

RESEARCH

Investigating Court Accommodations for Persons with Severe Communication Disabilities: Perspectives of International Legal Experts

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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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