
**IDENTIFYING BARRIERS IN THE SOUTH AFRICAN CRIMINAL
JUSTICE SYSTEM: IMPLICATIONS FOR INDIVIDUALS WITH
SEVERE COMMUNICATION DISABILITY**

Juan Bornman,¹ Robyn White,² Ensa Johnson³ and Diane Nelson Bryen⁴

ABSTRACT

Individuals with severe communication disabilities and who are victims of crime, experience many access and opportunity barriers in the criminal justice system. The aim of this research was to identify the barriers experienced by this population in the South African Criminal Justice System as perceived by experts in the field. A qualitative research method, with 56 expert professionals in the criminal justice system divided into two different sequential data sources, was employed. The first data source included in-depth, semi-structured interviews (n=3), and these results informed the second data source, which was in the form of four focus groups (n=53). The results from both data sources (N=56) identified numerous barriers for individuals with a severe communication disability who had been victims of crime and needed access to the criminal justice system. The findings suggest that more support and resources need to be provided to individuals with severe communication disability. Additionally, disability training for all professionals working in the criminal justice system needs to be a top priority. Recommendations were made to develop an augmentative and alternative communication resource toolkit to assist these professionals, to ensure equal justice for one of the most vulnerable groups in society – those individuals with a severe communication disability who have been victims of crime.

Keywords: *access barriers; augmentative and alternative communication (AAC); criminal justice system; opportunity barriers; persons with little or no functional speech (LNFS); severe communication disability; victim.*

INTRODUCTION

The number of individuals with disabilities worldwide has increased from 10 percent in the 1970s to approximately 15 percent currently (World Health Organisation, 2011: 27) – a staggering 1 billion people. The World Health Organisation (WHO) (2011: 29) further estimates that 2.2 to 3.8 percent of individuals worldwide have a severe communication disability, which implies that they are unable to rely on their natural speech to meet their daily communication needs. This global estimate would translate to between 1.18 and 2.05 million South Africans, as extrapolated from a population of 54 million people (Statistics South Africa, 2014: 2). Since these numbers of individuals with disabilities are also increasing, persons in the criminal justice system (e.g. police officers) may find themselves investigating a greater number of crimes involving this population. This is especially relevant given that individuals with a disability are four-to-ten times more likely to be the victims of crime than their peers without thus making them disproportionately more vulnerable (Martin, Ray, Sotres-Alvares, Kupper, Morocco & Dickens, 2006: 823; Modell & Mak, 2008: 183). Although persons with a disability can also be

¹ Prof. Director. Centre for Augmentative and Alternative Communication, University of Pretoria.
Email: juan.bornman@up.ac.za

² Lecturer. Centre for Augmentative and Alternative Communication, University of Pretoria.
Email: robyn.white@up.ac.za

³ Dr. Lecturer. Centre for Augmentative and Alternative Communication, University of Pretoria.
Email: ensa.johnson@up.ac.za

⁴ *Professor Extraordinarius.* Centre for Augmentative and Alternative Communication, University of Pretoria.
Email: dianeb@temple.edu

involved with the criminal justice system as witnesses and alleged offenders (Chown, 2010: 258), the focus of this research was on their role as victims of crime.

The nature of victimisation of individuals with a disability is often misunderstood, minimised or even ignored. Five different types of victimisation have been reported (Smith Thiel, Baladerian, Boyce, Cantos VII, Davis, Kelly, Mitchell & Stream, 2011: 124). These include:

- (i) silent victimisation: this occurs in the home or school setting and does not rise to reported victimisation, for example, bullying at school;
- (ii) civil victimisation: this occurs in the judicial proceedings that involve the 'best interests of the child', such as termination of parental rights and moving a child into a place of safety;
- (iii) criminal victimisation: this occurs in the law enforcement proceedings when the special needs of individuals are not accommodated. For example, assistance in reporting a crime or preparing the victim for testifying in court;
- (iv) secondary victimisation: this occurs when a person with a disability is used by others to perpetrate a crime. For example, if they are over eager to please others and do not understand the consequences of their actions, they may commit a crime on behalf of others; and
- (v) victimisation due to criminal justice system failures: this type of victimisation occurs in the absence of a skilled professional workforce, able to identify the person with disability and to make the required reasonable accommodations.

This article emphasises criminal victimisation as well as victimisation due to the failure of the criminal justice system to adequately protect victims with severe communication disability.

Individuals with disabilities are at a high risk of being victims of crime (Jones, Bellis, Wood, Hughes, McCoy, Eckley, Bates, Mikton, Shakespeare & Officer, 2012: 904). The type of violence against them tends to be more severe, appears to comprise multiple different forms and also appears to have longer duration and greater frequency (Powers, Hughes & Lund, 2009: 2), leading to greater trauma than with once-off events. One vulnerable group within the larger population of people with disabilities, are those individuals with a severe communication disability, also known as individuals with little or no functional speech (LNFS)¹ as they have an increased risk of being a victim of crime (Bornman, 2014: 53-54). A chain of events contribute to people with LNFS becoming increasingly vulnerable as victims of crime. Firstly, there is the risk of being unable to call or shout for help and to fight back to protect themselves from the crime; secondly, there is the myth that people with LNFS do not have the language skills to understand (receptively) and communicate (expressively), which may seem appealing to potential perpetrators; thirdly, they are seen as unable to communicate their victimisation due to their communication difficulties; fourthly, when they do communicate their victimisation, they are less likely to be believed, because they may not be understood due to their communication disability and, lastly, there is the misperception that they are unable to testify in court as competent and reliable witnesses (Bornman, Bryen, Kershaw & Ledwaba, 2011: 117; Bryen & Wickman, 2011, Larcher, 2014: 137). Victimisation of people with severe communication disability is compounded by the fact that their victimisation is generally unaddressed. As such, these crime victims remain largely invisible (Bornman, 2014: 52; Bryen & Wickman, 2011; Combrinck & Meer, 2013: 13). One reason for this invisibility may be the fact that social workers, police officers, lawyers, advocates and judges, all of whom form part of the criminal justice system, often have extremely limited knowledge of how to assist persons with severe

communication disability and therefore find the whole process of taking a statement and testifying in court too daunting (Bryen & Wickman, 2011). Lack of knowledge may also influence prevailing attitudes, since attitudes and perceptions are formed by training and experience (Modell & Cropp, 2007: 61; Oschwald, Curry, Hughes, Arthur & Powers, 2011: 532).

Regardless of the factors that bring individuals with disabilities into contact with the criminal justice system, the police play a key role because they are likely to be the first point of contact or first responders (Modell & Mak, 2008: 184). Moreover, the role of the police has also changed from the classic policing model with generic responses to the community policing model, which focuses on the specific needs of those who seek their services – vulnerable groups in particular (Henshaw & Thomas, 2012: 620). The National Instruction on Sexual Offences (2008:2-24), provides meticulous information to South African police officers regarding as how to assist a victim of crime. It states that while taking statements from a victim and their family, police officers must be professional and sensitive towards the emotional state of the victim and their families (Combrinck & Meer, 2013: 7). The police officer must be patient while the victim of crime is explaining what happened during the (sexual) crime and additionally, should not be judgemental towards such victims (Combrinck & Meer, 2013: 7). A patient, friendly interviewer obtains a more accurate picture of events than one who is abrupt. This is particularly the case with individuals who have low self-esteem, as with some individuals with a disability (Hayes, 2007: 150). Furthermore, the National Instruction (2008: 2-24), also states that if a police officer encounters any form of difficulty when dealing with a ‘mentally disabled person’, the matter must be discussed with SAPS’ Legal Services, since the procedure may demand an urgent application to the High Court (Combrinck & Meer, 2013: 7; National Instruction, 2008: 2-24). Unfortunately, this document does not provide further details regarding what such a ‘difficulty’ may entail or why an urgent application might be considered (Combrinck & Meer, 2013: 7).

In a study of police officers in the United States, it was reported that, because of their lack of knowledge and tainted perceptions of disability, they had difficulty in distinguishing between different types of disabilities and tended to focus on persons with disability as being ‘different from the norm with a lack of ability’ (Modell & Mak, 2008: 185). ‘Different’ could be viewed either as positive or neutral (when ‘being different’ is regarded as acceptable by society) or as negative (when ‘being different’ is regarded as something that should be fixed and/or regarded as less valued and/or avoided). This study by Modell and Mak (2008: 187), also reported that police officers perceived themselves as competent when in fact they may not have been, further suggesting the need for training. An Australian-based study that investigated police identification of intellectual disability reported that police tended to identify intellectual competence based on physical appearance, ‘odd behaviour’ as well as communication deficits (Spivak & Thomas, 2013: 636). A similar United Kingdom-based study that focussed on police officers’ knowledge and attitudes, specifically related to persons with autism, reported that police officers required additional training, especially as far as increasing their communication skills in general was concerned, as well as improving their skills in interviewing techniques (Chown, 2010: 268).

Police officers in South Africa have acknowledged that, insofar as adequate skills go, they feel ill-equipped to take statements from those with severe communication disability and therefore may not provide the victim with the correct service and support needed for a victim of a sexual crime to provide an effective statement (Hesselink-Louw, Booyens, & Neethling, 2003: 175). Additional research has shown that some police officers view people with communication disabilities as unreliable in providing an adequate statement and therefore do not offer the victim an opportunity to provide one (Bornman, 2014: 72-73; Combrinck & Meer, 2013: 15). However, there is evidence that if people with severe communication disabilities are questioned

appropriately, they can produce accurate reports of the event and go on to testify in court (Bryen & Wickman, 2011; Pillay, 2012: 313). Furthermore, police officers internationally may view an individual with severe a communication disability as being a competent witness able to testify on their own behalf in court and therefore do not provide the correct services to that victim since they feel there is no need to start the process if it will not end up in court (Henshaw & Thomas, 2012: 622; Keilty & Connelly, 2001: 281).

In South Africa, some victim empowerment protocols which include victims of crime who have a disability are available, although strategies to support those individuals with a severe communication scant (South African Police Service: Department of Police, 2016: 3). However, when the reported crime is of a sexual nature, police officers will typically contact social workers – who play a vital role in the process of ensuring justice for victims with disabilities (Western Cape Forum for Intellectual Disability, 2014). In these instances, social workers are required to do the following:

- (i) assist in keeping the alleged crime victim with a disability safe;
- (ii) report the crime to the Sexual Offences court;
- (iii) refer the victim and their family to appropriate services;
- (iv) and most importantly, prepare the victim with a disability to appear in court (Western Cape Forum for Intellectual Disability, 2014).

All of the above also applies to individuals with a severe communication disability who have been victims of crime. However, social workers do not always feel equipped to deal with victims with significant communication disabilities, or do not have enough resources at their disposal, such as communication boards,² to assist persons with severe communication disabilities in preparation for the court hearing (Seedat, Van Niekerk, Jewkes, Suffla & Ratele, 2009: 1019).

Barriers that have been identified in the international literature when focussing on the criminal justice system for people with disabilities include the following: language and communication difficulties; problems with interpretation of their communication attempts; and challenges related to cross-examination techniques for people with disabilities with limited communication skills. In fact, the courts in Israel restrict the cross-examination of a victim of crime in some cases, relying more heavily on the statement (Ziv, 2007: 13). All of these identified barriers tend to marginalise their credibility (Chown, 2010: 268; Collier, McGhie-Richmond, Odette & Pyne, 2006: 63; Modell & Mak, 2008: 186). A paucity of similar research for the South African context exists.

In the South African context, people with severe communication disabilities face significant difficulties when they need to testify in court (Bryen & Wickman, 2011; Pillay, 2012: 313). There is also controversy around the legal test for competency to testify, as well as whether individuals with a severe communication disability have the ability to testify in court. South African law identifies two types of witness competency, specifically, basic competency and truth-lie competency (Pillay, 2012: 316). Basic competency is the witness's ability to retell the event and the truth-lie competency is the ability to tell the truth so that a witness is able to take the oath (Pillay, 2012: 316). This research will not, however, address the full complexity of these problems, but rather set out to determine from experts in the criminal justice system what they perceive as the barriers preventing individuals with a severe communication disability from reporting a crime to the police in South Africa, as a first step in ensuring communication accommodation to enable this vulnerable population to obtain equal justice.

METHOD

In order to address the main purpose of this study, a qualitative research design using two different sequential data sources was used. The first data source was in-depth, semi-structured interviews ($n=3$) that informed the second data source, which was in the form of four focus groups ($n=53$). This study forms part of a larger project aimed at determining the vocabulary needed for individuals with a severe communication disability to testify in court (White, Bornman & Johnson, 2015: 1-14). This could include individuals with a severe physical disability (e.g. cerebral palsy (CP) and muscular dystrophy), intellectual disability (e.g. Down Syndrome and Foetal Alcohol Spectrum Disorder (FASD)), Autism Spectrum Disorder as well as multiple disabilities (e.g. individuals who are deaf and blind, or who are deaf and have cerebral palsy). The South African law currently makes provisions for deaf persons to give their evidence or testimony by using sign language, typically South African Sign Language (SASL) (Jonker & Swanzen, 2007: 100).

Participants

The 56 purposively selected participants who formed part of the two data sources, were recognised experts in the South African criminal justice system. Participants were recruited by means of snowball sampling, given the sensitive nature of the topic (Biernacki & Waldorf, 1981: 141-142). A forensic social worker, forensic nurse and childcare specialist participated in the individual in-depth interviews (Data Source 1). The 53 participants in Data Source 2 had varied professions, with 26 being social workers, 14 social auxiliary workers, three lawyers, three therapists, two teachers and educational staff, two child and youth care workers, one forensic nurse, one probation officer and one disability advocate. The participants' biographic details are shown in Table 1. Despite numerous attempts to include police officers in the focus groups, and the fact that eight police officers had consented to participate, they did not attend the focus groups, claiming unforeseen work-related matters. They were therefore not included in the data presented.

Table 1: Participant description (N=56)

Criteria	Data Source 1 ($n=3$)	Data Source 2 ($n=53$)
Age		
20 - 29 years	0	16
30 - 39 years	0	19
40 - 49 years	2	14
50 - 59 years	0	4
60 years and older	1	0
Gender		
Male	1	2
Female	2	51
Home language		
English	2	19
isiZulu	1	15
Afrikaans	0	5
Setswana	0	4
Southern Sotho	0	3
isiXhosa	0	3
Xitsonga	0	2
Northern Sotho	0	1
Ndebele	0	1

Qualification		
Diploma / Certificate	1	19
Bachelor's Degree	0	28
Honour's Degree	0	2
Master's Degree	2	4
Current position		
Disability advocate	0	1
Social worker	0	26
Auxiliary social worker	0	14
Forensic social worker	1	0
Lawyer	0	3
Probation Officer	0	1
Therapist	0	3
Teacher and educational staff	0	2
Child and youth worker	1	2
Forensic Nurse	1	1
Length of time in current role		
< 1 year	0	6
1 – 3 years	0	22
4 – 6 years	0	11
7 – 9 years	0	10
>10 years	3	4
Experience with victims of crime testifying in court		
Yes	3	34
No	0	19
Experience with people with disabilities who have been victims of crime		
Yes	3	44
No	0	9

It is clear from Table 1 that the majority of the participants was female, spoke a variety of languages, and held a Bachelor's degree or more. The average age was 35 years, and the range was 24 to 63 years. The length of time that they had spent in the current roles was equally divided between those who had spent three years or less (n=28) and those who had spent four years or more (n=28).

Procedures

Before participant recruitment commenced, ethics approval to conduct the study was obtained from the relevant authorities. Participation was voluntary, as participants were not pressured into participation and were assured that they could withdraw from the research at any time, without any negative consequences. Prospective participants were provided with adequate written information about the purpose and nature of the research, thereby allowing them to make informed decisions regarding participation before providing informed consent (Campbell, Vasquez, Behnke & Kinscherff, 2010). They were also informed that their participation posed neither risks nor benefits. Participants' individual data were protected by the use of codes, as well as the removal of all identifying information to ensure confidentiality.

Participants from Data Source 1 were interviewed individually in order to provide the researchers with a more comprehensive understanding of the context and deeper insight into the

scope of the topic, as they all have had experience with both victims with disability and testifying in court. Examples of the interview questions that were asked were:

- *'What experiences have you had with victims of crime testifying in court?'*;
- *'Which of these court experiences were successful in terms that the perpetrator was convicted due to the victim's testimony?'*;
- *'What in your professional opinion makes an incompetent witness?'*; [and]
- *'What experiences have you had with a person with a severe communication disability who had been a victim of crime?'*

Hence, their responses to the interview questions furthermore assisted in the preparation of the focus groups. Interview guides and demographic information questionnaires were developed and pilot tested with five experts who had experience working with people with disabilities who had been victims of crime. They provided suggestions to improve the interview guide. After the pilot testing, minor adjustments were made to the interview guide. For example, the original question *'What experiences have you had with victims of crime testifying in court?'* was rephrased so that the importance of *'victims of crime with disabilities'* and *'testimony'* was highlighted. This question was rephrased to: *'Have you been in court when victims of crime who have disabilities have testified? If yes, please elaborate.'* Responses to the questions were audio-recorded in order to increase the procedural reliability and to accurately capture answers to the interview questions when transcribing their responses.

Data Source 2 comprised of four focus groups of 53 professionals who were all working in the criminal justice system. Focus groups have the advantage of stimulating group dynamics and discussions and help participants to conceptualise issues in more depth than through other methods, such as individual interviews or surveys (Wibeck, Dahlgren & Öberg, 2007: 251). Before the focus groups commenced, a focus group script was developed. The experts from Data Source 1 provided input to improve the script where possible. One recommendation from the experts was to include a section explaining the two concepts of alternative and augmentative communication (AAC) and severe communication disability, so that participants were fully informed about the research aim.

During each focus group, participants were welcomed and put at ease. Rapport was established quickly as all participants in the four focus groups knew each other. Participants in all four focus groups were asked the same three questions, namely:

- *'What are the challenges or barriers you face when a person with a disability has to testify in court?'*;
- *'What may facilitate the process of an illiterate individual who cannot speak to testify in court?'*; [and]
- *'Which words do you think are needed to testify in court when a person has been a victim of crime?'*

Overall, the length of the interviews with the focus groups varied between 55 and 76 minutes. Participants were encouraged to respond honestly, based on their own experiences in the field, and to write their suggestions on *'Post-it'* notes. The second author acted as the moderator while the third author was the scribe who typed all comments on a laptop. In each focus group, the comments were projected onto a wall to enable the participants to check and jointly revise the formulation of their statements. The participants confirmed that the statements were true representations of their experiences and added more information where applicable (member checking) (Johnson, Nilsson & Adolfsson, 2015: 329). Where applicable, duplications

were removed. As all participants were included in this process, checking the accuracy of the data was increased (Bornman et al, 2011: 120).

Data analysis

The in-depth interviews from Data Source 1 were digitally recorded and responses were transcribed verbatim by the third author. A second-coder (second author) checked all of the transcriptions. Discrepancies were noted, discussed between the coders and revised where necessary, resulting in a 98 percent inter-coder agreement. Thereafter, the first three authors worked together to identify the various types of barriers described by participants through an inductive thematic analysis coding process (Braun & Clarke, 2006: 83). The results are shown in Table 2.

The results from this inductive thematic analysis of the different types of barriers from Data Source 1, enabled the researchers to draw a link to the different participation barriers, specifically opportunity and access barriers as proposed by Beukelman and Mirenda (2013: 114-116).

'Opportunity barriers' are barriers imposed by others and which are beyond the control of the individuals with a severe communication disability. Opportunity barriers are sub-divided into four groups:

- (i) *'practice barriers'* (this refers to procedures or conventions that limit the opportunities for people with disabilities);
- (ii) *'policy barriers'* (this refers to legislation or written documents that limit the opportunities for people with disabilities in some way;
- (iii) *'knowledge and skills'* (lack of knowledge and/or skills of people involved with the persons with disabilities, resulting in them not being able to address the needs or intervention strategies for those with disabilities); and
- (iv) *'attitudinal barriers'* (these refer to negative attitudes within the professional team, family or community concerning the person with a disability in general) (Beukelman & Mirenda, 2013: 114-116).

The second type of participation barrier, namely **access barriers**, refers to barriers within the individual with a disability themselves, and can include their own attitudes, capabilities and limitations (Beukelman & Mirenda, 2013: 114-116). The themes of opportunity and access were used in this study to conceptualise and organise the data from Data Source 1 and to then conduct a deductive thematic analysis (Braun & Clarke, 2006: 83) of Data Source 2.

Statements from the focus groups in Data Source 2 were typed by the scribe and copied and transposed onto an Excel spreadsheet. Thereafter, this was uploaded into the ATLAS.ti software programme, an electronic method for identifying, analysing and reporting patterns across qualitative information transcribed into written text (Braun & Clarke, 2006: 84). Where statements were unclear, the authors referred to the recorded audio material provided during data analysis to ensure credibility of the data (Johnson et al, 2015: 329). Next, the researchers divided statements from Data Source 2 into meaningful units and inductively coded these into sub-themes. Consequently, the researchers used deductive coding to code the sub-themes according to the themes from the opportunity (Table 3) and access barriers (Table 4) as identified in Data Source 1. The first three authors did the coding in mutual agreement, while the fourth author confirmed the codes and themes.

RESULTS

The results are discussed separately for the two data sources. Table 2 reflects the barriers identified from the inductive analysis of Data Source 1.

Table 2: Barriers and suggestions from individual interviews (n=3)

Participant	Barriers	Suggestions to overcome barriers
Participant 1.1 Forensic social worker	<ul style="list-style-type: none"> • Lack of knowledge of all legal professionals • Time pressure • Too many cases in the legal system • Impatience from the legal system • Certain legal professionals cannot deal with children who have a disability 	Training of all professionals involved with a person with a disability who needs to testify in court
Participant 1.2 Childcare specialist in the legal system	<ul style="list-style-type: none"> • Lack of training of all legal professionals • Attitudes towards people with disabilities 	Adopting the International Classification of Functioning, Disability and Health (ICF) framework, could assist in addressing barriers
Participant 1.3 Forensic nurse	<ul style="list-style-type: none"> • Lack of training of all legal professionals • Communication difficulties 	A communication programme to train legal professionals and using AAC could help to remove these barriers

As is evident in Table 2, a variety of barriers were identified. However, two main types of barriers appeared more than once. Consensus among the three experts was that there was a lack of knowledge or lack of training among professionals within the criminal justice system. The second barrier focuses on attitudes about people with disabilities who may or may not have a severe communication disability. Two of the three experts suggested training as a way of overcoming these barriers.

The responses from Data Source 2 are presented in Table 3 and Table 4. A total of 34 responses were captured in ATLAS.ti, with 23 responses related to opportunity barriers (Table 3) and 11 responses related to access barriers (Table 4). This shows that participants thought that there were more opportunity barriers, in other words, barriers outside of the person with the disability.

Table 3: Coding themes, sub-themes and examples of opportunity barriers discussed by participants in the focus groups (n=53)

Themes	Sub-themes	Examples provided by participants
Practice barriers (procedures or conventions that have become common in a family, school or community, but not actual policies)	Legal terminology Urban and rural areas Caregivers as perpetrators Accessibility Lack of resources	<ul style="list-style-type: none"> • This person who cannot speak does not always understand legal jargon • Difference between rural and urban areas – urban areas have more exposure to education • High frequency of caregivers who are the perpetrators – difficult to report the crime to the police as this has resource implications • Accessibility to the police station is not always easy and no transport to police station is available. Not easy to access a lawyer • Lack of AAC and communication resources

Themes	Sub-themes	Examples provided by participants
	Not using intermediaries Time Costs South African law Lack of interpreters	<ul style="list-style-type: none"> • Intermediaries are not used although the law makes provision for including them • The turnaround time in South African criminal justice system is slow • Costs of hiring a lawyer • No interpreters to translate different languages
Policy barriers (legislative or regulatory decisions that govern situations)	The competency test and decisions around how to conduct and interpret it	<ul style="list-style-type: none"> • People with communication disabilities do not always understand the constructs of truth and lie
Knowledge and skills barriers (lack of information and skills of a professional that results in limited opportunities)	Lack of training Lack of knowledge Police rank crimes Lack of skill in taking a statement	<ul style="list-style-type: none"> • Majority of legal professionals are not trained to work with people with disabilities and misunderstand the victim's statement • Majority of legal professionals have lack of knowledge when it comes to people with disabilities and are not sure how to handle them or how to take a statement • Police feel murder crimes are more important than sexual crimes • Police do not have the skills to take a reliable statement from the victim
Attitude barriers (attitudes and beliefs held by an individual)	Over-active libidos Low conviction rates No multidisciplinary approach Parents and community attitudes Attitudes towards persons with severe communication disability Families not educated Discrimination Professionals' attitudes.	<ul style="list-style-type: none"> • The myth that people with disabilities have over-active libidos or that they are seen as asexual • Low conviction rates of perpetrators result in parents not always reporting the crime • Prosecutors do not always allow the input from the social worker and there is no multidisciplinary approach • Parents' and communities' attitudes towards the stigma of being abused or raped and unwillingness to report the crime to 'protect' their child from further trauma • Perceptions and attitudes about persons with disability and that they cannot report a crime • Families are not educated and are ignorant • There is discrimination from the community • Professionals are ignorant and uncaring

From Table 3 it is clear that all four of the sub-categories of opportunity barriers were mentioned. A range of examples was provided for each barrier type, with the exception of Policy Barrier, where only one example was provided. It is also clear that the coding framework developed after Data Source 1 was effective for Data Source 2, as all responses could be captured in this manner.

Table 4: Coding themes, sub-themes and examples of access barriers discussed by participants in focus groups (n=53)

Themes	Sub-themes	Examples provided by participants
Access barriers (individual's current communication skills, attitude and resource limitations)	Receptive language	<ul style="list-style-type: none"> Does the person with severe communication disability understand what happened and can he/she recall what happened?
	Expressive language	<ul style="list-style-type: none"> Child's expressive language is difficult to understand (unintelligible speech)
	Lack of relevant vocabulary	<ul style="list-style-type: none"> People who cannot talk cannot communicate what happened
	Concentration span	<ul style="list-style-type: none"> People with communication disability do not have the concentration span required to testify in court
	Forget details	<ul style="list-style-type: none"> Can forget details of the event, as the court date can take long to be finalised
Themes	Sub-themes	Examples provided by participants
	Insecurities	<ul style="list-style-type: none"> Feels insecure to disclose incident to stranger/professional, as there has not been enough time to build the relationship
	Child blaming	<ul style="list-style-type: none"> Child blaming himself/herself and thinking it is their own fault
	Illiteracy	<ul style="list-style-type: none"> Illiterate and thus unable to write statements or write down what happened
	Isolation	<ul style="list-style-type: none"> Victim feels isolated
	Dependence on perpetrator who is a family member	<ul style="list-style-type: none"> Therefore will not disclose (caregiver/perpetrator washes clothes and feeds victim)
	Discrimination and lack of support	<ul style="list-style-type: none"> From community and family

Based on the findings detailed in Tables 3 and 4, one of the main barriers reported was that the majority of participants, who were recognised experts in the South African criminal justice system, had little or no knowledge or training of people with disabilities, with several noting specifically training focused on individuals with a severe communication disability. Lack of resources (e.g. lack of AAC communication boards, lack of interpreters, costs of hiring a lawyer) was also noted, as was attitudinal barriers. Only one policy barrier was noted, which was related to the competency test. Each of these barriers creates opportunity barriers when an individual is a victim of a crime and needs to access the criminal justice system. However, as shown in Table 4, participants also noted real access barriers that are likely to require accommodations by the justice system if equal access is to be provided to crime victims with disabilities.

DISCUSSION

The findings from Data Source 1 and 2 suggest that the main barrier reported was that the majority of legal professionals had little or no knowledge or training of people with disabilities and/or severe communication disability. Other barriers that were noted, were attitudes about people with disabilities who may or may not have a severe communication disability as held by

their parents and families, the community at large and professionals (e.g. prosecutor, social worker, police); lack of resources (e.g. lack of AAC communication boards, lack of interpreters, costs of hiring a lawyer) and policy barriers that were related to the competency test.

The findings of this South African study are similar to the data reported in international studies (Chown, 2010: 267-268; Modell & Cropp, 2007: 63; Modell & Mak, 2008: 187-188; Oswald et al, 2011: 538-539). Training of professionals within the criminal justice system is needed to address the most frequently mentioned opportunity barrier, namely the lack of knowledge and skills. Police officers tend to rely on well-worn (but not necessarily accurate) cues from the individual to determine if they are lying or telling the truth (Hayes, 2007: 150). For example, gaze behaviour (e.g. looking down), fidgeting, changing posture and placing a hand over the eyes or mouth, have all been demonstrated to be inaccurate behaviour cues of whether an individual is lying. Yet many police continue to believe these sets of behavioural myths as indicators of lying or telling the truth, while it might in fact be more related to cultural beliefs and or practices (e.g. in certain African cultures not making eye contact is seen as a sign of respect) (Rugsaken, 2006: 1) or be associated with a specific disability, e.g. individuals with Autism Spectrum Disorder (ASD) often have abnormalities in eye-contact and body language (Koudstaal, 2016: 384). This type of training should also address attitudinal barriers. By focusing on changing erroneous and negative attitudes, there is a likelihood that behaviour in assisting persons with a severe communication disability (e.g. by means of statement-taking) will also change (Modell & Cropp, 2007: 63). Police officers can therefore learn to be less apprehensive about interacting with a crime victim with a disability, which might, in turn, mitigate poor judgement calls, indiscretion and complacency (Modell & Cropp, 2007: 63). Research has also indicated that a holistic approach to disability training that covers general principles and a range of specific disabilities would likely enable police to handle a variety of situations better (Chown, 2010: 269-270; Modell & Mak, 2008: 189; Oswald et al, 2011: 539).

Training of professionals in the criminal justice system (e.g. police, prosecutors and presiding officers) in relevant legislation regarding people with disabilities who had been victims of crime, should be prioritised (Hayes, 2007: 152; Seedat et al, 2009: 1019; Oswald et al, 2011: 539). Training on how to protect individuals with significant communication disabilities and ensure that their basic human and civil rights are protected should be included. This is especially important for individuals with a severe communication disability who are more likely to be victims of crime and less likely to receive better access to the justice system than able-bodied peers at the police level to ultimately receive a court date, thereby allowing the crime victim with a severe communication disability the opportunity to testify in court (Seedat et al, 2009: 1019). This type of training should be seen as a way of in-service training and professional development of all professionals involved in the criminal justice system, as it broadens knowledge and improves professional qualifications. Such skills improvements have become increasingly important in the past decade due to the constant changes in societal demands and in professional work environments, such as breaking professional boundaries and life-long learning (Kordaczuk-Wąs & Sosnowski, 2011: 319-320; Oswald et al, 2011: 539).

It is evident that when a multidisciplinary team approach is adopted and the criminal justice system works alongside disability experts where there is exchange of knowledge and training, there can be a success in convictions with people with severe communication disabilities (Krauze, 2014; Smith Thiel et al, 2011: 145-146). This was exemplified in an Australian study (Henshaw & Thomas, 2012: 628), which reported that it is neither practical nor important for police officers to be able to diagnose disability (specifically intellectual disability), since this can be a difficult and sometimes time-consuming task. Police officers should rather be trained in how to identify those who are vulnerable, disadvantaged and in need of support (Henshaw & Thomas, 2012: 628; Spivak & Thomas, 2013: 644). Their training should rather

focus on how to use functional problems, such as ‘communication difficulties’, as a means of identification rather than physical or behavioural characteristics. Spivak and Thomas’s research (2013: 643) showed that this resulted in police officers being more likely to capture a large proportion of those individuals who are in need of additional support.

Communication and language are well researched barriers and have been reported in recent literature. For example, Henshaw and Thomas (2012: 628) state that establishing an effective means of communication has been a longstanding skills deficit for police and that they should be equipped with additional ‘tools’ about adapted communication styles and approaches. Trained police officers and/or social workers, who have the skills to communicate with persons with severe communication disabilities or who have communication difficulties, must assist them. South Africa has 11 official languages and is a multi-lingual nation. Hence, provision must be made for people with severe communication disabilities in different South African languages so that there is a police officer or an interpreter available throughout the process that can assist with the whole process from statement-taking through to the court process (Keilty & Connelly, 2010: 284). Research also shows that it should be considered best practice to have a ‘support person’ (e.g. social worker, trained court intermediary) present when interviewing a person with a disability. This ‘support person’ can provide emotional support and act as an advocate on behalf of the person with the disability, while also supporting the police officer by conveying the information to the person with the disability in an understandable format (Spivak & Thomas, 2013: 643). Unfortunately, there is evidence of low referral rates from police to social and/or health services, which might be attributed to the fact that awareness of the need and availability of these services, are limited (Henshaw & Thomas, 2012: 628).

Furthermore, the training should be interdisciplinary in nature, involving interactions between social services, health services, legal services, police, experts in the disability field and individuals with disability themselves (Henshaw & Thomas, 2012: 629; Smith Thiel et al, 2011: 146). This will help address further victimisation due to system failure. International research has documented that there is little systematic information available to all the stakeholders who work in the criminal justice setting or related services on supporting persons with severe communication disabilities (Hayes, 2007: 149-150).

The negative attitudes are a mammoth barrier for individuals with a severe communication disability in accessing justice. For example, there is a belief that people with intellectual disabilities cannot distinguish fact from fantasy, that they are promiscuous and that they are prone to lying (Spivak & Thomas, 2013: 637). Furthermore, a family’s fear of the stigma their disabled child faces as a victim of sexual crime, also contributes as attitudinal barriers faced by persons with severe communication disabilities who are victims of crime. Likewise, attitudes of the police that an individual with a severe communication disability cannot be a competent witness and will not pass the credibility test (Mandal, 2013: 15), and therefore police often do not even take a statement from such victims,, who mistakenly believe that the victim ‘wanted’ sex, since they have over-active sexual libidos (McKenzie, 2013: 374). All these attitudes can be addressed with proper training and education within our communities and schools.

A person with a disability can be assisted to testify in court if an intermediary is used and court preparation is given. The intermediary can inform the court and presiding officer of the concentration span of a victim with a severe communication disability and that the victim may need more time than an able-bodied individual to respond to questioning in court (Jonker & Swanzen, 2007: 95). The social worker can assist the victim with appropriate counselling so that the victim does not blame himself or herself for the sexual crime. However, much depends on what initially happens with first responders, such as the police when taking down a statement. More community programmes such as Afrika Tikkun³ should be implemented, since they assist

victims of crime to find the nearest police station and reporting the crime to the police, as well as with the court preparation (De Sas Kropiwnicki, Elphick & Elphick, 2014: 364).

Training in interacting and supporting individuals with severe communication difficulties must be made a priority by the criminal justice system in order to address knowledge, skills and attitudinal barriers. Police officers and prosecutors should be given training on how to communicate with people with disabilities. Furthermore, a presiding officer should be given a detailed description and overview before the court case begins regarding the specific victim's disability and method(s) of communication. Specific training programmes, such as those implemented in the United Kingdom and Israel, are needed in South Africa (Larcher, 2014: 154-156; Ziv, 2007). The United Kingdom has successfully implemented the Witness Intermediary Scheme where professionals are trained in specific skills and in the specific role of insisting in the court process and enabling complete, coherent and accurate communication to occur while testifying (Larcher, 2014: 156). Intermediaries are also regarded as 'best practice' in Israel when allowing people with intellectual disabilities to testify in court, as discussed earlier (Ziv, 2007). These identified barriers added to the trustworthiness of the data of this phase, as the barriers identified in Data Source 1 corresponded with the barriers identified in Data Source 2. Furthermore, the majority of these barriers have also been recorded in literature.

Strengths and limitations of the study

The research question posed in this study has importance, since it has both clinical and societal importance and implications. It also cuts across many disciplines, given that a disability is a multidisciplinary and indeed multifaceted phenomenon. Therefore, the impact of the findings of this study affect multiple stakeholders who rarely interact but are needed to work together if equal access to the justice system is to occur for people with severe communication disabilities.

A rigorous selection procedure was followed to ensure that the participants had the knowledge and skills to assist in answering the research question. From the description of participants' biographical and professional details, it was clear that the participants were from different professional backgrounds and disciplines. The heterogeneity of the target population, comprising multiple stakeholders, therefore broadened the depth of the information obtained.

Unfortunately, despite attempts to involve as many police officers as possible as part of the multidisciplinary stakeholder group included in the research, time constraints and work pressures experienced by them proved to be challenging and led to their non-participation in the focus group interviews. Their perspectives regarding challenges related to reporting crimes would have been valuable and therefore survey data (quantitative) as well as focus groups (qualitative) are intended.

CONCLUSION

People with disabilities, specifically those with a severe communication disability, currently face access barriers when attempting to participate in the criminal justice system, since they lack effective communication skills, knowledge about the criminal justice system, as well as financial and/or organisational skills that can assist them to advocate on their own behalf for changes to the criminal justice system. They also face a plethora of opportunity barriers. In other words, barriers that are beyond their control. Families, police, probation officers, lawyers and prosecutors, magistrates and judges, social workers, therapists, teachers, forensic nurses, and disability advocates, all have a role to play and should collaborate to 'end the silence' of victims with a severe communication disability. More training, specifically interdisciplinary training involving all these stakeholders, will ensure full access to justice for this vulnerable and neglected group of individuals in our society.

Further studies should therefore aim to develop a relevant augmentative and alternative communication resource toolkit with relevant interdisciplinary training that is available to all

stakeholders involved in the criminal justice system to ensure than victimisation of persons with a disability, in particular those with a severe communication disability due to policy and practice barriers, can be effectively addressed. In Israel, an AAC tool kit was developed that enables a person with a severe communication disability to express him or herself without changing the legal proceedings itself (Bornman & Bryen, 2014: 129). The purpose of the toolkit is to serve the witness with severe communication disability in all stages of the legal process from the investigation to testifying in court and therefore safeguard their access to and participation in all aspects of justice that concern them.

LIST OF REFERENCES

- Beukelman, D.R. & Mirenda, P. 2013. *Augmentative and alternative communication: Supporting adults and children with complex communication needs*. (4th edition). Baltimore: Paul H Brookes.
- Biernacki, P. & Waldorf, D. 1981. Snowball sampling: Problems and techniques of chain referral sampling. *Sociological Methods and Research*, 10(2): 141-163.
- Bornman, J. 2014. Join the fight – as we pave a new way forward: A view from South Africa. In D.N. Bryen & J. Bornman. (Eds). *Stop violence against people with disabilities! An international resource*. Pretoria: Pretoria University Law Press.
- Bornman, J., Bryen, D.N., Kershaw, P. & Ledwaba, G. 2011. Reducing the risk of being a victim of crime in South Africa: You can tell and be heard! *Augmentative and Alternative Communication*, 27(2): 117-130.
- Braun, V. & Clarke, V. 2006. Using thematic analysis in psychology. *Qualitative Research in Psychology*, 3(2): 77-101
- Bryen, D.N. & Wickman, C.H. 2011. Ending the silence of people with little or no functional speech: Testifying in court. *Disability Studies Quarterly*, 31(4). Available at: <http://dsq-sds.org/> (accessed on: 17 July 2012)
- Campbell, L., Vasquez, M., Behnke, S. & Kinscherff, R., 2010, *APA ethics code commentary and case illustrations*, American Psychological Association, Washington, DC.
- Cantwell, D.P. & Baker, L. 1985. Speech and language: Development and disorders. (Pp. 526-544). In M. Rutter & L. Hersov. (Eds). *Child and adolescent psychiatry: Modern approaches* (2nd edition). Boston: Blackwell Scientific Publications.
- Chown, N. 2010. Do you have any difficulties that I may not be aware of? A study of autism awareness and understanding of the UK police service. *International Journal of Police Science and Management*, 12(2): 256-273.
- Collier, B., McGhie-Richmond, D., Odette, F. & Pyne, J. 2006. Reducing the risk of sexual abuse for people who use augmentative and alternative communication. *Augmentative and Alternative Communication*, 22: 62-75.
- Combrinck, H. & Meer, T. 2013. *Gender-based violence against women with psychosocial and intellectual disabilities in South Africa: Promoting access to justice*. Submission to the Committee on the Rights of Person with Disabilities (17 April 2013).
- De Sas Kropiwnicki, Z.O., Elphick, J. & Elphick, R. 2014. Standing by themselves: Caregivers' strategies to ensure the right to education for children with disabilities in Orange Farm, South Africa. *Childhood*. 21(3): 354-368.
- Hayes, S., 2007. Missing out: Offenders with learning disabilities and the criminal justice system. *British Journal of Learning Disabilities*, 35: 146-153.
- Henshaw, M. & Thomas, S. 2012. Police encounters with people with intellectual disability: Prevalence, characteristics and challenges. *Journal of Intellectual Disability Research*, 56(6): 620-631.

- Hesselink-Louw, A.E., Booyens, K. & Neethling, A. 2003. Disabled children as invisible and forgotten victims of crime. *Acta Criminologica: Southern African Journal of Criminology*, 16(2):165-180.
- Johnson, E., Nilsson, S. & Adolfsson, M. 2015. Eina! Ouch! Eish! Professionals' perceptions of how children with cerebral palsy communicate about pain in South African school settings: Implications for the use of AAC. *Augmentative and Alternative Communication*, 31(4): 325-335.
- Jones, L., Bellis, M. A., Wood, S., Hughes, K., McCoy, E., Eckley, L., Bates, G., Mikton, C., Shakespeare, T. & Officer, A. 2012. Prevalence and risk of violence against adults with disabilities: A systematic review and meta-analysis of observational studies. *Lancet*, 380(9845): 899-907.
- Jonker, G.J. & Swanzen, R. 2007. Intermediary services for child witnesses testifying in South African criminal courts. *Sur-International Journal on Human Rights*. 4(6): 91-114.
- Keilty, J. & Connelly, G. 2010. Making a statement: An exploratory study of barriers facing women with intellectual disability when making a statement about sexual assault to police. *Disability & Society*, 16(2): 273-291.
- Kordaczuk-Wąs, M. & Sosnowski, S. 2011. Police in-service-training and self-education in Poland. *Police Practice and Research*. 1294: 317-324.
- Koudstaal, C. 2016. Autism Spectrum Disorder. (Pp. 383-404). In E. Landsberg, D. Krüger & E. Swart. *Addressing barriers to learning: A South African perspective*. (3rd edition). Pretoria: Van Schaik
- Krauze, R. 2014. *The role of the prosecutor*. Paper presented to the 15th South African Professional Society on the Abuse of Children Annual National Conference on Child Abuse. CSIR International Convention Centre: Pretoria, 10 November 2014.
- Larcher, J. 2014. Crime against persons with little or no functional speech: A view from the United Kingdom. (Pp. 137-159). In D.N. Bryen & J. Bornman. (Eds). *Stop violence against people with disabilities! An international resource*. Pretoria: Pretoria University Law Press.
- Lloyd, L., Fuller, D. & Arvidson, H. (Eds). 1997. *Augmentative and alternative communication: Handbook of principles and practices*. Needham Heights, MA: Allyn & Bacon.
- Mandal, S. 2013. The burden of Intelligibility: Disabled women's testimony in rape trials. *Indian Journal of Gender Studies*, 20(1): 1-29.
- Martin, S.L., Ray, N., Sotres-Alvares, D., Kupper, L.L., Moracco, K.E. & Dickens, P.A. 2006. Physical and sexual assault of women with disabilities. *Violence against woman*, 12: 83-837
- McKenzie, J. 2013. Disabled people in rural South Africa talk about sexuality. *Culture, Health & Sexuality*, 15(3): 372-386.
- Modell, S.J. & Cropp, D. 2007. Police officers and disability: Perceptions and attitudes. *Intellectual and Developmental Disabilities*, 45(1): 60-63.
- Modell, S.J. & Mak, S. 2008. A preliminary assessment of police officers' knowledge and perceptions of persons with disabilities. *Intellectual and Developmental Disabilities*, 46(3): 183-189.
- National Instruction 3/2008: Sexual offences. Legal Services: Legislation. Issued by Consolidation Notice 11/2008. Available at: http://www.saps.gov.za/resource_centre/acts/downloads/sexual_offences/ni/ni0308e.pdf.
- Oschwald, M., Curry, M., Hughes, R.B., Arthur, A. & Powers, L.E. 2011. Law enforcement's response to crime reporting by people with disabilities. *Police Practice and Research*, 12(6): 527-542.

- Pillay, A.L. 2012. The rape survivor with an intellectual disability vs. the court. *South African Journal of Psychology*, 42: 312-322.
- Powers, L.E., Hughes, R.B. & Lund, E.M. 2009. *Interpersonal violence and women with disability; A research update*. Harrisburg, PA: VAWnet, a project of the National Resource Centre on Domestic Violence/Pennsylvania Coalition Against Domestic Violence. Available on the website <http://www.vawnet.org> (accessed on: 24 July 2013).
- Rugsaken, K. 2006. *Body speaks: Body language around the world*. Available at NACADA Clearinghouse of Academic Advising Resources Web site: <http://www.nacada.ksu.edu/Resources/Clearinghouse/View-Articles/body-speaks.aspx>. (accessed on: 19 October 2015).
- Seedat, M., Van Niekerk, A., Jewkes, R., Suffla, S. & Ratele, K. 2009. Violence and injuries in South Africa: Prioritising an agenda for prevention. *Lancet*, 374: 68-79.
- Smith Thiel, K., Baladerian, N.J., Boyce, K.R., Cantos VII, O.D., Davis, L.A., Kelly, K., Mitchell, K.T. & Stream, J. 2011. Fetal Alcohol Spectrum Disorder and victimization: Implications for families, educators, social services, law enforcement and the judicial system. *Journal of Psychiatry and Law*, 39: 121-157.
- South African Police Service (SAPS). 2016. *Victim Empowerment Service in the South African Police Service*. Available at: http://www.saps.gov/za/resource_centre/women_children/amended_victim_empo_service.pdf (accessed on: 26 August 2016).
- Spivak, B.L. & Thomas, D.M. 2013. Police contact with people with intellectual disability: The independent third person perspective. *Journal of Intellectual Disability Research*, 57(7): 635-646.
- Statistics South Africa. 2014. *Mid-year population estimates, 2014. Statistical Release P03*. Available at: <http://www.statssa.gov.za> (accessed on: 14 June 2015).
- Western Cape Forum for Intellectual Disability. 2014. *The right to protection: Identifying and reporting sexual abuse of children and adults with intellectual disability*. Cape Town: Western Cape Forum for Intellectual Disability.
- White, R., Bornman, J. & Johnson, E. 2015. Testifying in court as a victim of crime for persons with little or no functional speech: Vocabulary implications. *Child Abuse Research: A South African Journal (CARSA)*, 16(1): 1-14
- Wibeck, V., Dahlgren, M.A. & Öberg, G. 2007. Learning in focus groups: An analytical dimension for enhancing focus group research. *Qualitative Research*, 7(2): 249-267.
- World Health Organisation. 2011. *World report on disability*. Available at: http://apps.who.int/iris/bitstream/10665/70670/1/WHO_NMH_VIP_11.01_eng.pdf (accessed on: 19 October 2015).
- Ziv, N. 2007. Witnesses with mental disabilities: Accommodations and the search for truth – The Israeli Case. *Disability Studies Quarterly*, 27(4). Available at: <http://dsq-sds.org/article/view/51/51> (accessed on: 1 November 2014).

ENDNOTES

1. Little or no functional speech refers to individuals who are unable to produce intelligible speech or who are only able to produce 15 or less intelligible words (Cantwell & Baker, 1985: 526).
2. A communication board can be defined as a low technology communication device that displays graphic symbols. For example: Picture Communication Symbols or Blissymbols and/or pictures and/or letters of the alphabet (Lloyd, Fuller & Arvidson, 1997: 526).
3. Afrika Tikun is a non-governmental organisation that is dedicated to investing in education, health and social services for children, youth and their families through its community centres (Bornman, 2014: 47).