participants, eight consented to partake in the expert panel discussion. Unfortunately, three experts were unable to physically attend because of unforeseen personal and logistical reasons, but as they recognised the value of the study, they inquired if they could do so remotely, in an asynchronous manner. To optimally benefit from their expertise, it was decided to collect their data via an email interview in which the exact questions that had been asked during the panel discussion were sent to them. Their responses were analysed and summarised and returned to them for verification as part of member checking. Thereafter, the first author presented their responses

(with their consent) in the form of a PowerPoint presentation on the same day as the expert panel discussion. The other five experts attended and participated in the expert panel discussion that was hosted at a venue convenient for all involved. The participants' biographical details are shown in Table 1. The participants all knew each other professionally, which led to rapport and trust being established quickly.

Furthermore, all participants had experience of working with persons with disabilities during the legal process.

Data collection

Before recruitment commenced, ethics approval was obtained from the Research Ethics Committee of the relevant institution. An email was sent to each participant with full details and instructions about the panel discussion. Once consent had been obtained from the participants, the programme for the full-day panel discussion was sent to them to allow adequate preparation and reflection time. At the beginning of the panel discussion, the researcher reiterated the topic, aim and purpose of the day. The procedure and timeline were highlighted. Experts were also reminded that their participation was voluntary and that they were allowed to discontinue at any given time without any negative consequences.

Prior to the expert panel discussion, the eight experts had been asked to prepare a presentation of 25–30 min on the invited topic to address the following questions: (1) Could you briefly discuss your experience with persons with communication disabilities in the criminal justice system? (2) Have you previously successfully asked for accommodations, and if so, can you please elaborate? The experts sent their presentations to the first author who acted as the primary correspondent and chair of the day. The first three presentations were presented by the first author. Each presentation provided a thought-provoking perspective on the invited topic (court accommodations for persons with communication disabilities), identified major trends and made suggestions for further accommodations. In the afternoon, a group discussion (similar to a focus group) followed, in which the following question was discussed: What may facilitate the process for a victim with a communication disability to be able to access and participate on an equal footing in the court system and process?

Apart from the audio recording, the third author also typed the full-day's panel discussion to contribute to the trustworthiness of the data. She made a verbatim transcription of both the individual presentations and group discussion and then audited each transcript against the original audio recording. A total of 20% of the transcriptions were additionally checked by an independent researcher. Discrepancies were noted and revised when necessary (the formula used to calculate agreement:

$$\frac{\text{number of agreements}}{\text{number of agreements} + \text{disagreements}} \times \frac{100}{1} \quad \text{(Hallgren 2012)}.$$

A 98% level of agreement was reached. This rigorous process

TABLE 1: Participant biographical details.

Expert number	Age	Gender	Language	Qualifications	Current title and role	Years' experience	Specific expert experience
Expert 1	68 years	Female	English	B. Social Work B. (Hons) MA PhD	Consultant: Child Rights and Child Protection	30 years	<ul style="list-style-type: none"> Pre-court preparation therapy Post-court therapy for child victims (physical and sexual abuse) Assessment for the use of the intermediary system
Expert 2	61 years	Male	English	MA MSc PhD	Associate Professor and Principal Clinical Psychologist	25 years	<ul style="list-style-type: none"> Expert witness Reporting to court on various questions regarding rape complainants with intellectual disability
Expert 3	43 years	Female	Afrikaans	B. Iuris LLB Certificate in DNA evidence	State Advocate and Case Manager; Sexual Offences and Community Affairs Unit (NPA)	20 years	<ul style="list-style-type: none"> Public Prosecutor (District and Regional Court) State Advocate Case Manager Sexual Offences and Community Affairs Unit
Expert 4	61 years	Female	English	Nursing Sciences (Professional Nurse) B. Criminology (final year)	National Coordinator and Deputy Director: Government court preparation programme	25 years	<ul style="list-style-type: none"> Author of first Court Preparation Programme Researcher who piloted and institutionalised the Victim Impact Statements in the trial process
Expert 5	52 years	Female	Afrikaans/English	B. Iuris LLB BA (Hons) LLM LLD	Associate Professor (previously Public Prosecutor)	28 years	<ul style="list-style-type: none"> Public Prosecutor for 5.5 years Prosecutor in specialised sexual offences court Published author of various manuscripts
Expert 6	61 years	Female	isiZulu/English	M. (Clinical Psychology) PhD	Senior Lecturer Clinical Psychologist	18 years	<ul style="list-style-type: none"> Assessing survivors of sexual assault who have an intellectual disability
Expert 7	44 years	Female	English	M. Soc. Sci. (Clinical Psychology) PhD	Principal Clinical Psychologist	18 years	<ul style="list-style-type: none"> Forensic mental health examinations of rape survivors with intellectual disabilities in terms of relevant legislation
Expert 8	63 years	Female	Gujarati/English	M. (Mental Health) PhD	Director of NGO for abused children	30 years	<ul style="list-style-type: none"> Therapeutic intervention with child victims of abuse Forensic assessments for the courts

LLD: Doctor of Laws; BA: Bachelor of Arts; LLM: Masters of Laws; M.Soc. Sci: Master of Social Science; LLB: Bachelor of Laws; DNA: deoxyribonucleic acid; MA: Masters of Arts; MSc: Master of Science; PhD: Doctor of Philosophy; B. Social Work: Bachelor of Social Work; NGO: non-governmental degree; B. Hons: Honours degree.

greatly enhanced the procedural integrity of the transcripts (McLellan, MacQueen & Neidig 2003).

Data analysis

The researcher used ATLAS.ti 8, a computer-assisted qualitative data analysis software (CAQDAS), to conduct a thematic analysis and combined it with an inductive coding approach (Fereday & Muir-Cochrane 2006). Friese, Soratto and Pires (2018) describe seven phases of conducting a thematic analysis when using a CAQDAS to expand on Braun and Clarke's (2006) six phases, namely, (1) becoming familiar with the data; (2) generating initial codes; (3) developing a structured code system; (4) searching for themes; (5) reviewing themes; (6) defining and naming themes; and (7) producing the report. This followed on first trying a deductive approach by using Article 13 (Access to Justice) of the CRPD as a coding framework. However, it proved to be an unreliable approach as a stable code structure could not be achieved (Friese et al. 2018).

The data were coded and analysed by the first author, after which authors 2 and 3 independently checked the codes and themes to increase inter-coder reliability and agreement of the data (Campbell et al. 2013). The process of initial coding (phase ii) resulted in a list of 244 codes. Next, a process of re-reading the coded segments, renaming, splitting and merging codes was conducted, which resulted in a total of 46 codes in the final structured code system (phase iii) (Friese et al. 2018).

Ethical considerations

This article is part of one data source that is part of the first author's PhD research where ethical clearance was obtained from the University of Pretoria, South Africa. Ethical Clearance number: GW20180718HS Student number: 29642630.

Results

Table 2 shows the structured code system used in the study. The bold capital letters present category labels that serve as titles, and all data segments were distributed under the subcodes of a category (Friese et al. 2018). The number in the column 'Grounded' shows how frequently a code was applied.

Table 3 provides examples of codes (specific quotes from the experts) that emerged from the six main categories.

Next, the authors used Article 13 (Access to Justice) of the CRPD (United Nations 2006) as a conceptual framework to link categories to themes (Drew et al. 2011; Harpur 2012). Four main themes were identified, namely, equality, accommodations, participation and training of professionals. The themes and related categories are presented in Figure 1.

Discussion

An in-depth discussion of the four themes – equality, accommodations, participation and training of professionals – is presented here.

TABLE 2: Structured code system.

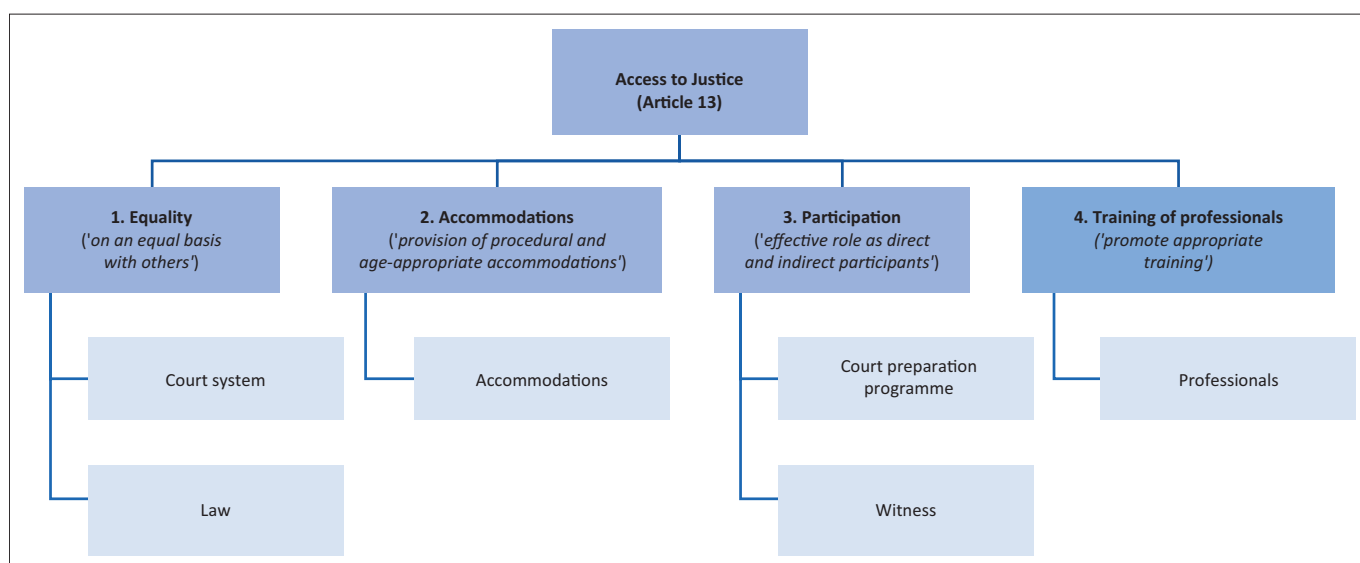
Categories and subcodes	Definition of category and subcode	Grounded
Accommodations: Court accommodations, relevant services such as intermediaries or making the court accessible		61
• Alternative communication methods/strategies	Alternative ways of communicating in court by the witness, for example, AAC, the use of anatomical dolls and alternative strategies (e.g. simple questioning techniques)	17
• Intermediary services	Intermediaries and any services related to intermediaries	13
• Expert evidence	The need for and importance of expert evidence to be given in court for witnesses with disabilities	12
• Environment	Physical accommodations, for example, wheelchair access and environment adaptations such as a private testifying room (negative and positive examples were included)	10
• Expert support person	A lay or legal assessor to support the magistrate during legal proceedings	5
• Victim impact statements	Explanation and importance of victim impact statements and how they can be used	4
Court preparation programmes: Court preparation offered by government or non-governmental organisations (NGOs)		33
• NGO 1	Process of the court preparation programme at NGO 1	12
• Government	Process of the NPA's Ke Bona Lesedi Court Preparation Programme	11
• NGO 2	Process and description of the court preparation programme at NGO 2	7
• Purpose	Purpose of court preparation for the victim and all involved	3
Court system: Court system and processes, for witnesses and professionals		44
• Equality	Highlighting the term 'equality' in the court system. Persons with disabilities should have the same (equal) rights as their peers and be able to access the court on an equal footing	13
• Challenges	Challenges to access the court system, and the challenges related to the rigid and inflexible procedures and processes that the courts follow	12
• Unrealistic expectations of victims	The court and court officials have unrealistic expectations of the victims with disabilities	9
• Process	The court processes followed (current as well as past processes)	6
• Trust of victims and families in process	Lack of faith in the court system by families and victims who did not find the system beneficial to pursue	4
LAW: Specific law regarding access to the court system for persons with disabilities		32
• Specific legislation for persons with disabilities	Specific mention of laws and policies for persons with disabilities, nationally and foreign law	15
• Reform	Mention of law reform and the importance of law reform	12
• Challenges	Challenges of the law, for example, law is perceived as dichotomous, which could disempower persons with disabilities	5
Professional experience: Professionals involved in the court process, either on a professional or personal level. Also, statements on how the professional interacts with or responds to the victim with a disability (lack of patience)		95
• Specific training needed	Specific training of professionals who work with persons with disabilities to address aspects such as knowledge, awareness and patience	36
• Responsibilities	Responsibilities of specific professionals in the court system, for example, the prosecutor, social worker and police.	23
• Importance of training	Importance of training of professionals so that victims could access the court system in a fair manner	21
• Work challenges	Challenges faced by professionals in the court system – being overworked, having too large caseloads, etc. This results in witnesses with a disability not being able to fully access the court system	15
Witness: Comments linked directly to the victim or witness with a communication disability		149
• Level of disability	The type or level of disability of the witness (e.g. intellectual disability and physical disability) and how the level of disability affected the victim's ability to consent to sexual intercourse	29
• Personal factors	Personal factors related to the witness (language barriers, self-blame, protecting the perpetrator, etc.) that have an impact on his or her access to the court system	23
• Witness competency	Basic competency, truth-lie competency and the ability of the person with a communication disability to testify in court and be a witness	23
• Human rights	Examples of human rights violations affecting the victim's human dignity and equality; no human respect for the witness or victim	20
• Environmental factors	Any processes or persons other than the witness' family mentioned in a negative way that prevented the witness from accessing the court system effectively	19
• Tools, assessments and methods used	Tools, models, assessments and the processes currently used with witnesses in South Africa	16
• Support services	Importance of support services for the witness	7
• Unfair discrimination	Unfair discrimination experienced by the witness	7
• Family	The witness' family	5

AAC, alternative and augmentative communication; NPA, National Prosecuting Authority.

TABLE 3: Examples of codes (quotes) in specific categories.

Categories	Codes based on verbatim quotes from participants
Accommodations	'We need non-verbal ways of communication that are reliable and valid'.
Court preparation programmes	'It is furthermore the process of empowering the witness or the complainant by familiarising them with information regarding the court environments so that they are not afraid of the unknown, what are they going to face, who they going to face, where they going to face and court processes, legal process and legal terminology and it all has to be age appropriate and how do we address that in terms of their disability? and it's very helpful when we get a report on what type of disability? what their medical, their mental functioning is, so that you can address that witness or the complainant on that level'.
Court system	'We need a more flexible court system that shows its understanding of the witness' disability and tries to work with [her] to enable optimal testimony'. 'We need a court system that is disability-friendly, and I don't believe that our present system is so, especially as it relates to intellectual disability'.
Law	'The Criminal Procedure Act 51 of 1977 (the CPA) provides for a number of protective measures for child and adult witnesses as well as witnesses with disabilities'. 'The PEPUDA act, in section nine and in section six says 'no person may unfairly discriminate against any person on the grounds of disability including denying or removing from any person who has a disability, any supporting or enabling facility necessary for their functioning in society and in court'.
Professional experience	'Training is critical'. 'There is a need for ongoing training'. '.....training, training, training. And I think that we need to see training as never ending, we can't do training in March and then leave it for another two years. We just have to keep training'.
Witness	'With mental disability I have encouraged police/prosecutors and sometimes testified in court, to understand the nature of the disability and how it impacts on the child and evidence. Sometimes I have not been successful and sometimes when the mental disability is profound, the child is unable to describe the offence and then the case only proceeds where there is other evidence e.g. – DNA or a witness'.

Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (PEPUDA); deoxyribonucleic acid (DNA).

**FIGURE 1:** Conceptual framework, themes and categories.

Equality

Article 13 specifically mentions the importance of ensuring access to justice for persons with communication disabilities on an 'equal basis' with others (United Nations 2006). The South African court system is not always considered beneficial or easy to pursue as one expert highlighted:

...[P]eople not seeing any value in the criminal justice system because the legal system has never actually benefited them in any way, the whole process of trying to go through the system is just one more big obstacle... impenetrable obstacle! The Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007, Section 170A, Subsection (1). (p. 106)

If transformative equality is to be achieved, processes and procedures within the court system need to be adapted and modified to enable persons with communication disabilities to participate equally in court. The court and criminal justice system have an important role to play in furthering transformative equality. In order to ensure that it promotes its aims of protecting vulnerable groups such as persons with communication disabilities, the court system is

compelled to develop certain criteria to accommodate witnesses with communication disabilities (Fredman 2005; Lord & Brown 2011).

The CRPD recognises that laws are not always sufficient to protect the rights of persons with disabilities, and therefore, strategic litigation and law reform are needed to ensure that laws are in line with international human rights standards such as the CRPD (Drew et al. 2011; Flynn 2013). Some countries have laws that protect and assist witnesses with disabilities to access the court system on an equal basis and have set a benchmark for other countries, for instance, Scotland's *Vulnerable Witnesses Act* of 2004, Israel's *Investigation and Testimony Procedural Act* (Accommodations for People with Cognitive or Mental Disability) of 2005 and India's *Rights of Persons with Disabilities Act* of 2016. Yet, the development of policies and laws historically excluded persons with communication disabilities, which implies that their needs were not adequately addressed. According to Drew et al. (2011), it is therefore essential that persons with communication disabilities are actively involved in the law reform process.

Accommodations

The court has a responsibility to ensure fair and equal access for all witnesses, including those with communication disabilities, and certain procedural accommodations could assist the court in achieving transformative equality. When discussing types of accommodations, Msipa (2015) puts forward the following strong statement:

In the criminal trial setting, the question should not be whether a person is competent to testify; rather it should be what types of accommodations are required to enable the person to give effective testimony? (p. 89)

The CRPD specifically mentions that provision of procedural and age-appropriate accommodations should be provided to a witness with a communication disability in order to ensure his or her effective access to justice (United Nations 2006).

Lay or Legal Assessors

Section 34 of the *Magistrates' Courts Act* 32 of 1944 allows for the appointment of assessors in both criminal and civil cases in South Africa. Expert assessors are generally experienced people in law who are advocates or magistrates (Department of Justice and Constitutional Development 2019). Lerm (2012) explains the rationale for this practice, namely, to assist magistrates and judges who are only professionally trained and who frequently lack the expertise and practical knowledge to match that of the experts who would testify in cases before them. Therefore, the use of expert assessors to assist judges and strengthen their competence to judge complex matters was developed. Appointing a legal assessor who is a trained and skilled expert in communication disability could assist the judge or magistrate to understand the witness' disability, as well as the accommodations that are needed to support this witness to be able to participate and testify in court.

Intermediaries

As criminal proceedings in court are generally not disability-friendly, intermediaries are used to assist both witnesses and perpetrators with communication disabilities during the court process and ultimately to support the witness or perpetrator to participate equally in the court process. This process is similar to the appointment of intermediaries in criminal cases for all witnesses under the biological or mental age of 18 years. An intermediary is a facilitator who assists a witness to testify and give evidence in court. As a result, all communication interaction exchanged between the witness and the court takes place through the intermediary, including examination-in-chief, cross-examination and re-examination (Fambasayi & Koraan 2018). The role of the intermediary is to translate the questions from the prosecution and the defence attorney and put them to the witness in a language and terminology that the witness understands (Jonker & Swanzen 2007).

Foreign case law in England has allowed the intermediary to assist with questions for cross-examination of the witness, which had been agreed in advance by all parties

involved (*R v Michael Boxer* [2015] EWCA Crim 1684) (The Advocate's Gateway 2019). This is a strategy that could assist the courts with regard to the cross-examination from the defence.

Alternative and Augmentative Communication

Alternative and augmentative communication (AAC) strategies and techniques are used by individuals with significant communication disabilities who cannot rely on spoken language alone for communication purposes, for example, persons with cerebral palsy or those with intellectual disability (Beukelman & Mirenda 2013). Broadly, AAC systems have a binary taxonomy that distinguishes between unaided and aided communication systems. In the case of unaided communication, persons use only their bodies to convey their messages, for example, systems with linguistic features such as a formal sign language (e.g. South African Sign Language [SASL] and finger spelling) or systems without linguistic features such as natural gestures, facial expressions and vocalisations (Beukelman & Mirenda 2013). In South African courts, persons with communication disabilities have been allowed to use unaided communication systems such as informal signs to testify in court (*R v Ranikolo* 1954 (3) SA 255 (0)). However, for many persons with severe communication disabilities, for example, those with significant physical disabilities and limited movement, the use of unaided communication systems (such as SASL) is not possible.

Aided communication can be defined as systems that require external assistance (e.g. using pictures or objects) to produce a message. As with unaided systems, aided systems also fall on the continuum of linguistic features. On the one end of the continuum, there would be symbol sets (*without* linguistic features), and on the other end, there would be symbol systems (*with* linguistic features) (Bornman & Tönsing 2019). Traditional orthography (e.g. letters of the alphabet) is an example of an aided symbol system with linguistic features that would allow literate individuals with a communication disability to generate their own messages. Alphabet letters can also be presented in Braille or Morse code format. Braille, a tactile symbol system for reading and writing that is typically used by blind persons, also requires literacy skills and hence the theoretical argument reverts to the issue of the literacy level of individuals with disabilities (Groce & Bakshi 2009; Statistics South Africa 2012). Unfortunately, using aided systems with linguistic features to testify is not applicable to the majority of South Africans with communication disabilities because of the notoriously high illiteracy rates in the local population (Groce & Bakshi 2009; Statistics South Africa 2012).

Blissymbols are a conceptually based graphic symbol system with linguistic rules and markers (Beukelman & Mirenda 2013). Blissymbols are placed half-way on the aided communication continuum between symbol sets with no linguistic features and symbol systems with linguistic features. Bliss Symbols have been used successfully in a

South African court case (Toefy 1994). Unfortunately, Bliss Symbols are not commonly used in South Africa as part of the education system.

The other end of the aided communication continuum consists of symbol sets that contain finite numbers of easily guessable symbols with limited linguistic features. Symbol sets thus consist of a defined number of symbols that have no rules for expansion or generating new words, for example, Picture Communication Symbols (PCS). This means that messages can only be compiled by selecting symbols from the pre-selected set (Beukelman & Mirenda 2013). Symbol sets are particularly useful for non-literate persons, persons with limited literacy skills and preliterate persons. Preliterate persons (young children who have not yet acquired literacy skills or individuals who have not yet been exposed to literacy and who might still acquire literacy skills) often use graphic symbol sets that do not have linguistic features and therefore do not require literacy skills. It is important for preliterate individuals with communication disabilities to have access to alternative means to represent messages and concepts to communicate (Drager, Light & McNaughton 2010).

Therefore, aided AAC systems that do not have linguistic features, such as PCS, may be a viable option in the criminal justice system. For non-literate and preliterate individuals, the vocabulary required to access the court system could be selected and represented in the form of line drawings that could be displayed as a communication board or book. Alternatively, the required vocabulary could be programmed into a specific speech-generating device such as a tablet with specific AAC software (Caron, Light & Drager 2016; White et al. 2015).

These systems could assist non-literate, minimally literate as well as preliterate persons with communication disabilities to participate with others in their environment, as the meanings of many of the symbols and line drawings are easy to understand (Dada, Huguet & Bornman 2013). The use of systems with a set of pre-selected vocabulary in the court system also has specific implications. The vocabulary will be selected from a pre-determined symbol set, and thus it will not be generated, as would have been possible when a symbol system such as traditional orthography or Braille had been used. These implications could be remedied by adding multiple foils and categories in the pre-determined symbol set (White et al. 2015).

In countries such as England, Wales, Northern Ireland and Scotland, witnesses with communication difficulties are permitted to use both aided and unaided forms of AAC to support their testimony (O'Leary & Feely 2018). The South African court system needs to formally recognise AAC as a form of communication and giving testimony for witnesses with communication disabilities, and provided that the court procedures and rules of evidence are not undermined, this form of accommodation should be allowed in court (Flynn 2016).

Participation

The CRPD, and specifically Article 13, highlights the importance of persons with disabilities being active participants as witnesses in the court process (United Nations 2006). In South Africa, the government and non-profit organisations offer multiple court preparation programmes to empower the witness with disabilities to participate effectively in the court system. Greater awareness needs to be raised and wider education be offered regarding the relevant court preparation programmes so that persons with disabilities and their families would know whom they can turn to when wanting to access the court system.

The purpose of the Ke Bona Lesedi Court Preparation component offered by the National Prosecuting Authority of South Africa (NPA) is to prepare and empower victims with communication disability (witnesses and their families) for testimony (Tewson 2017). This skilled and practical intervention is prosecutor guided and aims to empower witnesses to give credible evidence in court. The court preparation officers (CPOs) accompany the witnesses and complainants from beginning to end, encouraging them, teaching them coping mechanisms, referring them for counselling and giving crucial feedback to the prosecutor. They also ensure that the prosecutor knows how to approach a witness with specific communication needs (Tewson 2017). Court preparation officers, together with the intermediaries, play a critical role in the court process and their role should be advocated in all courts as part of ensuring equal access to justice for witnesses with communication disabilities. Court preparation officers identify the accommodations and special needs of the witness prior to testimony and consultation with the prosecutor, which ensures that the necessary accommodations are timeously arranged (Tewson 2017).

A barrier and recurring obstruction to witness participation is the victim's level of disability and ability to be a competent witness. Pillay (2012) strongly argues that every attempt must be made to find reasons why witnesses with intellectual disabilities should be permitted to give evidence, rather than why they should *not* be allowed to testify. Scottish Law has addressed this barrier where the *Vulnerable Witnesses (Scotland) Act* of 2004 legally removed the competence test for vulnerable witnesses. The advantage of removing this test is that it allows the magistrate to determine the witness' reliability, rather than to rely on a test that does not necessarily ensure the truthfulness of their evidence. It also ensures that victims with communication disabilities have the opportunity to be heard (Turner, Forrest & Bennett 2016).

Training of professionals

The CRPD specifically mentions the importance of training all professionals who work in the court system.

Lack of training is consistently labelled as a barrier in the South African court system as it gives rise to, for example, lack of awareness, lack of patience and lack of knowledge (Bornman et al. 2016).

This type of training has been demonstrated to be effective. For example, a Swedish study that focused on the training of active crime investigators of alleged child abuse who participated in six different half-year courses between 2007 and 2010 showed effective outcomes in shaping the interviewers' behaviour towards better compliance with foreign recognised guidelines (Cederborg et al. 2013). This is just one of many examples of the benefits of specific training programmes for legal professionals. Access to justice can be improved when these professionals can receive the relevant training (Larson 2014), and this practice should be prioritised in the South African court system.

Evaluation of study

This study focused on the South African court system and therefore included only South African legal experts.

An expert panel incorporating foreign experts could have added a more global perspective on the accommodations needed for persons with disabilities. A comparison between South African and foreign experts should be considered for future research to obtain a more comprehensive list of possible accommodations that have demonstrated effect. Other professional stakeholders (therapists, parents and caregivers) could have also been included in the expert panel to provide additional accommodations.

Although this study focused predominantly on the witness and victim, the same supports could be offered to perpetrators and offenders too. Effective access to justice could also be achieved, the integrity of the court system could be maintained (Flynn 2016) and all human rights would be uplifted.

This study focused on the CRPD as a human rights framework, although future research could also include other relevant frameworks such as the International Classification of Functioning, Disability and Health (ICF) when aiming to identify possible court accommodations for persons with communication disabilities.

Furthermore, when conducting legal research and making legal statements, a systematic literature search approach (such as a legal systematic review) could be followed (Baude, Chilton & Malani 2017). Therefore, future research could focus on conducting systematic legal reviews that are evidence-based to determine a scope of published literature that focuses on globally accepted court accommodations for persons with communication disabilities.

Conclusion

The aim of this study was to identify court accommodations that could assist persons with communication disabilities to participate in the court system. The reality is that persons with communication disabilities who were victims of crime, as well as their families, still face many barriers when accessing the court system. As a result, they sometimes choose not to report the victimisation, as all too often this

process seems to be more of an obstacle than a benefit. Similarly, perpetrators with communication disabilities may experience profound disadvantages in preparing and presenting their defence if not provided with appropriate accommodations during both the pre-trial and trial processes.

Foreign and national laws forbid discrimination against persons with communication disabilities and insist that they should be given fair and equal access to the court system. For transformative equality to be achieved, certain rules and laws need to be changed to include specific accommodations for witnesses with communication disabilities so as to enable them to participate effectively in the court system. Furthermore, it is also the responsibility of the courts to ensure effective access to justice. Participation in court processes can benefit both the victim and the perpetrator in many ways because it will allow them to tell their version of events and feel believed. More importantly, it may assist these individuals to experience the effective fulfilment of their human rights.

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Competing interests

The authors declare that no competing interests exist and that they have no financial or personal relationships that may have inappropriately influenced them in writing this article.

Authors' contributions

R.M.W., J.B. and E.J. contributed to the conceptualisation of the study, development of methodology, analysis of data, summary of results, writing of the original draft and the subsequent versions. K.T. and J.v.N. contributed to the introduction and discussion sections, and they reviewed the article.

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Data availability statement

The data that support the findings of this study are available on request from the corresponding author (R.M.W.). The data are not publicly available due to [restrictions e.g. their containing information that could compromise the privacy of research participants].

Disclaimer

The views and opinions expressed in this article are those of the authors and do not necessarily reflect the official policy or position of any affiliated agency of the authors.

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Appendix 3G - Permission from Editor of African Journal of Disability



Robyn Wilson White

Permission to add AJOD article to my PhD thesis - Transformative equality : court accommodations for South African citizens with severe communication disabilities

Trudie Retief <[REDACTED]>

Mon, Jul 12, 2021 at 12:51 PM

To: Robyn White <[REDACTED]>

Cc: AJOD Manuscripts <[REDACTED]>

Dear Robyn

Thank you for the follow-up email, apologies for my delayed response.

You can place your article as an appendix to your thesis, as the authors' retain copyright.

If you are to place an updated or edited version of the paper, ensure to acknowledge the place of first publication (African Journal of Disability - How to cite this article), all the authors and add the re-use license:

How to cite this article:

White, R.M., Bornman, J.,
Johnson, E., Tewson, K. &
Van Niekerk, J., 2020,
'Transformative equality:
Court accommodations for
South African citizens with
severe communication
disabilities', *African Journal
of Disability* 9(0), a651.
<https://doi.org/10.4102/ajod.v9i0.651>

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Attribution License.

You can add the article, as it was published in PDF in its entirety, as an Appendix. On the first page, all the relevant acknowledgement statements already appear.

Trust you will enjoy much success.

Blessings,

Trudie Retief

Publishing Manager

MDP (USB-ED), NDEID (CPUT), DFD (EGA)

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From: Robyn White <[REDACTED]>

Sent: Monday, 12 July 2021 13:33

To: Charlotte H Capri <[REDACTED]>

Subject: Re: Fw: Permission to add AJOD article to my PhD thesis - Transformative equality : court accommodations for South African citizens with severe communication disabilities

[Quoted text hidden]

Framework for participants number allocation

Method	Participant number	Number allocated	Total number of participants
Phase 1			
Data source 2 – Focus group with South African experts	All participant numbers start with a 1 (to indicate Phase 1) followed by a 2 (to indicate Data source 2)	121 - 128	8
Data source 3 – Online focus group with international experts	All participant numbers start with a 1 (to indicate Phase 1) followed by a 3 (to indicate Data source 3)	131 - 139	9
Data source 4 – Interviews with legal practitioners with disabilities	All participant numbers start with a 1 (to indicate Phase 1) followed by a 4 (to indicate Data source 4)	141 - 147	7
Phase 2			
Stakeholder review	All participant numbers start with a 2 (to indicate Phase 2) followed by a 1 (to indicate the first data collection in Phase 2)	211 - 216	6
Phase 3			
Pilot Study	All participant numbers start with a 3 (to indicate Phase 3) followed by a 1 (to indicate the first data collection in Phase 3)	311-322	12
Data Collection Phase 3	All participant numbers start with a 3 (to indicate Phase 3) followed by a 3 (to separate it from the pilot participants) (e.g. #311 and #322)	330 – 367	36



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Appendix 3I - Ethics approval from the Research Ethics Committee
at the University of Pretoria

Faculty of Humanities
Research Ethics Committee

3 August 2018

Dear Ms White

Project: Accommodating persons with severe communication disabilities in court: Using universal design principles to guide key role-players
Researcher: RM White
Supervisors: Prof J Bornman and Dr E Johnson
Department: Centre for Augmentative and Alternative Communication
Reference number: 29642630 (GW20180718HS)

Thank you for the well written application that was submitted for ethical consideration.

I am pleased to inform you that the above application was **approved** by the **Research Ethics Committee** at the meeting held on 2 August 2018. Data collection may therefore commence.

Please note that this approval is based on the assumption that the research will be carried out along the lines laid out in the proposal. Should the actual research depart significantly from the proposed research, it will be necessary to apply for a new research approval and ethical clearance.

We wish you success with the project.

Sincerely

Prof Maxi Schoeman
Deputy Dean: Postgraduate and Research Ethics
Faculty of Humanities
UNIVERSITY OF PRETORIA
e-mail: PGHumanities@up.ac.za

cc: Dr E Johnson (Co-Supervisor)
Prof J Bornman (Supervisor and HoD)

Fakulteit Geesteswetenskappe
Lefapha la Bomotho

Research Ethics Committee Members: Prof MME Schoeman (Deputy Dean); Prof KL Harris; Mr A Bizos; Dr L Blokland; Dr K Booyens; Dr A-M de Beer; Ms A dos Santos; Dr R Fasselt; Ms KT Govinder Andrew; Dr E Johnson; Dr W Kelleher; Mr A Mohamed; Dr C Puttergill; Dr D Reyburn; Dr M Soer; Prof E Taljard; Prof Y Tsehe; Ms B Tsehe; Ms D Mokalapa

Appendix 3J – South African expert focus group biographic information

Biographical questionnaire for South African experts

Biographical Questionnaire	For office use Participant no:
1) Age: _____	Q1 <input type="checkbox"/>
2) Date of birth: _____	Q2 <input type="checkbox"/>
3) Sex: Male <input type="checkbox"/> Female <input type="checkbox"/>	Q3 <input type="checkbox"/>
4) Home Language: _____	Q4 <input type="checkbox"/>
5) Qualifications: Please specify (Degrees, Diplomas) _____ _____ _____	Q5 <input type="checkbox"/>
6) Current Position and Title: _____	Q6 <input type="checkbox"/>
7) How long have you been working in your current position: _____	Q7 <input type="checkbox"/>
8) Number of years' experience working in or have been involved in the legal sector: _____	Q8 <input type="checkbox"/>
9) Do you have work experience with victims of crime during the legal process: Yes <input type="checkbox"/> No <input type="checkbox"/> Please specify if Yes: _____ _____ _____ _____	Q9 <input type="checkbox"/>
10) Do you have work experience with people with disabilities who have been victims of crime: Yes <input type="checkbox"/> No <input type="checkbox"/> If yes, please answer Questions 11	Q10 <input type="checkbox"/>
11) What difficulties did you experience when working with people with disabilities who had been victims of crime, specifically with these individuals accessing the court system? _____ _____ _____	Q11 <input type="checkbox"/>

RESEARCH

Investigating Court Accommodations for Persons with Severe Communication Disabilities: Perspectives of International Legal Experts

Robyn White, Ensa Johnson and Juan Bornman

Centre for Augmentative and Alternative Communication, The University of Pretoria, ZA

Corresponding author: Robyn White (robynwilson13@gmail.com)

Globally, persons with disabilities, specifically individuals with severe communication disabilities, require a range of court accommodations to enable them access to the court system, thereby realizing their right to access to justice. This study aimed to investigate the perspectives of nine international experts on possible universal court accommodations for these individuals. An asynchronous, online focus group discussion with four questions was conducted over five days. Through deductive thematic analysis, four themes related to Article 13 of the CRPD were identified: Accommodations related to procedural fairness (e.g., testifying via CCTV camera); accommodations related to ensuring equality (e.g., specific international and local legislation); accommodations related to non-discrimination (e.g., developing appropriate questioning techniques); and accommodations related to legal practitioners (e.g., disability sensitivity training). The range of identified court accommodations could act as the impetus needed to ensure access to justice, a basic human right, for persons with disabilities internationally.

Keywords: Convention on the Rights of Persons with Disabilities (CRPD); court accommodations; disability; equality; human rights; severe communication disabilities; procedural justice

Introduction

For centuries, minority groups, such as persons with disabilities, have faced discrimination, inequality, and countless barriers when attempting to claim their basic human rights, such as access to justice, healthcare, and education (Beqiraj, Mcnamara & Wicks 2017; Bossuyt 2015; White et al. 2020b). Within the already marginalised sphere of disability, the most vulnerable group are those individuals with severe communication disabilities as they are unable to rely on spoken language not only to make their needs and wants known, but also to protect themselves and to be safe (Bryen 2014). The term severe communication disabilities (also known as complex communication needs or being nonverbal) describes persons from different socio-economic, ethnic, and racial backgrounds, across the age range, whose disabilities stem from a range of diagnoses, such as autism spectrum disorder, cerebral palsy, traumatic brain injury, sensory disability, and intellectual disability (Beukelman & Light 2020; Camilleri & Pedersen 2019; Doak & Doak 2017). These individuals typically require accommodations and adaptive supports to communicate effectively across a wide range of different contexts, including specific communication contexts, such as in court.

For persons with severe communication disabilities, access to justice is an essential tool to counter the discrimination and violence they commonly face (Beqiraj et al. 2017; Bornman et al. 2016). Regrettably, these individuals are often denied access to justice—especially participation in the court system—due to factors such as their own limited communication skills, a lack of information (on the side of both persons with disabilities and legal practitioners), legal practitioners' insufficient training and inadequate knowledge, as well as limited resources in the court system. Collectively these factors contribute to a lack of awareness of court accommodations and inevitably result in such accommodations not being available (Cremin 2016; Dagut & Morgan 2003; Flynn 2016; Gooding et al. 2017).

In cases where accommodations are available, a one-size-fits-all approach seems to prevail, despite evidence supporting the opposite (Holness 2014). For example, providing a sign language interpreter to all individuals who are deaf may not necessarily be an appropriate accommodation to provide the best outcome (Kermit, Mjøen & Olsen 2011; Olsen & Kermit 2015). In a recent South African case, the accused did not use standard South African Sign Language (SASL) and could therefore not benefit from the use of an interpreter who used SASL (*Kruse v S* (A100/2018) [2018] ZAWCHC 105; [2019] 4 All SA 287 (WCC) (27 August 2018). Moreover, persons with severe communication disabilities may have multiple disabilities and may therefore need more than one accommodation to achieve equal participation in court

(White et al. 2020a). Although the literature discusses some accommodations (e.g., intermediaries or augmentative and alternative communication (AAC) strategies) these accommodations barely scrape the surface.

The nexus of procedural justice and Article 13 of the CRPD

The United Nation's Convention on the Rights of Persons with Disabilities (CRPD) (United Nations 2006)—an international treaty—has highlighted the importance of equality and non-discrimination for persons with (severe communication) disabilities. Article 13 of the CRPD specifically describes the roles and responsibilities of State institutions, such as the courts, to ensure effective access to justice for all persons with disabilities on an equal basis with others through the provision of procedural and age-appropriate accommodations to facilitate their participation in all legal proceedings (Celik 2017; United Nations 2006). As such, the CRPD states substantive equality for persons with disabilities as its purpose through exemplifying the interrelationship of all human rights (Degener 2016; Lord & Brown 2011), while also analysing the role of State institutions in terms of the legal obligations embedded within a substantive equality framework (Lord & Brown 2011). Ergo the CRPD can be applied as a useful framework to deliver positive outcomes for persons with disabilities (Chan et al. 2012).

When focusing on the type of court accommodations that could assist persons with severe communication disabilities to access the court, it is important to consider procedural justice as a central driving force (Dorfman 2017). This thoroughly researched construct, also known as procedural fairness, is rooted in the notion that the manner in which disputes are handled by the courts has an important influence upon how individuals evaluate their experiences in the court system (Bowen & LaGratta 2014; Ellem & Richards 2018; Pennington 2015; Tyler, Goff & MacCoun 2015; Wood, Tyler, & Papachristos 2020). The basis of procedural justice is that in people's contact with the justice system, not only do they care about the outcome of their case, but also they value the way in which it was handled (Brems & Lavrysen 2013). This highlights the subjective experience of the process through which human rights decision making is achieved, rather than only its outcomes. Therefore, procedural justice is valued not because of the way it facilitates a desired outcome, but rather because it portrays a sense of procedural fairness and respect for the individuals involved (Brems & Lavrysen 2013).

In a recommendation for court accommodations, the legal scholar Tyler (2008) distinguishes four procedural justice principles that courts should take into account when assisting persons with severe communication disabilities (Bowen & LaGratta 2014; Brems & Lavrysen 2013): i) the 'having a voice' principle, which requires that legal practitioners support persons with severe communication disabilities to actively participate in court by allowing their 'voice' to be heard, irrespective of the means or modes of communication that are used (e.g., gestures, sign language, speech-generating devices, writing, symbol-based communication boards); ii) the 'treated with respect' principle, which requires that legal practitioners engage with persons with severe communication disabilities in a respectful manner, thereby implying courtesy and dignity towards them and recognising the individual and their disability; iii) the 'using objective criteria for decision-making' principle, which requires that legal practitioners use objective, legitimate criteria to make decisions and apply fairness in all decisions; and iv) the 'understanding the court language' principle, which requires that legal practitioners focus on the individuals with severe communication disabilities' ability to understand the language used in court in order to build trust (Bowen & LaGratta 2014; Brems & Lavrysen 2013; Tyler 2008).

From the above discussion it is thus clear that the court system is found to be lacking in providing court accommodations that focus on procedural justice and fairness to enable persons with severe communication disabilities to participate equally in the court system. Perspectives of international experts who work in the court system may be able to suggest valuable and relevant recommendations of court accommodations for persons with severe communication disabilities.

Aim

The aim of the current study was to investigate the perspectives of international experts on possible universal court accommodations that could enable persons with severe communication disabilities from across the globe to participate equally in the court system so as to ensure access to justice for them. This was done by applying an international treaty, namely the CRPD, as the bedrock for this research with a further focus on procedural justice principles. The research question was formulated to read as follows: What court accommodations should be provided for persons with severe communication disabilities to participate equally in the court system?

Methodology

The first author moderated an asynchronous online focus group with a panel of nine international experts while the second and third authors acted as observers. An asynchronous online focus group is a selected group of individuals (or experts) who volunteer to participate in a moderated, structured, online discussion to explore a particular topic for the purpose of research (Jensen et al. 2017; Williams et al. 2012). Furthermore, this type of online discussion allows participants to read and reply to each other's postings at a time that suits them (Williams et al. 2012).

The choice of platform for hosting an online focus group is a crucial consideration for this type of methodology to ensure that the participants feel comfortable and safe to share information (Cortini, Galanti & Fantinelli 2019; Johansson 2019). Three criteria were set for the platform: it had to ensure the participants' safety and confidentiality;

it had to be easy to understand and use; and it had to allow for asynchronous discussion. The learning platform, Blackboard Learn, was selected as it allowed a degree of customisation and was relatively easy to use by the moderator, observers, and participants (Stewart & Shamdasani 2017). It could also ensure confidentiality and between-participant anonymity, while making it possible to capture the content of the discussion in an easy-to-follow manner (Stewart & Shamdasani 2017). Adhering to the principles established in a face-to-face focus group, a facilitation script was developed (Tates et al. 2009) that specifically examined participants' perspectives about court accommodations for persons with communication disabilities.

An advantage of asynchronous online focus groups is that it enables access to hard-to-reach populations (e.g., experts) and to a more diverse participant group from a larger geographical area, which is challenging when using traditional research techniques (Reisner et al. 2018; Skelton et al. 2018). The use of asynchronous online focus groups is particularly advantageous when investigating sensitive topics, such as court accommodations for persons with severe communication disabilities, as it allows the participants to choose which aspects of their experience they feel comfortable disclosing. Online focus groups are also more cost effective than traditional face-to-face ones because there are no costs related to facility rental, equipment, and transportation (Lijadi & Schalkwyk 2015; Stewart & Shamdasani 2017). Research has also shown that the content was virtually the same between synchronous and asynchronous focus groups despite obvious differences in the data collection format (Biedermann 2018; Reisner et al. 2018).

However, a disadvantage of online focus groups is that comments are not elaborated on in detail, as participants might say less when they need to type their responses. It may also take longer to respond; therefore, they might only give a shallow response (Biedermann 2018). Careful attention was thus given to each participant's response, and the moderator asked additional questions if clarity was needed.

Participants

Expert perspectives may provide an accessible source of information that can be harnessed relatively quickly to provide opinions and knowledge when there is a paucity of research evidence regarding a specific topic (Baker, Lovell & Harris 2006). Consequently, when investigating relatively new areas of research, experts can make a significant contribution based on their extensive experience in this specific focus area (Bornman & Naude 2019; Etikan, Musa & Alkassim 2016).

A purposive sampling technique was used to identify participants to ensure that they could be considered experts on the research topic and that they would be able to provide thick and rich data regarding possible court accommodations (Creswell & Plano Clark 2018). These experts also had to be practising in a country that is a signatory of the CRPD. When defining an expert, different criteria can be used. For the purpose of the current study, three criteria (as based on Baker et al. 2006) were employed: knowledge (articulated by qualifications and publications in the field of the current study), experience, and influence (articulated by whether they had informed policy or were involved in policy revision) (see **Table 1**). Each of these criteria were then scored using specific parameters. For example, experience was used, with number of years used as the proxy. Experience of between 1 and 5 years yielded a score of 1; 6 to 10 years yielded a score of 2; 11 to 15 years a score of 3, and 16 years or more a score of 4. (See **Table 1** for the scoring that was used for the knowledge and influence criteria). A minimum score of 7 was required to ensure that potential participants met the minimum criteria for consideration as experts related to the specific topic at hand. A total of 16 potential participants were identified, of whom 9 consented to participate in the expert online focus group. The seven non-consenting potential participants cited prior commitments, high workload, maternity leave, and health challenges.

The nine participants were well-known, influential, published scholars in their respective fields. The majority were female, and their ages ranged from 37 to 74 years (average age of 54 years). The participants practised in Australia, Canada, England, Germany, Israel, the USA, and Zimbabwe. All participants met the 3 criteria, with weighted scores for inclusion ranging from 7 to 13 points, with an average weighting of 11 points.

Data collection

Before recruitment commenced, ethics approval was obtained from the Research Ethics Committee at the tertiary institution concerned (Ethics approval number: GW20180718HS). The potential participants were emailed letters of informed consent with details about the research topic, what was expected of them, as well as potential risks and benefits. To ensure confidentiality, each participant was given a unique login name and password with which they could anonymously (between participants) access their discussion group forum for 5 days, 24 hours a day. The only persons who could be identified by name were the moderator (first author) and observers (second and third authors) who played a similar role as in face-to-face focus groups, for example by asking clarifying questions and encouraging group discussions (Williams et al. 2012).

The discussions took place from Monday to Friday with no holidays or public holidays that could influence the frequency of participants' postings (Skelton et al. 2018). Instead of introducing all questions at the start of the online focus group discussion, the facilitation script enabled the moderator to post a question daily, aiming to achieve optimal group discussion as recommended in previous research (Tates et al. 2009). The following four questions were posted:

Table 1: Participant Description (N = 9).

Nr	Gender	Age	First language	Has a disability	Title	Knowledge (qualifications) weighting: Bachelors = 1 Honours = 2 Master's = 3 PhD = 4	Knowledge (publications) weighting: 1 to 5 = 1 6 to 10 = 2 11 to 15 = 3 16+ = 4	Experience (in years) weighting: 1 to 5 = 1 6 to 10 = 2 11 to 15 = 3 16+ = 4	Influence (informed policy or revision) weighting: Yes = 1 No = 0	Total weighting score
1	Female	37	Shona	No	Attorney	3	2	2	1	8
2	Female	74	English	No	Professor Emerita (disability)	4	4	4	1	13
3	Female	65	Germany	No	Professor (Special needs education and rehabilitation)	4	4	4	1	13
4	Female	59	Hebrew	No	Speech Therapist	1	4	4	1	10
5	Female	42	English	Yes, Cerebral Palsy	Tribunal Member	2	1	3	1	7
6	Female	50	English	No	Associate Professor (Criminology)	4	4	4	1	13
7	Female	44	English	Yes, Speech disability	Compliance Officer	3	3	4	1	11
8	Female	61	English	No	Associate	3	3	3	1	10
9	Male	54	English	No	Forensic Psychologist	4	3	3	1	11

- (i) Please introduce yourself to the group by referring to your experience with people with communication disabilities in the criminal justice system.
- (ii) Please describe the specific court accommodations that you have asked for/recommended in court.
- (iii) Please describe any specific legislation/laws that you are aware of in your country that can assist a person with a communication disability to equally access the court.
- (iv) In your opinion, what may facilitate the process for a person with a communication disability to be able to access and equally participate in the court system and process?

Although no question was posted on the last day, participants had the opportunity to view all the responses in the discussion thread and to review their own responses. Furthermore, all the questions remained open for responses during the whole week. To ensure all participants participated in the online discussion, a reminder was sent to those participants who had not yet joined the discussion on the second day. Thereafter, apart from one participant (who only responded to two questions), all the other participants participated daily. On conclusion of the online focus group, the discussions (questions and responses) were exported to Microsoft Word and the original formatting was removed and replaced with standard document formatting. The Word document was emailed to all the participants for verification as part of member checking and to enhance the trustworthiness and credibility of the data (Nowell et al. 2017).

Data analysis

ATLAS.ti 8, a computer-assisted qualitative data analysis software (CAQDAS), was employed to conduct a thematic analysis using a deductive coding approach (Braun & Clarke 2020; Nowell et al. 2017). This deductive thematic analysis approach was selected as it allows for a recursive process, with movement back and forth between different phases involving distinct steps (Braun & Clarke 2019). First, the authors familiarized themselves with the data by exploring the text of each posting. Next, the text was divided into preliminary codes, based on an existing structured codebook developed from Article 13 of the CRPD (Access to Justice) (White et al. 2020b). Following reflective and critical analysis, the researchers adapted the existing codebook and combined Article 13 with procedural justice principles, which then became auditable evidence to support the trustworthiness of the study (Braun & Clarke 2020; Tyler 2008). This deductive type of coding allowed for the text to reflect codes based on the theoretical interests guiding the research. Codes were then grouped within main themes that reflected the most prominent ideas represented in each code category (e.g., accommodations related to procedural fairness). The data was coded and analysed by the first author, after which the second and third authors independently checked the codes to increase inter-coder reliability and agreement of the data (Campbell et al. 2013). Thereafter, codes and themes were reviewed, defined, and named (Braun & Clarke 2020).

Findings

This research focusses on specific legislations/laws related to court accommodations that the experts were aware of and that they considered should be made available to persons with severe communication disabilities to facilitate equal participation in the court. As the research questions thus focused on possible facilitators, it might create the incorrect impression that these accommodations are implemented in court. Theory does not necessarily equate to practice. The findings should therefore be read keeping the research aim in mind, without interpreting the findings to mean that these accommodations are in fact provided and/or implemented.

Four main themes were extrapolated from the data: accommodations related to procedural fairness; accommodations related to ensuring equality; accommodations related to non-discrimination; and accommodations related to legal practitioners. Within the theme, 'accommodations related to ensuring equality', the following codes were generated: treated with respect, understanding the court language, having a voice, and using objective criteria for decision-making. Within the theme 'accommodations related to ensuring equality', the following codes were generated: follow legal process, international laws that apply, national laws that apply, case law, and specific narrative examples that apply, barriers related to equality, and facilitators related to equality. Within the theme 'accommodations related to non-discrimination', the following codes were generated: discrimination based on disability definition, discrimination based on level/type of disability, discrimination based on fitness to stand trial, discrimination based on identification/screening, role of the defendant, roles of the family and legal guardians. Within the theme 'accommodations related to legal practitioners', the following codes were generated: importance of legal practitioners' training, responsibilities of legal practitioners, and no cross-referencing and collaboration between disciplines.

Accommodations related to procedural fairness

Accommodations related to procedural fairness were mentioned the most frequently by the participants. The accommodations were categorised into four specific codes that resonate with the procedural justice constructs: treated with respect, understanding court language, having a voice, and using objective criteria for decision-making.

Under the 'treated with respect' code, Expert 6 reiterated specific court accommodations that were currently available for persons with severe communication disabilities:

There are typical accommodations within the criminal law such as testifying behind a screen [and] having a support person....

Other 'treated with respect' accommodations related to procedural fairness that were identified by the experts included providing extra time for clients who appear literate but still cannot understand letters sent from the court (Expert 7), using a stress ball (Expert 9), and giving testimony via CCTV camera so that the complainant does not have to testify in the same room as the accused person (Expert 1).

Under the 'understanding court language' code, Expert 4 reflected on her professional experience:

For the people that did have a communication board we usually added vocabulary to their boards, vocabulary that will help them answer questions in the investigation.

The 'having a voice' code highlighted the use of intermediaries as one of the most frequently used accommodations. Expert 8 specifically highlighted the benefit of this accommodation:

That said, global interest in the role of [the] intermediary and the many examples of where individuals, children and adults [with disabilities], have been enabled to access justice is greatly encouraging.

Other accommodations mentioned included asking whether the witness may be provided with access to a pen and paper to write their answers down if they do not wish to speak them aloud in court, as well as the use of AAC. The latter included unaided forms of communication (e.g., gestures, fingerspelling, and sign language) as well as aided forms (e.g., pictures and written words displayed on communication boards or on speech-generating devices). Expert 4 shared her experience relating to her specific country's law regarding the use of AAC:

After application of the Investigation and Testimony Procedural Act (Accommodations for Persons with Mental or Intellectual Disabilities) of 2005, children's investigators were trained and given new authorisations for special investigations according to the law. The authorisation was developed in such a way so that the investigators themselves are considered a 'tool of the investigation' [and] made accessible, which is to say, the investigators learned how to conduct an interview (linguistic simplification, relating to times and quantities, using open and closed questions, etc.). Alongside training, the need arose for additional tools and media that will be at the disposal of the investigator and used at his or her discretion. As such, a special AAC kit was developed, aiding investigations with the assistance of a speech language pathologist funded by the Ministry of Welfare and Social Services, just as translators for sign language have aided in investigations and testimonies for several years.

Several accommodations were identified by the experts under the 'using objective criteria for decision-making' code. For instance, experts mentioned that every investigation should be recorded by two video cameras, one focusing on the person investigated and one on the communication board; judges and attorneys should not be in formal attire; and the court should have the discretion to forbid a criminal defendant from single-handedly cross-examining a witness with intellectual disabilities.

Accommodations related to ensuring equality

Accommodations related to equality that were identified by the experts were important international (the CRPD) and regional (country-specific) laws that could assist persons with severe communication disabilities in their pursuit of justice. Specific regional laws that were mentioned by the participants were from Canada (Criminal Code of Canada); Germany (Guidelines for Criminal and Administrative Summary Fine Proceedings (Richtlinien für das Straf- und Bußgeldverfahren, RiSTBV) referring to the German Criminal Code (Strafgesetzbuch, StGB); South Africa (Children's Act 38 of 2005, Criminal Procedure Act 51 of 1977); Israel (Israel's Investigation and Testimony Procedural Act, Accommodations for Persons with Mental or Intellectual Disabilities, 2005); United Kingdom (Youth Justice and Criminal Evidence Act 1999, The Police and Criminal Evidence Act 1984 (PACE) Code of Practice); and the USA (Americans with Disabilities Act of 1990).

Expert 4 spoke in detail about Israel's Investigation and Testimony Procedural Act (Accommodations for Persons with Mental or Intellectual Disabilities, 2005) that promotes equality for persons with severe communication disabilities:

In Israel, there is a very good law for access to justice. People with disabilities have the possibility to be in court with all the accessibility they need, stated by law. The main advantage of this law is that special investigators conduct investigations of people with disabilities in the criminal cases. The investigators are social workers, specialised in investigating people with disabilities. They belong to the ministry of welfare with authority like the police.

Expert 2 underscored the importance of including a variety of strategies that could be used in terms of ensuring equality for persons with severe communication disabilities:

In my opinion, there needs to be a variety of strategies, with each strategy focused on different stakeholders. National or international legislation that mandates equal opportunity/non-discrimination for people with disabilities, including those who have complex communication needs, in accessing the justice system is a good starting point.

Accommodations related to non-discrimination

Accommodations related to non-discrimination that were highlighted by the experts were procedures that should be put in place that could identify at the earliest point when a person with a communication disability enters the system (Expert 8), developing appropriate questioning techniques for children with intellectual or psychiatric difficulties (Expert 1), and people with severe communication disabilities and their families benefiting from being educated about their legal rights within the criminal justice system (Expert 2).

Expert 8 mentioned that

England's Police and Criminal Evidence Act of 1984 makes provision for the support role titled 'Appropriate Adult' (Home Office: National Appropriate Adult Network 2011) which directly benefits defendants with severe communication disabilities who come into contact with the court system. This appropriate adult should be called if the suspect is either younger than 17 years of age or an adult whom the custody sergeant considers to be 'mentally disordered or otherwise mentally vulnerable'. Also, an appropriate adult is called to the police station as an important safeguard, providing independent support to defendants to ensure that they understand what is happening at the police station during the police interview (Home Office and National Appropriate Adult Network 2011).

This support role of the Appropriate Adult as a possible accommodation is a positive example of a non-discriminatory practice for defendants and could be of great benefit to vulnerable populations, such as defendants with severe communication disabilities, not only prior to court, for example at the police station, but also in court.

Expert 1 also described in detail certain accommodations related to non-discrimination that could assist persons with severe communication disabilities in accessing the court system:

For instance, the person who conducts the assessment to determine the individual's communication needs has to understand that it is more than just a matter of a medical diagnosis. What matters most is the individual's needs relating to communication. Secondly, the needs assessment has to be carried out at the appropriate time, that is at the investigative stage to determine the person's needs as early as possible.

Accommodations related to legal practitioners

Almost all of the experts highlighted the importance of training legal practitioners regarding disability awareness and knowledge. Expert 2 made a comment on which specific legal practitioners should be considered for training:

... this includes training of judges, attorneys, police and victim's assistance professionals.

Discussion

Court accommodations that highlight procedural justice principles can contribute to feelings of self-worth and satisfaction for persons with severe communication disabilities (Brems & Lavrysen 2013; White et al. 2020a). There is existing case law where accommodations related to procedural fairness have successfully been implemented. For example, giving testimony via CCTV camera so that the complainant does not have to testify in the same room as the accused, as was used in *Donnelly v Ireland* [1998] 1 IR 321 and in *White v Ireland* [1995] 1 IR 268; employing intermediaries was used in *People v Miller*, 530 N.Y.S.2d 490 (City Ct. Rochester City. 1988, R v Watts, [2010] EWCA Crim 1824, [2011] 1 Crim LR 58 at 61 and *R (on the application of C) v Sevenoaks Youth Court* [2010] 1 All ER 735; and utilizing AAC as was done in *R v Watts*, [2010] EWCA Crim 1824, [2011] 1 Crim LR 58 at 61, *Com v. Tavares*, 555 A.2d 199 (Pa. Super. Ct. 1989) and *People v Webb* 157 Misc.2d 474 (1993) 597 N.Y.S.2d 565).

Within the broader disability spectrum, individuals with severe communication disabilities have heightened vulnerabilities associated with the range and severity of their impairments. They may well be disadvantaged by discrimination on the basis of these vulnerabilities when attempting to access the court (Satz 2008). However, procedural justice principles can guide legal scholars and practitioners on how to combat these discriminatory practices and how to identify accommodations that can be used in court to allow for these individuals' voices to be heard (using a variety of communication modes and means) and for them to be treated with dignity and respect (Bowen & LaGratta 2014).

A strong connection between the principles of procedural justice and the perceived legitimacy given to legal institutions, such as the court system, exist (Dorfman 2017). When individuals believe that they have been treated in a procedurally fair and neutral manner, they are more likely to think highly of the institutions they have dealt with in terms of respect, loyalty, and compliance (Dorfman 2017). The accommodations related to procedural fairness identified in this research (e.g., the use of intermediaries and AAC) could assist persons with severe communication disabilities in perceiving that they are being treated in a fair and neutral manner by legal practitioners. This could, in turn lead to them showing reciprocal respect and compliance towards the court system.

Another theme extrapolated from the data dealt with accommodations related to ensuring equality. As such, the CRPD provides for transformative equality (Degener 2016; Goldschmidt 2017) that requires not only the removal of barriers to inclusion, but also the implementation of positive measures to initiate real change that addresses institutional and State power relations (Degener 2016). For transformative equality to be achieved, certain rules, laws, and procedures need to be revised and changed to include specific accommodations for persons with communication disabilities in order to enable them to participate effectively in the court system (Flynn 2016; Minkowitz 2017). The courts, regardless of country or jurisdiction, need to be transformed so they no longer remain grounded in historically determined patterns of power that used to exclude people with severe communication disabilities (Minkowitz 2017). When procedural justice principles, such as having a voice, being treated with respect, using objective criteria for decision-making, and understanding the court language, are used to identify potential court accommodations, research shows that these principles can improve transformative equality among persons with severe communication disabilities (who may have low perceptions of the court system) (Bowen & LaGratta 2014; Tyler 2008).

Many countries, other than the ones represented by the experts, also have regional laws that, when enforced, can provide the necessary court accommodations for persons with severe communication disabilities. For example, Sweden's Social Services Act (SFS 2001:453) provides persons with disabilities with the support of requesting a special contact person or support person to assist them with their personal and/or legal matters (Kuosmanen & Starke 2015). The local Swedish social services can appoint such a contact person, for example, to support persons with severe communication disabilities in their dealings with different authorities, such as the court system, based on their individual needs (Kuosmanen & Starke 2015). Accommodations related to non-discrimination was another theme that emerged from the data. Non-discrimination, together with equality, are considered fundamental principles of the CRPD and, given their interconnectedness with human dignity, form the cornerstones of all human rights (United Nations 2006). Although not the focus of the current study, the findings showed that discriminatory practices still exist in the court system. Examples that were mentioned include the lack of early identification of disability, the combining of certain disorders and disabilities under a single umbrella term, and unequal access to support in court.

'Discrimination on the basis of disability' is defined in the CRPD as

...exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation (United Nations 2006: 4).

The CRPD further highlights that it is the State's duty to take specific concrete measures to achieve de facto equality and non-discrimination for persons with disabilities (both witnesses and defendants). This is to ensure that they can in fact enjoy all human rights and fundamental freedoms (Committee on the Rights of Persons with Disabilities 2018).

One such concrete measure that could be taken is to ensure that the assessments of persons with severe communication disabilities are conducted as early as possible in the court process (investigative stage) and that assessments of the individual's ability should only be made for the purpose of determining what accommodations they need in order to participate effectively in court (Msipa 2015).

The final theme extrapolated from the data looked at accommodations related to legal practitioners. Article 13 of the CRPD stresses the importance of training legal practitioners by clearly stating the following: 'In order to help to ensure effective access to justice for persons with disabilities, State Parties shall promote appropriate training for those working in the field of administration of justice, including police and prison staff' (United Nations 2006: 11).

Celik (2017: 950), a jurist, explains how the CRPD places persons with disabilities in an empowered position, as their 'autonomy needs to be respected and supported through institutions; institutions which owe their very existence for the protection of vulnerability'. This statement also underscores the importance of training legal practitioners across the entire judiciary system, including the courts. This could potentially enable them to support and accommodate individuals with severe communication disabilities as soon as they enter court (White, Bornman & Johnson 2018).

A recent study that encouraged police officers to adopt procedural justice policing strategies emphasised respect, neutrality, and transparency in the exercise of authority as an example of also reflecting on what happens prior to court. It also stressed the importance of providing opportunities for citizens to explain their side of events, which proved to be effective as complaints against police were reduced (Wood et al. 2020). Using procedural justice guidelines to train legal practitioners in court accommodations for persons with severe communication disabilities could be just as effective. It will allow these individuals effective access to the court system and will ensure that they receive the same treatment as their able-bodied equals.

Critical reflection and limitations

The current study focused on identifying a universal range of specific court accommodations for individuals (children and adults) with severe communication disabilities. Our findings could well serve as a blueprint for other vulnerable populations, such as children (Murphy 2014). Although our focus was on international experts, only seven countries were represented. It must be noted that each country's laws and jurisdiction differ, and therefore court accommodations mentioned in this study would have to be considered in line with the specific law of each country. The findings should be considered as illustrating certain principles, rather than attempting to suggest an exhaustive list of court accommodations.

Furthermore, only the perspectives of legal practitioners were captured, and therefore obtaining multiple stakeholder perspectives is suggested for future research. For example, including the voices of persons with severe communication disabilities who have been in contact with the court system themselves (either as witnesses or as defendants) or those of legal practitioners with disabilities (e.g., jurors, attorneys, judges, or judicial officers) would produce rich data and might offer a different perspective. Furthermore, this study focused only on one stage of the justice process, namely attending and participating in court. Future research could focus on accommodations needed for other stages, such as after the trial (i.e., participating in counselling or in prison reform programmes). As this research study's focus was one of a universal outlook and a starting point for court accommodations for persons with severe communication disabilities, future research could also focus on the distinct roles in the justice system, for example the witness with a severe communication disability or the defendant with a severe communication disability, as each role is different and requires different processes and court accommodations that would need to be individualised per role and per court (criminal, civil, mental health).

Conclusion

The court accommodations identified in this research could assist persons with severe communication disabilities, their families, and legal practitioners when accessing the court system. Traditionally, the human right of access to justice has notoriously been violated for persons with severe communication disabilities, as accommodations to participate in court have typically been unknown to legal practitioners and hence been unavailable to persons in need. If, or when, these individuals and their families arrive at court, they often encounter little or no support in the form of accommodations or resources that can assist them in their pursuit of justice. The identified court accommodations could act as the impetus needed to assist the court system and relevant legal practitioners to ensure that persons with severe communication disabilities are treated in a fair and equal manner and, ultimately, that these individuals can have the realisation of their human rights fulfilled.

Data Accessibility Statement

The data that supports the findings of this study is available on request from the corresponding author. The data is not publicly available due to confidentiality restrictions.

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Competing Interests

The authors have no competing interests to declare.

Author Contributions

All authors contributed to the conceptualisation of the study, development of methodology, data collection, analysis of data, summary of findings, and writing of the original draft and the subsequent versions.

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Appendix 3L- International expert online focus group informed consent form

Faculty of Humanities

REPLY SLIP: International online expert focus group

Please submit electronically to PhD student at: [REDACTED]

Name of Expert: _____

Title or Profession: _____

Contact Details: Email: _____

Project Title: Accommodating persons with severe communication disabilities in court: Using universal design principles to guide key role-players

PhD student: Robyn White, M.AAC
Email: [REDACTED]

Supervisors: Prof. Juan Bornman – [REDACTED]
Dr. Ensa Johnson – [REDACTED]

I, _____, (full names and surname) hereby:

- Agree that participation is voluntary and that I have the right to withdraw from this study should I wish to do so for any reason whatsoever without providing any explanation and without any negative consequences;
- Agree to participate in an online expert focus group. The online expert focus group will run over a period of 5 days during the week of the 27th - 31st January 2020. The online discussion will run in an asynchronous manner which means you will be able to access the online platform at a time and place convenient for you.
- Understand that there is a psychologist who is part of the research team and I can contact her during the research for debriefing sessions.
- Understand that I will at no stage during the research process be exposed to any harmful situations;
- Understand that the content of the data and information will be handled with confidentiality and used for research purposes, to write a PhD thesis; conference presentations, journal articles, only;
- Understand that the data will be stored for a period of 15 years in a safe place at the Centre for AAC, University of Pretoria for 15 years for archival purposes for future use of data.
- The electronic data will be protected in a password protected file

(Please X your preferred option)

I give consent to participate in the study	<input type="checkbox"/>	I do not give consent to participate in the study	<input type="checkbox"/>
--	--------------------------	---	--------------------------

Signature of professional

Date

Upon completion, I would like to obtain a copy of the PhD thesis: Yes ___ No ___

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www.caac.up.ac.za

Fakulteit Geesteswetenskappe
Lefapha la Bomotheo



6 January 2020

Dear Expert

SAVE THE DATE: 27 – 31 January 2020

REQUEST TO PARTICIPATE IN A RESEARCH PROJECT AS A RECOGNIZED PROFESSIONAL IN AN INTERNATIONAL ONLINE EXPERT FOCUS GROUP

I am currently a PhD candidate in Augmentative and Alternative Communication (AAC) at the Centre for Augmentative and Alternative Communication (CAAC) at the University of Pretoria in South Africa. In partial fulfilment for the requirements of this degree; I am required to conduct a research project. I would appreciate your consent to participate in this research in a member of an international online expert focus group.

You were selected into the group based on your knowledge and experience in one or more of the following fields: Augmentative and alternative Communication (AAC), social justice, human rights, disability rights, access to justice and the criminal justice system.

Research topic: Accommodating persons with severe communication disabilities in court: Using universal design principles to guide key role-players

Aim of the study: The main aim of this study is to identify and describe the court accommodations that should be provided by key role-players in the criminal justice system, using universal design principles, in order to accommodate persons with severe communication disabilities.

What will be expected from you as a participant of the international expert panel discussion? You will be asked to join an online discussion on the ClickUp Blackboard Learn platform (<https://clickup.up.ac.za/>), that will run over a period of 5 days during the week of the 27th – 31 January 2020. You will not need to download any specific software and will be sent a unique link that will make access to this portal easy and user-friendly. This platform was selected because it provides a secure site hosted by the University of Pretoria which will also protect the confidentiality of your responses. The online discussion will run in an asynchronous manner which means you will be able to access the online platform at a time and place convenient to you.

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Fakulteit Geesteswetenskappe
Lefapha la Bomotheo



Three questions will be posted during the week where you can respond on the other posts. The questions and discussion will be around your experiences and knowledge on court accommodations for persons with communication disabilities.

Risks and benefits of participants: You may withdraw from the study at any time without any negative consequences. If you agree to volunteer to consent to participate in the online focus group, your confidentiality will be ensured. Furthermore, the content of the data will be handled with confidentiality and used only for research purposes, conference presentations, journal articles and to write a thesis. Documents will be in safekeeping at the Centre for AAC, University of Pretoria for 15 years for archival purposes and for future use of data. The electronic data will be protected in a password protected file. Should the need arise, and you experience any potential distress related to the research, there is a psychologist who is part of the research team and who can provide debriefing sessions. Please contact the PhD candidate who will assist you and set up a session using your preferred choice of an online platform.

If you require further information after reading this document, please feel free to contact me on the details below:

PhD Candidate: Mrs. Robyn White
Contact details: [REDACTED] (email address)
Supervisor: Prof. Juan Bornman
Contact details: [REDACTED] (email address)
Co- Supervisor: Dr. Ensa Johnson
Contact details: [REDACTED] (email address)

We trust that you will agree on the importance of this research project to help persons with communication disabilities be able to access justice on an equal basis as others. We would appreciate your willingness to participate in this research project.

Kind regards

Robyn White
Researcher

Prof. Juan Bornman
Supervisor

Dr. Ensa Johnson
Co-supervisor

Biographical questionnaire for international experts

Biographical Questionnaire	For office use Participant no:
1) Date of birth/Age:	Q1 <input type="checkbox"/>
2) Sex: Male <input type="checkbox"/> Female <input type="checkbox"/>	Q2 <input type="checkbox"/>
3) Do you have a disability? Yes <input type="checkbox"/> No <input type="checkbox"/> Please specify if Yes:	Q3 <input type="checkbox"/>
4) Home Language:	Q4 <input type="checkbox"/>
5) Qualifications: Please specify (Degrees, Diplomas)	Q5 <input type="checkbox"/>
6) Current Position and Title:	Q6 <input type="checkbox"/>
7) Number of years' working experience:	Q7 <input type="checkbox"/>
8) Number of publications (journal articles, media, books, internet etc):	Q8 <input type="checkbox"/>
9) Do you have experience with law reform activities, policy development or advocating change in the legal system? Yes <input type="checkbox"/> No <input type="checkbox"/> Please specify if Yes:	Q9 <input type="checkbox"/>
10) Do you have work experience with persons with disabilities during the criminal justice process: Yes <input type="checkbox"/> No <input type="checkbox"/> Please specify if Yes:	Q10 <input type="checkbox"/>
11) What difficulties/barriers did you experience when working with people with disabilities accessing the criminal justice system, specifically the court system?	Q11 <input type="checkbox"/>

Appendix 30

Definition of deductive codes as specified in the codebook (Data source 3 - International expert online focus group)

Code	Definition of code
	Theme 1: Accommodations related to procedural fairness
Treated with respect	This accommodation enhances the perception of the person with a severe communication disability that the legal practitioners treat them with respect and dignity, thereby implying courtesy and recognition of the individual and their disability. Respectful treatment includes environmental adaptations and accommodations that make up the physical, social and attitudinal environment.
Understanding of court language	This accommodation assists the person with a severe communication disability to comprehend the language used in court and to understand how decisions are made. The focus is on processes that will enhance the person's receptive language and on whether the person feels that the motives of the legal practitioners are trustworthy.
Having a voice	This accommodation enhances the perception of the person with a severe communication disability that they have a voice and are being heard. The focus is on processes that will assist the individual with expressive communication and language in court, for example, by means of an intermediary, interpreter, sign language interpreter, AAC, independent communication worker or special investigator.
Using objective criteria for decision making	The legal practitioners use objective, legitimate criteria to make decisions and they apply fairness in all decisions, without allowing personal bias or views to influence their choice or opinion.
	Theme 2: Accommodations related to ensuring equality
Adherence to legal process	Accommodations related to how the court process is followed (processes prior to court and processes during court).
International laws that apply	Accommodations mentioned in international laws or conventions, e.g., CRPD.
National laws that apply	Accommodations mentioned in any law or legislation relating to a specific country, e.g., Canada., US, Israel, South Africa, Germany, Australia.
Case law and specific narrative examples that apply	Accommodations mentioned in specific case law, or narratives describing accommodations relating to persons with severe communication disabilities.
Barriers related to equality	Specific mention of the challenges and the discrimination faced with certain laws and policies when no accommodations are made (for example, when the court 'lumps' all mental disabilities into the same category).

Facilitators related to equality

Accommodations related to the fulfilment of specific laws and policies.

Theme 3: Accommodations related to non-discrimination

Discrimination based on the definition of disability

Accommodations related to specific legal definitions and criteria, for example, certain laws only apply to children with disabilities, not to adults with disabilities.

Discrimination based on level/type of disability

Accommodations related to the type or level of disability of the individual (intellectual, sensory or physical disability) and how the level of disability affects the individual's ability to testify in court.

Discrimination based on fitness to stand trial

Accommodations related to the individual's ability to stand trial (i.e., witness's competency, ability to testify).

Discrimination based on identification/screening

Accommodations related to how individuals with communication, intellectual or mental disabilities are identified within the criminal justice system.

Role of the defendant

Accommodations specifically related to accused/defendants with disabilities.

Roles of the family and legal guardians

Accommodations related to the involvement of the family or legal guardians of individuals with severe communication disabilities.

Theme 4: Accommodations related to legal practitioners

Importance of legal practitioners' training

Accommodations resulting from the training of legal practitioners so that they will allow the individual with a severe communication disability fair access to the court.

Responsibilities of legal practitioners

Accommodations resulting from understanding the unique role of specific legal practitioners in the court, e.g. the judge, the police or advocate.

No cross-referencing and collaboration between disciplines

Accommodations resulting from cross-referencing and collaboration between different disciplines/fields, e.g. law, social sciences, and therapeutic sciences.

Giving voice to the voices of legal practitioners with disabilities

Robyn White, Ensa Johnson and Juan Bornman

Abstract

Several international human rights conventions focus on ensuring access to justice for all. Based on their unique lived experiences, legal practitioners with disabilities have much to offer in terms of understanding – from an insider perspective – the accommodations that could be used in court. The aim of this study was to describe the perspectives of legal practitioners with disabilities on their own experience of participation in court (focusing on both barriers and facilitators), and to elicit their suggested accommodations for persons with severe communication disabilities. Online and telephonic interviews were conducted with seven legal practitioners with disabilities. In response to the questions, three themes were conceptualised: participation barriers that hinder access to justice; accommodations related to ensuring equality; and accommodations related to procedural fairness. The insider perspectives of legal practitioners with disabilities may assist other persons with disabilities to participate equally in court, thereby ensuring access to justice for all.

Keywords

Accommodations, communication disability, court, human rights, legal practitioners, participation, persons with disabilities

Introduction

Over half a century ago, on 10 December 1948, the United Nations' General Assembly (United Nations 1948) adopted the Universal Declaration of Human Rights (UDHR). This declaration has become the foundation of the modern human rights movement and is widely regarded as a universal standard of achievement for all people and all nations (Global Citizenship Commission 2016; Harpur 2012; Hibbert 2017). The preamble of the UDHR states that human rights is the foundation of global freedom, justice and peace (United Nations 1948), and it paved the way for the adoption of further human-rights focused conventions, for example, the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) (United Nations 1988), the Convention on the Rights of the Child (CRC) (United Nations 1989), and the Convention on the Rights of Persons with Disabilities (CRPD) (United Nations 2006).

The CRPD, with its focus on human rights for persons with disabilities, was negotiated during only eight sessions of an Ad Hoc Committee of the General Assembly from 2002 to 2006, making it the fastest negotiated human rights treaty to date (Degener 2016). Moreover, it received the highest number of signatories in history to a United Nations Convention on its opening day, thereby highlighting the global importance of redress of the societal discrimination and exclusion faced by persons with disabilities (Degener 2016). Fourteen years have passed since the global adoption and ratification of the CRPD, and 72 years since the adoption of the UDHR; yet worldwide, persons with disabilities still face basic human rights violations, such as exclusion from education, from employment and from the court system (Harpur 2012; Shrewsbury 2015; White et al. 2020a).

One human right pertaining to persons with disability that has been well researched in recent years is access to justice (Benedet and Grant 2012; Bornman 2017; Cremin 2016; Flynn 2016; Flynn and Lawson 2013; Hepner et al. 2015; O'Leary and Feely 2018; Ortoleva 2011; Talbot 2012; White et al. 2020a). The research focused on different stakeholder groups such as persons with disabilities as victims (Bornman et al. 2011; Cusack 2017; Kuosmanen and Starke 2015; Lumsden and Black 2020; Marinos et al. 2014; White, Bornman, and Johnson 2015) and as witnesses (Beckene, Forrester-Jones, and Murphy 2017; Hepner, Woodward, and Stewart 2015; Nair 2009; O'Leary and Feely 2018; Pillay 2012; Ziv 2007) and, to a lesser extent, on persons with disabilities as perpetrators and defendants (Gooding et al. 2017; Hayes 2007; O'Mahony

2012; Talbot 2012). However, despite the fact that they are a direct stakeholder group who could provide an insider perspective, there is a paucity of research that focuses on persons with disabilities as legal practitioners (e.g. judges, lawyers, jurors) and how they, despite their disability, access and navigate the court system to perform their professional roles (Flynn 2016). The scant existing research that includes legal practitioners with disabilities, focuses mostly on the barriers that they experience in their role as legal practitioners. Ill-treatment, ignorance or discrimination from peers and senior personnel have been reported (Flynn 2016; Foster and Hirst 2020). In disability research, the inclusion of persons with disability's own voices has become more prominent in recent years (Ashby 2011; D'Or, Kelly, and McCawley 2020; Thill 2015). There is general consensus that if the voices of persons with disabilities are not actively listened to, society conveys a message to them (and to others) that their perspectives as persons with disabilities are not valued (Ashby 2011). The fact that this deprives them of a sense of belonging or of being recognised as persons, seriously inhibits their well-being, personhood and identity (Celik 2017).

This lack of participation by legal professionals with disabilities limits their lived experiences (Flynn 2016) and is concerning. Participation is defined as engagement in a life situation (Imms et al. 2017; Ramsten and Blomberg 2019; Rix et al. 2020) involving two distinctive components: attendance (being in the life situation) and involvement (the experience of participation while being in the life situation) (Imms 2020). These two components can provide some clarity for outcome measurements when considering access to justice and participation as a legal practitioner with a disability. If persons with disabilities cannot 'attend' a life situation, participation is not possible. Hence, it is of critical importance to acknowledge that it is ineffective and insufficient if legal professionals with a disability can merely 'attend' their professional roles (Imms 2020). However, attendance should be acknowledged as a first step. For true participation to transpire, attendance is necessary, but not sufficient. Legal practitioners with disabilities should be allowed to be involved in their professional role, and therefore court accommodations should be provided to them (White et al., 2020b). Only then will legal practitioners with disabilities experience equal and effective participation as described in Article 13 of the CRPD (United Nations 2006).

Research has been conducted on participation for court users, and a provisional framework entitled *Ten Points of Participation* has been proposed to assist legal practitioners to reflect on their own understanding of participation and thus on their approach towards court users (Jacobson and Cooper 2020). These *Ten Points of Participation* conceptualised what participation entails (e.g. providing and eliciting information; being informed; being represented; being protected) and what the functions of participation are (e.g. to exercise legal rights; enable decision making; legitimate the judicial process and outcomes) (Jacobson and Cooper 2020). Although these points focused on court users in general and did not specifically consider legal practitioners with disabilities, the same framework could apply.

It is important for researchers to not only study topics related to persons with disabilities, but to also include the actual voices of these persons in order to understand disability. As such, an insider perspective will add agency, advance the field and drive relevant change (Hall 2013; Shrewsbury 2015). Persons with disabilities are the experts on disability and their extensive knowledge and lived experiences in their workplace (the court) could lead the way in important and sensitive research topics such as access to justice (Lordan 2000). To enhance participation and inclusion in the courts for persons with disabilities, their perspectives should be acknowledged and their voices should be heard (Hall 2013). Moreover, including the authentic voices and experiences of legal practitioners with disabilities will give insight into their experiences of the judiciary system (Hyun, Hahn, and McConnell 2014). These insights could also assist in identifying relevant and appropriate court accommodations that are needed for equal participation for all persons with disabilities in court, irrespective of their role (Foster and Hirst 2020; Hyun, Hahn, and McConnell 2014). Involving legal practitioners with disabilities might also improve the quality of research by ensuring that it addresses the most pertinent issues faced by this group (Farmer and Macleod 2011). Such research findings can produce evidence for policymaking based on the authentic views of legal practitioners with disabilities.

The aim of our study was to describe the perspectives and experiences of legal practitioners with disabilities regarding their participation in the contemporary judiciary system – specifically the court – by exploring both barriers and facilitators. It also aimed to elicit their suggested accommodations from an insider perspective to enhance the participation of persons with disabilities (specifically communication disabilities) in court, regardless of the specific role they

occupy (witness, defendant, judge, lawyer, juror). Three research questions were asked to the participants, namely:

- 1) In the context of your work as a legal professional/juror, what are the barriers you have personally experienced first-hand as a person with a disability?
- 2) What were the accommodations (facilitators) that assisted you in your personal work context?
- 3) What accommodations would you recommend for a person with a communication disability (a person who cannot use speech) to be able to access and participate in court?

Methodology

In-depth, semi-structured, asynchronous online email (n=6) and telephonic (n=1) interviews were conducted with seven legal practitioners with disabilities from various countries. Initially, only online email interviews were planned for this qualitative research study, but one participant requested to be interviewed telephonically due to his visual disability. In line with the focus of our study, the researchers were flexible and readily accommodated this request.

Online email interviewing is a qualitative research method where information is repeatedly exchanged online between researcher and participant within a particular timeframe (Ratislavová and Ratislav 2014). The advantages of online email interviews are numerous. They eliminate the boundaries of time and space, make the geographical setting obsolete, prioritise participants' comfort and encourage iterative reflection throughout the interview process (Bowden and Galindo-Gonzalez 2015). The accessibility of potential participants despite their geographical setting allowed the researchers to recruit suitable persons from various countries. Online email interviews proved to be a cost-effective form of data collection as time and money for travelling to an interview venue were saved for both participants and researchers. Methodological analysis also proved that asynchronous email interviews are appropriate for use in sensitive and important topics (Hershberger and Kavanaugh 2017).

Hershberger and Kavanaugh (2017) found that a sub-set of the participants not only preferred email interviews, but they may not have participated in the study if email interviews had not been offered. Furthermore, the flexibility of online email interviews probably aided participation for individuals with disabilities (whether experiencing challenges of physical coordination,

mobility or speech), as the textual nature of online interaction affords people with diverse operating techniques the capacity to participate (Bowker and Tuffin 2004). According to Bowker and Tuffin (2004), using email interviews as an online medium may offer an ideal and equitable environment for conducting research with people with disabilities.

A first potential disadvantage of using online email interviews is the researcher's inability to capture the participants' nonverbal and paralinguistic cues, as would have been possible with face-to-face interviews (Fritz and Vandermause 2018). However, since participants in the current study had excellent linguistic skills (one of the requirements of their profession), they were able to clearly articulate their responses in writing. A further potential disadvantage was posed by the fact that, after the first introductory email, some participants needed to be sent multiple 'reminder' emails to complete the answers by a certain date, while others asked for an extension because they had limited available time. The primary researcher (Author 1) coped with this challenge by developing an active professional online relationship with all participants to ensure that they remained in contact and were aware of dates and expectations (e.g. when questions would be posed and when they would submit their answers) (James 2016). As a result, a 100% response rate was obtained for all the email interviews.

Participants

Participants were identified through purposive sampling to ensure that they would be able to share their experiences and perspectives as legal practitioners with disabilities (Creswell and Plano Clark 2018). Only two broad selection criteria were used, as the potential pool of participants was extremely small. Firstly, participants had to be legal practitioners (lawyer, juror, judge, etc.); and secondly, they had to have a disability (no specific type of disability was stated beforehand). In order to elicit a rich and diverse view on the topic, no restrictions were placed in respect of country representation, which implied that participants would have their own unique experience with their specific countries' laws. Seven potential participants were identified through the researchers' professional networks, and these potential participants were asked to nominate other legal practitioners with disabilities whom they were familiar with, thus using a snowball-sampling technique (Creswell and Plano Clark 2018). This resulted in the identification of two additional potential participants from two more countries. All nine identified participants

were recruited, but unfortunately one passed away and one declined participation due to health reasons.

The ages of the remaining seven (who all consented) ranged from 29 to 72 years, with an average age of 50. All participants were male. This fact should not be blamed on the identification or recruitment process but could possibly result from the fact that women with disabilities continue to face barriers to their attaining of professional and jury positions in the judiciary system. It could also possibly be linked to the term ‘intersectional discrimination’, which highlights the fact that women with disabilities are more likely to face further discrimination because of their gender and disability than men with disabilities or women without disabilities, and they are less likely to be employed (Kim, Skinner, and Parish 2020).

Despite the gender homogeneity, the diagnoses of the participants differed. Three had visual impairments, with one each having a hearing impairment, cerebral palsy, facioscapulohumeral muscular dystrophy (FSHD) and one being a stroke survivor. All seven participants used assistive communication devices (dictaphone, screen reader) or mobility devices (wheelchair), and three participants also had support in the workplace in the form of an administrative clerk or note-taker. As expected, all the participants had obtained a higher educational degree. Two participants were lawyers, two were judges, with the remaining participants being professionally labelled as a juror, barrister and advocate. The participants’ work experience within the court system ranged from 2 to 47 years, with an average of 23 years. They had worked in varied types of courts, including tribunals, district courts, regional courts, crown courts, magistrate’s courts, civil courts, criminal courts, supreme courts, employment tribunal county courts and constitutional courts. The majority of the participants had participated in a court case where the witness or defendant had a disability and had been involved in legislation and law reform activities. Participants varied in nationality and represented four different countries: England and the United States of America (USA), which both have common law systems, Lesotho, which has a dual legal system consisting of customary and general laws that operate side by side, as well as South Africa, which has a mixed legal system – a hybrid of Roman Dutch civilian law, English common law, customary law and religious personal law.

Data Collection and Materials

Before recruitment commenced, ethics approval was obtained from the Research Ethics Committee at the relevant tertiary institution (Ethics approval number: GW20180718HS). Pre-interview email contact was made by the primary researcher to establish rapport with the potential participants prior to the interviews. All potential participants were emailed a letter of informed consent with details outlining the research topic, what was expected of them, as well as potential risks and benefits. Precautions were taken to guarantee the confidentiality of their emails and answers, as only the primary researcher had access to the password-protected email platform. A second email contained the biographical questionnaire and was followed by a final email with the interview questions in the body of the email. This was done to accommodate the participants who preferred to respond to the questions within the email rather than to open a separate document attached to the email (Ratislavová and Ratislav 2014). The primary researcher maintained an active online presence and was available to answer any questions or deal with concerns when needed.

The exact same questions asked in the online email interviews were asked in the one telephonic interview. This interview was audio recorded, the answers were transcribed by means of transcription software (Otter.ai), and then the primary researcher audited the transcription against the original audio recording.

To maintain trustworthiness, credibility and rigor, an interview schedule was developed (Fritz and Vandermause 2018). This schedule started off with an introduction that contained the following question: “Thank you for completing the biographical questionnaire beforehand. However, is there anything in your background that you would like to bring to my attention before I start with the interview questions?”

The next three questions, which reiterated the aim of our study, were as follows:

- 1) In the context of your work as a legal professional/juror, what are the barriers you have personally experienced first-hand as a person with a disability?
- 2) What were the accommodations (facilitators) that assisted you in your personal work context?

- 3) What accommodations would you recommend for a person with a communication disability (a person who cannot use speech) to be able to access and participate in court?

The interview concluded with a wrap-up question that asked the participants if they wanted to add anything or expand on any of the answers they had provided. The participants were thanked and assured that they were welcome to contact the first author if they needed further information or assistance.

Once the first author had received each completed email interview, she read all the answers and, if clarity was needed for any answers, she emailed the participants to ask their assistance. This was done to enhance the trustworthiness and credibility of the data (Nowell et al. 2017). The authors also used the technique of prolonged engagement with each participant to ensure the credibility and trustworthiness of the data (Nowell et al. 2017).

Data Analysis

The researchers used ATLAS.ti 8, a computer-assisted qualitative data analysis software program (CAQDAS), to conduct a codebook thematic analysis combined with a deductive coding approach (Braun and Clarke 2019a; Braun and Clarke 2020b; Nowell et al. 2017). Thematic analysis was selected as it provides a structured approach to identify themes and patterns in the data that may be used to answer the research question (Braun and Clarke 2020a). Analysis is a recursive and methodical process, with movement back and forth between different phases (Braun and Clarke 2020b). The analytic phases in the current study involved distinct steps. Firstly, all the researchers thoroughly familiarised themselves with the data. Secondly, they used an existing structured codebook based on a human rights framework (Article 13 of the CRPD – Access to Justice) (White et al. 2020a) to code the data deductively.

Following reflective and critical analysis, the researchers adapted the existing codebook and combined Article 13 of the CRPD with procedural justice principles (Tyler 2008) and participation barriers (Beukelman and Light 2020). This document then became auditable evidence to support the trustworthiness of the study (Braun and Clarke 2020a). The data was coded and analysed by the first author, after which the second and third authors independently

checked the codes to increase inter-coder reliability and agreement of the data (Campbell et al. 2013). Themes were subsequently generated from the codes, then reviewed, and lastly, defined and named (Braun and Clarke 2020b).

Findings

Three main themes were linked to the three questions that were posed: participation barriers that hindered access to justice (linked to Question 1); accommodations related to ensuring equality (linked to Question 2); and accommodations related to procedural fairness (linked to Question 3). Each is described in detail next.

Participation barriers that hinder access to justice

Historically, the voices of legal practitioners with disabilities were silenced, suppressed, or ignored; yet their voices should have been regarded as prominent in the exploration of what is occurring in their work environment – the court. They were asked to reflect on the participation barriers that they had experienced from an insider perspective, in order to gauge if their experiences confirm what the existing literature reports. The participation barriers mentioned were analysed using the framework suggested by Beukelman and Light (2020), and they included four different types of barriers, namely policy, practice, knowledge and skills, and attitudinal barriers. Beukelman and Light (2020) classify these barriers collectively as opportunity barriers, as they all imply barriers imposed by others and beyond the control of the individual with disability themselves (in this case the legal practitioners).

The participants mentioned barriers linked directly to legislative or regulatory decisions that govern certain legal situations, which were classified as policy barriers. Participant 3 spoke specifically about the legislation linked to if a juror was deaf and needed a sign language interpreter in court:

If the person needs a [sign language] translator then I think that will be a barrier because of the legality where a 13th person cannot be used during the deliberation. The law has to change.

Participant 5 spoke in detail about the election versus selection process of judges in the USA:

... if [state] had appointments and not elections for judges... There's no way I'd be a judge. No chance that I would be a judge, no chance. And the reason that I feel so strongly about that is because if you had to go in front of a merit selection committee, I don't think they would ever give someone like me an opportunity.

Barriers mentioned were linked to procedures or conventions that had become common practice in the judiciary system or community, although these were not actual policies (classified as practice barriers). Participant 1 spoke about the challenge of accessibility he had experienced:

Chambers and courts also lack accessibility. This is worse inside court as I have never been at a barrister's bench that I could access in my wheelchair.

Participant 3 shared his experience as a juror and how the court was not prepared or able to accommodate him:

When I received a letter from the court that I was summoned up to jury service, I asked them to provide captions. They said they didn't know how and would have to get funding. Because of my persistence, they finally got funding to pay for the stenographers (other deaf people would have opted out). This showed the court was ill-prepared and not inclusive.

Participant 5 reflected on the court system and its practice barriers:

When you're dealing with the court, even if you're not disabled, it is excruciatingly difficult dealing with the court, even before having a disability it is incredibly daunting and incredibly challenging. [When you] add a speech issue to it, it is only going to make it more difficult... I think that would be one of the most difficult [barriers], because it really hinders your communication abilities, which is a critical element for being able to work with the court system in general.

Knowledge and skill barriers that hindered access to justice were also mentioned. These barriers were linked directly to the lack of information and skills of a professional, which result in limited opportunities being provided to persons with disability. Participant 1 shared his personal experience owing to the lack of knowledge and skill within the court system:

I have been told that I will not be able to be a barrister because of my speech impairment, although I am generally understood.

Participant 7 shared his thoughts on persons with severe communication disabilities and the lack of knowledge about legal practitioners in the court system:

Judicial officers, prosecutors and lawyers should be trained to understand that absence of the ability to communicate by speech does not mean the absence of thinking power or any of the attributes of humanity.

Participant 4 reflected on the court system and lack of resources, knowledge, and skills of the legal practitioners within the system:

Courts do not have communication aids to support effective participation of such a person [with a communication disability], his or her evidence may be less valued since he or she does not give evidence viva voce as required by our Criminal Procedure and Evidence Act; the court may not hear his or her evidence if the evidence is not given via speech. Such persons may not be able to access justice because they may have difficulties in responding to the questions posed in court, they may not be able to cross examine or ask questions verbally.

Participant 2 commented on his invisible disability diagnosis and how that impacted him as a legal practitioner in the court environment due to the lack of knowledge and skills of his legal peers in the courts:

My disability is not as obvious as someone who is blind or confined to a wheelchair. My experience in the workplace environment is that some people are sceptical that you actually have a disability; others simply deny that you have a disability at all. This makes it very difficult to claim reasonable accommodation for special needs.

Most participants mentioned attitudinal barriers that hindered their access to justice. These barriers were linked directly to the attitudes and beliefs held by other professionals or individuals. Participant 7 explained:

The worst barrier was people thinking I had no brains or was some kind of idiot because I was blind.

An in-depth discussion by Participant 2 highlighted his personal experience of the negative attitude of the courts and the legal practitioners who are employed in the court system:

The head of court complained to the Magistrates Commission (the body regulating magistrates in [country name removed]). The secretariat of the commission displayed a very bad attitude to equality. They alleged I was incapable of carrying out my duties as a judicial officer. At that stage I had no administrative assistance and was expected to perform my duties without any assistance. My special needs were not considered.

One of the underlying principles of the CRPD is “...full and effective participation and inclusion in society” (United Nations 2006, 5) for all persons with disabilities. Yet, the legal practitioners involved in our study all highlighted numerous barriers that they had personally experienced in their careers or of which they were aware with respect to other persons with disabilities who wanted to practise in the legal profession. These barriers were in line with those mentioned in the existing literature.

Practice barriers were mentioned most frequently. The insider perspective of the legal practitioners with disabilities added a rich understanding of what transpires in their everyday workplace: the court. Their insights included aspects such as physical inaccessibility of the courts; lack of resources (e.g., financial assistance); lack of human support (e.g., administrative clerks); inaccessible legal documents; lack of or limited aids and devices (e.g., speech-generating devices). Practice barriers can be addressed by applying the guidelines in the CRPD (United Nations 2006) and other international documents, for example the *International Principles and Guidelines on Access to Justice for Persons with Disabilities* (United Nations 2020). Court accommodations such as wheelchair ramps (Edwards, Harold, and Kilcommins 2012), alternative and augmentative communication (AAC) strategies and methods (Doak and Doak 2017), and support persons such as administrative clerks (Cremin 2016) could also assist the legal practitioners with disabilities in the court system.

Furthermore, research has shown that opportunity barriers can be addressed by training legal professionals about disability in the work context, by providing further professional development training programmes, and by including modules about disability in law degrees (Bornman et al. 2016; Flynn 2016; Foster and Hirst 2020; Horan 2011; Larson 2014). Recommendations suggested in previous reports include raising disability awareness in the initial professional

qualification training of law students and accepting disability awareness as a mandatory element of continuing professional development for those working in criminal law (Equality and Human Rights Commission 2020; United Nations 2020). Flynn (2016) consistently highlights the importance of clinical legal education and of university-based law clinics serving people with disabilities. Clinical legal education will greatly assist law students to acquire new skills and to gain a deeper understanding of disability rights issues. Moreover, it provides an ideal opportunity to bring the lived experiences of people with disabilities into the university law classroom (Flynn 2016).

All the barriers mentioned by the participants confirm what the existing literature reports on the barriers experienced by legal practitioners with disabilities when wanting to access the court system (Dorfman 2016; Flynn 2016; Foster and Hirst 2020).

Accommodations related to ensuring equality

Accommodations to ensure equality were linked to the second research question, which focused on the accommodations (facilitators) that assisted the legal practitioners in their personal work context. These accommodations were analysed using the CRPD as a human rights framework and included five distinct subthemes: international laws; regional or country-specific laws; case law that applies; following legal processes (related to case law); facilitators related to equality.

Regarding international law, the CRPD – and more specifically, Article 13 of the CRPD, access to justice – was mentioned numerous times. The United Nations recently published International Principles and Guidelines on Access to Justice for Persons with Disabilities (United Nations 2020) which state: “Everyone should, on an equal basis with others, enjoy the rights to equality before the law, to equal protection under the law, to a fair resolution of disputes, to meaningful participation and to be heard” (United Nations 2020, 6). As noted from the findings related to the different barriers, most of the participants experienced discriminatory behaviours and inequality in the legal profession or in the court when they attempted to perform their job. The question that arises is whether a legal practitioner without disability would have been subjected to the same discriminatory practices, for instance having to prove their ability to perform their job (Foster and Hirst 2020).

The specific regional laws mentioned naturally reflect the laws of the countries represented in our study. Regional laws that were mentioned were largely from South Africa (the Promotion of Equality and Prohibition of Unfair Discrimination Act, 2000) and from the United Kingdom (the Equality Act 2010; the Human Rights Act 1998; the Equal Treatment Bench Book (ETBB)).

Non-discrimination and equality in the legal system, as well as the ability to participate equally is a professional's human right (United Nations 1948). Findings from the current study revealed that the majority of participating legal practitioners with disabilities experienced the violation of their human rights during some phase in their career and they were granted limited accommodations or support to ensure equal participation in their role as legal professionals. However, the findings also showed how the law protected them (albeit through a lengthy process) and allowed for them to obtain the accommodations needed to be able to participate in the court system.

Under the subtheme, 'Case law that applies', Participant 2 shared his personal experience (and case law) on how he achieved equality in the workplace after a lengthy and unfair process:

My special needs were not considered. The prosecution purported to take a decision to cease allocating new trials to my court in October 2003. I sought the assistance initially of the International Commission of Jurists (ICJ) and later... the United Nations Special Rapporteur of the Independence of Judges and Lawyers (UNSPIJL) to get the prosecuting authority to reverse their decision. I also informed the UNSPIJL that I had a disability. The ICJ intervened without success. The UNSRIJL then sought the assistance of the United Nations Special Rapporteur on the Rights of Persons with Disabilities (UNSRRPD). Together they sent a joint urgent appeal to the [country removed] Government urging them to comply with their obligations under international law, at that time the Declaration of the Rights of Persons with Disabilities. The [country removed] Government then gave an undertaking that they would do so. The Magistrate Commission abruptly halted enquiry into my alleged incapacity to carry out the duties of my office in March 2004. The Magistrates Commission carried out a needs assessment in July 2004. The Commission recommended that the [specific department] assign a personal clerk to me to assist with administrative tasks that I had difficulty performing in November 2004. Despite the fact that I now had a personal clerk to assist me with

administrative tasks the prosecuting authority persisted in their refusal to place new trials before my court. I took the prosecuting authority on review to the High Court. The High Court decided in my favour on 16 August 2005.

Participant 5 also described his professional journey in detail and illustrated the case law or precedent he set. He mentioned how he did not use any specific laws to rely on in his pursuit of access to justice, but did mention working together with the courts and the importance of collaboration within the court system:

...there were no laws or anything that I kind of relied on ... It was really more just me working with the court to figure out what's the best way we can make this work. Oh, very much so [the court was accommodating], very much so. It was one of those situations where voters had made their determination. So, everybody wanted this to be a success.

Under the subtheme, 'Following legal processes', Participant 5 went on to share his personal reflection on specific legal processes and how he felt he would not have been considered for his specific legal position if it had not been for an election process in his own country:

I think what they would do is they would say, 'Wow, it is so inspirational that he wants to be a Supreme Court justice and that's so inspiring because he is blind'...and I think they would approach it from that perspective, like, 'oh wow, that's so great that he wants to have this position and he's inspiring and all that'. But in the end, I don't think they would give me the job. I think they would probably say after the interview... I think they would probably all go back into a room and they'd probably say, 'You know, that's great that he's accomplished all these things but, he doesn't look like us, he doesn't sound like us, this doesn't look like the kind of person that could probably perform this job.

Participant 5 provided a detailed explanation of the election versus appointment process of judges in his country, and how he perceived this specific court process to have ensured equality for him in being elected as a judge: "And.... I believe strongly that if [state removed] had used an appointment process, and not an electoral process, I don't think I would have been elected, because I would not have been given the opportunity [as a person with a disability].

One of the traditional methods of selecting high court judges in the USA is nonpartisan elections where the public votes for the judge. However, the judges are not permitted to advertise

themselves as members of particular political parties (Choi, Gulati, and Posner 2010). Much controversy and research surround the debate about the appointment versus election of judges (Choi, Gulati, and Posner 2010; Iaryczower, Lewis, and Shum 2013; Menton 2009; Ryan 2005; Skaggs 2010), and from the quote above, it is clear that Participant 5 was of the opinion that the election process aided his quest for equality in becoming a judge (Choi, Gulati, and Posner 2010). More importantly, what the election of this judge underscores, is the evidence that legal practitioners with disabilities have been successfully incorporated into judicial systems, despite sceptical attitudes and barriers against the appointment of persons with disability (Dorfman 2016).

In line with Participant 5's acknowledgement of how specific USA law and jurisdiction assisted and accommodated him in his pursuit of access to justice as a legal practitioner, there has also been specific law in the other participants' countries that assisted them with equal opportunities and accommodations. Examples are the Promotion of Equality and Prohibition of Unfair Discrimination Act, 2000 (South Africa); the Equality Act 2010 (England) and the Disability Equity Act 2021 (Lesotho), which were recently enacted. All these laws prohibit discrimination on any basis and promote equality for all – including for individuals with disabilities.

Under the subtheme 'Facilitators related to equality', Participant 3 shared his experience on being a juror and how the courts were accommodating towards him as a person who was deaf: "However, once I served in the jury service, the court was extremely accommodating with my needs and made sure I had everything I needed.

Recently in the UK, the Police, Crime, Sentencing and Courts Bill was proposed and is in the process of becoming an Act (United Kingdom Parliament 2021). This Bill includes new measures that will allow persons who are deaf to sit on juries in England and Wales for the first time. Current laws ban the presence of a 'stranger' being in the jury deliberation room, but this will now be revoked and instead, a British Sign Language Interpreter will be allowed into the room (United Kingdom Parliament 2021). This once again highlights how law reform and new legislations are assisting persons with disabilities to participate equally in the court system and achieve their right of access to justice.

Accommodations related to procedural fairness

When asked to reflect on accommodations that they would recommend for a person with a communication disability to enable them to access and participate in court (in response to Question 3), all participants suggested accommodations related to procedural fairness. These accommodations were categorised under four specific subthemes that resonate with the procedural justice principles: being treated with respect; understanding court language; having a voice; and using objective criteria for decision making.

The principle of ‘being treated with respect’ can be defined as an accommodation that can enhance the perception of persons with disabilities that legal professionals in the court system will treat them with respect and dignity, thereby implying courtesy and recognition of the individual and their disability. Respect includes environmental adaptations and accommodations that make up the physical, social and attitudinal environment. Suggestions made by the participants included making court rooms accessible with microphones (Participant 1), and having a family member or friend who could accompany the person with a communication disability, if the latter is a complainant or witness in a matter (Participant 2).

The principle of ‘understanding of court language’ implies an accommodation that can assist persons with disabilities to understand the language or terminology used in court and how decisions are made. These accommodations focus on the process that will assist the person’s receptive language and whether the person feels the motives of the legal practitioners are trustworthy. Recommendations that were suggested under this principle were to determine (in appropriate cases) the tribunal or court’s method of and approach to cross-examination for all parties involved (the witness, the defendant and the attorney) (Participant 6).

Another accommodation that was mentioned was to allow persons with communication disabilities to write notes to others during the trial process, especially in the case of jurors (Participant 3).

The principle of ‘having a voice’ includes accommodations that can help persons with disabilities to feel that they have a voice and are being heard. The focus must be on the process that will assist the individual with expressive communication and language to participate in court. Recommendations that were provided included the use of alphabet boards and pictures, as well as the provision of environmental accommodations such as portable or fold-up wheelchair ramps, which may enable persons with communication disabilities to participate effectively in

court (Participant 4). Participant 7 also suggested that courts should employ sign language interpreters trained in court procedures on a permanent basis.

The last principle, ‘using objective criteria for decision making’, requires the legal practitioners to use objective, legitimate criteria for making decisions and to apply fairness in decisions, without allowing personal bias or views to influence their choice or opinion. Participant 3 suggested that the law needs to be changed to allow a 13th person in the deliberation and Participant 7 recommended that people who were deaf and did not know sign language be allowed to write down their version of events.

Principle 7 in *International Principles and Guidelines on Access to Justice for Persons with Disabilities* (United Nations 2020) highlights the notion that persons with disabilities have the right to participate in the administration of justice on an equal basis with others. This principle further states that it is the responsibility of the courts to ensure the equal participation of persons with disabilities in the court system – as judges, lawyers, prosecutors, witnesses, jurors, experts and court officials – without discrimination.

Over the past decade, numerous commonly used court accommodations for persons with disabilities have been identified and documented (Flynn 2016; O’Leary 2016; United Nations 2020). More recent research focused specifically on court accommodations for persons with severe communication disabilities (White et al. 2020a; White et al. 2020b). However, these accommodations focus predominantly on victims, and to some extent on alleged perpetrators with disabilities, with no attention given to accommodating the needs of legal practitioners with disabilities to ensure their full and equal participation in the court system – the workplace in which they have to participate on a daily basis (Flynn 2016; Foster and Hirst 2020).

Common workplace accommodations that have been identified for persons with disabilities and that could also apply to legal practitioners with disabilities include adapting work procedures (e.g. having a quiet space to work); allowing frequent breaks to help process and retain information; providing a place to rest to counter possible fatigue; and providing accessible parking facilities, accessible paths, wheelchair ramps and assistive technology (e.g. communication devices) (Chi et al. 2018; Lindsay et al. 2019; McDowell and Fossey 2015; Nevala et al. 2015). Our findings propose novel accommodations that were recommended by the legal practitioners with disabilities themselves, such as the use of AAC methods of

communication, sign language interpreters, support persons, additional administrative clerks, physical adaptations to enhance accessibility, and allowing individuals with disabilities to write down their questions or answers during court proceedings and discussions with other legal professionals. The participants further mentioned that the accommodations they had received in their professional capacity within the court context had assisted them to participate in their legal careers. Such accommodations were additional administrative clerks, assistive technology (screen readers and communication software), and environmental adaptations (accessible paths and wheelchair ramps).

Article 13 (Access to Justice) of the CRPD clearly states that accommodations should be provided to ensure effective access to justice for persons with disabilities on an equal basis with others (United Nations 2006). Our study shows that research is increasingly documenting and drawing attention to identified court accommodations for persons with disabilities. It is thus proposed that the court accommodations identified here could support the court system in accommodating legal practitioners with disabilities. More importantly, the accommodations should assist these individuals to participate equally in their judicial role without further delay.

Critical Reflection and Limitations

This study highlighted and confirmed the perspectives of legal practitioners with disabilities in the court system and consequently suggests strategies and accommodations to enhance their participation in court. The findings can also be used to develop recommendations for students with disabilities who are planning to study and pursue a legal profession (Flynn 2016).

A limitation of the study is that all participants were male legal practitioners with disabilities. This might indicate that more men (with or without disabilities) are practising law, compared to women, as was highlighted in a recent study that reported that women are still largely underrepresented in the court system (Gill and Eugenis 2019). The absence of women participants in the current study highlights the fact that women with disabilities still face barriers such as having fewer educational opportunities than their male counterparts, and therefore having limited access to professional and jury positions in the court system (Kim, Skinner, and Parish 2020; Lodovici and Orlando 2017; Women Enabled International 2019).

Although each of the countries represented in this research (England, Lesotho, South Africa and the USA) has its own laws and jurisdictions, it must be noted that all of them have either ratified or are signatories of the CRPD (United Nations 2021). Thus, they formally recognise the importance of the human rights of persons with disabilities, including those with severe communication disabilities. As stated in the CRPD, each country should recognise areas where adaptations should be made for persons with disabilities to effectively exercise their rights. Our study case highlights the importance of adapting the court system and providing court accommodations for legal practitioners with disabilities.

Future research could focus on involving legal practitioners with disabilities in co-designing or co-developing tools and guidelines (i.e. potential court accommodations) that could assist persons with disabilities to participate equally and fully in the court system – whether as witnesses, victims, perpetrators or legal practitioners (Park 2020; Smits et al. 2020).

Furthermore, future research should focus on the development of specific disability training programmes for legal practitioners – with the express input from legal practitioners with disabilities. The latter group should be comprehensively involved in the development of such training programmes, as they are the experts on disability (Lordan 2000; Viljoen 2018). At the same time, educational modules on disability for legal academics and students could be designed to raise awareness of the challenges faced by persons with disabilities in accessing the judiciary system (as a victim, witness, defendant or legal practitioner). Such intervention is essential to break the cycle of discrimination that legal practitioners with disabilities so often experience (Equality and Human Rights Commission 2020).

Conclusion

Despite living in the 21st century, legal practitioners with disabilities continue to be challenged by an ableist zeitgeist that results in discriminatory, exclusionary attitudes and practices that hinder them in their roles as jurors, advocates and judges (Foster and Hirst 2020). According to Article 23 of the UDHR, “[e]veryone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment” (United Nations, 1948, 5). Article 27 in the CRPD further declares that accommodations should be provided to persons with disabilities in the workplace (United Nations 2006). The perspectives of and recommendations given by the legal practitioners with disabilities who participated in this study

could assist other legal practitioners, scholars and students with disabilities (including those with severe communication disabilities) to not only pursue a legal profession, but also to participate equally and fairly in the court system. To date, very little research has been conducted on legal practitioners with disabilities in the court system, which suggests that people with disabilities are largely unexpected in these higher-status occupations (Foster and Hirst 2020). Furthermore, educated and successful legal practitioners with disabilities are often presented as the ‘exception to the rule’ rather than the expected norm. Going forward, every effort should be made to assist legal practitioners with disabilities to participate equally in the courts, and this can be done only if court accommodations are made readily available. Moreover, the human rights of legal practitioners with disabilities to work and to access justice must be protected fervidly, so as to ensure that the Universal Declaration of Human Rights is fulfilled.

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Authors’ contributions

All authors contributed to the conceptualisation of the study, the development of methodology, data collection, analysis of data, summary of results, as well as in the writing of the original draft and all subsequent versions.

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REPLY SLIP: Email interview

Please submit electronically to PhD student at: [redacted]

Name of practitioner:

Title or Profession:

Contact Details:

Email:

Project Title:

Accommodating persons with severe communication disabilities in court: Using universal design principles to guide key role-players

PhD student:

Robyn White, M.AAC

Email: [redacted]

Supervisors:

Prof. Juan Bornman – [redacted]

Dr. Ensa Johnson – [redacted]

I, _____, (full names and surname) hereby:

- Agree that participation is voluntary and that I have the right to withdraw from this study should I wish to do so for any reason whatsoever without providing any explanation and without any negative consequences;
- Agree to participate in an email online interview. The email online interview will run in an asynchronous manner which means you will be able to answer the questions at a time and pace convenient for you.
- Understand that there is a psychologist who is part of the research team and I can contact her during the research for debriefing sessions if need be.
- Understand that I will at no stage during the research process be exposed to any harmful situations;
- Understand that the content of the data and information will be handled with confidentiality and used for research purposes, to write a PhD thesis; conference presentations, journal articles, only;
- Understand that the data will be stored for a period of 15 years in a safe place at the Centre for AAC, University of Pretoria in South Africa for 15 years for archival purposes for future use of data.
- The electronic data will be protected in a password protected file

(Please X your preferred option)

I give consent to participate in the study	<input type="checkbox"/>	I do not give consent to participate in the study	<input type="checkbox"/>
--	--------------------------	---	--------------------------

Signature of legal practitioner

Date

Upon completion, I would like to obtain a copy of the PhD thesis: Yes No

Centre for Augmentative and Alternative
Communication, Room 2-36, Com path
Building, Lynnwood Road
University of Pretoria, Private Bag X20
Hatfield 0028, South Africa
Tel +27 (0)12 420 2001
Fax +27 (0) 86 5100841
Email saak@up.ac.za
www.caac.up.ac.za

**Fakulteit Geesteswetenskappe
Lefapha la Bomotho**



16 December 2020

Dear Legal Practitioner

REQUEST TO PARTICIPATE IN AN EMAIL INTERVIEW AS A RECOGNISED LEGAL PRACTITIONER

I am currently a PhD candidate in Augmentative and Alternative Communication (AAC) at the Centre for Augmentative and Alternative Communication (CAAC) at the University of Pretoria in South Africa. In partial fulfilment for the requirements of this degree, I am required to conduct a research project. I would appreciate your consent to participate in this research in the form of an online email interview.

Research topic: Accommodating persons with severe communication disabilities in court: Using universal design principles to guide key role-players

You were selected based on your knowledge and experience in one or more of the following fields: The court system, social justice, human rights, disability rights, access to justice and the criminal justice system and because you are a person living with a disability which provides you with specific insights into the broader disability field.

Aim of the study: The main aim of this study is to identify and describe the court accommodations that should be provided to persons with severe communication disabilities in the criminal justice system, to ensure that their human rights are met and that they achieve access to justice.

What will be expected from you as a participant? You will be asked to complete approximately five questions in the format of an online email interview. The questions will be posted in the body of the email (not as a separate attachment however if you would prefer this, this can be arranged). You will not need to download any specific software and the email will be sent directly to the email address you have provided. The email interview will run in an asynchronous manner which means you will be able to access the email interview and answer the questions at a time and place convenient to you.

The questions and discussion will be around your experiences and knowledge on court accommodations for persons with disabilities.

Centre for Augmentative and Alternative
Communication, Room 2-36, Com path
Building, Lynnwood Road
University of Pretoria, Private Bag X20
Hatfield 0028, South Africa
Tel +27 (0)12 420 2001
Email saak@up.ac.za
www.caac.up.ac.za

Fakulteit Geesteswetenskappe
Lefapha la Bomotheo



Risks and benefits of participants: You may withdraw from the study at any time without any negative consequences. If you agree to consent to your participation in the email online interview, your confidentiality will be ensured. Furthermore, the content of the data will be handled with confidentiality and used only for research purposes, conference presentations, journal articles and to write a thesis. Documents will be in safekeeping at the Centre for AAC, University of Pretoria for 15 years for archival purposes and for future use of data. The electronic data will be protected in a password protected file. Should the need arise, and you experience any potential distress related to the research, there is a psychologist who is part of the research team and who can provide debriefing sessions. Please contact us and we will assist you and set up a session using your preferred choice of an online platform.

If you require further information after reading this document, please feel free to contact anyone of us on the details below:

Phd Candidate:	Mrs. Robyn White
Contact details:	[REDACTED]
Supervisor:	Prof. Juan Bornman
Contact details:	[REDACTED]
Co- Supervisor:	Dr. Ensa Johnson
Contact details:	[REDACTED]

We trust that you will agree on the importance of this research project to help persons with communication disabilities to be able to access justice on an equal basis as others and furthermore, would appreciate your willingness to participate in this research project.

Kind regards

Robyn White
Researcher

Prof. Juan Bornman
Supervisor

Dr. Ensa Johnson
Co-supervisor

Biographical questionnaire for legal practitioners with disabilities

	Question	Answer	For office use only
1	Date of birth / Age:		
2	Gender:	Male <input type="checkbox"/> Female <input type="checkbox"/> Prefer not to say <input type="checkbox"/> Prefer to self-describe <input type="checkbox"/>	
3	Nationality (or country of residence)		
4	Please describe your specific disability.		
5	Could you please specify if your disability is congenital (from birth) or acquired (resulting from an injury or accident)?		
6	Do you use any specific assistive devices in the workplace? e.g. screen readers, hearing devices, communication devices		
8	Highest educational qualifications. Please specify		
9	Current Position and Title:		
10	What has your role been with the criminal justice system (attorney, advocate, barrister, juror, magistrate, etc)		

11	How long have you worked in the criminal justice system (if you are a permanent legal practitioner)?		
12	What type of courts have you worked in or participated in?		
13	Have you ever participated in a court case where the witness/defendant had a disability? If yes, please specify.		
14	Have you been involved in the writing of legislations or law reform activities?		



REPLY SLIP: Stakeholder review

Please submit electronically to PhD student at: [redacted]

Name of participant:

Contact Details:

Email:

Project Title:

Accommodating persons with severe communication disabilities in court: Using a holistic approach to guide key role-players

PhD student:

Robyn White, M.AAC

Email: [redacted]

Supervisors:

Prof. Juan Bornman – [redacted]

Dr. Ensa Johnson – [redacted]

I, _____, (full names and surname) hereby:

- Agree that participation is voluntary and that I have the right to withdraw from this study should I wish to do so for any reason whatsoever without providing any explanation and without any negative consequences;
- Agree to participate in an online survey.
- Understand that there is a psychologist who is part of the research team and I can contact her during the research for debriefing sessions if need be.
- Understand that I will at no stage during the research process be exposed to any harmful situations;
- Understand that the content of the data and information will be handled with confidentiality and used for research purposes, to write a PhD thesis; conference presentations, journal articles, only;
- Understand that the data will be stored for a period of 15 years in a safe place at the Centre for AAC, University of Pretoria in South Africa for 15 years for archival purposes for future use of data.
- The electronic data will be protected in a password protected file

(Please X your preferred option)

I give consent to participate in the study	<input type="checkbox"/>	I do not give consent to participate in the study	<input type="checkbox"/>
--	--------------------------	---	--------------------------

Signature of legal practitioner

Date

Upon completion, I would like to obtain a copy of the PhD thesis: Yes No



21 January 2021

Dear Participant

REQUEST TO PARTICIPATE IN A STAKEHOLDER REVIEW

I am currently a PhD candidate in Augmentative and Alternative Communication (AAC) at the Centre for Augmentative and Alternative Communication (CAAC) at the University of Pretoria in South Africa. In partial fulfilment for the requirements of this degree, I am required to conduct a research project. I would appreciate your consent to participate in this research in the form of a stakeholder review.

Research topic: Accommodating persons with severe communication disabilities in court: Using a holistic approach to guide key role-players

Aim of the study: The main aim of this study is to identify, describe and develop guidelines for court accommodations that should be provided to persons with severe communication disabilities in order to participate in the legal system in an equal, respected way and achieve access to justice (irrespective of the role – witness, defendant or legal practitioner).

What will be expected from you as a participant? You will be asked to read a 4-page guideline document and thereafter, complete a short questionnaire in the format of an online survey. The guideline document includes recommended court accommodations for persons with severe communication disabilities. The reading of the document should take you approximately 10 minutes and the completion of the questionnaire approximately 10 minutes. The questions will be posted in the online platform called Qualtrics which you can access from your mobile or computer. You will not need to download any specific software and the email will be sent directly to the email address you have provided.

Risks and benefits of participants: You may withdraw from the study at any time without any negative consequences. If you agree to consent to your participation in the email online interview, your confidentiality will be ensured. Furthermore, the content of the data will be handled with confidentiality and used only for research purposes, conference presentations, journal articles and to write a thesis.



Documents will be in safekeeping at the Centre for AAC, University of Pretoria for 15 years for archival purposes and for future use of data. The electronic data will be protected in a password protected file. Should the need arise, and you experience any potential distress related to the research, there is a psychologist who is part of the research team and who can provide debriefing sessions. Please contact us and we will assist you and set up a session using your preferred choice of an online platform.

If you require further information after reading this document, please feel free to contact anyone of us on the details below:

Phd Candidate:	Mrs. Robyn White
Contact details:	[REDACTED]
Supervisor:	Prof. Juan Bornman
Contact details:	[REDACTED]
Co- Supervisor:	Dr. Ensa Johnson
Contact details:	[REDACTED]

We trust that you will agree on the importance of this research project to help persons with communication disabilities to be able to access justice on an equal basis as others and furthermore, would appreciate your willingness to participate in this research project.

Kind regards

Robyn White
Researcher

Prof. Juan Bornman
Supervisor

Dr. Ensa Johnson
Co-supervisor

Court Accommodations for Persons with Severe Communication Disabilities

Purpose

These guidelines describe the court accommodations that should be made available to persons with severe communication disabilities to allow them to access the legal system (criminal, civil, family court etc). These guidelines are designed to support persons with severe communication disability, their family members, legal practitioners, and support persons.

The role of the court accommodations is to assist these individuals with severe communication disabilities to participate in their specific role in the legal system (this role can be as a witness, defendant or a legal practitioner). The aim of providing accommodations to the said individuals is to assist these individuals in achieving their human right of access to justice, without discrimination and inequality. These guidelines have been developed using a human rights framework based on the Convention on the Rights of Persons with Disabilities (CRPD) (2006) with specific focus on [Article 13 – Access to Justice](#) and [Article 21 - Freedom of expression and opinion, and access to information](#).

(*There are links attached to Article 13 and Article 21. By clicking on the links above, this will assist you in accessing the articles.)

Development of the guidelines

These guidelines are based on information from four data sources that form part of the study entitled, “Accommodating persons with severe communication disabilities in court: Using a holistic approach to guide key role-players”. *

The four data sources include the following:

1. [A legal scoping review of court accommodations](#)
2. [An expert focus group with South African experts](#)
3. An expert online focus group with international experts
4. Interviews with legal practitioners with disabilities.

Please click on the top two data sources for the published papers.

Although these guidelines are copyright protected, they may be reproduced freely for non-profit purposes acknowledging the source: *White, RM (2021). Accommodating persons with severe communication disabilities in court: Using a holistic approach to guide key role-players. Unpublished thesis, University of Pretoria, Pretoria, South Africa.*

How to use the guidelines

The definition of a “person with a severe communication disability” is highlighted in the text box on pg. 2. These four guidelines are a general set of recommendations for court accommodations for persons with severe communication disabilities to enable them to participate in the legal system, thereby ensuring access justice. It is important to acknowledge that persons with disabilities are not all the same in their receptive and expressive communication skills, and styles may differ as well as their needs and support requirements. Therefore, each person ought to be treated with respect and dignity using an individualistic approach. There is no “one size fits all” accommodation.

This is where an illustration will go – that is why this block is empty. Still awaiting on the illustrator.

Who is a person with a severe communication disability?

- Persons who cannot make their wants or needs known by using spoken communication (speech).
- Persons who have difficulty in understanding certain words and when being spoken too.
- A person's disability can be congenital (from birth) (e.g., cerebral palsy, autism spectrum disorder, visual impairment).
- A person's disability can be acquired (e.g., traumatic brain injury, stroke, motor neuron disease).

Guideline 1: The person should be allowed to use their "voice" using a communication method or mode of their preference throughout the whole legal process.

The CRPD highlights that every person with a disability should be allowed to participate in a meaningful and equal way in any legal proceedings that concern them, whether as a witness, defendant or legal practitioner. Some court accommodations that could assist the individual in being able to use their "voice" are:


1. Use an intermediary
2. Use augmentative and alternative communication (AAC) methods
3. Use a sign language interpreter
4. Use a language interpreter
5. Use an AAC toolkit
6. Use a victim statement (for victims)
7. Use a deaf relay interpreter
8. Use an independent communication support worker
9. Give evidence through free narration (without questioning in between)
10. Allow communication in audio, video or other electronic form

For further explanation and definitions of the above-mentioned accommodations, please see [Appendix 1](#).

Guideline 2: The person should be shown respect and treated with dignity by all persons involved throughout the legal process.

The CRPD highlights the importance of respect for persons with disabilities. Dignity is provided to persons with disabilities when they are treated in a courtesy manner and when they are recognised as individuals. Respect includes environmental adaptations and accommodations that make up the physical, social and attitudinal environment. Court accommodations that could assist these individuals in being shown respect are:

1. Testify behind a screen
2. Testify via live video/television link
3. Use CCTV in court
4. Conduct trial *in camera*
5. Testify outside courtroom or familiar environment
6. Testify not on the witness stand
7. Testify in the judge's chambers
8. Modify the court-room setup
9. Testify without the defendant present in the courtroom, and only the defence attorney present
10. Use a support person
11. Allow an additional clerk (for legal practitioners)
12. Allow Guardian ad Litem (children) and Next friend (adult)
13. Allow McKenzie friend
14. Develop specialized services for persons who use AAC
15. Allow support animal
16. Allow stuffed animal
17. Conduct a functional assessment of individual
18. Ensure physical accessibility
19. Allow enough and extra time to testify
20. Allow frequent breaks
21. Make information accessible for those with visual and hearing impairments
22. Use auxiliary hearing devices
23. Allow additional time for pauses (to help with concentration and attention)

Additional court 'respect' accommodations were identified in the legal scoping review and that can be accessed here (please click on icon) .

For further explanation and definitions of the above-mentioned accommodations, please see [Appendix 1](#).

Guideline 3: The person should feel that all decisions are being made in a fair and neutral way throughout the whole legal process.

The courts and legal practitioners should ensure to use objective, legitimate criteria for making decisions and applying fairness in decisions when a person with a communication disability needs to access and participate in the court. Personal bias or views that could influence choice or opinion should not be allowed. Court accommodations that could assist the individual in being shown fairness in court are:


1. Involve expert professional
2. Involve expert witness
3. Appoint an Amicus Curiae
4. Allow video/ pre-recorded evidence
5. Allow out-of-court testimony
6. Allow sworn depositions in court
7. Use video to cross-examine prior to trial
8. Film the court proceedings to review the communication
9. Use pre-sentence reports to make suggestions to the court about the individual's need
10. Remove official attire
11. Prohibit personal cross-examination by accused or defendant
12. Prohibit direct questions by a defence lawyer and prosecutor
13. Establish court procedures to enable a process for requesting accommodations

For further explanation and definitions of the above-mentioned accommodations, please see [Appendix 1](#).

Guideline 4: The person should feel that all legal practitioners can be trusted and that their decisions are easy to understand and, in the person's best interest.

The courts and legal practitioners should ensure that court accommodations can support the person with a communication disability's receptive language (understanding) and the person should feel that the courts motives are trustworthy. Court accommodations that could assist the individual in experiencing feelings of trust are:

1. Allow judicial officers' intervention
2. Allow the language interpreter time to interpret in the consecutive mode where possible
3. Use modified oath
4. Allow linguistic simplification
5. Use appropriate and proper questioning strategies
6. Provide information about the proceedings in plain language, braille, accessible and child-friendly formats
7. Regularly check understanding, particularly if witness or defendant has poor language ability
8. Use pictures/communication aids to enhance understanding
9. Provide real-time captioning of court proceedings

Additional court accommodations that were identified in the legal scoping review that can be accessed here .

For further explanation and definitions of the above-mentioned accommodations, please see [Appendix 1](#).

A holistic approach to court accommodations

These guidelines and the specific accommodations mentioned are not intended as an exhaustive list but rather to assist legal practitioners in making available court accommodations for persons with severe communication disabilities, the accommodations alone will not assist persons with communication disabilities in accessing justice. As suggested in research ([please see Appendix 2](#)) a combination of court accommodations, a cross-disciplinary approach from all practitioners involved in the legal proceedings (e.g. judges, prosecutors, lawyers, social workers, expert witnesses, court officials etc.), as well as their knowledge, skills, attitudes and training will impact on the process and should therefore be considered, so that access to justice for persons with severe communication disabilities can be achieved.

Additional Resources

- ❖ The United Nations (2020) has released and identified international principles and guidelines on access to justice for persons with disabilities, these guidelines can be accessed here ([please click here](#)).
- ❖ Domestically, the United Kingdom and Australia's judiciary systems have published Equal Treatment Bench Book's, which are guide's for judicial officers and suggests steps that could increase participation by all parties, including persons with severe communication disabilities. [Please click here for access.](#)
- ❖ For examples of case law involving persons with disabilities and the use of intermediaries, frequent breaks, CCTV, AAC and simple questioning strategies please [click here](#).

Acknowledgements

Thank you to the following persons:

- ❖ All the legal experts who participated in the data sources, in South Africa and internationally, for sharing their limited time and invaluable knowledge and expertise.
- ❖ All the legal practitioners with disabilities who participated in data source 4 and shared their vital experiences and providing an insider perspective.
- ❖ The stakeholders with and without disabilities who evaluated the clarity of the guidelines.

International Implications

The implementation of any guidelines has cost implications and the recommended court accommodations also do. In many judicial systems (particularly those in low- and middle-income countries) there may be limited resources and services readily available for persons with severe communication disabilities. Some accommodations for example, an intermediary or sign language interpreter, has cost implications, but other accommodations such as removal of official attire does not, and therefore should be judged on an individual basis.

The main aim of this document is to assist and support these individuals (and their families) who often find themselves excluded from the legal system to be able to participate effectively and meaningfully, and ultimately, for them to equally realize their human right - access to justice.

* These guidelines stem from the PhD thesis of Robyn White, with Prof Juan Bornman as her supervisor and Dr. Ensa Johnson as her co-supervisor (from the CAAC, The University of Pretoria). Financial support from the National Institute of Humanities and Social Sciences (NIHSS) and the South African Humanities Deans Association (SAHUDA) enabled this research. The views from both these institutions have not influenced the content of these guidelines.

*There were no competing interests from any participants, experts, or researchers during the development of these guidelines.

* Please cite these guidelines as follows:

White, RM (2021). Accommodating persons with severe communication disabilities in court: Using a holistic approach to guide key role-players. Unpublished thesis, University of Pretoria, Pretoria, South Africa

Appendix 4D - Stakeholder review Qualtrics online survey (including consent and biographic information)

Consent

Thank you for agreeing to participate in the study: **Accommodating persons with severe communication disabilities in court: Using a holistic approach to guide key role-players.**

Please can you read and acknowledge the following:

I, hereby:

- Agree that participation is voluntary and that I have the right to withdraw from this study should I wish to do so for any reason whatsoever without providing any explanation and without any negative consequences;
- Agree to participate in an online survey.
- Understand that there is a psychologist who is part of the research team and I can contact her during the research for debriefing sessions if need be.
- Understand that I will at no stage during the research process be exposed to any harmful situations;
- Understand that the content of the data and information will be handled with confidentiality and used for research purposes, to write a PhD thesis; conference presentations, journal articles, only;
- Understand that the data will be stored for a period of 15 years in a safe place at the Centre for AAC, the University of Pretoria in South Africa for 15 years for archival purposes for future use of data.

- The electronic data will be protected in a password protected file

Do you consent to participate in the study:

Yes

No

Biographic Information

Date of birth/ Age

Gender

Male

Female

Prefer not to say

Prefer to self-describe

Nationality (or country of residence)

Highest educational level (high school/national certificate, degree, diploma, etc).
Please specify.

Number of years working experience

- Employed part-time
- Employed full-time
- Self-employed
- Not employed and seeking work
- Not employed
- Student
- Prefer not to say

Have you had a personal experience with the legal system (police station, court system etc)? Please specify.

If you answered yes to question,,, please describe your specific disability.

If you answered yes to question..... do you use any specific assistive devices? (e.g., screen readers, communication devices, hearing devices)

Guidelines: Court accommodations

Did you read the guideline document?

- Yes
- No

Did you find the guideline document practical?

(For example - do you think the guidelines would be useful for persons with severe communication disabilities, their families and other relevant parties?)

- Yes
- Unsure
- No

Was there consistency in the style and formatting of the guideline document?
(For example - was the text and headings easy to follow?)

- Yes
- Unsure
- No

Was the language used clear?

- Yes
- Unsure
- No

Was the length of the guideline document appropriate?
(For example - was it the right amount of pages and words?)

- Yes
- Unsure
- No

Is there anything you would like to add or comment on regarding the guideline document? Please feel free to share any suggestions or feedback.

Powered by Qualtrics

Appendix 4E - Court accommodations guidelines for persons with severe communication disabilities

Court Accommodations for Persons with Severe Communication Disabilities



Illustration done by Nicci Mathanson

Purpose

These guidelines describe the court accommodations that should be made available to persons with severe communication disabilities to allow them to access the legal system, for example criminal-, civil-, and family court. These guidelines are designed to support persons with severe communication disabilities, their family members, legal practitioners, and support persons. The role of the court accommodations is to assist these individuals to participate in their specific role as a witness, defendant or as a legal practitioner throughout the legal process.

The aim of providing accommodations to the said individuals is to assist these individuals in achieving their human right of access to justice, without discrimination and inequality.

These guidelines have been developed using a human rights framework based on the Convention on the Rights of Persons with Disabilities (CRPD) (2006) with specific focus on [Article 13 – Access to Justice](#) and [Article 21 - Freedom of expression and opinion, and access to information](#).

(*There are links attached to Article 13 and Article 21. By clicking on the links above, this will assist you in accessing the articles.)

Development of the guidelines

These guidelines are based on information from four data sources:

1. [A legal scoping review of court accommodations \(this includes in depth detail of the methodology, selection criteria, strengths, and limitations\)](#)
2. [An expert focus group with South African experts](#)
3. An expert online focus group with international experts
4. Interviews with legal practitioners with disabilities.

Together these four data sources form part of the study entitled, “Accommodating persons with severe communication disabilities in court: Using a holistic approach to guide key role-players”.

Please cite these guidelines as follows:

White, RM (2021). Accommodating persons with severe communication disabilities in court: Using a holistic approach to guide key role-players. Unpublished doctoral thesis, University of Pretoria, Pretoria, South Africa

Please click on the top two data sources for the published papers.

Who is a person with a severe communication disability?

- A person who cannot make their wants or needs known by using spoken communication (speech or writing).
- A person who may or may not have difficulty in understanding certain words and when being spoken too.
- Severe communication disabilities can be associated with developmental disability such as intellectual disability, cerebral palsy, autism spectrum disorder or can be acquired for example brain injury, stroke and motor neuron disease.

How to use the guidelines

The definition of a “person with a severe communication disability’ is highlighted in the text box on the left. These four guidelines are a general set of recommendations for court accommodations for persons with severe communication disabilities to enable them to participant in the legal system, thereby ensuring access justice.

It is important to acknowledge that persons with disabilities are not all the same in their receptive and expressive communication skills, and styles may differ as well as their needs and support requirements. Therefore, each person ought to be treated with respect and dignity using an individualistic approach. There is no “one size fits all” accommodation, and therefore accommodations must be tailored to the needs and specific skills of the individual.

Guidelines for court accommodations for persons with severe communication disabilities

1

The person should be allowed to use their “voice” using a communication method or mode of their preference throughout the whole legal process.

The CRPD highlights that every person with a disability should be allowed to participate in a meaningful and equal way in any legal proceeding that concern them, whether as a witness, defendant or legal practitioner.

Court accommodations that could assist the individual in being able to **use their “voice”** are:

1. Use an intermediary
2. Use augmentative and alternative communication (AAC) methods
3. Use a sign language interpreter
4. Use an AAC toolkit
5. Use a victim statement (for victims)

2

The person should be shown respect and treated with dignity by all persons involved throughout the legal process.

The CRPD highlights the importance of respect for persons with disabilities. Dignity is provided to persons with disabilities when they are treated in a courteous manner and when they are recognised as individuals. Respect includes environmental adaptations and accommodations that make up the physical, social and attitudinal environment.

Court accommodations that could assist these individuals in being shown **respect** are:

1. Allow a support person
2. Allow witness, support, preparation and profiling program (court preparation programme)
3. Allow frequent breaks
4. Testify behind a screen
5. Testify via live video/television link
6. Conduct a functional assessment of the person
7. Testify without the defendant present in the courtroom, and only the defence attorney present
8. Testify not on the witness stand
9. Testify in the judge’s chambers
10. Testify outside the courtroom
11. Ensure physical accessibility

3

The person should feel that all decisions are being made in a fair and neutral way throughout the whole legal process.

The courts and legal practitioners should ensure to use objective, legitimate criteria for making decisions and apply fairness in decisions when a person with a communication disability needs to access and participate in the court. Personal bias or views that could influence choice or opinion should not be allowed.

Court accommodations that could assist the individual in being shown **fairness** in court are:

1. Involve an expert professional
2. Involve an expert witness
3. Remove official attire
4. Prohibit personal cross-examination by accused or defendant themselves in cases where they represent themselves.

4

The person should feel that all legal practitioners can be trusted and that their decisions are easy to understand and in the person’s best interest.

The courts and legal practitioners should ensure that court accommodations can support the person with a communication disability’s receptive language (understanding) and the person should feel that the courts motives are trustworthy.

Court accommodations that could assist the individual in experiencing **feelings of trust** are:

1. Use appropriate and proper questioning strategies.
2. Use linguistic simplification, for example editing and processing written and spoken information to ensure that it is simple, clear and easy to understand.
3. Use pictures/communication aids to enhance understanding.
4. Use a facilitator (to simplify language, to give meaning and to support the individual).

A holistic approach to court accommodations for persons with severe communication disabilities

A holistic approach

These guidelines and the specific accommodations mentioned are not intended as an exhaustive list but rather to assist legal practitioners in making available court accommodations for persons with severe communication disabilities, the accommodations alone will not assist persons with communication disabilities in accessing justice.

As suggested in research, [\(please click here\)](#) a combination of court accommodations, a cross-disciplinary approach from all practitioners involved in the legal proceedings (e.g., judges, prosecutors, lawyers, social workers, expert witnesses, court officials etc.), as well as their knowledge, skills, attitudes, and training will impact on the process and should therefore be considered, so that access to justice for persons with severe communication disabilities can be achieved.

Furthermore, emphasis must be placed on the importance of law reform and changes in legal procedures and processes as highlighted in all four data sources mentioned above.

Additional resources

- The United Nations (2020) has released and identified international principles and guidelines on access to justice for persons with disabilities, these guidelines can be accessed here [\(please click here\)](#).
- Domestically, the United Kingdom and Australia's judiciary systems have published Equal Treatment Bench Books, which are guides for judicial officers and suggests steps that could increase participation by all parties, including persons with severe communication disabilities. [Please click here for access.](#)
- For examples of case law involving persons with disabilities and the use of intermediaries, frequent breaks, CCTV, AAC and simple questioning strategies please [click here](#).
- For important definitions such as: Persons who use AAC and persons who are hard of hearing [please click here](#).

International implications

The implementation of any guideline has cost implications and the recommended court accommodations also do. In many judicial and legal systems (particularly those in low- and middle-income countries) there may be limited resources and services readily available for persons with severe communication disabilities. Some accommodations for example, an intermediary or sign language interpreter, has cost implications, but other accommodations such as removal of official attire does not, and therefore accommodations should be judged on an individual basis.

The main aim of these guidelines is to assist and support individuals with severe communication disabilities (and their families) who often find themselves excluded from the legal system to be able to participate effectively and meaningfully, and ultimately, for them to equally realize their human right – access to justice.

Acknowledgements

Thank you to the following persons:
- All the legal experts who participated in the data sources, in South Africa and internationally, for sharing their limited time and invaluable knowledge and expertise.
- All the legal practitioners with disabilities who participated in data source 4 and shared their personal experiences and providing an insider perspective.
- The stakeholders with severe communication disabilities who evaluated the feasibility and clarity of the guidelines.

Funding

These guidelines stem from the PhD thesis of Robyn White, with Prof. Juan Bornman as her supervisor and Dr Ensa Johnson as her co-supervisor (from the CAAC, The University of Pretoria). Financial support from the University of Pretoria, the National Institute of Humanities and Social Sciences (NIHSS) and the South African Humanities Deans Association (SAHUDA) enabled this research. The views from these institutions have not influenced the content of these guidelines.

Additional information

There were no competing interests from any participants, experts, or researchers during the development of these guidelines.

If the document is printed, it is advised that all links added in this document be printed alongside the guideline document.

Appendix 5A - Personal communication with AGREE researcher



Robyn Wilson White [REDACTED]

RE: New contact us received from the AGREE Enterprise website

1 message

Agree, Z <agree@mcmaster.ca>

Thu, Oct 29, 2020 at 4:46 PM

To: [REDACTED]

Hi Robyn,

Thanks for your interest in AGREE and apologies for the delay in coming back to you.

Regarding your question, we are afraid the AGREE II tool has not been developed to inform guidelines or recommendations outside the health field. All the process of tool development, validation and reliability evaluation, was performed using health related guidelines. Considering that guidelines or recommendations outside the health field might be substantially different in terms of type of evidence, evidence methodology, outcomes expected and others, we are afraid it might not be a good tool for this purpose. However, I might assume there is no tool for this purpose in your field, and therefore, AGREE concepts may still be used to inform a first approach to your guidelines/recommendations, since our tool considered dimensions that might be applicable in other contexts. What I mean is that the domains: scope and purpose, stakeholder participation, rigor of development, applicability, clarity of presentation and editorial independence, are overarching domains that we can see as applicable to any kind of guidance/recommendations that should be based on evidence. Thus, although the tool and the way we score in health related guidelines is not applicable, its domains may be of used to inform a first approach to analyze guidelines/recommendations in other fields.

Thanks again for your interest and all the best in your PhD work!

AGREE Team

Pamela Velásquez
Research Assistant
AGREE Scientific Research Office
Medical Investigations Institute
University of Antioquia
Medellin, Colombia
Email: [REDACTED]
Website: www.agreetrust.org
Twitter feed: @AGREEScientific

De: AGREE Trust [REDACTED] >**Enviado:** martes, 20 de octubre de 2020 5:30 a. m.**Para:** Agree, Z [REDACTED] a>**Asunto:** New contact us received from the AGREE Enterprise website

Name: Robyn White Email: [REDACTED] Your message: To Whom it may concern, My name is Robyn White and I am a PhD candidate at the University of Pretoria in South Africa. My Phd research is aiming to identify and describe (in the form of guidelines) court accommodations for persons with communication disabilities. I am in the process of developing the guidelines after my first phase which was a systematic review, two expert panels and interviews with persons with disabilities. I am hoping to use the AGREE instrument to appraise my guidelines. Has this instrument been used before outside the health field? And would it be okay for me to "adapt" the manual in terms of the examples and scenarios to be related to court accommodations for persons with disabilities? I would appreciate if anyone could provide me with guidance in to this matter?

418



February 2021

Dear Participant

REQUEST TO PARTICIPATE IN A PILOT STUDY

I am currently a PhD candidate in Augmentative and Alternative Communication (AAC) at the Centre for Augmentative and Alternative Communication (CAAC) at the University of Pretoria in South Africa. In partial fulfilment for the requirements of this degree, I am required to conduct a research project. I would appreciate your consent to participate in this research in the form of a stakeholder review.

Research topic: Accommodating persons with severe communication disabilities in court: Using a holistic approach to guide key role-players

Aim of the study: The main aim of this study is to identify and develop guidelines for court accommodations that should be provided to persons with severe communication disabilities in order to participate in the legal system in an equal, respected way and achieve access to justice (irrespective of the role – witness, defendant or legal practitioner).

What will be expected from you as a participant? You will be asked to participate in a pilot study. For the purpose of the main study, the researcher has developed court accommodation guidelines and a tool that can appraise the guidelines called the Court Accommodations Guideline Appraisal Tool (CAGAT). You will need to complete an online survey after reading the guidelines and completing the CAGAT. The online survey will consist of questions that are linked to the readability, feasibility, and technical aspects of the CAGAT. The researcher will send you a detailed email with clear instructions if you agree to participate. The guidelines will be attached, and two links will be embedded in the email, one link for the CAGAT and another for the online survey you must complete. The whole process should take you approximately 25 minutes. The online survey questions will be posted in the online platform called Qualtrics which you can access from your mobile or computer. You will not need to download any specific software and the email will be sent directly to the email address you have provided.



Risks and benefits of participants: You may withdraw from the study at any time without any negative consequences. If you agree to consent to your participation in the email online interview, your confidentiality will be ensured. Furthermore, the content of the data will be handled with confidentiality and used only for research purposes, conference presentations, journal articles and to write a thesis.

Documents will be in safekeeping at the Centre for AAC, University of Pretoria for 15 years for archival purposes and for future use of data. The electronic data will be protected in a password protected file. Should the need arise, and you experience any potential distress related to the research, there is a psychologist who is part of the research team and who can provide debriefing sessions. Please contact us and we will assist you and set up a session using your preferred choice of an online platform.

If you require further information after reading this document, please feel free to contact anyone of us on the details below:

Phd Candidate:	Mrs. Robyn White
Contact details:	██
Supervisor:	Prof. Juan Bornman
Contact details:	██
Co- Supervisor:	Dr. Ensa Johnson
Contact details:	██

██████ trust that you will agree on the importance of this research project to help persons with communication disabilities to be able to access justice on an equal basis as others and furthermore, would appreciate your willingness to participate in this research project.

Kind regards

Robyn White
Researcher

Prof. Juan Bornman
Supervisor

Dr. Ensa Johnson
Co-supervisor

Appendix 5C - Court Accommodations Guideline Appraisal Tool (CAGAT) (including consent and biographic information)

Consent

Thank you for agreeing to participate in the study: *Accommodating persons with severe communication disabilities in court: Using a holistic approach to guide key role-players.*

Please can you read and acknowledge the following:

I, hereby,

Agree that participation is voluntary and that I have the right to withdraw from this study should I wish to do so for any reason whatsoever without providing any explanation and without any negative consequences;

Agree to read the guideline document and participate in an online survey;

Understand that there is a psychologist who is part of the research team and I can contact her during the research for debriefing sessions;

Understand that I will at no stage during the research process be exposed to any harmful situations;

Understand that the content of the data and information will be handled with confidentiality and used for research purposes, to write a PhD thesis; conference presentations, journal articles, only;

Understand that the data will be stored for a period of 15 years in a safe place at the Centre for AAC, the University of Pretoria in South Africa for archival purposes for future use of data;

The electronic data will be protected in a password-protected file.

Do you consent to participate in the study:

- Yes
 No

Did you read the guideline document?

- Yes
 No

Biographic Information

Biographical Information

1. Date of birth (dd/mm/year)

2. Gender:

- Male
 Female
 Prefer not to say
 Prefer to self-describe

3. Nationality (or country of residence):

4. Qualifications: Please specify.

5. Current work position, role or title:

6. Total years' working experience:

7. Do you have work experience working with people with disabilities?

Yes (please can you describe in text box)

No

8. Do you have a disability?

Yes (please can you describe in text box)

No

9. If you answered yes to question 8 above, do you use any specific assistive devices? (e.g. screen readers, communication devices, hearing devices)

10. Do you have experience with persons with disabilities who have come into contact with the legal system?

Yes (please can you describe in text box)

No

Court Accommodations Guideline Appraisal Tool (CAGAT)

Court Accommodations Guideline Appraisal Tool (CAGAT)

Domain 1 - Scope and purpose of the guideline document

Domain 1: Scope and purpose of the guideline document

The overall objective of the guidelines were specifically described.

Strongly agree	Agree	Somewhat agree	Neither agree nor disagree	Somewhat disagree	Disagree	Strongly disagree
<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

The population for whom the guidelines are intended for were specifically described.

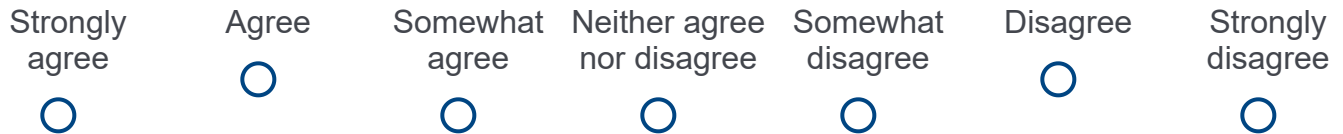
Strongly agree	Agree	Somewhat agree	Neither agree nor disagree	Somewhat disagree	Disagree	Strongly disagree
<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Are there any comments or feedback you would like to give regarding the scope and purpose of the guideline document?

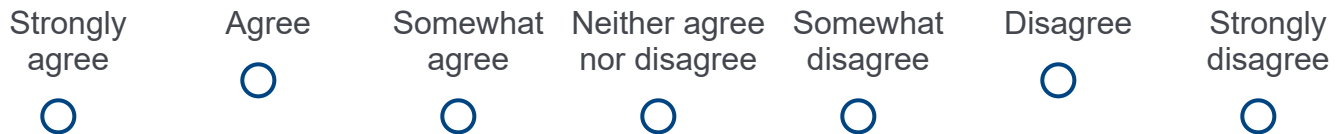
Domain 2 - Stakeholder involvement

Domain 2: Stakeholder involvement

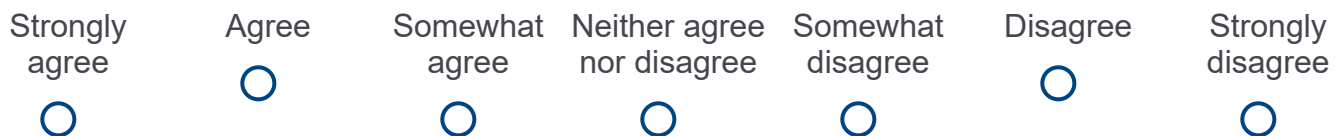
The guideline development process included individuals from different stakeholder groups.



Views and perspectives from stakeholders (including persons with disabilities) who would benefit from the guidelines have been sought.



The individuals who will benefit from the guideline document were clearly defined.

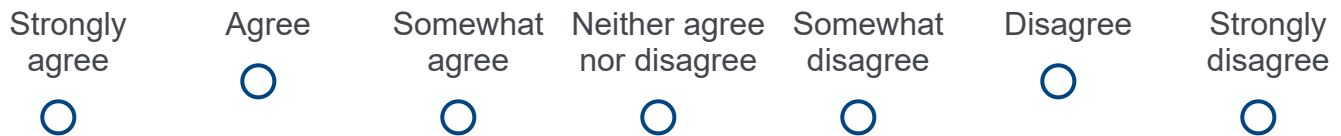


Are there any comments or feedback you would like to give regarding the stakeholder involvement of the guideline document?

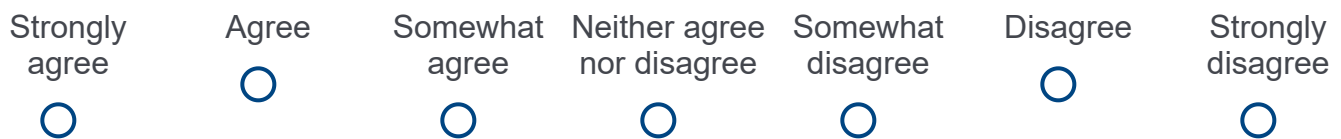
Domain 3: Rigor of development

Domain 3: Rigour of development

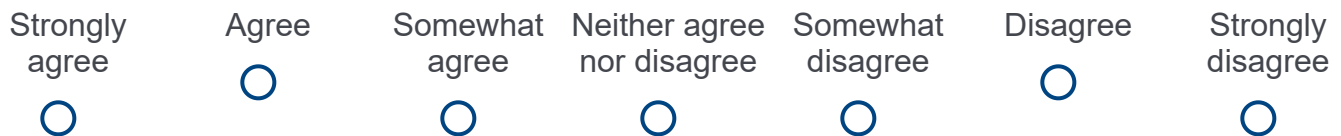
Systematic methods were used to search for evidence.



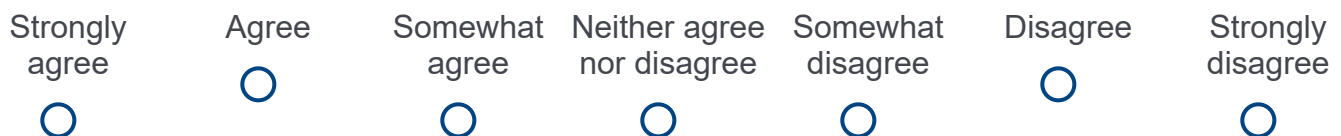
The criteria for selecting the evidence were clearly described.



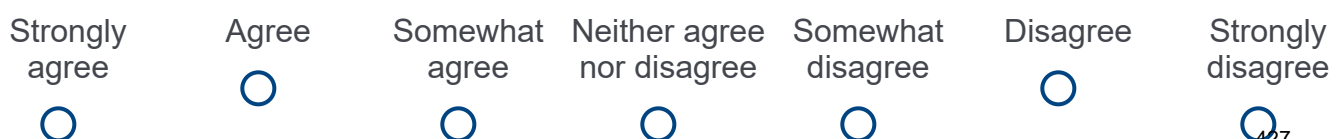
The strengths and limitations of the body of evidence were clearly described.



The methods for formulating the guideline document were clearly described.



The international implications have been considered in formulating the guideline document.



There is an explicit link between the recommendations (court accommodations) and the supporting evidence.

Strongly agree	Agree	Somewhat agree	Neither agree nor disagree	Somewhat disagree	Disagree	Strongly disagree
<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Are there any comments or feedback you would like to give regarding the rigor of development of the guideline document?

Domain 4 - Clarity of Presentation

Domain 4: Clarity of presentation

The recommendations (court accommodations) under GUIDELINE 1, '***The person should be allowed to use their “voice” using a communication method or mode of their preference throughout the whole legal process***', are specific (or clearly specified).

Strongly agree	Agree	Somewhat agree	Neither agree nor disagree	Somewhat disagree	Disagree	Strongly disagree
<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

The recommendations (court accommodations) under GUIDELINE 1, '***The person should be allowed to use their “voice” using a communication***

method or mode of their preference throughout the whole legal process', are easily identifiable.

Strongly agree Agree Somewhat agree Neither agree nor disagree Somewhat disagree Disagree Strongly disagree

The recommendations (court accommodations) under GUIDELINE 2, '**The person should be shown respect and treated with dignity by all persons involved throughout the legal process',** are specific (or clearly specified).

Strongly agree Agree Somewhat agree Neither agree nor disagree Somewhat disagree Disagree Strongly disagree

The recommendations (court accommodations) under GUIDELINE 2, '**The person should be shown respect and treated with dignity by all persons involved throughout the legal process',** are easily identifiable.

Strongly agree Agree Somewhat agree Neither agree nor disagree Somewhat disagree Disagree Strongly disagree

The recommendations (court accommodations) under GUIDELINE 3, '**The person should feel that all decisions are being made in a fair and neutral way throughout the whole legal process',** are specific (or clearly specified).

Strongly agree Agree Somewhat agree Neither agree nor disagree Somewhat disagree Disagree Strongly disagree

The recommendations (court accommodations) under GUIDELINE 3, '**The person should feel that all decisions are being made in a fair and neutral way throughout the whole legal process',** are easily identifiable.

Strongly agree

Agree

Somewhat agree

Neither agree nor disagree

Somewhat disagree

Disagree

Strongly disagree

The recommendations (court accommodations) under GUIDELINE 4, '***The person should feel that all legal practitioners can be trusted and that their decisions are easy to understand and in the person's best interest***', are specific (or clearly specified).

Strongly agree

Agree

Somewhat agree

Neither agree nor disagree

Somewhat disagree

Disagree

Strongly disagree

The recommendations (court accommodations) under GUIDELINE 4, '***The person should feel that all legal practitioners can be trusted and that their decisions are easy to understand and in the person's best interest***', are easily identifiable.

Strongly agree

Agree

Somewhat agree

Neither agree nor disagree

Somewhat disagree

Disagree

Strongly disagree

Are there any comments or feedback you would like to give regarding the clarity of the presentation of the guideline document?

Domain 5: Applicability

Domain 5: Applicability

The guideline document provides advice on how the court accommodations can be put into practice.

Strongly agree Agree Somewhat agree Neither agree nor disagree Somewhat disagree Disagree Strongly disagree

The potential resource implications of applying the court accommodations have been considered.

Strongly agree Agree Somewhat agree Neither agree nor disagree Somewhat disagree Disagree Strongly disagree

Are there any comments or feedback you would like to give regarding the applicability of the guideline document?

Domain 6: Editorial independence

Domain 6: Editorial Independence

The funders who have enabled this research were mentioned. Their views did not influence the content of the development of the guidelines.

Strongly Agree Somewhat Neither agree Somewhat Disagree Strongly

agree



agree



nor disagree



disagree



disagree



Competing interests have been recorded.

Strongly agree



Agree



Somewhat agree



Neither agree nor disagree



Somewhat disagree



Disagree



Strongly disagree



Are there any comments or feedback you would like to give regarding the editorial Independence of the guideline document?

Overall guideline document assessment

Overall guideline document assessment

Please rate the overall quality of the guideline document.

Exceptional



Excellent



Very good



Good



Fair



Poor



Extremely poor



I would recommend this guideline document.

Yes



Yes, with modifications



No



Do you have any final comments you would like to share?

Powered by Qualtrics

Appendix 5D- Qualtrics Pilot study online questionnaire (including consent and biographic information)

Consent

Thank you for agreeing to participate in the study: *Accommodating persons with severe communication disabilities in court: Using a holistic approach to guide key role-players.*

Please can you read and acknowledge the following:

I, hereby:

Agree that participation is voluntary and that I have the right to withdraw from this study should I wish to do so for any reason whatsoever without providing any explanation and without any negative consequences;

Agree to participate in an online survey;

Understand that there is a psychologist who is part of the research team and I can contact her during the research for debriefing sessions if need be;

Understand that I will at no stage during the research process be exposed to any harmful situations;

Understand that the content of the data and information will be handled with confidentiality and used for research purposes, to write a PhD thesis; conference presentations, journal articles, only;

Understand that the data will be stored for a period of 15 years in a safe place at the Centre for AAC, the University of Pretoria in South Africa for 15 years for archival purposes for future use of data;

The electronic data will be protected in a password-protected file.

Do you consent to participate in the study:

- Yes
 No

Biographic Information

Date of birth/ Age

Gender

- Male
 Female
 Prefer not to say
 Prefer to self-describe

Nationality (or country of residence)

Qualifications: Please specify.

Current work position, role or title

Number of years' working experience

- 1 - 5 years
- 6 - 10 years
- 11 - 15 years
- 16 - 20 years
- 21 - 25 years
- 25 and above

Please describe your experience with online work? (for example: survey development, content development, website development, online work management etc.)

Pilot study: CAGAT (Court Accommodations Guideline Appraisal Tool)

Pilot study: Court Accommodations Guideline Appraisal Tool (CAGAT)

Technical Aspects

Technical Aspects

1. Did the link to the CAGAT work effectively?

- Yes

No

2. Did the link work effectively on your specific device (laptop, mobile phone etc.)?

Yes

No

3. Could you please specify from which device you accessed the link from.

4. Did the link work effectively from your specific web browser on your device (for example Google Chrome, Internet Explorer, Safari etc.)?

Yes

No

5. Could you please specify from which web browser you accessed the link from.

Layout and visual representation

Layout and visual representation

6. Is the flow of the items presented in the CAGAT logical and easy-to-read?

Yes

No

7. Is the layout of the response item (The 7-point Likert scale) in the CAGAT appropriate?

- Yes
 No

Layout of CAGAT items

Layout of CAGAT items

8. Are the items (questions) in the CAGAT clearly instructed and ordered?

- Yes
 No

9. Are the instructions on the CAGAT clearly instructed and ordered?

- Yes
 No

10. Did you notice any spelling or language errors in the CAGAT?

- Yes
 No

General Aspects

General aspects

11. Was the length of the CAGAT appropriate?

- Yes
 No

12. Are the number of items in the CAGAT appropriate?

- Yes
 No

13. Was the line spacing used in the CAGAT sufficient enough to allow for easy reading?

- Yes
 No

Further suggestions

Further suggestions

14. Are there any comments, suggestions or feedback regarding the CAGAT you would like to add?

Powered by Qualtrics



February 2021

Dear Expert

REQUEST TO PARTICIPATE IN AN ONLINE SURVEY

I am currently a PhD candidate in Augmentative and Alternative Communication (AAC) at the Centre for Augmentative and Alternative Communication (CAAC) at the University of Pretoria in South Africa. In partial fulfilment for the requirements of this degree, I am required to conduct a research project. I would appreciate your consent to participate in this research in the form of a stakeholder review.

Research topic: Accommodating persons with severe communication disabilities in court: Using a holistic approach to guide key role-players

Aim of the study: The main aim of this study is to identify and develop guidelines for court accommodations that should be provided to persons with severe communication disabilities in order to participate in the legal system in an equal, respected way and achieve access to justice (irrespective of the role – witness, defendant or legal practitioner).

What will be expected from you as a participant? You will be asked to participate in an online survey. You will be required to read a 4-page document titled, '*Court accommodations for persons with severe communication disabilities*' and thereafter complete an online survey in Qualtrics. The researcher will send you a detailed email with clear instructions if you agree to participate. The guidelines will be attached to the email, and a link to the Qualtrics survey will be embedded in the email. The whole process should take you approximately 20 minutes. The online survey questions will be posted in the online platform called Qualtrics which you can access from your mobile or computer. You will not need to download any specific software and the email will be sent directly to the email address you have provided.

Risks and benefits of participants: You may withdraw from the study at any time without any negative consequences. If you agree to consent to your participation in the email online interview, your confidentiality will be ensured. Furthermore, the content of the data will be handled with confidentiality and used only for research purposes, conference presentations, journal articles and to write a thesis.

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Email saak@up.ac.za
www.caac.up.ac.za

Fakulteit Geesteswetenskappe
Lefapha la Bomotheo



Documents will be in safekeeping at the Centre for AAC, University of Pretoria for 15 years for archival purposes and for future use of data. The electronic data will be protected in a password protected file. Should the need arise, and you experience any potential distress related to the research, there is a psychologist who is part of the research team and who can provide debriefing sessions. Please contact us and we will assist you and set up a session using your preferred choice of an online platform.

If you require further information after reading this document, please feel free to contact anyone of us on the details below:

Phd Candidate:	Mrs. Robyn White
Contact details:	[REDACTED]
Supervisor:	Prof. Juan Bornman
Contact details:	[REDACTED]
Co- Supervisor:	Dr. Ensa Johnson
Contact details:	[REDACTED]

We trust that you will agree on the importance of this research project to help persons with communication disabilities to be able to access justice on an equal basis as others and furthermore, would appreciate your willingness to participate in this research project.

Kind regards

Robyn White
Researcher

Prof. Juan Bornman
Supervisor

Dr. Ensa Johnson
Co-supervisor

Appendix 5F - Qualitative feedback provided by participants on the CAGAT

Qualitative feedback from participants for each domain – CAGAT (Phase 3 – Quantitative test phase)

Theme	Sub theme (codes)	Statements
Domain 1 – Scope and Purpose (20)		
Engagement level during the guideline appraisal process	<ol style="list-style-type: none"> 1. Complimentary remarks 2. Edit language for clarity 	Generally well-done. However, in need of editing for clarity (#5)
Stakeholder customization for optimal use of guidelines	<ol style="list-style-type: none"> 1. Simplify layout and format 2. Design an 'easy read' version 3. Customise the guidelines for support persons and carers 4. Customise the guidelines for persons with severe communication disabilities 5. Include more examples and resources to enhance understandability 	The guidelines were designed for legal practitioners, to my understanding. A companion guide for persons with severe communication disabilities and their support persons (including carers) should be developed in Easy Read. The links to research was very informative but legal practitioners do not usually have the time and inclination to read those, many of which were academic in nature. Rather, examples such as the BenchBooks were of use to legal practitioners as these were practical in nature (#6)
The processes and members in the court system	<ol style="list-style-type: none"> 1 Define target audience (population) 2. Customise the guidelines for all relevant stakeholders 	I think you could be more specific in mentioning the people who need to use the court accommodations guidelines - from the security guards directing where people need to go right through to the clerks of the court and the legal professionals (#9).
	<ol style="list-style-type: none"> 1. Clarify the terminology 2. Clarify the populations disability type 3. Clarify the populations age 	The population is described but I don't think that you have captured how mental health can cause severe communication disabilities. I think that mental disorder could and should be mentioned under the list of Who is a person with a severe communication disability? Do you include ADHD? Also does the definition include young children? (#13)
	<ol style="list-style-type: none"> 1. Clarify the terminology 2. Clarify the populations disability type 3. Clarify the populations age 4. Clarify the populations severity of disability 5. Clarify the populations geographical location 6. Customise the guidelines for persons with severe communication disabilities 	This first definition is rather confusing - I'm not sure why speech and writing is in brackets if you are referring to spoken communication? But also, this description suggests the person cannot communicate at all, and although there might be some who are in this situation, that is not the majority of people who may need accommodations who come into contact with the justice system, or who might benefit from the ones you've suggested. A person who cannot make their wants or needs known by using spoken communication (speech or writing). Do you mean 'A person who cannot make their wants or needs known by using spoken or written communication'? Or would it be more helpful to say 'A person who has difficulty with making their wants or needs known by using spoken or written communication' as this covers a much broader range of people. Many of the people I work with can manage to make their wants or needs known proficiently in some contexts, but it is the highly complex, linguistically demanding context which is challenging for them. Why is 'too' at the

	<p>7. Customise the guidelines for witness with disabilities</p> <p>9. Customise the guidelines for the accused or defendant with disabilities.</p> <p>10. Consider the legal process: Legal capacity and competency of the individual</p> <p>11. Consider the legal process: existing court procedures</p> <p>12. Consider legal practitioners' lack of knowledge and experience</p> <p>13. Simplify layout and format</p> <p>14. Edit language for clarity</p> <p>15. Design an 'easy read' version</p> <p>16. Customise the guidelines for the family and support persons</p> <p>17. Consider the legal process: decision making</p> <p>18. Consider the legal process: procedural guidelines</p>	<p>end of this point? Do you mean to? A person who may or may not have difficulty in understanding certain words and when being spoken too.</p> <p>This document appears to be primarily considering the needs of complainants/witnesses (although it states it is about defendants too). In my experience, many people on both sides of the court may present with difficulties. Actually, we sometimes assist the same individuals who in one matter might be the 'victims' and in other matters, the 'accused'. Has the situation of the accused/defendants also been considered, as that didn't come across very strongly in the recommendations provided? The other major point we experience is that an individual may not consider they have any communication needs themselves and that communication needs are often unrecognised, misunderstood, or misattributed to other causes. I'm not sure if you are considering only those with known, diagnosed difficulties, or the majority who are unlikely to have their needs known or understood. Legal professionals may need to know that people might have many different factors impacting on their communication and these might not have been formally or accurately recognised. I also think that many processes relating to capacity/fitness are relevant when people have severe communication challenges. Will those be covered? Who decides whether someone is 'above the bar' enough is likely to differ in different legislations, but how much the accommodations are likely to be useful or relevant will really depend on the communication issues involved in the legal matters, and the level of difficulty experienced by the individual. People might try to employ many of the accommodations suggested here without success if the person has a very severe difficulty and application of the relevant processes might need to be considered. Often an alternative pathway for managing the person's legal matter might be relevant but these decisions are extremely complex and must be carefully handled by people with the necessary knowledge and expertise, and within processes that are carefully applied. We need to make sure that all is done to accommodate an individual's needs, but sometimes accommodations might not be sufficient for the legal process concerned. I think the style of this document is difficult to follow for anyone who is not a well-educated professional - words like 'thereby' 'said individuals' etc are complex and a much easier to understand style could perhaps be useful here. I doubt it would be understood by anyone with a communication difficulty themselves but is an appropriate 'communication accessible' version being considered? I'm not sure that family members or non-legal professionals themselves would be able to understand the document which might be fine, as they might not be the intended audience, but I think that reviewing the style and considering how it might be easier to understand might enable the document to be useful to a potentially broader audience. Some words and phrases might not make sense to non-disability professionals e.g. receptive and expressive skills and styles. There are a number of typos (mainly grammatical non-agreement but also missing words e.g. 'spoken to' - to was missing), unclear wording - 'courtesy manner', 'court's motives (I wasn't sure what that referred to) and 'proper questioning' (I wasn't sure what that meant), and unnecessarily complex grammatical structures used at times. I don't know what 'use a victim statement for victims' is referring to.(#14)</p>
	<p>1. Clarify the terminology</p>	<p>Consideration might be given to reframing the opening sentence to state that the guidelines provide information about the accommodations that are necessary to allow persons with severe communication disabilities to **meaningfully** access the legal system. The inclusion of the word</p>

	<p>2. Consider the legal process: Specific countries and jurisdictions</p> <p>3. Consider the legal process: procedural guidelines</p> <p>4. Clarify the populations geographical location</p> <p>5. Edit language for clarity</p> <p>6. Design an easy read version</p> <p>7. Simplify layout and format</p>	<p>""meaningfully"" emphasises that - while these individuals are not positively prohibited from accessing the legal system at present, they are indirectly prevented from getting this access (i.e. there is no effort to meaningfully allow them to access the system). The intended geographical focus of the guidelines is not clear from the ""Purpose"" paragraph. Are these guidelines intended to be used only in South Africa? Or are they intended for wider application? If the latter is intended, it will be important to recognise that these guidelines may needed to be adapted from different procedural systems and legal cultures. It might be useful in this regard to explain that the guidelines are global recommendations which will need to be adapted in accordance with national constitutional provisions, due process safeguards, human rights norms etc (#15)</p>
	<p>1. Complimentary remarks</p> <p>2. Consider the legal process: existing court procedures</p> <p>3. Language editing and clarity</p> <p>4. Customise the guidelines for persons with severe communication disabilities</p> <p>5. Customise the guidelines for families and support persons</p> <p>9. Design an 'easy read' version</p> <p>10. Define target audience (population)</p>	<p>Many excellent aspects of the guidelines -- overview, examples, focus on communication. Several comments: 1. The boundaries of accommodations are not clear--rules of evidence still apply and accommodations must abide by them. The crux is how to apply accommodations in ways which adhere by the core principles of evidence law and do not violate the rights of the other side. There is a great need to delineate what's within and what's outside of the boundaries, otherwise judges, lawyers, and police investigators will push back (and rightly so). For example: the neutrality of intermediaries, that they cannot speak for the person, how not to lead the witness, etc. -- are essential. If the guidelines are intended for everyone (it wasn't clear to me to whom they are intended) then they lack that aspect. 2. I wasn't convinced by the four categories (voice, dignity, decisions) etc. The connection between the titles and the break down into types of accommodations wasn't clear to me-- doesn't help better understand types of accommodations. And a specific comment: the ""best interest"" test (4th category) is being phased out--it stands in stark contrast to autonomy, will and preference and the rest of the values espoused in the table. 3. At the end of the guidelines it says that the guidelines are aimed at people with communication disabilities and their families. However, as written and presented, these guidelines seem to target professionals. If for the people themselves and families--the type of information would be different (#18).</p>
	<p>1. Consider the legal process: Specific countries and jurisdictions</p>	<p>Israel as a developed country, with the special law "The Law for Investigation and Testimony (Adjustments for People with Disabilities), 2005 " was not mentioned. (#19)</p>
	<p>1. Language editing for clarity</p> <p>2. Define target audience (population)</p>	<p>Could perhaps be more tightly worded in terms of how you intend them to be used - are they for disabled people/families/advocates to demand their rights or identify when their rights in the courtroom are not being observed? Or are they a reminder for legal practitioners of their obligations? Or are they intended to do both? (#20)</p>
	<p>1. Clarify the terminology</p> <p>2. Define target audience (population)</p> <p>3. Consider the legal process: existing court procedures</p>	<p>The document refers to accommodations for 'severe' communication difficulties. In our experience in the UK, this is inappropriate - the word 'severe' should be omitted because, for example: a) it is difficult for justice system to apply this definition. In our experience (where the English Home Office and Ministry of Justice misinterpreted intermediary legislation on its introduction is applying only to the most extreme cases) will encourage justice system professionals to apply the guidance only to the</p>

	<p>4. Clarify the populations age 5. Clarify the populations disability type 6. Clarify the populations severity of disability 7. Edit language for clarity</p>	<p>most obvious and extreme cases, b) even 'severe' communication difficulties may be hidden , c) even people with communication needs which may not be perceived as 'severe' are disadvantaged in the conventional approaches of the justice system, including cross-examination. What about children who are normally developing but are disadvantaged because of their age? The guidance refers to the person feeling that all legal practitioners 'can be trusted' and that their decisions are 'in the person's best interests'. I understand the aim here but the way to is set out is unrealistic and misleading, given the objectives and practice of an adversarial legal process. The defence's decisions will always be in the best interests of the defendant - not a vulnerable prosecution witness - within any constraints imposed by the court in the interests of justice. Even the vulnerable witness's interests must accord with the overall interests of justice. For more suitable wording about what is expected of advocates and judges, please see the Equal Treatment Bench Book for England and Wales and the 20 principles of questioning set out by the Inns of Court College of Advocacy - advocacy and the vulnerable (crime) course - free on its website. (#21)</p>
	<p>1. Clarify the terminology 2. Define target audience (population)</p>	<p>I am puzzled as to why 'severe' is necessary - all persons with communication disabilities should be included in provision of accommodations, regardless of perceived or actual degree of disability.(#22)</p>
	<p>1. Consider including persons with disabilities themselves when developing procedural guidelines</p>	<p>No but i would like to include the engagement of persons with disabilities in developing and guideline or document (#23)</p>
	<p>1. Clarify the terminology 2. Define target audience (population)</p>	<p>4 guidelines around 'defining' a person with a severe communication disability could be clearer - one aspect says the person 'may or may not' have difficulty (#24).</p>
	<p>1. Clarify the terminology 2. Define target audience (population)</p>	<p>I would recommend a little more clarity around what qualifies as a "severe communication disability". Particularly, providing an example for, "A person who may or may not have difficulty in understanding certain words and when being spoken too (#25)</p>
	<p>1. Clarify the terminology 2. Define target audience (population)</p>	<p>I have concerns about using the phrase "severe communication disability" as it is a subjective and dependent on an individual's definition / perception of severity. Any disability that affects communication can have a significant impact on a victim/witness / accused person's communication within the justice system (#27)</p>
	<p>1. Complimentary remarks 2. Design an easy read version</p>	<p>Well set out. Easy to read and understand the various points highlighted in the document (#28)</p>
	<p>1. Complimentary remarks</p>	<p>the guidelines are very thorough. Not surprisingly, many of the issues are similar to those that we are grappling with in Australia (#30)</p>

	<ul style="list-style-type: none"> 1. Edit language for clarity 2. Clarify the terminology 3. Design an easy read version 4. Define target audience (population) 	I wonder if the language could be in easier English. I suggest you could do this by breaking down long sentences into several sentences. The second point under 'who is a person with a severe communication disability does not make grammatical sense (#31)
	<ul style="list-style-type: none"> 1. Simplify layout and format 	I found the format and layout a bit difficult initially. it was easier on the second read. (#32)
	<ul style="list-style-type: none"> 1. Complimentary remark 	i think they were broad enough to apply to people with different disabilities and recommended are very useful for a broad section of a vulnerable population (#34)
Domain 2 – Stakeholder engagement (15)		
	<ul style="list-style-type: none"> 1. Include more examples and resources to enhance understandability 	Without hyperlinks for Groups 3 and 4 it is unclear who participated in these groups. I assume that there are papers in press that will be hyperlinked in due course (#13).
	<ul style="list-style-type: none"> 1. Edit language for clarity 	I'm not sure about how to answer the first two - it does state that relevant stakeholder opinion has been sought so I assume it has been, but I'm not sure whether I'm reviewing the document after this consultation has been considered and helped shape the document, or whether that is underway and a different iteration will then be created. (#14)
	<ul style="list-style-type: none"> 1. Edit language for clarity 2. Include more examples and resources to enhance understandability 3. Consider including persons with disabilities themselves when developing procedural guidelines 	It is not clear from the guidance document that the guidelines were drawn up in contemplation of feedback from persons with lived experience of severe communication disability. The national expert panel does not appear to have included such an individual and we do not have access to the composition of the international panel. This is not an issue in itself but it might be useful to state this point clearly (perhaps in a footnote) if it is indeed the case that the work did not empirically engage with persons with lived experience of this condition (#15)
	<ul style="list-style-type: none"> 1. Edit language for clarity 	I was unable to ascertain whether the views of persons with severe communication disabilities were sought when developing the guidelines. (#16)
	<ul style="list-style-type: none"> 1. Simplify layout and format 	I was not part of this study and do not know anything about stakeholder engagement in this case. I could only answer the first question about the kind of stakeholder engagement I think should take place. I noted that I agree that the individuals who will benefit from the guideline document were clearly defined, but as I noted -- I didn't think that the format of this document was suited for the purpose. It seems geared to a professional circle.(#18)
	<ul style="list-style-type: none"> 1. Simplify layout and format 2. Edit language for clarity 3. Design an 'easy read' version 	I'm not sure how you got feedback from stakeholders with severe communication disabilities as the document states - as the document is quite densely packed and written at quite an advanced level. Were they stakeholders with severe expressive communication difficulties but high cognitive level of functioning therefore high receptive language? Which would be quite different from stakeholders who have difficulties with both expressive and receptive language due to e.g. severe learning disability. This group I imagine would find it hard to access this document and would need an easy read version produced with symbols/images and fewer words (#20)

	1. Complimentary remark	I don't feel able to comment but knowing the author I have no doubt that relevant stakeholders were properly included (#22).
	1. Consider including persons with disabilities themselves when developing procedural guidelines	Just to follow up with persons with disabilities where possible around their experiences (#23)
	1. Edit language for clarity	Under acknowledgments, stakeholders with severe communication disabilities were noted for commenting on feasibility and clarity. These individuals were not noted in the development of the guidelines section. I would mention their involvement earlier (#25).
	1. Edit language for clarity 2. Include more examples and resources to enhance understandability 3. Consider including persons with disabilities themselves when developing procedural guidelines	I could not find this information - is it embedded in the hyperlinked articles? If so, I suggest that it could be extracted and provide a link to articles for more information. Did the stakeholders include people with a wide range of communication profiles and needs? Did it include professionals from comm disability sector; trained communication intermediaries; police, legal and justice professionals, victim witness services? Did the legal professionals have specific training in comm disabilities? Did they know what they don't know? I apologize if I missed seeing this information. I also think it would be useful to link to a list of the experts - and their professional roles - I couldn't find this (#27).
	1. Complimentary remarks	Data sources used seem to be adequate and relevant in informing the development of the guidelines (#28)
	1. Procedural consideration for Consider including persons with disabilities themselves when developing procedural guidelines	Was a witness with a disability included apart from the legal practitioners in this study? (#29)
	1. Edit language for clarity 2. Include more examples and resources to enhance understandability 3. Consider including persons with disabilities themselves when developing procedural guidelines	It is not clear whether people with disability themselves were involved in the development process. The views of people with disability could have been captured in the scoping review, however it is not clear whether they were. Did the expert focus group with South African and international experts include people with disability? It appears from the list that the only people with disability who were included were legal practitioners with disability (#31).
	1. Consider including persons with disabilities themselves when developing procedural guidelines	Although challenging and also legal professionals with disabilities were included, I think participation with persons with disabilities who are not legal professionals could be useful, especially those who may have been through the legal system. (#32)
	1. Consider including persons with disabilities themselves when developing procedural guidelines	The document says that interviews were conducted "with legal practitioners with disabilities." The document does not say that interviews were conducted with individuals with disabilities who have had experiences in the court system and who are not legal practitioners. There are also other stakeholders who may not have been involved. I did not read the linked documents, so I don't know

	<p>2. Edit language for clarity 3. Include more examples and resources to enhance understandability</p>	<p>the information that is in them. Also, the nature of the experts is also not described in the guideline document (#35).</p>
<p>Domain 3: Rigor of Development (14)</p>		
	<p>1: Consider the legal process: Specific countries and jurisdictions 2: Consider the legal process: existing court procedures</p>	<p>This is coming from the perspective of a criminal defense attorney in the United States. Many of the accommodations for persons with communicative disabilities do not address the actual communication disability itself. Many of them address the stress of actually being present as a witness, accused, or victim in court and try to alleviate for people with disabilities where it is otherwise not allowable for people who do not yet have disabilities. Specific examples:</p> <ul style="list-style-type: none"> - Victim Statement (fine for sentencing, but not in lieu of testimony in the US) - Support Person (fine if the person is assisting with communication, but not generally okay if just for emotional support.) - Testify behind a screen (So this happens to shield the accuser from the accused (in the case where the PwD is an alleged victim), but the jury, judge, and attorney questioning needs to see the person.) - Testify via live video/television link (See the above comment - in the United States, we have the right to confront our accuser and this can be complicated with testifying remotely.) - Testify without the defendant present in the courtroom, and only the defense attorney present (This presumes that something happened and that the PwD is not lying - something people with and without disabilities do. It's not allowed with persons without disabilities and shouldn't be allowed for persons with disabilities. A screen shielding or distancing the accuser from the accused (when PwD is an alleged victim) is sufficient here. - Testify in the judge's chambers. (See all the above commentary on being able to ""confront"" the person in the US) - Testify outside the courtroom. (See above) - Remove official attire. (Not sure the reasoning on this - maybe official attire is intimidating? The official attire is good for establishing respect and boundaries with the court and I'm not seeing a compelling need for removal.) - Prohibit personal cross-examination by accused or defendant themselves in cases where they represent themselves. (No, no, no, no, no. At least in the United States, people have the ability to represent themselves. Judges and prosecutors keep a short rein on defendants being inappropriate when questioned. Yes, this is super scary and intimidating for everyone, but it's about allowing people with disabilities to communicate - not shielding them from the unpleasant necessities in court altogether where others without disabilities are not shielded.) It's clear a LOT of great effort went into these guidelines to be as protective as possible. If my criticism is found warranted by you (probably not based on how late in the process you are), just look to sort out what is unrelated to the disability and the ability to communicate. People with disabilities who struggle with communication just speak a language the rest of us can't easily understand without an

		interpreter/assistance. With an interpreter/assistance and patience, they can communicate like an individual speaking a foreign language. (#4)
	1. Include more examples and resources to enhance understandability	Should have provided what prior published research that was used to develop or inform the guidelines, and perhaps even provide a link to the references used (#5).
	1. Include more examples and resources to enhance understandability 2. Edit language for clarity	I think the "how" is very clear, but the "why" (e.g. why did you select the specific methods, or specific population) as well as the strengths and limitations of the approach that you used could be more clearly described in this document, if that is information that you think would be valuable to include in it. I will however say that I didn't notice that information about this was lacking when reading the guidelines, so it might be a case of having limited space and therefore choosing to not include some information (#8).
	1. Edit language for clarity 1. Include more examples and resources to enhance understandability	I am struggling to find the evidence base that was used. Was this the material described in the Additional Resources? If so, I cannot see why these papers were selected and others not selected. For example, there are many published papers about intermediaries from the UK and Australia / New Zealand that are not referenced. Likewise, the selected caselaw examples. Why were these selected and others omitted? (#13)
	1. Edit language for clarity 2. Consider the legal process: procedural guidelines 3. Include more examples and resources to enhance understandability 4. Simplify layout and format 5: Consider the legal process: Specific countries and jurisdictions 6. Clarify the guidelines for geographical location	Owing to the nature of a guideline document, it was always going to be a challenge to include detailed evidence to support the recommended guidelines. This is apparent in the current draft of the guidelines and the document does not make it clear why the four principles were selected. The only information is that these principles were distilled from the interaction of four data sources. The individual insights/evidence which emerged from each data source are not revealed. Nor are the weaknesses associated with the evidence from these sources identified. This is understandable given the brevity of the document. Perhaps these issues can be more fully explained in an accompanying academic article? There is also a need to more carefully locate the recommendations in an international context - perhaps include a statement acknowledging that some principles may need to be adapted to fit the normative and procedural structures for different jurisdictions.(#15)
	1. Include more examples and resources to enhance understandability	I found this hard to do, not having access the full procedure. The article on the scoping review was not accessible to me. #16)
	1. Edit language for clarity	I wasn't sure what was being asked and maybe I'm not the relevant audience for these questions as I do not know the process of the development of the document and couldn't answer. I was able to access some of the links provided, but some links led only to an abstract.(#18)
	1. Edit language for clarity	The international relevance could be specified in the document, especially since the involvement of a South African focus group is highlighted and perhaps a perception among some quarters that this

	<p>2. Consider the legal process: Specific countries and jurisdictions</p> <p>3. Clarify the guidelines for geographical location</p>	<p>might mean it is only relevance in the South African context when actually the CRPD link means it is relevance across international contexts. (#24)</p>
	<p>1. Include more resources and information</p>	<p>I am not sure I have the information you are referring to here - in the AJOD paper it refers to 8 legal professionals providing email input and presentations.... what skills / trainings did this group have in identifying and providing communication accommodations? (#27)</p>
	<p>1. Consider including persons with disabilities themselves when developing procedural guidelines</p>	<p>The various data sources used seemed to yield the information needed to develop the guidelines. Persons with disabilities however do not seem to have been used in a focus group to gain their insights in court experiences? Only legal practitioners with disabilities?" (#28)</p>
	<p>1. Consider including persons with disabilities themselves when developing procedural guidelines</p>	<p>As discussed previously I think people with disabilities as stakeholders could have been better represented. (#31)</p>
	<p>1. Language editing and clarity</p> <p>1. Consider including persons with disabilities themselves when developing procedural guidelines</p>	<p>I repeat my earlier statement about consulting with persons with disability especially older children. in column 2 on page 2 there is a correction needed: "when they are treated in a courtesy (should read courteous) manner. (#32)</p>
Domain 4: Clarity of presentation (20)		
	<p>1. Edit language for clarity</p>	<p>The use of the phrase "the person should feel" is difficult and perhaps impossible to assess since it is difficult to assess/identify how a person feels (#5).</p>
	<p>3. Edit language for clarity</p>	<p>A person's best interests is usually a term utilised for children. It should be avoided in relation to adults with disabilities as it can be seen as patronising. Also, the legal term 'best interests' has a particular meaning where another person makes decisions for that person. Adults with disabilities should make decisions for themselves or to be supported to exercise their legal capacity to do so. Rethink the use of the term 'best interests'. (#6)</p>
	<p>1. Edit language for clarity</p> <p>3. Clarify the terminology</p>	<p>Regarding number 2: the concept of ""respect"" is very complex, being individual, cultural, and social related. How is it possible to deal with the verification of such a complex concept? The sentence ""the person should feel"" is somehow critical to me. How is it possible to assure a feeling? Wouldn't be better to reformulate this sentence, to allow a more scientific verification of the respect of these recommendations? (#7)</p>

	<p>1. Edit language for clarity 1. Include more examples and resources to enhance understandability</p>	<p>Under Guideline 4, accommodation 1 says: "Use appropriate and proper questioning strategies." This to me is a bit unclear- what are does strategies? Maybe there is a need for an example, or perhaps if a legal practitioner reads that sentence it is clear to them what appropriate and proper questioning strategies mean. Just something to think about(#8).</p>
	<p>1. Edit language for clarity 2. Clarify the terminology 3. Customise the guidelines for persons with severe communication disabilities 4. Define target audience (population) 2. Design an easy read version</p>	<p>The guideline document needs language editing. The link between the heading of each of the four guidelines and the recommendations are not always that clear. The audience of your guideline should be clearly specified, and the language adapted accordingly. For example, a magistrate or judge can receive a guideline document which would have to be simplified if given to the people at reception in the court (#9).</p>
	<p>1. Edit language for clarity 2. Clarify the terminology 3. Consider the legal process: existing court procedures</p>	<p>I am not sure that it is solely communication that goes to the heart of a person feeling that all decisions are being made in a fair and neutral way. Yes, it is most certainly helpful, but a person can still feel that the process and decisions are unfair even if they understand it. It is not clear to me how 'personal bias or views that could influence choice or opinion should not be allowed'. How is this going to be managed? (#13)</p>
	<p>1. Edit language for clarity 2. Define target audience (population) 3. Customise the guidelines for persons with severe communication disabilities 5: Consider the legal process: Specific countries and jurisdictions</p>	<p>I'm not sure what you're asking with this set of questions - do you mean - is it easy to find the 4 points and the subpoints on the document? If that is what you're asking, then, yes, that is clearly laid out on the page (and that is what I meant when I responded by 'agree' responses above). I wasn't sure what this meant: Allow witness, support, preparation and profiling program (court preparation programme). I think the commas are confusing (#14).</p>
	<p>1. Edit language for clarity 2. Clarify the terminology 3. Consider the legal process: Specific countries and jurisdictions</p>	<p>The third principle concerning ""fairness"" is somewhat vague. It is based on a court user subjectively interpreting the procedure as being fair - this may be impossible to achieve (as it is contingent on convincing a court user's uncontrollable opinion). Also the notion of fairness may differ depending on the status of the person with a disability - what is fair for a victim is different to what is fair for an accused. The accused has the benefit of a presumption of innocence, a right to silence etc. Consideration should be given to rewording this guideline so as to make it clear that it only refers to matters with the judge's/prosecutor's/court service's control and that you do not wish to guarantee fairness in all aspects of the trial (this would be impossible in a jury trial, for instance, where a judge has no control over the verdict). Consider therefore limiting this guideline to the treatment of requests</p>

		for special measures (i.e. that the judiciary will consider all requests for accommodation objectively). With respect to guideline 1, it is also worth noting that in many common law countries (which subscribe to an adversarial model of justice), it may not be possible for a victim to have a ""voice"" at trial. They will only get to speak if summoned as witnesses. In these jurisdictions, victims often only get to speak at the post-trial stage when an offender is being sentenced.(#15)
	1.Edit language for clarity 2. Clarify the terminology	I was unsure about the functional assessment - what is meant here? Is it a capacity assessment? What about facilitated communication - how will the guidelines help to prevent the use of methods that are open to abuse and can lead to wrong convictions? On that point #4 under the fourth guideline may require rewording or explanation.(#16)
	1. Edit language for clarity 2. Clarify the terminology 3. Consider the legal process: procedural guidelines	I wrote agree -- with two caveats: 1. The actual numbered recommendations are clear and helpful, but I didn't see a connection between them and each of the categories, titles, etc. What relates the list under ""dignity"" specifically to ""dignity"" and not to ""fairness"" etc. 2. As I wrote above, there is no guidance on how to apply these accommodations. Issues of neutrality, not speaking for the witness, not leading the witness; some clarification about the difference between ""support person"" and ""intermediary""; what is ""expert professional"" and for what purpose; what are potential traps to beware of? 3. I wrote above, ""best interests"" is not a helpful test here; it is what the person's will or preference is (or dignity, equality).(#18)
	1. Simplify layout and format 2. Clarify the terminology	the section 4 should be before section 2,3 or should be the first. the most important accommodation is that the person with the disability will understand what is spoken to him (#19).
	1. Clarify the terminology	The term 'in the person's best interests' doesn't entirely fit with UNCRPD and should be replaced by 'will and preference' - this may add a further step, but is important (#22).
	1. Complimentary remarks	I think the guideline document is clear and easy to read and understand (#23)
	1. Complimentary remarks	Great to see link to CRPD and clear recommendations and guidance here. This will be so useful.(#24)
	1. Clarify the terminology 2. Include more examples and resources to enhance understandability	I have trouble understanding the categories and lists - I think more info is needed on how to identify and provide accommodations and supports. Important to state that comm accommodations address an individual's needs in understanding information, retaining, problem solving and expressing messages. These are usually practices, tools and assistance (informal and formal) (#27)
	1. Consider the legal process: Specific countries and jurisdictions 2. Consider the legal process: existing court procedures	Guideline 3 is the unpredictable in this scenario. A legal practitioner with experience in working with pwd would be the ideal person in this scenario. However, in our country that is impossible in the majority of cases, if not most of the cases due to the lack of legal practitioners with experience in working with pwd and more so persons with severe communication disabilities. What will the objective, legitimate criteria be in the instance of persons with CCN? How will bias and views that could influence choice or opinion be guaranteed? In many instances (or most cases) this is based on stereotypes, myths, attitude and knowledge about pwd...subjective opinions and experiences? (#28)
	Consider the legal process: existing court procedures	The use of intermediaries should ideally begin with police interview, as the point of largest attrition of reports is at the investigation and reporting stage. Waiting to introduce intermediaries at court, is too late (#30).
	1. Complimentary remarks	I think the presentation of the guideline document is very clear and engaging (#31)
	1. Simplify layout and format	the print is small and dense. I found the layout a little difficult. (#32)

	1. Edit language for clarity 2. Clarify the terminology	I was not sure how to answer the items regarding ""easily identifiable"" because I wasn't sure what that meant. The recommendations are visually easy to identify on the page, if that is what is meant. I noticed that there are some proofreading-type errors in the guidelines document.(#35)
Domain 5: Applicability (14)		
	1. Edit language for clarity	Should be carefully edited for clarity. (#5)
	1. Consider the legal process: Specific countries and jurisdictions 2. Consider the legal process: existing court procedures 3. Customise the guidelines for all relevant stakeholders	It may be advisable to acknowledge in the guideline document that court accommodations are not always legislated or in regulations and court rules and that these should be requested by the legal practitioner and are often subject to the discretion of the judicial officer. In children's court proceedings there is almost never a lawyer present. Social workers often investigate a family's circumstances and report to the court on the best interests of the child in question. Therefore the social worker does not 'represent' or often care for the justice participation needs of the adult with the disability.(#6)
	1. Complimentary remarks	It is a very well put together resource which I believe would be useful in practice.(#10)
	1. Consider limited training provided to legal practitioner	I think that an important resource to be considered is the ongoing training, both initial and refresher training, required for all members of the judiciary, all lawyers and all court staff. It is a big project that will require expertise to both write and deliver the training programme.(#13)
	1. Edit language for clarity 2. Include more examples and resources to enhance understandability 3. Consider providing training to legal practitioners 4. Consider lack of practitioners knowledge and expertise 5. Consider the legal process: Cost and resource implications	It is a highly complex process to put into place such accommodations - assessing who needs them, which are relevant, and then practically, how to make them happen in very complicated communication contexts is difficult. I think this is acknowledged in the guideline, but perhaps more needs to be made of this. Being successful in implementing accommodations depends on a wide range of stakeholders sharing a common understanding of the issues, being willing to implement a different approach, and then figuring out how to practically implement the accommodations, so I think this is a big challenge here! That doesn't mean we should make every effort to do this, but I think the guidelines need to sit alongside developing stakeholder knowledge and skills, and developing appropriate processes. This is a big job with enormous implications for resource allocation and availability of an appropriately highly-skilled workforce.(#14)
	1. Consider the legal process: Cost and resource implications 2. Consider the legal process: Specific countries and jurisdictions 3. Consider providing training to legal practitioners	The resource implications are not the only challenge to implementing these guidelines. Different countries will have to carefully consider how the introduction of these supports will challenge accepted assumptions around the ingredients that are necessary for a fair trial. Training will also be of fundamental importance.(#15)

	1. Consider the legal process: Specific countries and jurisdictions	I think the individual national legal systems of each country would need to be considered in interpreting and applying the guidelines. (#16)
	1. Include more examples and resources to enhance understandability 2. Consider the legal process: Procedural guidelines	The guideline is clear on what should be done, but more is needed on the how. That doesn't mean to say that it's not an important document, it is; however, more is needed to develop the question of 'how' it will be applied (#22).
	1. Consider the legal process: procedural guidelines 2. Clarify the geographical location	Should be applicable across international contexts and of course the same principles apply (#24)
	1. Customise the guidelines for persons with severe communication disabilities	I think it is important, as the document notes, that these are guidelines and best practices, and that it is important to take an individualized approach and tailor these recommendations to the specific needs of the individual. (#25)
	1. Consider practitioner's lack of knowledge and expertise 2. Consider providing training to legal practitioners	I think police, legal and justice professionals need to know how to recognize a potential comm disability (many are invisible) and when and how to have a communication intermediary engaged to assess and define the supports that a person needs. I don't think they have sufficient knowledge and skill to provide these supports in high risk situations (#27)
	1. Consider the legal process: Specific countries and jurisdictions	Guideline 1: Point 5. Recommended term is ""Victim Impact Statement"" (used at sentencing stage of the trial) and versus the SAPS Statement articulating the crime. Guideline 2: Point 7 and 9 This will not happen in SA. it is the accused constitutional right to be present. CPA does not provide for this. However it does provide for Protective measures such as Sec 153 (in camera proceedings) and sec 154 (prohibition of publication of certain information relating to information to criminal proceedings. Sec 158 (CCTV) and sec 170A use of an intermediary. These protective measures are for children and adults upon application by the prosecutor and a report by a professional. Guideline 3: Point no 4. this will not be applicable in SA for the same reasons as per Guideline no 2. protective measures are applicable (#29)
	1. Consider providing training to legal practitioners 2. Consider the legal process: Specific countries and jurisdictions	applicability worries me. For persons, especially children, without disabilities the court process and context is seldom ideal in terms of an enabling environment, and I do not believe are always protected adequately when they come to court to testify despite our legislation and the spoken commitment of government. there will be a need to train all court officials on the accommodation (both practical and figurative on these guidelines and to assist in the development of an empathic, facilitating and supportive approach (#32)
	1. Consider the legal process: Specific countries and jurisdictions	Some of the recommendations may conflict with laws that govern court cases (or may raise the possibility of conflicting with laws that govern court cases or certain types of court cases)--for example, laws that may exist regarding confrontation in court.(#35)
Domain 6 – Editorial Independence (9)		

	1. Include more examples and resources to enhance understandability	It seems impossible to answer these two questions satisfactorily without any idea other than the statement on page 3 of the PDF (#13)
	1. Include more examples and resources to enhance understandability	I don't know - I have only looked at the guideline document which states that their views did not influence the content and that competing interests have been recorded, but I have no way of ascertaining whether this is accurate information. I haven't had time to read the accompanying research papers where this information might be found. (#14)
	1. Complimentary remark	Re 1st question - funders were mentioned, but I am unable to comment on the 2nd statement other than that it was stated to be so. (#16)
	1. Include more examples and resources to enhance understandability	I wasn't a part of this so don't have an opinion on this (#18)
	1. Include more examples and resources to enhance understandability	Re the above answers - I don't feel qualified to say. However, knowing the author I have no doubt all work has been undertaken properly (#22)
	1. Complimentary remark	It seems to be fair, sound and objective (#23)
	1. Include more examples and resources to enhance understandability	unable to comment on these questions as more information would be required (#30).
	1. Complimentary remark	Competing interests : although I marked agree, we are dependent on the openness of the document on competing interests. but yes it appears that they have been recorded (#32).
Overall assessment (21)		
	1. Complimentary remark 2. Consider the legal Process: Specific Country and jurisdiction 3. Include more examples and resources to enhance understandability 4. Consider the legal process: procedural guidelines	I've shared a lot with regards to the right to confrontation and the legal process in the United States. Something that I can't remember if it made it into the book is the concern about someone ""interpreting"" communications making up answers on behalf of the persons with disabilities. It may be worthwhile in either this guidance or in other linked guidance to suggest an answer for that. Ask the question of the person with disabilities with the assisting person absent. Bring the assisting person in and then have them ""interpret"" the answer. This ensures that the assisting person is truly just interpreting the answer and not supplying the answer. Do not take my criticism too hard. You are doing great and very important research. Keep up the good work! (#4)
	1. Consider including persons with disabilities themselves when developing procedural guidelines	Have a sample of key stakeholders read the guidelines document for accuracy and clarity. (#5)
	1. Complimentary remark	Congratulations on a very important and much needed guideline document. I anticipate that training will be required of justice personnel, as well as of attorneys and social workers on these measures

	<p>2. Consider providing training to legal practitioners</p> <p>3. Consider the legal process: Existing Court procedures</p>	<p>proposed. Law reform should be suggested to ensure some of these examples are regularised in court proceedings.(#6)</p>
	<p>1. Complimentary remark</p>	<p>I think the guidelines are very clearly described, and the layout of the document is nice. The additional resources that you have provided are very good and adds value to the reader. Good job! (#8)</p>
	<p>1. Consider the legal process: Specific Country and jurisdiction</p> <p>2. Include more examples and resources to enhance understandability</p>	<p>I am UK-based where we have special measures, however there is a lot of overlap with the recommendations in this doc in any case. I would possibly like more detail in places, but at the same time it is helpful that it is relatively brief. It would be good to have more signposts to where detailed guidance can be found on each of the specific guidelines (e.g., 'use an intermediary')(#10)</p>
	<p>1. Complimentary remark</p> <p>2. Include more examples and resources to enhance understandability</p>	<p>Thank you for the opportunity to participate. Thank you also for your ongoing commitment to raise awareness on these issues. At times my comments may seem critical but they are made with the best of intentions and to assist with the ongoing development of your work. Please continue with your extremely important research.(#13)</p>
	<p>1. Complimentary remark</p>	<p>I think this is a useful project to undertake, but more development is needed. (#14)</p>
	<p>1. Complimentary remark</p> <p>2. Consider the legal Process: Specific Country and jurisdiction</p>	<p>A very good attempt to produce a useful blueprint. Given the complexity of the area and the different procedural traditions of various countries, consideration should be given to narrowing the application of the guidelines to one specific country. This will ensure that they can be meaningfully tailored to make an impact in the chosen jurisdiction and they will be of persuasive authority in other countries who can learn from them and adapt them accordingly.(#15)</p>
	<p>1. Complimentary remark</p> <p>2. Customise the guidelines for persons with severe communication disabilities</p> <p>3. Define target audience (population)</p> <p>4. Design an easy read version</p>	<p>I would very highly recommend the guideline document. Absolutely essential and could be very very helpful. I'm happy to share further my suggestions in this document. First and foremost, to be clear whom this is targeting and then tailor this closer to that target audience. The rest would flow from that. For example, if the target audience is the people with disabilities themselves, then one doesn't have to send to other legal materials; one doesn't have to go into the legal aspects of the boundaries of accommodations; but then one needs to explain things much more simply and clearly and consider what is helpful for that particular target audience. If the audience is a professional one, then I think more of the dilemmas, boundaries, advice on how to work with these boundaries, is necessary. if the target audience is the judicial profession--then these guidelines need to address this issue from their perspective; knowing their concerns and the kind of pushback they are likely to have, how would we explain this issue to show them that their concerns are addressed? Etc.(#18)</p>
	<p>1. Complimentary remark</p> <p>2. Include pictorial support</p> <p>3. Design an easy read version</p>	<p>This is a useful and interesting idea. I would support the idea of an easy read format to accompany it as the text will not be accessible for people with severe learning disabilities, using PhotoSymbols or similar.(#20)</p>

	<ol style="list-style-type: none"> 1. Complimentary remark 2. Simplify layout and format 3. Design an 'easy read' version 	Three pages is a good size (longer documents are often left unread) - but the type is very small and there are wide margins. Would be worth spreading over four sides/two pages? Maybe consider an 'easy read' version? Well done, a valuable piece of work. (#22)
	<ol style="list-style-type: none"> 1. Complimentary remark 	I am pleased to see that there is a focus on disabilities as it is long overdue and sorely needed (#23)
	<ol style="list-style-type: none"> 1. Complimentary remark 2. Customise the guidelines for persons with severe communication disabilities 	Delighted to see this being developed and have no doubt it will be a very useful and accessible tool to support people with severe communication disabilities in accessing justice. A toolkit replicating this across impairment types is clearly an option as well. (#24)
	<ol style="list-style-type: none"> 1. Complimentary remark 	This document is terrific and extremely important. I would more clearly specify the role that individuals with severe communication disabilities earlier in the document. (#25)
	<ol style="list-style-type: none"> 1. Complimentary remark 	Good work !! (#26)
	<ol style="list-style-type: none"> 1. Complimentary remark 2: Clarify the terminology 	This is such a complex topic - while I commend you on this guideline - and I recognize it is a good start - I think what's missing is a clear description of what comm access is in a court and the scope of comm accommodations and supports that people may need ...how to recognize the need; and how to ensure the need is met through practices, tools and formal and informal assistance... and how a court can provide these accommodations. (#27)
	<ol style="list-style-type: none"> 1. Complimentary remark 	Well put together document. Easy to read and understand. Holistic approach to court accommodations is set out clearly and referring back to the data sources used. Limitations and strengths are acknowledged. (#28)
	<ol style="list-style-type: none"> 1. Complimentary remark 	The Guidelines will assist the Criminal Justice System and is a critical intervention. (#29)
	<ol style="list-style-type: none"> 1. Complimentary remark 	Lovely and important work (#31)
	<ol style="list-style-type: none"> 1. Edit language for clarity 2. Simplify layout and format 3. Customise the guidelines for all relevant stakeholders 	modifications suggested: Simplify language for non-English speakers. make the document easier to read rather than cram content into 3 pages, suggest that not all the information is necessary for all role-players. (#32)
	<ol style="list-style-type: none"> 1. Complimentary remark 2. Consider the legal process: Specific Country and jurisdiction 3. Customise the guidelines for the Accused or defendant 4. Consider lack of practitioners knowledge and expertise 	Thank you for the opportunity to look at this document and for your work on this important issue. It was very interesting. Depending on the jurisdiction, I think that one of the issues with some of the accommodations may be how the accommodations interact with rights that defendants in criminal cases have. There may also be issues with whether judges and other court personnel have the knowledge, skills, or access to resources, etc. to be able to implement some of the accommodations. (#35)



Faculty of Humanities

RECOMMENDATION REGARDING TITLES OF THESES/DISSERTATIONS/mini-DISSERTATIONS,

APPOINTMENT OF SUPERVISORS/CO-SUPERVISORS

THIS FORM MUST PLEASE BE TYPED AND SUBMITTED TO THE RESEARCH ETHICS / POSTGRADUATE COMMITTEE.

Student number: 29642630 Title: Mrs Surname: White Initials: RM Course e.g. PhD(AAC) Department: Centre for Augmentative and Alternative Communication	SUPERVISOR: Prof Juan Bornman (p2430843) <u>Please state staff number</u> (If a person outside the University is nominated, a CV and motivation should be attached to the proposal)	ROUTE 1. SUPERVISOR:  Signature Date: 28 June 2021
Please ensure that the title is grammatically correct. Please do not type the full title in capital letters. For notification of the faculty board, please mention: THESIS: <u> X </u> DISSERTATION: _____ MINI-DISSERTATION: _____ Current research title: Accommodating persons with severe communication disabilities in court: Guidelines to support key role players New research title (to be approved): Accommodating persons with severe communication disabilities in court: Development and appraisal of guidelines	b) CO-SUPERVISOR: Dr Ensa Johnson (04377478) <u>Please state staff number</u> (If a person outside the University is nominated, a CV and motivation should be attached to the proposal)	2. DEPARTMENTAL RESEARCH/POSTGRADUATE COMMITTEE:  Signature Date 2021-06-28 3. HEAD OF DEPARTMENT:  Signature Date 2021-06-28 4. FACULTY RESEARCH ETHICS/ POSTGRADUATE COMMITTEE: Where applicable (to approve research proposal/ethics; change of title; appointment or change of internal/external supervisor/co-supervisor;  Signature..... Date..... 07 July 2021
APPROVAL: <input type="checkbox"/> Ethical clearance to be considered by the Ethics Committee <input type="checkbox"/> Appointment of external supervisor/co-supervisor (motivation and cv attached) <input type="checkbox"/> Change of supervisor/co-supervisor <input type="checkbox"/> Research proposal and title to be considered by the Postgraduate Committee (where applicable) <input checked="" type="checkbox"/> Editorial change of title X <input type="checkbox"/> Other (mention): _____		5. STUDENT ADMINISTRATION: Signature..... Date.....