

Giving voice to the voices of legal practitioners with disabilities

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Points of interest

- Law professionals with disabilities, for example lawyers and judges, have unique experiences of the court system, which means that they can offer a clearer understanding of what communication skills and strategies are needed to participate in court.
- Law professionals with disabilities can suggest effective communication methods and strategies that other persons with disabilities could use in court.
- There are certain barriers in court that make it difficult for persons with disabilities to participate in court, for example, policy barriers.
- There are also certain accommodations that can assist persons with disabilities to be treated with respect in court, in a fair and equal way.
- In the future, law professionals with disabilities should be involved when new laws, policies and guidelines are created that could assist persons with disabilities to participate in the court system in an equal way.

Abstract

Several international human rights conventions focus on ensuring access to justice for all. Based on their unique lived experiences, legal practitioners with disabilities have much to offer in terms of understanding – from an insider perspective – the accommodations that could be used in court. The aim of this study was to describe the perspectives of legal practitioners with disabilities on their own experience of participation in court (focusing on both barriers and facilitators), and to elicit their suggested accommodations for persons with severe communication disabilities. Online and telephonic interviews were conducted with seven legal practitioners with disabilities. In response to the questions, three themes were conceptualised: participation barriers that hinder access to justice; accommodations related to ensuring equality; and accommodations related to

procedural fairness. The insider perspectives of legal practitioners with disabilities may assist other persons with disabilities to participate equally in court, thereby ensuring access to justice for all.

Keywords

Accommodations, communication disability, court, human rights, legal practitioners, participation, persons with disabilities

Introduction

Over half a century ago, on 10 December 1948, the United Nations' General Assembly (United Nations 1948) adopted the Universal Declaration of Human Rights (UDHR). This declaration has become the foundation of the modern human rights movement and is widely regarded as a universal standard of achievement for all people and all nations (Global Citizenship Commission 2016; Harpur 2012; Hibbert 2017). The preamble of the UDHR states that human rights is the foundation of global freedom, justice and peace (United Nations 1948), and it paved the way for the adoption of further human-rights focused conventions, for example, the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) (United Nations 1988), the Convention on the Rights of the Child (CRC) (United Nations 1989), and the Convention on the Rights of Persons with Disabilities (CRPD) (United Nations 2006).

The CRPD, with its focus on human rights for persons with disabilities, was negotiated during only eight sessions of an Ad Hoc Committee of the General Assembly from 2002 to 2006, making it the fastest negotiated human rights treaty to date (Degener 2016). Moreover, it received the highest number of signatories in history to a United Nations Convention on its opening day, thereby highlighting the global importance of redress of the societal discrimination and exclusion faced by persons with disabilities (Degener 2016). Fourteen years have passed since the global adoption and ratification of the CRPD, and 72 years since the adoption of the UDHR; yet worldwide, persons with disabilities still face basic human rights violations, such as exclusion from education, from employment and from the court system (Harpur 2012; Shrewsbury 2015; White et al. 2020a).

One human right pertaining to persons with disability that has been well researched in recent years is access to justice (Benedet and Grant 2012; Bornman 2017; Cremin 2016; Flynn 2016; Flynn and Lawson 2013; Hepner et al. 2015; O’Leary and Feely 2018; Ortoleva 2011; Talbot 2012; White et al. 2020a). The research focused on different stakeholder groups such as persons with disabilities as victims (Bornman et al. 2011; Cusack 2017; Kuosmanen and Starke 2015; Lumsden and Black 2020; Marinos et al. 2014; White, Bornman, and Johnson 2015) and as witnesses (Beckene, Forrester-Jones, and Murphy 2017; Hepner, Woodward, and Stewart 2015; Nair 2009; O’Leary and Feely 2018; Pillay 2012; Ziv 2007) and, to a lesser extent, on persons with disabilities as perpetrators and defendants (Gooding et al. 2017; Hayes 2007; O’Mahony 2012; Talbot 2012). However, despite the fact that they are a direct stakeholder group who could provide an insider perspective, there is a paucity of research that focuses on persons with disabilities as legal practitioners (e.g. judges, lawyers, jurors) and how they, despite their disability, access and navigate the court system to perform their professional roles (Flynn 2016). The scant existing research that includes legal practitioners with disabilities, focuses mostly on the barriers that they experience in their role as legal practitioners. Ill-treatment, ignorance or discrimination from peers and senior personnel have been reported (Flynn 2016; Foster and Hirst 2020). In disability research, the inclusion of persons with disability’s own voices has become more prominent in recent years (Ashby 2011; D’Or, Kelly, and McCawley 2020; Thill 2015). There is general consensus that if the voices of persons with disabilities are not actively listened to, society conveys a message to them (and to others) that their perspectives as persons with disabilities are not valued (Ashby 2011). The fact that this deprives them of a sense of belonging or of being recognised as persons, seriously inhibits their well-being, personhood and identity (Celik 2017).

This lack of participation by legal professionals with disabilities limits their lived experiences (Flynn 2016) and is concerning. Participation is defined as engagement in a life situation (Imms et al. 2017; Ramsten and Blomberg 2019; Rix et al. 2020) involving two distinctive components: attendance (being in the life situation) and involvement (the experience of participation while being in the life situation) (Imms 2020). These two components can provide some clarity for outcome measurements when considering access to justice and participation as a legal practitioner with a disability. If persons with disabilities cannot ‘attend’ a life situation, participation is not possible. Hence, it is of critical importance to acknowledge that it is

ineffective and insufficient if legal professionals with a disability can merely ‘attend’ their professional roles (Imms 2020). However, attendance should be acknowledged as a first step. For true participation to transpire, attendance is necessary, but not sufficient. Legal practitioners with disabilities should be allowed to be involved in their professional role, and therefore court accommodations should be provided to them (White et al., 2020b). Only then will legal practitioners with disabilities experience equal and effective participation as described in Article 13 of the CRPD (United Nations 2006).

Research has been conducted on participation for court users, and a provisional framework entitled *Ten Points of Participation* has been proposed to assist legal practitioners to reflect on their own understanding of participation and thus on their approach towards court users (Jacobson and Cooper 2020). These *Ten Points of Participation* conceptualised what participation entails (e.g. providing and eliciting information; being informed; being represented; being protected) and what the functions of participation are (e.g. to exercise legal rights; enable decision making; legitimate the judicial process and outcomes) (Jacobson and Cooper 2020). Although these points focused on court users in general and did not specifically consider legal practitioners with disabilities, the same framework could apply.

It is important for researchers to not only study topics related to persons with disabilities, but to also include the actual voices of these persons in order to understand disability. As such, an insider perspective will add agency, advance the field and drive relevant change (Hall 2013; Shrewsbury 2015). Persons with disabilities are the experts on disability and their extensive knowledge and lived experiences in their workplace (the court) could lead the way in important and sensitive research topics such as access to justice (Lordan 2000). To enhance participation and inclusion in the courts for persons with disabilities, their perspectives should be acknowledged and their voices should be heard (Hall 2013). Moreover, including the authentic voices and experiences of legal practitioners with disabilities will give insight into their experiences of the judiciary system (Hyun, Hahn, and McConnell 2014). These insights could also assist in identifying relevant and appropriate court accommodations that are needed for equal participation for all persons with disabilities in court, irrespective of their role (Foster and Hirst 2020; Hyun, Hahn, and McConnell 2014). Involving legal practitioners with disabilities might also improve the quality of research by ensuring that it addresses the most pertinent issues

faced by this group (Farmer and Macleod 2011). Such research findings can produce evidence for policymaking based on the authentic views of legal practitioners with disabilities.

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

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

Methodology

In-depth, semi-structured, asynchronous online email (n=6) and telephonic (n=1) interviews were conducted with seven legal practitioners with disabilities from various countries. Initially, only online email interviews were planned for this qualitative research study, but one participant requested to be interviewed telephonically due to his visual disability. In line with the focus of our study, the researchers were flexible and readily accommodated this request.

Online email interviewing is a qualitative research method where information is repeatedly exchanged online between researcher and participant within a particular timeframe (Ratislavová and Ratislav 2014). The advantages of online email interviews are numerous. They eliminate the boundaries of time and space, make the geographical setting obsolete, prioritise participants' comfort and encourage iterative reflection throughout the interview process (Bowden and Galindo-Gonzalez 2015). The accessibility of potential participants despite their geographical setting allowed the researchers to recruit suitable persons from various countries. Online email interviews proved to be a cost-effective form of data collection as time and money for travelling

to an interview venue were saved for both participants and researchers. Methodological analysis also proved that asynchronous email interviews are appropriate for use in sensitive and important topics (Hershberger and Kavanaugh 2017).

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

A first potential disadvantage of using online email interviews is the researcher's inability to capture the participants' nonverbal and paralinguistic cues, as would have been possible with face-to-face interviews (Fritz and Vandermause 2018). However, since participants in the current study had excellent linguistic skills (one of the requirements of their profession), they were able to clearly articulate their responses in writing. A further potential disadvantage was posed by the fact that, after the first introductory email, some participants needed to be sent multiple 'reminder' emails to complete the answers by a certain date, while others asked for an extension because they had limited available time. The primary researcher (Author 1) coped with this challenge by developing an active professional online relationship with all participants to ensure that they remained in contact and were aware of dates and expectations (e.g. when questions would be posed and when they would submit their answers) (James 2016). As a result, a 100% response rate was obtained for all the email interviews.

Participants

Participants were identified through purposive sampling to ensure that they would be able to share their experiences and perspectives as legal practitioners with disabilities (Creswell and Plano Clark 2018). Only two broad selection criteria were used, as the potential pool of participants was extremely small. Firstly, participants had to be legal practitioners (lawyer, juror, judge, etc.); and secondly, they had to have a disability (no specific type of disability was stated

beforehand). In order to elicit a rich and diverse view on the topic, no restrictions were placed in respect of country representation, which implied that participants would have their own unique experience with their specific countries' laws. Seven potential participants were identified through the researchers' professional networks, and these potential participants were asked to nominate other legal practitioners with disabilities whom they were familiar with, thus using a snowball-sampling technique (Creswell and Plano Clark 2018). This resulted in the identification of two additional potential participants from two more countries. All nine identified participants were recruited, but unfortunately one passed away and one declined participation due to health reasons.

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

Despite the gender homogeneity, the diagnoses of the participants differed. Three had visual impairments, with one each having a hearing impairment, cerebral palsy, facioscapulohumeral muscular dystrophy (FSHD) and one being a stroke survivor. All seven participants used assistive communication devices (dictaphone, screen reader) or mobility devices (wheelchair), and three participants also had support in the workplace in the form of an administrative clerk or note-taker. As expected, all the participants had obtained a higher educational degree. Two participants were lawyers, two were judges, with the remaining participants being professionally labelled as a juror, barrister and advocate. The participants' work experience within the court system ranged from 2 to 47 years, with an average of 23 years. They had worked in varied types of courts, including tribunals, district courts, regional courts, crown courts, magistrate's courts, civil courts, criminal courts, supreme courts, employment tribunal county courts and constitutional courts. The majority of the participants had participated in a court case where the witness or defendant had a disability and had been involved in legislation and law reform

activities. Participants varied in nationality and represented four different countries: England and the United States of America (USA), which both have common law systems, Lesotho, which has a dual legal system consisting of customary and general laws that operate side by side, as well as South Africa, which has a mixed legal system – a hybrid of Roman Dutch civilian law, English common law, customary law and religious personal law.

Data Collection and Materials

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

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

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

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

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

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

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

Data Analysis

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

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

Findings

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

Participation barriers that hinder access to justice

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

The participants mentioned barriers linked directly to legislative or regulatory decisions that govern certain legal situations, which were classified as policy barriers. Participant 3 spoke specifically about the legislation linked to if a juror was deaf and needed a sign language interpreter in court:

If the person needs a [sign language] translator then I think that will be a barrier because of the legality where a 13th person cannot be used during the deliberation. The law has to change.

Participant 5 spoke in detail about the election versus selection process of judges in the USA:

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

Barriers mentioned were linked to procedures or conventions that had become common practice in the judiciary system or community, although these were not actual policies (classified as practice barriers). Participant 1 spoke about the challenge of accessibility he had experienced:

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

Participant 3 shared his experience as a juror and how the court was not prepared or able to accommodate him:

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

Participant 5 reflected on the court system and its practice barriers:

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

Knowledge and skill barriers that hindered access to justice were also mentioned. These barriers were linked directly to the lack of information and skills of a professional, which result in limited opportunities being provided to persons with disability. Participant 1 shared his personal experience owing to the lack of knowledge and skill within the court system:

I have been told that I will not be able to be a barrister because of my speech impairment, although I am generally understood.

Participant 7 shared his thoughts on persons with severe communication disabilities and the lack of knowledge about legal practitioners in the court system:

Judicial officers, prosecutors and lawyers should be trained to understand that absence of the ability to communicate by speech does not mean the absence of thinking power or any of the attributes of humanity.

Participant 4 reflected on the court system and lack of resources, knowledge, and skills of the legal practitioners within the system:

Courts do not have communication aids to support effective participation of such a person [with a communication disability], his or her evidence may be less valued since he or she does not give evidence *viva voce* as required by our Criminal Procedure and Evidence Act; the court may not hear his or her evidence if the evidence is not given via speech. Such persons may not be able to access justice because they may have difficulties in responding to the questions posed in court, they may not be able to cross examine or ask questions verbally.

Participant 2 commented on his invisible disability diagnosis and how that impacted him as a legal practitioner in the court environment due to the lack of knowledge and skills of his legal peers in the courts:

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

Most participants mentioned attitudinal barriers that hindered their access to justice. These barriers were linked directly to the attitudes and beliefs held by other professionals or individuals. Participant 7 explained:

The worst barrier was people thinking I had no brains or was some kind of idiot because I was blind.

An in-depth discussion by Participant 2 highlighted his personal experience of the negative attitude of the courts and the legal practitioners who are employed in the court system:

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

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

Practice barriers were mentioned most frequently. The insider perspective of the legal practitioners with disabilities added a rich understanding of what transpires in their everyday workplace: the court. Their insights included aspects such as physical inaccessibility of the courts; lack of resources (e.g., financial assistance); lack of human support (e.g., administrative clerks); inaccessible legal documents; lack of or limited aids and devices (e.g., speech-generating devices). Practice barriers can be addressed by applying the guidelines in the CRPD (United Nations 2006) and other international documents, for example the *International Principles and Guidelines on Access to Justice for Persons with Disabilities* (United Nations 2020). Court accommodations such as wheelchair ramps (Edwards, Harold, and Kilcommins 2012), alternative and augmentative communication (AAC) strategies and methods (Doak and Doak

2017), and support persons such as administrative clerks (Cremin 2016) could also assist the legal practitioners with disabilities in the court system.

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

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

Accommodations related to ensuring equality

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

Regarding international law, the CRPD – and more specifically, Article 13 of the CRPD, access to justice – was mentioned numerous times. The United Nations recently published International Principles and Guidelines on Access to Justice for Persons with Disabilities (United Nations 2020) which state: “Everyone should, on an equal basis with others, enjoy the rights to equality before the law, to equal protection under the law, to a fair resolution of disputes, to meaningful

participation and to be heard” (United Nations 2020, 6). As noted from the findings related to the different barriers, most of the participants experienced discriminatory behaviours and inequality in the legal profession or in the court when they attempted to perform their job. The question that arises is whether a legal practitioner without disability would have been subjected to the same discriminatory practices, for instance having to prove their ability to perform their job (Foster and Hirst 2020).

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

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

Under the subtheme, ‘Case law that applies’, Participant 2 shared his personal experience (and case law) on how he achieved equality in the workplace after a lengthy and unfair process:

My special needs were not considered. The prosecution purported to take a decision to cease allocating new trials to my court in October 2003. I sought the assistance initially of the International Commission of Jurists (ICJ) and later... the United Nations Special Rapporteur of the Independence of Judges and Lawyers (UNSPIJL) to get the prosecuting authority to reverse their decision. I also informed the UNSPIJL that I had a disability. The ICJ intervened without success. The UNSRIJL then sought the assistance of the United Nations Special Rapporteur on the Rights of Persons with Disabilities (UNSRRPD). Together they sent a joint urgent appeal to the [country removed] Government urging them to comply with their obligations under international law, at that time the Declaration of the Rights of Persons with Disabilities. The [country removed]

Government then gave an undertaking that they would do so. The Magistrate Commission abruptly halted enquiry into my alleged incapacity to carry out the duties of my office in March 2004. The Magistrates Commission carried out a needs assessment in July 2004. The Commission recommended that the [specific department] assign a personal clerk to me to assist with administrative tasks that I had difficulty performing in November 2004. Despite the fact that I now had a personal clerk to assist me with administrative tasks the prosecuting authority persisted in their refusal to place new trials before my court. I took the prosecuting authority on review to the High Court. The High Court decided in my favour on 16 August 2005.

Participant 5 also described his professional journey in detail and illustrated the case law or precedent he set. He mentioned how he did not use any specific laws to rely on in his pursuit of access to justice, but did mention working together with the courts and the importance of collaboration within the court system:

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

Under the subtheme, 'Following legal processes', Participant 5 went on to share his personal reflection on specific legal processes and how he felt he would not have been considered for his specific legal position if it had not been for an election process in his own country:

I think what they would do is they would say, 'Wow, it is so inspirational that he wants to be a Supreme Court justice and that's so inspiring because he is blind' ...and I think they would approach it from that perspective, like, 'oh wow, that's so great that he wants to have this position and he's inspiring and all that'. But in the end, I don't think they would give me the job. I think they would probably say after the interview... I think they would probably all go back into a room and they'd probably say, 'You know, that's great that he's accomplished all these things but, he doesn't look like us, he doesn't sound like us, this doesn't look like the kind of person that could probably perform this job.

Participant 5 provided a detailed explanation of the election versus appointment process of judges in his country, and how he perceived this specific court process to have ensured equality for him in being elected as a judge: “And.... I believe strongly that if [state removed] had used an appointment process, and not an electoral process, I don't think I would have been elected, because I would not have been given the opportunity [as a person with a disability].

One of the traditional methods of selecting high court judges in the USA is nonpartisan elections where the public votes for the judge. However, the judges are not permitted to advertise themselves as members of particular political parties (Choi, Gulati, and Posner 2010). Much controversy and research surround the debate about the appointment versus election of judges (Choi, Gulati, and Posner 2010; Iaryczower, Lewis, and Shum 2013; Menton 2009; Ryan 2005; Skaggs 2010), and from the quote above, it is clear that Participant 5 was of the opinion that the election process aided his quest for equality in becoming a judge (Choi, Gulati, and Posner 2010). More importantly, what the election of this judge underscores, is the evidence that legal practitioners with disabilities have been successfully incorporated into judicial systems, despite sceptical attitudes and barriers against the appointment of persons with disabilities (Dorfman 2016).

In line with Participant 5's acknowledgement of how specific USA law and jurisdiction assisted and accommodated him in his pursuit of access to justice as a legal practitioner, there has also been specific law in the other participants' countries that assisted them with equal opportunities and accommodations. Examples are the Promotion of Equality and Prohibition of Unfair Discrimination Act, 2000 (South Africa); the Equality Act 2010 (England) and the Disability Equity Act 2021 (Lesotho), which were recently enacted. All these laws prohibit discrimination on any basis and promote equality for all – including for individuals with disabilities.

Under the subtheme 'Facilitators related to equality', Participant 3 shared his experience on being a juror and how the courts were accommodating towards him as a person who was deaf: “However, once I served in the jury service, the court was extremely accommodating with my needs and made sure I had everything I needed.

Recently in the UK, the Police, Crime, Sentencing and Courts Bill was proposed and is in the process of becoming an Act (United Kingdom Parliament 2021). This Bill includes new measures that will allow persons who are deaf to sit on juries in England and Wales for the first

time. Current laws ban the presence of a ‘stranger’ being in the jury deliberation room, but this will now be revoked and instead, a British Sign Language Interpreter will be allowed into the room (United Kingdom Parliament 2021). This once again highlights how law reform and new legislations are assisting persons with disabilities to participate equally in the court system and achieve their right of access to justice.

Accommodations related to procedural fairness

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

The principle of ‘being treated with respect’ can be defined as an accommodation that can enhance the perception of persons with disabilities that legal professionals in the court system will treat them with respect and dignity, thereby implying courtesy and recognition of the individual and their disability. Respect includes environmental adaptations and accommodations that make up the physical, social and attitudinal environment. Suggestions made by the participants included making court rooms accessible with microphones (Participant 1), and having a family member or friend who could accompany the person with a communication disability, if the latter is a complainant or witness in a matter (Participant 2).

The principle of ‘understanding of court language’ implies an accommodation that can assist persons with disabilities to understand the language or terminology used in court and how decisions are made. These accommodations focus on the process that will assist the person’s receptive language and whether the person feels the motives of the legal practitioners are trustworthy. Recommendations that were suggested under this principle were to determine (in appropriate cases) the tribunal or court’s method of and approach to cross-examination for all parties involved (the witness, the defendant and the attorney) (Participant 6).

Another accommodation that was mentioned was to allow persons with communication disabilities to write notes to others during the trial process, especially in the case of jurors (Participant 3).

The principle of ‘having a voice’ includes accommodations that can help persons with disabilities to feel that they have a voice and are being heard. The focus must be on the process that will assist the individual with expressive communication and language to participate in court. Recommendations that were provided included the use of alphabet boards and pictures, as well as the provision of environmental accommodations such as portable or fold-up wheelchair ramps, which may enable persons with communication disabilities to participate effectively in court (Participant 4). Participant 7 also suggested that courts should employ sign language interpreters trained in court procedures on a permanent basis.

The last principle, ‘using objective criteria for decision making’, requires the legal practitioners to use objective, legitimate criteria for making decisions and to apply fairness in decisions, without allowing personal bias or views to influence their choice or opinion. Participant 3 suggested that the law needs to be changed to allow a 13th person in the deliberation and Participant 7 recommended that people who were deaf and did not know sign language be allowed to write down their version of events.

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

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

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

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

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

Critical Reflection and Limitations

This study highlighted and confirmed the perspectives of legal practitioners with disabilities in the court system and consequently suggests strategies and accommodations to enhance their participation in court. The findings can also be used to develop recommendations for students with disabilities who are planning to study and pursue a legal profession (Flynn 2016).

A limitation of the study is that all participants were male legal practitioners with disabilities. This might indicate that more men (with or without disabilities) are practising law, compared to women, as was highlighted in a recent study that reported that women are still largely underrepresented in the court system (Gill and Eugenis 2019). The absence of women participants in the current study highlights the fact that women with disabilities still face barriers such as having fewer educational opportunities than their male counterparts, and therefore having limited access to professional and jury positions in the court system (Kim, Skinner, and Parish 2020; Lodovici and Orlando 2017; Women Enabled International 2019).

Although each of the countries represented in this research (England, Lesotho, South Africa and the USA) has its own laws and jurisdictions, it must be noted that all of them have either ratified or are signatories of the CRPD (United Nations 2021). Thus, they formally recognise the importance of the human rights of persons with disabilities, including those with severe communication disabilities. As stated in the CRPD, each country should recognise areas where adaptations should be made for persons with disabilities to effectively exercise their rights. Our study case highlights the importance of adapting the court system and providing court accommodations for legal practitioners with disabilities.

Future research could focus on involving legal practitioners with disabilities in co-designing or co-developing tools and guidelines (i.e. potential court accommodations) that could assist persons with disabilities to participate equally and fully in the court system – whether as witnesses, victims, perpetrators or legal practitioners (Park 2020; Smits et al. 2020).

Furthermore, future research should focus on the development of specific disability training programmes for legal practitioners – with the express input from legal practitioners with disabilities. The latter group should be comprehensively involved in the development of such training programmes, as they are the experts on disability (Lordan 2000; Viljoen 2018). At the same time, educational modules on disability for legal academics and students could be designed to raise awareness of the challenges faced by persons with disabilities in accessing the judiciary system (as a victim, witness, defendant or legal practitioner). Such intervention is essential to break the cycle of discrimination that legal practitioners with disabilities so often experience (Equality and Human Rights Commission 2020).

Conclusion

Despite living in the 21st century, legal practitioners with disabilities continue to be challenged by an ableist zeitgeist that results in discriminatory, exclusionary attitudes and practices that hinder them in their roles as jurors, advocates and judges (Foster and Hirst 2020). According to Article 23 of the UDHR, “[e]veryone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment” (United Nations, 1948, 5). Article 27 in the CRPD further declares that accommodations should be provided to persons with disabilities in the workplace (United Nations 2006). The perspectives of and recommendations given by the legal practitioners with disabilities who participated in this study could assist other legal practitioners, scholars and students with disabilities (including those with severe communication disabilities) to not only pursue a legal profession, but also to participate equally and fairly in the court system. To date, very little research has been conducted on legal practitioners with disabilities in the court system, which suggests that people with disabilities are largely unexpected in these higher-status occupations (Foster and Hirst 2020). Furthermore, educated and successful legal practitioners with disabilities are often presented as the ‘exception to the rule’ rather than the expected norm. Going forward, every effort should be made to assist legal practitioners with disabilities to participate equally in the courts, and this can be done only if court accommodations are made readily available. Moreover, the human rights of legal practitioners with disabilities to work and to access justice must be protected fervidly, so as to ensure that the Universal Declaration of Human Rights is fulfilled.

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Competing interests

The authors declare that no competing interests exist and that they have no financial or personal relationships that may have influenced them inappropriately in writing this article.

Authors' contributions

All authors contributed to the conceptualisation of the study, the development of methodology, data collection, analysis of data, summary of results, as well as in the writing of the original draft and all subsequent versions.

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Data availability statement

The data that supports the findings of this study is available on request from the corresponding author. Due to confidentiality restrictions, the data is not publicly available as it contains information that could compromise the privacy of the research participants.

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