STOP VIOLENCE AGAINST PEOPLE WITH DISABILITIES
AN INTERNATIONAL RESOURCE

Edited by

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The authors who all believe that ‘silence is not golden’ contributed unique chapters reflecting their particular national contexts and thereby creating a truly international book. They are, in alphabetical order:

Netta Ben Zeev, Fiona Given, Yifat Klein, Janet Larcher, Naama Lerner, India Ochs, Rajul Padmanabhan, Shunit Reiter, and Christopher Wickman

The individuals who shared their stories with us so that we could include true living breathing examples of why no stone should be left unturned in ensuring that violence be stopped and equal justice ensured. They are the true inspiration behind the book. Some individuals wanted their identity known, and others not. We would like to thank the following individuals in alphabetical order L, Constance, G, L, Mark, R and Ramesh.

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Due to length restrictions of the book, only one communication board is included as an example. However, the communication boards for all 27 languages are available for free downloading from the website at Centre for Augmentative and Alternative Communication at the University of Pretoria (www.caac.up.ac.za).

John Coetzee for his meticulous language editing and guidance on current punctuation conventions. His painstaking (not pain giving!) editing of the book has helped to make it more accessible to a wide international readership.

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And last, but definitely not least, our friends and families, in particular Michael Bryen, Werner Bornman, Heinrich Bornman and Wikus Bornman who encouraged and supported us and continued to surround us with love and understanding even when we were preoccupied with the book.

Margaret Mead (16 December 1901 – 15 November 1978), a cultural anthropologist wrote: ‘Never doubt that a small group of thoughtful, committed citizens can change the world. Indeed, it is the only thing that ever has’. Such words of wisdom and truth inspire us all.

Silence is Never Golden
PREFACE

Stop Violence Against People with Disabilities! An International Resource provides a multinational and multidisciplinary perspective on violence against and abuse of both children and adults with disabilities. It includes promising approaches to risk reduction, intervention and access to justice when violence does occur. A unique focus of this book is on children and adults who have little or no functional speech as a result of a variety of disabilities, including cognitive, physical, socio-emotional and sensory disabilities. Their voices have been silent far too long. As a result of their communication disabilities, these individuals are especially vulnerable to violence. Additionally, they are often denied access to the justice system.

Stop Violence Against People with Disabilities! An International Resource is the result of more than a decade of research and training in the areas of disability policy, human and civil rights supporting individuals through the justice system, and product development with and in support of individuals with little or no functional speech. It has been a collaborative effort in the truest sense of the word, as we have realised from the outset that neither of us could write this book alone. The authors of the various chapters in the book are mostly members of the International Society for Augmentative and Alternative Communication (ISAAC) who share a collective passion for addressing violence against people in need of communication supports. We have been able to meet and interact at various ISAAC conferences, but have also collaborated through the use of current technology such as Skype and email. In doing so, our understanding of the scope and nature of the problem has increased, and we have learnt many of the principles we are able to illustrate in this book.

Our vision in writing this book was to go beyond simply describing the extent of the problem, but to rather focus on promising practices from across the globe in addressing risk reduction. These promising practices have evolved from seven countries across five continents to reduce violence and assure equal justice when violence does occur. Chapters are modelled on a real case study from the particular country.

Stop Violence Against People with Disabilities! An International Resource also identifies links between the United Nations Convention on the Rights of Persons with Disabilities and efforts to reduce violence against children and adults with limited or no functional speech, and to increase equal access to the justice system. This book aims to achieve this through

• improving awareness, knowledge and understanding that violence against people with disabilities is international in scope rather than a ‘problem only in one’s own country’;
• providing a beginning framework for addressing the problem;
• sharing promising approaches at the levels of prevention, intervention, prosecution and recovery;
• showing how the United Nations Convention on the Rights of Persons with Disabilities might be used as an instrument for change;
• supplying a variety of practical resources both in the text and in the appendices; and
• identifying directions for future action.

Of special note is the inclusion of one example of a picture-based communication board called You Can Tell and be Heard in Afrikaans and English. The vocabulary included on the boards has been socially validated by a group of literate persons who use Augmentative and Alternative Communication (AAC) systems to ensure stakeholder relevance.

Stop Violence Against People with Disabilities! An International Resource is intended for peers who work in the fields of disability, law and AAC. This includes public policy decision-makers, researchers, and multidisciplinary practitioners, including those providing a wide range of services within the field of disability.
Members of ISAAC and their local chapters across the globe have a special role in addressing the issue of violence against people with little or no functional speech. Many of the promising approaches and resources will help them to meet this challenge.

Law-enforcement professionals, including the police, attorneys, judges and victim-assistance staff should also read Stop Violence Against People with Disabilities! An International Resource.

Persons with disabilities and their parents or carers are the major stakeholders and can learn much from the chapters in the book and the resources provided in the appendices. To ensure that people with disabilities can become familiar with the content of this book, abstracts have been written in the home language of the author and in easy English.

Anyone who is committed to human rights and to ensuring that the United Nations Convention on the Rights of Persons with Disabilities is implemented in their countries will benefit from reading this book.

However, it should be noted that violence against children and adults with little or no functional speech will continue as long as those who are neither perpetrators nor victims remain silent when violence does occur.

A note about language and spelling used in this book: We have chosen to use the feminine gender when referring to victims of violence. That is not because we are radical feminists, nor is it intended as sexual discrimination or limitation, but rather because the research has shown that women and girls are most likely to be victims of violence. Of course, we do not want to imply that men and boys with little or no functional speech have not also been victims of violence and abuse. We know that is not the case. However, the majority of victims are, indeed, women and girls. Similarly, when referring to perpetrators of violence we use the male gender, given that men are most likely to be the source of violence towards boys, girls, and women.

Finally, all chapters have been written in or translated into English. However, spellings of English words will vary between American English and British English. We have respected those differences when they have appeared.

Diane Nelson Bryen and Juan Bornman
December 2014
The World Health Organization estimates that 10% of the world’s population, which means approximately 450 million adults and 200 million children, experience some form of disability. In this book you will learn that individuals with disability are three to four times more likely to experience violence against them than their nondisabled peers. Individuals with disability who cannot speak are particularly vulnerable.

With such staggering global statistics, it becomes clear why an international resource aimed at stopping the violence against such a vulnerable population is needed. In this book, statistics become real people. You will hear the stories of seven individuals, each from a different country. You will learn how each has suffered and survived violence and abuse. More importantly, you will learn how each is surviving and coping with the violence each has experienced.

Eradicating violence against people with disability is no easy quest, especially because of myths and misconceptions around disability. For example, people should realise that the inability to speak does not imply an inability to think or to become an integral part of the community.

Communication is a basic human right – we all know that ‘the word is mightier than the sword.’ But talking about the power of communication from a speaking person’s point of view somehow does not capture the importance thereof. Something about communication as being the essence of life is lost. How can words describe the total despair of being regarded as a ‘nobody’ – a person without needs and wants, rights and responsibilities, emotions and feelings by those who do have the power of speech? Without a means of speech, the ability to communicate and make contact with those around us is lost. Disability issues are seen as a matter of charity, not as a human-rights matter. So, *Stop Violence against People with Disabilities* is not about charity; but rather the human rights of almost one billion members of humankind.

I once stated that I am not interested in picking up the crumbs of compassion thrown from the table of someone who considers himself my master. I want the full menu of human rights. None of us should be satisfied with less than the full menu of human rights. This includes personal safety; protection from violence, exploitation and abuse; and equal justice for ALL our brothers and sisters at home and across the globe.

If we don’t start offering individuals with disability, including those who have no speech, the full menu of human rights, who will?

**Emeritus Archbishop Desmond Tutu**
December 2013
CONTRIBUTORS

Editors

Dr Diane Nelson Bryen has been a professor of Special Education since 1973 and the Executive Director of Temple's Institute on Disabilities, Pennsylvania's University Center for Excellence from 1992 until her retirement in 2008. Dr Bryen has been a leader, mentor, advocate, teacher and researcher. Her contributions to improving the quality of life and equal access for people with disabilities have been widely recognized (i.e., the first annual Temple University Great Teacher's Award; the 1996 Humanitarian Award from United Cerebral Palsy of Pennsylvania; the ACES Free Speech Now Award in 1992; two leadership awards from the Administration on Developmental Disabilities; the Temple University Stauffer Award for distinguished service in 2006; the Distinguished Achievement Award from the Association of University Centers on Disability in 2007; the 2008 Gallery of Success at Temple University, Fulbright Specialist to Kolkata, India and Sakhnin, Israel, and the Neville Cohen Award in South Africa). Dr Bryen has done work in Israel, South Africa, India, Australia, United States Virgin Islands and Guam with four main foci – AAC, criminal justice, inclusive education and disability studies. In her retirement, she continues to teach, write, engage in research, mentor and consult. As a result, she has been appointed as an extraordinary professor at the Centre for Augmentative and Alternative Communication at the University of Pretoria, South Africa, for the period 2013 – 2015. Dr Bryen can be reached via email at dianeb@temple.edu.

Juan Bornman is a professor and Director of the Centre for Augmentative and Alternative Communication at the University of Pretoria. For the past 23 years she has been actively involved in the disability field as a trainer, researcher and activist for one of the most vulnerable groups within the disability spectrum: those individuals with little or no functional speech. She has published more than 30 journal papers and book chapters (some with a research focus and some with a clinical focus), has written two books and done numerous presentations locally and internationally on the topic of AAC. She realised the vulnerability of individuals with little or no functional speech, as there is a prevailing attitude that ‘A silent victim is a perfect victim’. She believes in a multidisciplinary systemic approach to addressing this issue and has been extensively involved in developing communication boards that can be used to address this issue, and through training of relevant stakeholder groups (eg police officers) in using augmentative and alternative forms of communication. Dr Bornman can be reached via email at juan.bornman@up.ac.za.
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A journey into the silent world of violence against persons with little or no functional speech is never easy. It is disturbing to acknowledge that violence is not a rare, isolated occurrence. It affects individuals from all over the globe – individuals who live in developing countries and those who live in the developed world. Perpetrators don’t seem to discriminate between race, age, gender or type of disability, although research has shown that within this sphere of vulnerable victims, those individuals with little or no functional speech are particularly at risk for acts of violence and abuse.

The causes of this devastating epidemic are numerous, as are the different types of violence and profiles of the perpetrators. Successful approaches to risk reduction are emerging within some countries, but are not widely communicated among and between nations. *Stop Violence against People with Disabilities! An International Resource* addresses this international epidemic by bringing together voices from different nations and varied perspectives, so that we can begin to reduce the risk of people with disabilities becoming victims of violence.

One glimmer of hope in changing this grim picture can be the ratification and implementation of the *United Nations Convention on the Rights of Persons with Disabilities* by individual countries. On 13 December 2006, the United Nations General Assembly adopted the *Convention on the Rights of Persons with Disabilities*. It is legally binding on all nations that have ratified it. At the time of the writing of this book, 136 countries had ratified the *United Nations Convention on the Rights of Persons with Disabilities*. All but one country represented in this book, namely the United States, has ratified the *United Nations Convention on the Rights of Persons with Disabilities* and there is strong grass-roots advocacy for ratification by the United States Senate.

The overall purpose of the *United Nations Convention on the Rights of Persons with Disabilities*, as stated in Article 1, is "to promote, protect and
ensure the full and equal enjoyment of all human rights and fundamental freedom by all persons with disabilities, and to promote respect for their inherent dignity”.

Among the 55 articles of the United Nations Convention on the Rights of Persons with Disabilities covering basic human rights, three articles speak directly or indirectly of violence against people with little or no functional speech and access to the criminal justice system when violence does occur. They are Article 16 (Freedom from exploitation, violence and abuse); Article 13 (Access to Justice); and Article 21 (Freedom of expression and opinion and access to information). For the first time in international human rights treaties, AAC is recognized in the United Nations Convention on the Rights of Persons with Disabilities as a legitimate means of communication.

Authors of the nine chapters in the book address the scope of the problem from the specific country’s experience. The authors also provide promising practices that have been successful in their country (1) to improve the personal safety of the individual with little or no functional speech; (2) to support their ability to communicate and tell about the violence as a form of disclosure; (3) to provide victim services, such as appearing in court as a witness or expert; and (4) to successfully try cases in court so that justice can be achieved.

In Chapter 1, India L. Ochs, Attorney, Social Justice Advocate and former President of the United States Society for Augmentative and Alternative Communication (USSAAC), introduces the scope of the problem from the specific country’s experience. She describes the existing international human-rights treaties that should have already addressed the problem of violence against women and children with disabilities. Sadly, these treaties have not been inclusive of women and children with disabilities. Additionally, these international treaties have failed to address equal access to justice when physical, sexual or economic violence against persons with disabilities has occurred.

In Chapters 2 through 7, the reader is introduced to the extent and nature of the problem in the specific country and some promising approaches to addressing violence against this previously silent victim of violence. Diane Nelson Bryen focuses on the United States in Chapter 2. This chapter emphasises the importance of educating people with little or no functional speech, families and members of the justice system, about reducing the risk of violence and obtaining equal access to the justice system when they are victims of violence. Also emphasised is the importance of having AAC systems that support the telling, reporting and appearing as victims in their own defence.

A view from South Africa is presented in Chapter 3 by Juan Bornman. Dr Bornman discusses the reasons why people with disabilities are at higher risk for abuse and rape in a developing country like South Africa.
She concludes by proposing a systemic multidisciplinary approach to risk reduction for this population. Specific strategies for the different stakeholders are provided.

In Chapter 4, Rajul Padmanabhan, addresses the problem of violence and people with limited or no functional speech in India. She highlights the importance of the government, disability activists and the civil society working together to address the widespread problem of violence against children in India, inclusive of children with disabilities.

Attorney Fiona Givens provides a view from Australia in Chapter 5. Women who, themselves, use AAC devices author both this chapter and Chapter 1. Their voices provide a deeper understanding of this disturbing phenomenon. In her chapter, Attorney Givens stresses the need for access not only to the justice system but also access to needed counselling for post-traumatic stress disorder.

Chapter 6 is written by a team comprising a speech language therapist, an advocate and a social worker. Netta Ben Zeev, Naama Lerner and Yifat Klein provide a view from Israel where they focus on policy and the use of AAC toolkits to provide testimony in court. This team has also presented their work on access to justice at the 5th Conference of States at the United Nations in 2012.

In Chapter 7, Dr Janet Larcher, provides some promising approaches to reducing the risk of violence from the United Kingdom. She also shares the many successes of registered intermediaries who can support victims with little or no functional speech when reporting their violence to the police and going to court to provide testimony.

Chapter 8 is a reprint of a paper by Diane Nelson Bryen and Christopher Wickman, published in Disability Studies Quarterly, in 2011. It examines 14 legal cases in which victims of violence, who have little or no functional speech, successfully went through the criminal justice system and were tried in court in seven different states in the United States. We are appreciative of the journal for granting permission to reprint this paper.

Finally, Diane Nelson Bryen from the United States, Shunit Reiter from Israel and Juan Bornman from South Africa present the key findings from these six countries from five different continents in Chapter 9. It is our hope that these findings will guide future international human-rights policy and local practice, so that children and adults with limited or no speech will be free from abuse and violence.

When confronted by a seemingly insurmountable problem, such as violence against children and adults with disabilities, who also have little or no functional speech, “the disability” or “the problem” can easily overshadow the small but significant gains that have already been made in
ending the silence for these individuals. Therefore, the focus throughout this book is not on the epidemic proportions of this grave reality, but rather on the emerging practices that provide glimpses of hope of true human rights and equal access to justice for all.

Diane Nelson Bryen & Juan Bornman
December 2014
Overview

**Being free from abuse and getting justice done**

It is easy to say, ‘fight back’ to people who have been abused, but it is not always easy to do so. Many people do not fight back because they are scared. They are worried about being hurt again or think they do not have the right to fight back but this, of course, is wrong.

In this chapter we look at why people with little or no functional speech are more likely to be abused, and what can be done about that by using both the law in that country and international law.

Having a disability is just one part of a person’s problem. There are other factors that can lead to discrimination and increase people’s fears of being maltreated, such as having a poor education, being abused at school, living in a rural area, or being a member of a minority group.

When people with little or no functional speech have one or more one of these other factors, in addition to their disability, they are at even higher risk of abuse or not having rights.

There are several international laws that should give more protection to people with disability, women, minority groups and children. These laws, if used properly, can reduce abuse and discrimination to a great extent.

There are other easy steps that local networks can take to raise awareness and support people with speech disabilities, by correctly applying the justice system.
Abstract

‘Fight back.’ It is easy to say, but not always easy to do. Very often, people do not fight back simply out of fear. While this kind of fear may be based on an attempt to avoid additional physical harm, fear can also come from an internal belief that the person does not have a right to fight back. Such beliefs are wrong. This chapter addresses external factors that can put individuals with speech disabilities into more vulnerable situations. We will also discuss how society can reduce such vulnerabilities by bringing international law and awareness to the local level.

Disability is just one characteristic that defines each individual person. Gender, a poor education, abuse within schools, living in rural areas or being part of an indigenous population are other potential factors which lead to additional discrimination, and increase a person’s feeling of oppression or fear. When these factors all overlap, individuals with little or no functional speech are at an extreme state of vulnerability to experience abuse or denial of rights. Several international conventions have been established to provide additional protections for women, minorities, children and other specific groups exposed to the justice system. The language within these conventions can have a strong impact in reducing a person’s exposure to abuse and discrimination and should be promoted and implemented at local level. There are also other simple steps local networks could take to raise awareness and support individuals with speech disabilities, who are involved in the justice system.

‘Fight back.’ That would be the common response when anyone is being attacked. When someone physically attacks you, you push back. When someone denies you something, you have a legal right to hold him or her accountable under the law. And yet, too many people do not fight back and endure physical and emotional abuse, whether from family, friends, strangers or even the government. Unfortunately, this failure to fight back is often not due to a person’s inability to do so, but because fear can overshadow everything else. This kind of fear can be based on instinct to avoid further physical harm or death. However, it is more likely that such fear stems from an unwarranted belief that the person has no right to fight back – especially if the attackers are seen as the authority figures, such as parents, caregivers, teachers, police officers or even government leaders. Such fear need not exist, and would not exist if more individuals had the proper support and education to fully understand and embrace their rights and resources.

The Universal Declaration of Human Rights, adopted on 10 December 1948,\(^1\) expresses to the world that the foundation of freedom, justice and peace in the world comes from the recognition of the inherent dignity and equal and inalienable rights of all members of the human family. The preamble goes on to state that freedom from fear and want has been proclaimed as the highest aspiration of the common people. Preambles, while introductory in

nature, exist to provide the foundation of a document’s purpose and philosophy. It is important to grasp the meaning behind terms such as ‘human family’ and ‘highest aspiration’. While this book will be discussing the plight of those with speech disabilities who are vulnerable to violence and a lack of access to justice, it is important to recognise that such vulnerability could be largely wiped away if all citizens of the world were recognised and included into the human family, regardless of individual characteristics. It is also critical for society to acknowledge that inherent dignity is inside all of us.

Almost eight years before the Universal Declaration of Human Rights came into existence, President Franklin D Roosevelt of the United States of America stated in his now famous ‘Four Freedoms’ 1941 State of the Union address that:

The fourth is freedom from fear – which, translated into world terms, means a world-wide reduction of armaments to such a point and in such a thorough fashion that no nation will be in a position to commit an act of physical aggression against any neighbour – anywhere in the world.

While President Roosevelt discussed freedom from fear at global level, with the need for countries not to be afraid of attacks from other countries, that freedom from fear goes right to the heart of anyone who may have experienced, or may be vulnerable to violence or discrimination by those in authority. This chapter attempts to address how many factors have an impact on the weight of fear on a person making him or her vulnerable to abuse and how society can secure freedom from such fear by bringing international law and stronger dialogue to the individual level.

More to fear than fear itself

A 2012 report by the United States Bureau of Justice Statistics showed some startling statistics in crimes against individuals with disabilities. In 2011, the average rate of serious acts of violence against persons with one disability type was 16 per 1,000, compared with 30 per 1,000 among persons with multiple disability types. When broken down, individuals with cognitive disabilities had the highest average rate of violent victimisation from 2009 to 2011. Statistics also show that, from 2009 to 2011, the average annual percentage of acts of violence against persons with disabilities, in which the victim had multiple disability types increased for rape/sexual assault, robbery and simple assault.

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Yet one of the biggest divides in the report did not come from disabled vs nondisabled or single disability vs multiple disabilities. According to the report, the rate of violence for males with disabilities was 42 per 1,000 in 2011, compared with 22 per 1,000 for males without disabilities. For females with disabilities, the rate of violence was 53 per 1,000 in 2011, compared with 17 per 1,000 for females without disabilities. Or in simpler terms, males with disabilities faced violence at a rate almost double of those without disabilities, while females with disabilities were more than three times likely to be victims of violence than their nondisabled counterparts. The question then becomes why is there such a difference between the genders?

The simple answer is that having a disability is just one of many characteristics that shape a person’s life. If societies are to fully support the lives of individuals with disabilities – and especially those with little or no functional speech – we must then look at the full spectrum of issues which influence each life, and what factors place such individuals into environments more susceptible to abuse.

Lacking access to a particular human or civil right is often the result of not having access to other essential human or civil rights as well. A child’s lack of education can stem from the parents not having basic rights to employment, adequate health care, or even basic education themselves. Without such fundamental human rights, families are often forced to focus on survival issues before any attempt can be made at securing the right to an education for their children. The same can hold true for those facing abuse or a lack of access to the justice system. The following is a snapshot of different factors that can magnify the vulnerabilities that individuals with little or no functional speech may face. It is also important to note that these factors are all interwoven, with elements such as gender, lack of education, poverty and disability, all having the potential to overlap each other.

(Lack of) education

Types of discrimination: Statistics estimate that children with disabilities constitute more than one-third of the 67 million children who are out of school worldwide, and 98% of children with disabilities in developing countries not attending schools. If children with disabilities are permitted to attend school, it is often in segregated schools or classrooms. Along with

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individuals with disabilities, indigenous populations and remote rural
groups, street children, migrants and nomads, and linguistic and cultural
minorities continue to be highlighted as groups who have been denied a
right to education.

*Heightened vulnerability to abuse:* Without a proper education, individuals
are thrown into society, not only without any knowledge of how to be
productive members of their communities, but with no understanding of
their rights to protect themselves from the abuses or discrimination a
society may produce.

**Discrimination and abuse in schools**

*Types of discrimination:* Students with disabilities, who are subject to
‘protections’ under the United States *Individuals with Disabilities Education
Act*, are more than twice as likely to receive one or more out-of-school
suspensions.7 A Human Rights Watch survey8 of corporal punishment in the
United States, found that many teachers are more likely to use corporal
punishment on children with disabilities than on their nondisabled peers.
Although paddling was the most common act of corporal punishment
within this report, corporal punishment is defined under human rights law
as ‘any punishment in which physical force is used and intended to cause
some degree of pain or discomfort’9.

*Heightened vulnerability to abuse:* A 2009 report10 by the United States
Government Accountability Office uncovered hundreds of cases within
the United States, of alleged abuse and death related to the use of seclusion
and restraint on school children during the prior two decades. One
common theme throughout the cases sampled in the report was that all the
children had disabilities and little or no functional speech. Moreover, if the
child was able to report the abuse, authorities frequently did not take
action, given the child’s few communication skills. In another report in
2012, while only 12% of the students in a study of 85% of schools in the
United States had disabilities, they made up 69% of the students held in
physical restraint at schools.11 Moreover, race also factored in with

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9 Id.
African-American students comprising 44% of those students held in a mechanical restraint.\textsuperscript{12}

**Gender**

*Types of discrimination:* Women, especially those with disabilities, are denied health and reproductive rights, such as being forcibly sterilised through actions of their legal guardians or doctors, which in itself is an act of violence. Women with disabilities also face multiple forms of violence when institutionalised, including forced intake of psychotropic drugs or other forced psychiatric treatment.\textsuperscript{13} A girl’s exclusion from school also factors in with women making up more than two-thirds of the world’s 796 million illiterate population.\textsuperscript{14}

*Heightened Vulnerability to Abuse:* Research has shown that women with disabilities are more prone to abuse because of mobility issues, communication barriers and isolation. In Europe, North America and Australia, over half of women with disabilities have experienced physical abuse, compared with one-third of nondisabled women.\textsuperscript{15} Women with disabilities are also more likely to experience abuse over a longer period of time, and they suffer injuries that are more severe as a result of the violence.\textsuperscript{16} Women are made even more vulnerable to abuse when a speech disability limits the woman’s ability to report what has happened to her.

**Living in rural areas**

*Types of discrimination:* In 2006, only 45% of the world’s rural population had access to basic sanitation facilities, compared with 79% in urban areas. In most countries, women in rural areas seeking paid employment are...
more likely than men to hold seasonal, part-time and low-wage jobs and women receive lower wages from the same work.\textsuperscript{17}

**Heightened vulnerability to abuse:** Only one third of rural women receive prenatal care compared with 50% in developing regions as a whole.\textsuperscript{18} This places rural women in positions where they either do not know their rights for better protections for themselves or their families, or do not have access to such resources. Individuals with disabilities within rural areas are at an even more heightened state of fear, given the lack of immediate resources to report abuse or seek assistance.

**Indigenous people**

*Types of discrimination:* There are approximately 370 million indigenous peoples in the world.\textsuperscript{19} Although they account for less than 5% of the global population, they comprise approximately 15% of those in poverty.\textsuperscript{20} The overlap in vulnerabilities can be staggering. According to the United Nations’ Expert Mechanism on the Rights of Indigenous Peoples, most indigenous populations are denied their right to education, and ‘[d]eprivation of access to quality education is a major factor contributing to social marginalisation, poverty and dispossession of indigenous peoples’.\textsuperscript{21} Moreover, girls are systematically excluded from attending school at any point, since families want them to stay at home to care for other children and do domestic work.\textsuperscript{22}

**Heightened vulnerability to abuse:** With most indigenous peoples living in rural or remote areas, they have few resources to influence the policies, laws and institutions that could prevent acts of abuse and shape their futures. Many of them do not have the legal right to live on the lands they depend on for survival or to use the resources they have managed on a sustainable basis for thousands of years. There are also thousands of different languages and dialects dispersed throughout indigenous groups, a fact that adds additional barriers in communication, even when someone has the ability to ask for help. Jumping to false conclusions, such as the

\begin{itemize}
  \item \textsuperscript{17} Food and Agricultural Organization of the United Nations (2011). The State of Food and Agriculture: Women in Agriculture, Closing the Gender Gap for Development. ISBN 978-92-5-106728-0.
\end{itemize}
thought that people from Central America can communicate with each other because they all speak Spanish, increases such vulnerability.

As one can see, certain characteristics – whether stemming from birth or one’s surroundings – can increase an individual’s exposure to abuse or a denial of basic rights. When disability is included, it magnifies such vulnerabilities even more. And when that disability involves poor communication, the ability to seek and secure support can be nonexistent.

**Barriers to access to justice in the United States**

Putting a spotlight specifically on specific barriers within the justice system in the United States, at the time of this writing, the United States Department of Justice had settled nineteen cases since 1996, involving communication issues for people with disabilities involved in the legal system. The cases reflect common communication barriers throughout the legal system, from attempts to seek legal representation, to interacting with law enforcement, to treatment while in jail or detention facilities.

23 The following are the 19 cases listed on the United States Department of Justice’s settlements page at: [http://www.ada.gov/settlement.htm](http://www.ada.gov/settlement.htm)

Peroutka and Peroutka, P.A. – re: modification of policies, practices and procedures and provision of auxiliary aids and services to persons who are deaf, to ensure effective communication at a law-firm collection agency (signed 3 January 2013).

Alameda County Sheriff’s Office – re: effective communications with persons who are deaf, hard of hearing, and deaf-blind in police and jail situations. (2 February 2010).

New York City Police Department – re: effective communication with persons who are deaf or hard of hearing under title II of the ADA. (18 November 2009).

Clifford B. Hearn, Jr. and Clifford B. Hearn, Jr., P.A. – re: provision of sign-language interpreters and other effective communication at an attorney’s office (signed 29 May 2008).

Consolidated City of Jacksonville, Florida – re: effective communication in police situations (signed 27 September 2007).

Joseph David Camacho, Esquire, Albuquerque, New Mexico – re: lack of effective communication in a law office (signed 9 August 2007).

Ken Mascara, Sheriff of St. Lucie County – re: effective communication in the County Jail, including provision of auxiliary aids and services (signed 12 April 2007).

Second Settlement Agreement between the United States and Youth Services International, Inc. – re: auxiliary aids and services to ensure effective communication in juvenile justice facilities (signed 11 July 2006).

Anne Arundel County Department of Detention Facilities – re: provision of auxiliary aids and services to ensure effective communication in detention facilities (signed 28 November 2005).

Bogalusa Parish Communications District – re: accessibility of 9-1-1 services to persons with communication disabilities (signed 30 August 2004).

Franklinton Police Department – re: accessibility of 9-1-1 services to persons with communication disabilities (signed 25 August 2004).

Washington Parish Communications District – re: accessibility of 9-1-1 services to persons with communication disabilities (signed 11 August 2004).

Washington Parish Sheriff’s Office – re: accessibility of 9-1-1 services to persons with communication disabilities (signed 22 June 2004).

Maryland Department of Juvenile Services – re: auxiliary aids and services to ensure effective communication (signed 29 March 2004).
Case sampling

Peroutka and Peroutka, P.A. (3 January 2013): The settlement required a law firm to change its policies when it came to interacting with people who could not verbally communicate over the phone. In this case, the Department of Justice investigation had shown that the law firm had ordered its employees to refuse to accept calls received through relay services and, instead, directed the callers to call back when a manager was available. Under the settlement, the law firm was ordered to pay $30,000 in compensation to the complainants, to revise its policies and procedures to ensure that the office accepts Video Relay Service calls and treats people with disabilities equally, and to train its employees on the obligations of the Americans with Disabilities Act.

Alameda County Sheriff’s Office (2 February 2010): The settlement required effective communications with persons who are deaf, hard of hearing, and deaf-blind in police and jail situations. In the initial complaint, the plaintiff, who was deaf and blind, alleged that the Sheriff failed to provide him with a tactile interpreter, when necessary, to ensure effective communication when arrested and incarcerated for two days. The man had also been secluded in the Out-patient Housing Unit area for the duration of his incarceration, allegedly due to concerns over his personal safety if released into the general population and because the Sheriff was unable to communicate with him.

Of note in the settlement was that the Sheriff’s office was required to give ‘primary consideration’ to a defendant’s requests for accommodations. According to the settlement, ‘primary consideration’ means

- that the Sheriff will honor the communication choice expressed by the individual with a disability unless it can demonstrate;
- that another equally effective means of communication is available;
- that the preferred auxiliary aid or service would fundamentally alter the service, program, or activity; or
- that use of the means chosen would result in undue financial or administrative burdens.

Youth Services International, Inc. – re: auxiliary aids and services to ensure effective communication in a juvenile detention facility (signed 29 March 2004).
City of Houston, TX – re: police, city jail and municipal courts providing effective communication with people who are deaf or hard of hearing (posted 31 March 2000).
North Kingstown Police Department, North Kingstown, RI – re: auxiliary aids and services and effective communication (posted 12 December 1996).
Santa Clara County Superior Court, Santa Clara, CA – re: auxiliary aids and services and effective communication (posted 10 October 1996).
Anne Arundel County Department of Detention Facilities (28 November 2005): The settlement required provision of auxiliary aids and services to ensure effective communication in detention facilities. The complainant, who is deaf, alleged that he was excluded from participation in and denied the benefits of services, programs, and activities during his booking and detention at facilities owned and/or operated by Anne Arundel County.

Maryland Department of Juvenile Services (29 March 2004): This settlement also required auxiliary aids and services to ensure effective communication. The Department of Justice investigation proved that Maryland Department of Juvenile Services did not have a policy in place to ensure that juveniles who are deaf or hard of hearing receive appropriate auxiliary aids and services, where necessary, for effective communication in Maryland Department of Juvenile Services programs, including those connected to educational and rehabilitative services, constituting discrimination in violation of Title II of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973. Allegations had also been made that the complainant had been placed in the facility's infirmary, segregated from other residents, because of his disability. Under the settlement, Maryland Department of Juvenile Services created a new policy to ensure that the appropriate aids and services would be provided from the moment of intake until the time of release, so that individuals with disabilities would have full benefit of all available programs and services in the same manner as their nondisabled peers.

Office of the Sheriff, County of Fairfax, Fairfax, VA (6 February 2001): The settlement required effective communication systems in a county jail. The complainant who is deaf was arrested for being drunk and taken to the county jail. While there was a public telephone in the cell, there was no Telecommunication Device for the Deaf. The man was also not provided with an interpreter, he was unable to make a telephone call, and none of the jail officials communicated through written notes. The settlement included having the Sheriff’s Office post a visible sign informing all inmates of access to a Telecommunication Device for the Deaf, as well as including an additional question on the booking questionnaire that would ask if the individual required sign language or foreign language interpretation.

North Kingstown Police Department, North Kingstown, RI (12 December 1996): The settlement required auxiliary aids and services to ensure effective communication. The complainant, who is deaf and uses American Sign Language to communicate, alleged that he was a witness to an accident but that on two occasions the North Kingstown Police Department failed to provide an interpreter to provide effective communication when he was being interviewed. The settlement not only provided necessary auxiliary aids and services to individuals with disabilities, when needed, but also given primary consideration to the type(s) of services being requested from the individual. The Police
Department also agreed to do local publicity to inform those in the deaf and hard-of-hearing community that such services were available.

While these cases are signs that the United States Government is active in eliminating such discrimination and improving the policies and practices of the legal community when it comes to communicating with individuals with disabilities, one troubling side note in reviewing all the settlements is the fact that each one involved individuals with hearing impairments. While this author has always believed that individuals with hearing impairments should be included in the wider definition of individuals with little or no functional speech, the fact that none of the cases involve individuals with specific speech disabilities raises the questions of whether individuals with little or no functional speech are aware of their rights to file complaints with the United States Government when facing such discrimination within the United States, and how to proceed with such complaints when discrimination within the justice system does occur? While one would think that staff within the Department of Justice would make every accommodation needed when investigating cases that involve individuals with speech disabilities, it takes effort and support at local level to initiate such investigations. The fact that there was not a single case involving discrimination of individuals with little or no functional speech without a hearing impairment, leads one to speculate about how little local support is available when such individuals are denied their rights within the justice system.

Enforcing universal rights, strengthening lives

Long before the United Nations Convention on the Rights of Persons with Disabilities was even considered, other treaties and conventions were established at global level, which, at their core, provide protections for individuals with disabilities. Eliminating violence against individuals with little or no functional speech – and providing them with the full access to justice when such instances do occur – cannot simply be seen as tackling the issue in its aftermath, but finding ways to prevent these abuses from occurring. And prevention starts not simply with laws that specifically address these issues, but in examining and educating society on all the factors that contribute to placing people into such situations. Once society can acknowledge and address those outside factors, we then can truly secure freedom from fear and eliminate the rampant abuses that individuals with little or no functional speech face.

Looking at core international conventions, we can define certain rights that we all deserve as human beings.

Under the International Covenant on Civil and Political Rights, Article 10 states that all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.
Needless to say, individuals with little or no functional speech would fall under ‘all persons deprived of their liberty’ and deserve the right to be ‘treated with humanity’. Article 19 goes on to afford everyone the right to hold opinions without interference. Moreover, everyone should have the right to freedom of expression, including ‘freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers …’. Under such language, those with communication barriers have the right to report discrimination or abuse without fear of reprimand, along with being able to seek and receive the necessary information to fully understand their rights under the law.

The Convention on the Rights of the Child\(^24\) Article 2 states that governments must respect and ensure all the rights set forth to each child within their jurisdiction without discrimination of any kind. It also asserts that nations shall take ‘all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.’ Article 23 goes on to state that governments must recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child’s active participation in the community.

The Convention on the Elimination of All Forms of Racial Discrimination\(^25\) and the Convention on the Elimination of All Forms of Discrimination Against Women\(^26\) have an impact on people with disabilities, who may be subject to multiple discriminations, such as women with disabilities and ethnic minorities with disabilities. Article 5(a) of the Convention on the Elimination of All Forms of Racial Discrimination requires that countries ‘eliminate racial discrimination in all its forms,’ and guarantee the right of everyone ‘to equal treatment before the tribunals and all other organs administering justice.’ Article 15 of the Convention on the Elimination of All Forms of Discrimination Against Women addresses these issues as they relate to women, and requires that countries treat women ‘equally in all stages of procedure in courts and tribunals.’

The Declaration on the Elimination of Violence against Women\(^27\) specifically acknowledges women’s rights to equality, security, liberty, integrity and dignity of all human beings, and that violence against women is an obstacle to the achievement of equality, development and peace. Moreover, it also acknowledges that specific groups of women, such as minorities, women living in rural or remote communities, destitute

\(^{24}\) Signed by the United States on 16 February 1995 but never ratified.
\(^{25}\) Ratified by the United States on 21 October 1994.
\(^{26}\) Signed by the United States on 17 July 1980 but never ratified.
\(^{27}\) UN General Assembly resolution 48/104 of 20 December 1993.
women, women in institutions or in detention, female children, the elderly, women in situations of armed conflict, and women with disabilities are especially vulnerable to violence.

The Basic Principles for the Treatment of Prisoners,28 Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment,29 Code of Conduct for Law Enforcement Officials,30 African (Banjul) Charter on Human and Peoples’ Rights,31 and American Convention on Human Rights32 all share similar wording that states all detainees or prisoners shall be treated with the respect due to their inherent dignity and value as human beings.

Guidelines for Action on Children in the Criminal Justice System33 states that countries should ensure that child victims and witnesses are provided with appropriate access to justice and fair treatment, restitution, compensation and social assistance. Police, attorneys, the judiciary and other court personnel should receive training in dealing with cases where children are victims. Moreover, '[c]hild victims should have access to assistance that meets their needs, such as advocacy, protection, economic assistance, counselling, health and social services, social reintegration and physical and psychological recovery services. Special assistance should be given to those children who are disabled or ill. Emphasis should be placed upon family- and community-based rehabilitation rather than institutionalisation.'

Basic Principles on the Role of Lawyers34 states that everyone is entitled to the assistance of a lawyer of their choice to protect and establish their rights and to defend them in all stages of criminal proceedings, and that governments should ensure that efficient procedures and responsive mechanisms for effective and equal access to lawyers are provided for all persons within their territory and subject to their jurisdiction, without distinction of any kind, such as discrimination based on race, ethnic origin, sex, language, religion, political or other opinion, national or social origin, property, birth, economic or other status. Furthermore, governments should provide sufficient funding and other resources for legal services to the poor and, as necessary, to other disadvantaged persons. Governments and professional associations of lawyers shall promote programs to inform the public about their rights and duties under the law and the important role of lawyers in protecting their fundamental freedoms. Special attention

28 Adopted and proclaimed by UN General Assembly resolution 45/111 of 14 December 1990.
30 Adopted by UN General Assembly resolution 34/169 of 17 December 1979.
33 Recommended by Economic and Social Council resolution 1997/30 of 21 July 1997.
should be given to assisting the poor and other disadvantaged persons so as to enable them to assert their rights and, where necessary, call upon the assistance of lawyers.

The previous paragraphs highlighted specific language aimed towards providing universal protections when it comes to acts of violence or discrimination, or full access to justice. The core question then becomes, how can a person bring these overarching, ‘international’ laws to the local level so that they truly have an impact on improving individual lives.

New thinking, new attitudes

How aware are individuals, of any background, of their rights and duties – and the means to solve problems, be it formally or informally? While one can attribute a lack in awareness of resources, or a lack of resources themselves, to surrounding issues such as living in poverty and/or rural settings or a poor education, the problem also goes to an overall societal judgment of individuals with little or no functional speech. Attitudes about the ability of people with disabilities to participate meaningfully in the justice systems, is another significant barrier when it comes to access to justice. Such attitudes include a belief that people with psychosocial and/or speech disabilities cannot be reliable witnesses. Governments have the responsibility to give extra support to individuals with disabilities to enable them to participate in the justice system, as claimant, defendant or witness. This need for stronger government intervention can be seen in numerous cases submitted under Article 6 of the European Convention on Human Rights (the right to a fair trial) that clearly state that defendants who use a language that is not English have the right to an interpreter. The interpretation of a ‘language that is not English’ should also include those who use alternative methods of communication.

Of equal significance, in 2009 a court ruled that if a witness with a mental health condition is not given appropriate support but instead treated as an unreliable witness because of stereotyping or false assumptions, then this may amount to breach of right to be free from degrading treatment. Such precedents should also apply in situations where individuals with speech disabilities are treated as unreliable witnesses or parties.

35 Related cases before the European Court of Human Rights include: Amer v Turkey; Luedicke, Belkacem and Koç v Germany (1978); and Cuscani v the United Kingdom (2002).
36 Entered into force on 3 September 1953.
37 Several lower courts in the United States have delivered similar rulings in instances where a defendant was wrongly denied a right to a sign language interpreter during court proceedings.
38 R (B) v Director of Public Prosecutions (Equality and Human Rights Commission intervening) [2009] EWHC 106 (Admin) [2009] WLR (D) 25 QBD (United Kingdom).
Societal attitudes can also have a significant impact on the laws drafted and enforced. When one discusses laws, especially when it comes to individuals with disabilities, it is easy to focus on the absence of laws or policies to ensure certain rights. Yet one should also be looking at the flipside to see if laws are in place that actually limit these universal rights. Are there policies or practices in place that expressly bar people with disabilities from being witnesses or jurors? Or limit such individuals from being part of the legal system as judges or lawyers?

At the same time, it is not just about laws specifically addressing disability issues. As has been shown in this chapter, other laws directed at different human-rights issues have an impact on a person’s life as well. Whether at local, national or international level, these laws geared to afford each of us the protections and rights we all deserve, exist. Individuals who are aware of the different international human-rights laws spotlighted earlier should look at their own local and national laws to see if their governments are adhering to the universal mandates.

The final question then becomes – what else can individuals do at local level to increase such awareness and support individuals with little or no functional speech? It is vital to look to see what resources or support systems are immediately at hand, since people tend to seek help from those closest in their lives.

Governments have the responsibility to educate their citizens on the rights and resources available to fully participate in the justice system or to seek help when facing acts of abuse. If one examines the previously discussed cases investigated and settled by the United States Department of Justice, the question is raised on how a stronger support system could have an impact on victims of violence or discrimination. Many of the cases listed were located within the Washington, DC Metro Area, which raises the question of how quickly public awareness of such resources decreases, the further one may get from the Department of Justice headquarters.

Unfortunately, there may not always be a formal support system within a community, which leads to the question of what other support systems may be close at hand? Are there local advocacy groups a person can turn to for support? To what extent can someone seek assistance from the ‘network’ that each individual has within his or her life?

The Access to Justice Assessment Toolkit includes some key steps that any variety of ‘networks’ could implement within the community. Whether through advocacy groups or friends and family, direct in-person support services can be developed for individuals with speech disabilities, who are victims of violence or discrimination. These services include such activities as

- accompanying the victim (or witness) to the police station;
• talking with the police to help them understand the nature of the person's disability;
• making suggestions for modifications that could be made to the usual procedures in order to help the investigation;
• if desired by the victim or witness, being present with him or her during police questioning;
• accompanying the individual to the courthouse prior to any official meetings there, in order to prepare for the courtroom environment;
• helping the individual to understand what procedures will occur and easing concerns about these procedures;
• accompanying the victim or witness during court proceedings, in order to help calm and support him or her; and
• where appropriate, and with the individual's permission, asking the court to make modifications to the testimony procedures; for example, moving proceedings to the judge’s chambers or another environment less intimidating than the courtroom, or bringing in an expert to help court officials understand the person's disability and its possible impact on the testimony.

Summing up change

'United Nations'; 'International Human Rights'. Even words like 'Legislation' or 'Government' can seem distant and intimidating to many. Yet it is important to remember that any discussion about universal human rights or international law is really a discussion about our individual lives and ourselves. Learn about the rights we all have within our 'human family'. Look at local laws and how individuals with speech disabilities are being treated within your community. If you see discrimination or abuse, or experience it, you do have the ability to change the situation. The more one understands one's rights, the stronger a person can advocate for changes in laws and policies to prevent such abuse of discrimination. Change does not need to start at national level, but can be as simple as new attitudes in your neighbourhood, new policies in your town, or new laws at regional level. Each step towards such change not only strengthens change at the next higher level, but also helps to expand change laterally throughout communities, cities, regions, countries and continents. As the Greek statesman Pericles once said: ‘What you leave behind is not what is engraved in stone monuments, but what is woven into the lives of others.’ No matter what each reader gains from the narratives shared within this book, this author believes that each of us can intertwine such awareness and support to protect and empower individuals with little or no functional speech within the lives of all whom we may cross paths with in our world.
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Overview

Ending the silence of violence: A view from the United States

Crimes against people with disabilities are similar to those generally experienced by women, children and the elderly. However, people with disability being victims of such crimes mostly go unseen and are often not attended to.

In this chapter we look at the huge problem of violence against children and adults with disabilities, who have little or no functional speech. We discuss what has been done about physical and sexual violence in the United States, focusing on the following:

• Legislation that addresses violence against people with disabilities.
• Strategies that prevent and protect people with disabilities from physical, verbal, sexual and financial violence.
• Prosecution and punishment of offenders.
• Recovery and rehabilitation of victims.

Then, we give short examples of good practice in each of these areas.

Abstract

Crimes against people with developmental and other disabilities are similar in scope to those of women, children and the elderly. However, their victimisation remains largely invisible and unaddressed. In this chapter, the scope of the problem of violence against children and adults with disabilities who have little or no functional speech, is described. Approaches in the United States that address physical and sexual violence are discussed, with a focus on: (1) legislation addressing violence against people with disabilities;
(2) initiatives that prevent and protect the occurrence of physical, verbal, sexual and financial violence; (3) prosecution and punishment; and (4) recovery and rehabilitation. Each of these frameworks is introduced and, where promising practices are known, they are also briefly described.

She went to a public school and completed grade 12. However, she was never provided with literacy skills nor did she receive an AAC device. Due to her cerebral palsy she had little functional speech – in her case, her speech was unintelligible to most unfamiliar people.

The rapist assumed that if she tried to tell someone, they would not believe her. And if a family member did believe her, she would not be believed when she tried to tell the police or in court, because she could not be understood due to her unintelligible speech. She had no other way to communicate effectively.

Her situation came to the attention of a disability protection and advocacy organisation and they contacted me. The request was made that I meet this young woman to see if I could understand her speech so that I might serve as a speech-to-speech transmitter in court. This process had never been used before in the criminal courts in Pennsylvania, so there was much at risk.

I met with the young woman. We did not discuss anything about her alleged rape, since, if I were to appear in court, her testimony and my speech transmission would not have been influenced due to prior knowledge. After two or three meetings, it became clear that I could understand about 90% of her speech.

We appeared in court for a preliminary hearing. Under oath, the young woman provided testimony on her own behalf and, under oath, I transmitted her speech word-for-word.

The defence attorney tried to claim that the young woman was not competent to be a witness. Without my speech-to-speech transmission of her responses to the judge’s questions, it is unlikely that the woman would have been found competent by the presiding judge to testify on her own behalf. Therefore, the case would have been thrown out of court, since there was no competent witness to testify against the alleged perpetrator. Given the declaration of competence by the judge, the young woman was able to present enough understandable evidence via my speech-to-speech transmission, so that the judge ruled that the preliminary hearing yielded sufficient evidence to go to trial.

Scope of the problem in the US

Crimes against people with developmental and other disabilities are similar in scope to that of women, children and the elderly. However, their victimisation remains largely invisible and unaddressed (Bryen, Carey & Frantz, 2003; Sobsey, 1994). Research from the United States indicates that people with developmental disabilities are 4 to 10 times more likely to be victims of a crime and that crimes against them are less likely to be reported or prosecuted (Martin, Ray, Sotres-Alvares, Kupper, Moracco & Dickens, 2006).
Children with disabilities are more than twice as likely as children without disabilities to experience sexual and physical violence (Sullivan, 2000). Girls with disabilities are particularly vulnerable, with high rates of violence resulting in health risks, trauma, adolescent pregnancy and susceptibility to HIV/AIDS (Rousso, 2003).

Adults with disabilities are particularly vulnerable to crimes of a sexual nature and they are often repeat victims (Nosek, Howland & Young, 1997; Sobsey & Doe, 1991). Findings from their research revealed that adults with developmental disability are assaulted, raped and sexually abused at a rate of two times greater than their nondisabled peers. Brownridge (2006) noted that on average more than 50% of women with disabilities in developed countries, including the United States, had experienced sexual exploitation and violence by the time they reached adulthood. Women with disabilities in these countries also reported significantly longer durations of physical and sexual abuse when compared with women without disabilities (Nosek et al., 1997).

When examining the characteristics of victims of crimes, several studies indicate that, of those who have been victimised, victimisation is more likely to be repeated and chronic among people with disabilities (Nosek, et al., 1997). Furthermore, a larger majority of crime victims with disabilities knew their perpetrator, compared with victims without disabilities (Sobsey & Doe, 1991). According to Sobsey and Doe (1991), in a study of adults with intellectual disabilities, 19% of perpetrators were family or step-family, 15.2% were acquaintances, and 44% of perpetrators were people known to the victim because the victim had a disability (i.e., service providers, medical staff, transportation staff, foster parents, and peers who interacted with the victim in a specialised program). Thirty-six percent of the abuse or violence occurred in settings that were encountered because the individual had a disability. Studies of victims of crime, who are deaf, have also found that family members and people encountered through disability services were the most likely perpetrators and that placement in residential programs placed people at particular risk (Furey & Niesen, 1994; Sullivan & Knuston, 1998).

The high incidence of abuse of people with disabilities seems directly related to the perpetrators’ recognition of their vulnerability. Perpetrators are often well known to their victims and believe that their victims are unable to seek help or report the crime, while the victims fear backlash from the perpetrator, particularly in cases where the perpetrator also provides personal assistance (Powers & Oschwald, 2004; Rand & Harrell, 2009).

Misconceptions about the sexuality of people with disabilities (and especially those with cognitive impairment) could also predispose this population to sexual abuse. The sexuality of this group is often misunderstood. At the one end of the spectrum, there is the belief that they
are sexually innocent – children forever. Inherent to this belief is the perception that they have little or no understanding of their bodies, making them prime targets for those individuals who seek sexual gratification from the abusive act.

The other end of the spectrum reflects the belief that individuals with disabilities are oversexed and uncontrolled. This misconception might be the result of being overly friendly with familiar people and strangers alike, or in displaying inappropriate sexual expressions or behaviours that make others feel uncomfortable, such as public masturbation. Reasons for the display of inappropriate behaviours might be the lack of information that these individuals have about which behaviours are acceptable and which are not, and their difficulty in making sense out of images portrayed in the media, such as music videos, television and magazines.

Other researchers have hypothesised that children and adults with disabilities may lack relevant knowledge, skills and experiences needed to protect themselves. They may lack the knowledge and skills (1) with which to make effective decisions about engaging in particular activities (especially relevant for sexual activities); (2) understand what ‘assault’ is or when they have been victimised; (3) understand their rights; (4) protect themselves in dangerous situations; (5) communicate resistance, and (6) later report abuse (McCabe, Cummins, & Reid, 1994). These authors hypothesised that people with disabilities may be more likely than people without disabilities to feel valued within abusive relationships and may not perceive such relationships as abusive. Furthermore, people with disabilities often live and work in settings in which dependence on or compliance with others is expected and they often face serious repercussions if they are not compliant (Lumley & Miltenberger, 1997, Nosek et al., 1997; Sobsey, 1994). Additionally, they often face inaccessible environments, lack of adaptive equipment, and a lack of service options that may decrease their ability to leave or report an abusive situation (Nosek et al., 1997). Because of the disability itself or as a result of societal stigma and lack of supports, people with disabilities may place an extra burden on caregivers, leading caregivers to take out their frustration on the person with a disability (Sullivan & Knutson, 2000). Finally, negative attitudes and prejudice against people with disabilities may seem to perpetrators to legitimate their abuse, protecting the perpetrator from punishment. However, it is important to note that few of these factors have been empirically tested to assess their effect upon rates of crime victimisation.

The reason why crimes against people with disabilities often remain invisible and unaddressed, is because these crimes are often covered up by communities or disability service providers (Brownridge, 2006). This creates a troublesome paradox: while there are higher rates of crime against people with disabilities, there are simultaneously lower rates of disclosure and reporting the crime to the police (Davies, 2002). While
Disclosure is difficult for everyone, women report greater difficulty in naming the abuse (Powers & Oschwald, 2004). When crime and abuse are reported, they are often handled administratively rather than through criminal prosecution. This may be due to the fact that the police, lawyers, judges and even rape-crisis counsellors, who all form part of the legal protection system, often have little or no knowledge of how to help a person with a disability and therefore find the whole process too daunting (Groce & Trasi, 2004). Sadly, it also appears that sexual violence against individuals with disabilities is viewed as less serious than of persons without disabilities. Consequently, lighter court sentences seem to be issued in cases where the victims have been people with a disability (Williams, 1993).

The intersection between gender and disability

According to a United Nations Report (2012), the intersection of gender-based and disability-based discrimination also contributes to stereotypical views of women and girls with disabilities as lacking in intelligence and being compliant and timid. This intersection may also lead to lack of credibility when abuse is reported, and therefore leads to minimal risk of perpetrators being discovered and punished. Therefore, the intersection between gender and disability cannot be minimised.

According to Habib (1995), women and girls with disabilities are more exposed to the forms of violence experienced by women without disabilities. Owing to some of the above-mentioned factors, acts of violence against women and girls with disabilities also include other forms of physical and psychological violence and neglect, including the withholding of medication and assistive devices (such as wheelchairs, braces and white canes); the removal of a ramp or mobility devices; refusal of caregivers to assist with daily living (such as bathing, dressing and eating); denial of food or water, or threat of any of these acts; verbal abuse and ridicule relating to the disability; removing or controlling communication aids; causing fear by intimidation; harming or threatening to harm, taking or killing of pets or destroying objects; psychological manipulation; and controlling behaviours involving restricting access to family, friends or phone calls. Women and girls with disabilities are also particularly vulnerable to forced sterilisation and medical treatment, including the administering of drugs or electroshocks.

Violence against individuals with little or no functional speech

Men and women with disabilities, who have little or no functional speech, face a double or triple vulnerability when it comes to physical, sexual and verbal violence, as they are often the most voiceless and invisible members
of society (Bryen & Frantz, 2004; Bryen, Carey, & Frantz, 2005; Davies, 2002; Collier, 2013). There are many reasons for this increased vulnerability. First, there is the very real risk that they are unable to make themselves understood. Second, there is the misconception that these individuals are undeveloped, that they lack basic understanding (poor receptive language abilities), are unable to make choices and that they cannot communicate their intent, which seems attractive to potential perpetrators. Third, they are seen as being unable to tell about their victimisation due to their communication difficulty (Howe, 2000) and their lack of needed vocabulary (Bryen, et al., 2005; Collier, 2013). Fourth, when they do tell, they are less likely to be believed because they may not be understood due to their communication disability. Listen to the words of the mother of a woman with little functional speech. She lamented:

*We found ourselves questioning will our daughter ever be free from her fear and pain that she endures as a result of the rape that occurred just a few doors from our home?*

*Would her right as a victim with special needs be equal to that of the defendant’s? Or would the scales of justice be tilted in favour of the perpetrator of this disgusting crime?*

*Would the judge, attorneys and law enforcers involved in the case be prepared to deal with someone little in speech and little in comprehending certain questions?*

This mother’s fears are reflected in many of the fears of other family members, believing that the process of telling and subsequent investigation will do more harm than good for the person with the disability (Hanass-Hancock, 2009).

Finally, there is the perception that individuals with little or no functional speech are unable to testify in court on their own behalf, owing to competency issues and other criminal codes about hearsay, confrontation and leading the witness (Borthwick & Crossley, 1998; Bryen, 2009). However, research by Bryen and Wickman (2011) and reprinted in this book, presents a cautiously brighter picture.

Ending the silence of violence against children and adults with little or no functional speech requires many strategic approaches focusing on (1) the individual with a disability; (2) the family; (3) disability service providers; (4) law enforcement; (5) the criminal justice system, as well as (6) public policy (Bryen et al. 2003). Ending the silence of crimes against individuals with disabilities means helping persons with disabilities understand what to do if they have been a victim of a crime; providing training which includes self-defence and personal safety; teaching the difference between healthy sexuality and sexual abuse; establishing partnerships between the justice system, advocates and service providers to support investigation, prosecution and the provision of victim-assistance services; expanding existing legislation to include people with disabilities; aggressively applying civil-rights laws and human-rights treaties; and creating national and international public awareness through personal
stories. Ending the silence also means understanding the court system, so that all stakeholders know how to negotiate the court system so that crime victims with little or no functional speech can successfully appear in court as witnesses in their own defence.

Perhaps most importantly, ending the silence means providing children and adults with little or no functional speech, with effective communication augment so that they can be heard. These communication augment can be sign language, communication boards with needed vocabulary and accessible symbols, or dedicated speech-generating devices or mobile communication technologies with needed vocabulary and synthesised or digitised speech output. These AAC approaches and the training needed to use them effectively may reduce the likelihood of being a victim of physical, sexual, verbal, or financial violence or exploitation. Furthermore, if violence does occur, unlike the young woman you met at the beginning of this chapter, the victim will be able to tell, thus increasing the likelihood of being protected from further violence or criminal behaviours.

**Approaches in the United States that address violence**

The United Nations thematic report on violence against woman and girls with disabilities provides a useful framework for addressing violence against children and adults with a wide variety of disabilities, including those with little or no functional speech (United Nations Report, 2012). This framework involves different stakeholders and different strategies. It focuses on: (1) legislation addressing violence against people with disabilities; (2) initiatives that prevent and protect the occurrence of physical, verbal, sexual and financial violence; (3) prosecution and punishment; and (4) recovery and rehabilitation. Each of these frameworks is introduced and, where promising practices are known, they are also briefly described.

The first approach focuses on legislation to address violence against children and adults with disabilities, inclusive of those with little or no functional speech. This approach is ‘important not only to ensure legal protection but also to promote a culture where no form of violence against people with disabilities is tolerated (Human Rights Council, 2013, p. 10)”. National and international advocacy and public policy changes resulting in state and national legislation and international human-rights treaties are the traditional methods. In the United States, the passing of the Civil Rights Act in 1964 and the Americans with Disabilities Act in 1992 are such instruments.

The second approach focuses on initiatives to prevent and protect the occurrence of physical, verbal, sexual and financial violence. In 1974, the Child Abuse Prevention and Treatment Act (CAPTA) was passed. Since
then, the United States Congress has implemented a number of laws that have had a significant impact on State child-protection and child-welfare services. Similar child-protection laws and services exist throughout the provinces of Canada. However, it is unclear to what extent children with little or no functional speech have been protected under these laws.

The United States has *Hate Crime Acts* that are inclusive of persons with disabilities. According to Stotzer (2007), a hate crime or bias-motivated crime occurs when the perpetrator of a crime intentionally selects the victim because of his or her membership in a certain group. In the United States, protected status originally included race, colour, religion and national origin. More recently gender, gender identity, sexual orientation and disability have been added. The purpose of the hate-crime laws is twofold: data collection at state and national levels and enhanced penalty when a perpetrator is found guilty of a crime that was bias-motivated against a member of a protected class (eg, race, gender, disability).

Beginning in 1997, under the *United States Hate Crime Statistics Act of 1990*, the Federal Bureau of Investigations in the federal Department of Justice has been required to collect data on disability hate crimes. The Bureau reports that, of 44 265 hate crimes recorded from 1997 to 2001, some 133, less than one-half of 1%, were against persons with disabilities (McClay, 2002). This number is likely to be grossly under-reported because many believe that crimes against people with disabilities occur because of their perceived vulnerability rather than motivated by hate. Legislative initiatives to *prevent and protect 'vulnerable' adults* from being victims of crime or abuse vary from state to state in the United States, with an initial focus on abuse of the elderly. More recently, some states have extended adult protections to adults with disabilities. Where state laws do exist, mandated reporting and provision of adult-protection services are provided at state or local levels.

Finally, given the high rate of violence against women with disabilities and the finding that most common perpetrators are their male partners (Brownridge, 2006), the 2005 reauthorisation of the *Violence Against Women Act* expanded its coverage to individuals with disabilities. With funding under this Act, grant programs have been established for education, training and service; construction and personnel costs so that shelters were accessible and usable by persons with disabilities; development of collaborative relationships between victim-services organisations and those serving individuals with severe disabilities; and the development of model programs that implement advocacy and intervention services within organisation serving individuals with disabilities (eg, National Coalition Against Domestic Violence).
Promising practices to prevent and protect the occurrence of violence

In the United States, there have been a variety of promising practices to prevent and protect the occurrence of physical, verbal and sexual violence against children and adults who have little or no functional speech. They have emerged as promising practices focusing on the individual, the family and disability providers. Brief descriptions of a few of these promising practices are provided to illustrate the scope of promising practices in the United States.

• **Use Your Voice** is a training program developed at the Augmentative Communication and Empowerment Supports (ACES) program at Temple University. It is focused on improving the personal safety of young adults with little or no functional speech. Participants learn
  • to recognise when they are not safe;
  • ways they can set boundaries regarding welcome and unwelcome touch, thus reducing the likelihood of being a sexually abused person;
  • how to ‘yell’ for help when needed;
  • how to use their wheelchairs and communication aids to reduce the perception and reality of being a vulnerable target of violence; and
  • how to report that they have been a victim of crime or abuse.

You can obtain a DVD or CD of this training program by contacting the Institute on Disabilities at Temple University at [www.disabilities.temple.edu/publications](http://www.disabilities.temple.edu/publications) or by requesting a copy by emailing iod@temple.edu.

• **Sexual Abuse Awareness Training for Self-Advocates** is a sexual-abuse and personal safety-awareness training program aimed at people with developmental disabilities. Developed by individuals with developmental disabilities for individuals with developmental disabilities, the information and strategies provided are accessible and user-friendly. The abuse awareness program is intended to be presented by individuals with disabilities in collaboration with victim-service professionals. Although not developed specifically for individuals with little or no functional speech, it is relevant, clear and interactive. Easy English and illustrative images are used throughout.

You can obtain the booklet and PowerPoint presentation of this training program by contacting the Institute on Disabilities at Temple University at [www.disabilities.temple.edu/publications](http://www.disabilities.temple.edu/publications) or you can request a copy by emailing iod@temple.edu.

• **Communication for ALL: You can Tell and be Heard.** Research-based vocabulary lists and actual communication aids have been developed so that individuals with little or no functional speech can ‘tell’ that they have been victims of crime or abuse.
The actual vocabulary lists can be found at http://disabilities.temple.edu/aacvocabulary/CRIME.shtml. Bryen (2008) describing the method used for identifying this vocabulary. In addition to this vocabulary list, actual communication boards were developed for and verified by South African young adults with little or no functional speech (Bornman, Bryen, Kershaw, & Ledwaba, 2011; Bornman & Bryen, 2013). These communication boards can be downloaded at no cost from the Centre for Augmentative and Alternative Communication at the University of Pretoria (http://www.caac.up.ac.za). Note that while these communication boards were developed specifically for South African individuals with disabilities so they can tell that they have been victims of crime or abuse, they can be adapted and verified for use in other countries.

- **End the Silence: Preventing the Sexual Assault of Women with Communication Disorders: Developing a Community Response** (Farrar, 1996). Developed in Canada in 1996, this book continues to be an excellent resource for women who use AAC and those who have a physical disability. User-friendly materials are provided, focusing on sex education and safeguarding against sexual abuse. In addition to its relevance for women who use AAC, it is relevant for service providers, legal professionals, medical professionals and abuse counsellors.

One of the most noteworthy perspectives provided in Farrar's book is the importance of sex education. She cautions parents, educators and service providers that by not providing sex education, you are increasing the individual’s risk of sexual abuse. The United Nations Report (2012) underscores this perspective. The report states that the lack of sexual education of women and girls with disabilities, wrongly perceived as nonssexual beings, contributes to sexual violence committed against them, as they are unable to distinguish inappropriate or abusive behaviours from touch that is friendly and invited.

The book can be purchased through the Technical Resource Centre, 200, 120-5 Street S.W., Calgary, AB T2R 0Y6 or by contacting www.AACsafeguarding.ca. Two PowerPoint slide presentations with information about reproduction and sexually transmitted diseases can be downloaded free from http://www.accpc.ca.

- **Speak Up Project** (ACCPC, 2013) - Barbara Collier conducts training focused on safety for people with little or no functional speech who use AAC throughout Canada. The focus of this training is support for people who use AAC in acquiring tools and skills to reduce their risk for abuse and crime by

- exploring the safety needs of adults who have physical disabilities and who use AAC; and
- providing information and resources on ways to enhance safety for people who use AAC.

In collaboration with people who use AAC, the project provides online resources on (1) Safety for People who use AAC and Lessons Learned; (2) Safety Checklists; and (3) General Safety Devices including attention getters,
security alarms, door openers and closers, monitors, telephones, computer servers, locks and useful websites. Additionally, there are useful communication displays so that the individual with little or no functional speech can communicate via Picture Communication Symbols (Mayer-Johnson) or text about the following:

- Boundaries
- Communicating in an Emergency
- Crimes
- Emotional Abuse
- Financial Abuse
- Making a Complaint/Disclosure
- Paying for Items
- Physical Abuse
- Privacy – Personal and Things
- Privacy – Space
- Sexual Abuse

**Prosecution and punishment**

If a perpetrator of violence against a person with little or no functional speech is not punished for his or her crime or abuse, then the message is ‘it is okay to commit this crime or abuse.’ It may also communicate to the perpetrator and to the public that people with disabilities are not as valued as those without disabilities.

The offender will not likely be punished within the criminal justice system if they are only handled administratively within the disability-service system. Unfortunately, this happens all too often and the offender is moved within the disability service system where another crime or abuse may take place.

If equal justice is to happen, crime victims with a disability, just like a victim of a crime without a disability, must not simply disclose the violence or abuse to a trusted friend or family member. Although disclosure is a necessary step in increasing one’s personal safety and obtaining needed support and treatment, it does little to punish the offender and prevent him from committing the violence once more. As such, the person with a disability needs to report the crime to a victim-service professional, if available, and file a complaint with the police. Finally the victim needs to be prepared to testify in court. This process is difficult for anyone, especially someone who has little or no support or who is marginalised within society. That is why so few women and people with disabilities report the crime and file a complaint. According to the National Institute of Justice and the Centers for Disease Control (Tjaden & Thoennes, 2000),
most intimate partner victimisations are not reported to the police. Only about 20% of all rapes and 25% of all physical assaults against women are reported. Even fewer rapes and physical assaults perpetrated against males are reported.

Why do adults without disabilities report so few crimes to the police? According to Victim Support, a website for supporting victims of crime, 'It's quite natural to feel unsure about this or worried about what will happen if you do. Perhaps you think the police will not care or that they will view the crime as too trivial. Maybe you've had a bad experience with the police in the past. Or perhaps you're worried that involving the police will make things worse or cause the offender to target you again (Victim Support, 2013).'

Adults without disabilities added the following barriers experienced by adults with disabilities:

• Not knowing their rights as victims of crimes
• Inaccessible police buildings and materials
• Lack of accessible transportation
• Lack of information about the criminal justice process
• Police officers who are unfamiliar and often uncomfortable with people with disabilities
• Police who are unfamiliar with the scope of possible accommodations that are guaranteed under Title II of the Americans with Disabilities Act, and Article 13 of the United Nations Convention on the Rights of Persons with Disabilities. For nations that have ratified the United Nations Convention on the Rights of Persons with Disabilities, they are required to ensure that persons with disabilities have the right to access to justice, including procedural and age-specific accommodations to facilitate their participation in legal proceedings.

For individuals with disabilities, who have little or no functional speech, the barriers are even greater. Reporting by one who has been a victim of crime requires a unique and cumbersome communication process. Vocabulary needs to be specific. Receptive vocabulary and grammatical sophistication are needed to be able to process and understand the rapid police interrogation process. Police are not likely to be familiar with and comfortable in communicating with someone who uses a non-typical means of communication. These non-speech communication alternatives include, but may not be limited to symbol-based visual communication boards, synthesised or digitised speech-generating devices or mobile technologies that may be quite slow. Many are accessed by a variety of switches or other access technologies. The International Network of Women with Disabilities (2010) noted that even when available, ‘there is often a lack of credibility accorded to women who require assistive communication or reasonable accommodation in communication (p. 10).’

Finally, some approaches to reporting use speech-to-speech
communication assistants who repeat word-for-word the speech of the crime victim whose speech is unintelligible to unfamiliar individuals but may be quite understandable to a familiar or trained communication partner.

Even when a victim wishes to file a complaint with the police and where the police investigation supports the complaint, the crime victim may encounter similar barriers previously noted. Additionally, prosecutors may be reluctant to represent an individual with little or no functional speech, because they fear more resources will be needed to investigate the victim’s ability to consent and testify in court (Bryen & Wickman, 2011). Furthermore, according to the United Nations Thematic Report (2012), judges may minimise certain forms of violence because of widespread societal perceptions of disability, resulting in inadequate sentences or a tendency to favour mediation, forcing claimants to confront their abusers. Although there are many barriers within the criminal justice system, there have been sufficient numbers of cases that have been successfully tried in court and where the offender has been found guilty and sentenced to prison. See, for example, the article by Bryen and Wickman (2011) reprinted in Chapter 8. (This article was originally published in the Journal of Disability Studies and is reprinted with permission of the Journal.) Findings reported in this article provide a cautiously optimistic picture of cases of physical and sexual violence that have been successfully tried in court and the important lessons learned from these trials.

Promising practices to address prosecution and punishment

In addition to programs that inform individuals of their rights to equal justice as victims of crime described earlier in this chapter, there have been a few initiatives focused on the criminal justice system. Each of these promising practices is described briefly accompanied by where further information can be obtained.

- **End the Silence Training Manuals of Lawyers and Judges**. These training guides provide relevant information about individuals with developmental disabilities, barriers faced in the criminal justice system, their rights to reasonable accommodation, and a special focus on how to communicate when in court.

  You can obtain a copy of these training guides by contacting the Institute on Disabilities at Temple University at www.disabilities.temple.edu/publications or by requesting a copy by emailing iod@temple.edu.
• **Assisting Victims and Witnesses with Disabilities in the Criminal Justice System: A Curriculum for Law Enforcement Officers** (with Trainers Guide). This guide is designed to provide law-enforcement officers with a basic understanding of developmental disabilities and how it impacts on an individual's ability to interact with criminal-justice personnel. The guide also presents information on how to enhance officers' abilities to respond in an appropriate and non-discriminatory manner to victims of crime who have developmental disabilities.

You can obtain a copy of this training guide by contacting the Institute on Disabilities at Temple University at www.disabilities.temple.edu/publications or by requesting a copy by emailing iod@temple.edu.

• **Persons with Disabilities can Speak out: Supporting Victims Who Want to Tell their Stories.** This guide focuses on what victim-assistance programs can do to support individuals with disabilities, who want to disclose or report an incident of sexual violence or other crimes. Communication methods other than spoken language are described so that victims with little or no functional speech can obtain support from victim-assistance staff.

You can obtain a copy of this guide by contacting the Institute on Disabilities at Temple University at www.disabilities.temple.edu/publications or by requesting a copy by emailing iod@temple.edu.

• **A Physical and Programmatic Accessibility Survey for Rape Crisis/Domestic Violence/Comprehensive Victim Services.** This resource provides a physical and programmatic self-evaluation instrument designed to evaluate the accessibility of rape crisis, domestic violence and comprehensive victim-service programs. Physical barriers are evaluated, as well as programmatic and communication barriers.

You can obtain a copy of this self-assessment tool by contacting the Institute on Disabilities at Temple University at www.disabilities.temple.edu/publications or by requesting a copy by emailing iod@temple.edu.

**Recovery and rehabilitation**

According to the United Nations Report (2012), many of the obstacles hindering access to justice for women and girls with disabilities, who have been victims of violence are also present when they request health and other services necessary to promote physical, cognitive and psychological recovery, rehabilitation and social integration. This situation is likely to be true for survivors of violence who have little or no functional speech.

Although there is little information about the recovery and rehabilitation of survivors with little or no functional speech, Bryen et al. (2003) provide important information about the effects of the violence. They found that victims of crime or abuse, who have little or no functional
speech, believed that their experiences had significant emotional (89%) and/or physical (39%) effects on them. Eleven percent also reported significant economic effect, such as losing valuable property or money. The findings of the study by Bryen et al. (2005) are parallel those of the United Nations study. 'For women and girls who survive violence and manage to escape an abusive and violent environment or situation, the effects can be particularly detrimental and long lasting. They include low self-esteem, feelings of guilt or shame, lack of confidence in themselves and others, effects of trauma and post-traumatic stress disorder, addiction problems, sadness, depression and suicidal thoughts (United Nations Report, 2012, p. 14).'

Unfortunately, little is known about promising approaches to rehabilitation and recovery for survivors with little or no functional speech that is mandated under Article 16 of the United Nations Convention on the Rights of Persons with Disabilities. In the United States, under the Violence Against Women Act, grant programs have been established for (1) education, training, and service; (2) construction and personnel costs so that shelters are accessible and usable by persons with disabilities; (3) development of collaborative relationships between victim-services organisations and those serving individuals with severe disabilities, and (4) the development of model programs that implement advocacy and intervention services within organisations serving individuals with disabilities.

These grant-sponsored programs should lead to promising practices focused on the recovery and rehabilitation of survivors of violence with little or no functional speech.

Conclusions and recommendations

There is a growing awareness in the United States of the need to address violence against people with disabilities at legislative, prevention and protection, prosecution and punishment, and recovery and rehabilitation levels. However, there is a general lack of systematic and disaggregated data on violence against children and adults with little or no functional speech. Similarly, there are few programs that specifically address violence against children and adults who are victims of violence and who have significant communication difficulties. Spoken or, more recently, sign language continues to be viewed as the only legitimate means to disclose, report, or testify in court. Similarly, spoken language continues to be the primary communicative mode used for participating in programs geared to recovery and rehabilitation. Many recovery programs continue to pose physical and programmatic barriers to accessing their services.

Based on the United Nations Report (2012) focusing on women with disabilities, a dual track approach is needed to effectively address violence against those with little or no functional speech. On the one hand,
programs to prevent violence against children and adults in the general population and ensure access to justice, protection measures and legal, social and medical services must be designed and implemented in a manner that ensures inclusion and accessibility by children and adults with little or no functional speech. On the other hand, specific programs and strategies targeting individuals with disabilities, especially those with little or no functional speech, should be implemented in accordance with international standards.

Based on this two-pronged approach, the following specific recommendations seem warranted in the United States:

• Ratification of the United Nations Convention on the Rights of Persons with Disabilities should be pursued in the United States, despite its failed attempt in 2012. Diligent monitoring of the implementation of this convention, especially Articles 6 and 13, should occur. The United Nations Convention on the Rights of Persons with Disabilities is potentially a powerful instrument to reduce violence against children and adults with disabilities. When violence does occur, implementing Article 13 will lead to increased access to the justice system.

• Simultaneously, disability advocates must work to ensure that existing legislation protecting ‘vulnerable children and adults’ (e.g., the Child Abuse Prevention and Treatment Act, the Violence Against Women Act, and the Hate Crime Act) are inclusive of those with disabilities, including those who have little or no functional speech. This is especially critical, given that abuse and violence in publicly-funded institutions serving people with developmental disabilities are often treated as an ‘incident’ that is handled administratively rather than a crime to be handled within the justice system (Gabrielson, 2012).

• Recognition that the intersection of gender and disability renders women with disabilities more vulnerable to violence of all kinds is critical. According to the international Network of Women with Disabilities (2010), this recognition will have an impact on a broad range of stakeholders and will yield a broad range of recommendations, including but not limited to the following:

• Promoting the inclusion of women with disabilities, including those with little or no functional speech, in mainstream efforts to address violence against all women by ensuring that women with disabilities can physically access programs and services, by arranging transportation or support, or by providing sign-language interpretation [and other forms of assistive communication approaches], and by ensuring that such programs do not exclude any woman on the basis of her disability.

• Taking measures to avoid stigma, discrimination and all forms of violence against women and girls with disabilities, for example through awareness campaigns and community discussions.

• Creating accessible means for distributing information, consulting and reporting about all forms of violence against women and girls with disabilities.
• Educating women and girls with disabilities about their human and legal rights. Providing women with disabilities with accessible information and counselling on sexual and reproductive health issues.

• Disseminating information in formats that are accessible to people with learning, sensory and motor disabilities, such as through Braille, sign language, electronic books, and easy to understand language, such as Easy English.

• Ensuring that all research, actions, and advocacy related to violence against women with disabilities incorporates the forms of violence identified by women with psychosocial disabilities and fully investigates the experience of these women.

• Developing advocacy, information and support services for women with disabilities, who are survivors of all forms of violence.

• Educating parents, partners, nurses, caregivers and other health-care service providers to deal respectfully with disability and offer quality care when their help is required. Training in communication on how to include and communicate with different types of disabilities to avoid isolation of women and girls with disabilities.

• Actively including diverse women with disabilities in developing and implementing programs, policies and protocols for service providers, law-enforcement officers, and other personnel who work with women with disabilities.

• Training women with disabilities to organise and manage support services efficiently, to develop skills and abilities for economic self-sufficiency, and to use technological aids that lead to greater independence (International Network of Women with Disabilities, 2010, pp. 11-13).

Although these recommendations are particularly germane to women and girls with disabilities, they are also relevant to men and boys with disabilities, including those with little or no functional communication.

Special consideration must be given to men and women with disabilities who have little or no functional communication. As with gender and disability, the intersection of disability, violence/abuse, and little or no functional speech require targeted approaches to reduce the risk of violence and to ensure equal access to the justice system when violence does occur (Collier, McGhie-Richmond, Odette, & Pyne, 2006). Three recommendations address the unique needs of men and women who have little or no functional speech:

• According to Collier et al. (2006) and the Speak Up project in Canada, there is a need to focus on sexual health and safeguarding, including (1) Information about sexuality, rights and abuse; (2) Communication tools and opportunities; (3) Abuse experiences; (4) Sexual assistance; and (5) Access to Community Services. Participants in the Speak Up project asserted that ‘attendants, clinicians, teachers, families, friends, police, legal professionals, victim services, health-care professionals, counsellors and people who use AAC themselves, all play a role in reducing the risk of sexual abuse (Collier et al., 2006, p. 72).’
Bryen and her colleagues in the United States and South Africa (Bryen, 2008; Bornman et al., 2011) and Collier (2013) in Canada have noted that the most likely victims are men, women and children who can't tell, or if they do tell, they won't be believed because their spoken language cannot be easily understood. It is therefore recommended that all communication boards and speech-generating devices have needed vocabulary and accessible symbols so that they can communicate ‘no’ to a potential perpetrator, tell someone if they have been a victim of physical, sexual or verbal violence, be a credible victim on their own behalf, and participate in their recovery. Samples of communication boards to tell or disclose that she has been a victim of violence can be found in Appendix D of this book.

Being interviewed by the police as a witness or as a suspect can be a frightening experience for many people. These feelings can be multiplied for many people who have a learning or communication disability and who do not understand the legal proceedings (O’Mahony, 2009). Introduced in the UK in 1999, intermediaries became a special measure to help facilitate communication between the police, the courts and the vulnerable witness. An intermediary is a trained professional who is able to help a person with little or no functional speech to communicate with the police or people at court if the person has been a victim of or a witness to a crime. Because intermediaries are used infrequently in the United States, it is recommended that this support be provided so as to improve access to the justice system. These intermediaries should be trained as sign-language interpreters, and a registry of trained professionals should be made accessible and usable by persons with little or no functional speech and to members of state and local law enforcement.

In conclusion, children and adults with little or no functional speech in the United States have many technological, legal, and professional potential supports to aid them in reducing the risk of violence and to improve their access to the justice system. However, these supports are sporadic in their implementation and are often narrow in their scope. It is our hope that this chapter will provide needed resources and recommendations so that all children and adults, whether they are all men or women or boys or girls with little or no functional speech, will experience less violence and will, if needed, have equal access to the justice system in the United States.
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Overview

Accessing justice via key role players: A view from South Africa

The rate of sexual abuse and rape in South Africa is the highest in the world. Disabled children and adults, especially those with little or no functional speech, have an increased risk. Perpetrators know that a silent victim is the ‘best’ victim.

This chapter starts by explaining the problem. We try to explain why it is difficult if you don’t know how big the problem is, and what the implications are. Then we look at why people with disabilities are at a higher risk of abuse and rape in South Africa, and discuss different types of abuse.

The second part of the chapter looks at how South African law fits into international law. Two common legal problems are discussed: the underreporting of crimes and low conviction rates.

The third and final part of the chapter looks at what is being done to reduce the risk for people with little or no functional speech, and gives guidance on promising ways forward.

Abstract

South Africa is the shameful world leader with unacceptably high numbers of sexual abuse and rape incidents in the general population. Both children and adults with disabilities, in particular those with little or no functional speech, run an increased risk. Perpetrators know that a silent victim is the ‘best’ victim. Within this group, girls and women are particularly vulnerable, although boys and men with disabilities are not exempt from being abused.
This chapter starts by explaining the scope of the problem and highlights the difficulties of not knowing what the exact extent of the problem is, as well as the implications thereof. The reasons why people with disabilities are at higher risk for abuse and rape in a developing country such as South Africa will then be explored and the type of abuse will be briefly discussed. Special reference will be made to disability-specific abuse, as well as passive violence and its implications. Next, the reasons for rape within the specific cultural context will be described, briefly highlighting traditional perceptions and practices. A brief overview of who the typical perpetrators are will then be given.

The second section of the chapter deals with legal aspects and outlines South-African law and how it fits into international law. Two common legal dilemmas are discussed, namely the underreporting of crimes, as well as the low conviction rates.

The third and final part of the chapter provides guidance in terms of the way forward by looking at possible and promising approaches to risk reduction for this population. Breaking the silence is hard work, but it can be done, and should be done. A systemic multidisciplinary approach is promulgated, and specific strategies are provided for each of the different role-players. This includes people who use AAC, AAC professionals, AAC manufacturers, criminal justice professionals, police officers, policy makers and disability advocates, family members, other significant others and last, but definitely not least, John Doe and civil society. Although the different roles and responsibilities are discussed separately, all people involved will learn from all of the strategies. The task ahead, building a strong wall of support to break the silence, will be more easily done if all of the role-players will help to pave the way.

Opsomming

Suid-Afrika het die skandelike titel as wêreldleier met onaanvaarbare hoë syfers van seksuele misbruik en verkragting onder die breë samelewing. Beide kinders en volwassenes met gestremdhede, en veral dié met min of geen funksionele spraak, loop 'n verhoogde risiko. Skuldiges weet dat 'n stil slagoffer die 'beste' slagoffer is. In hierdie groep, is veral dogters en vroue weerloos, alhoewel seuns en mans met gestremdhede nie misbruik vry spring nie.

Hierdie hoofstuk begin met 'n beskrywende oorsig rakende die trefwydte van die probleem, en beklemtroom die verbandhoudende probleme wanneer die presiese omvang van die probleem onbekend is, sowel as die gevolglike implikasies daarvan. Die redes waarom persone met gestremdhede 'n verhoogde risiko vir misbruik en verkragting in 'n ontwikkelende land soos Suid Afrika inhou, word dan uiteengesit, gevolg deur 'n kort beskrywing van die tipe misbruik wat te wagte kan wees. Misbruik wat spesifiek met gestremdheid verband hou sal beklemttoon word, asook passiewe misbruik met gevolglike implikasies. Daarna word redes vir verkragting in die bepaalde kulturele konteks beskryf, en die tradisionele persepsies en praktyke sal
kortliks toegelig word. ’n Kort oorsig oor hoe ’n skuldige se profiel tipies lyk, sal vervolgens gegee word.

Die tweede deel van hierdie hoofstuk hou verband met regsaspekte en verskaf ‘n kort skets van die Suid-Afrikaanse wet en hoe dit by internasionale wetgewing aanpas. Twee algemene geregtelike dilemma word bespreek, naamlik die lae aanmelding van misdaad sowel as die lae getalle van skuldigbevindinge in die hof.

Die derde en laaste deel van die hoofstuk verskaf riglyne aangaande die pad vorentoe, deur te kyk na moontlike en belowende benaderings tot risikovermindering vir hierdie bevolking. Om die stilte te verbreek is harde werk, maar dit kan, en moet gedoen word. ’n Sistemiese, multidissiplinêre benadering word voorgestaan, en spesifieke strategieë vir elk van die betrokke rolspeletters word verskaf. Dit sluit die volgende persone en groepe in: persone wat Aanvullende en Alternatiewe Kommunikasie (AAK) gebruik, professionele persone op die AAK-gebied, AAK-ontwikkelaars, die regsbank, polisiebeamptes, beleidskrywers en dié wat veg vir die reëte van persone met gestremdhede, familieledle, ander betekenisvolle persone, en laaste maar beslis nie die minste nie, Jan Alleman en die breë publiek. Alhoewel die verskillende rolle en verantwoordelikhede afsonderlik bespreek word, sal alle betrokkenes by al die verskillende strategieë baat. Die taak op hande, naamlik om ’n sterk muur van ondersteuning te bou om die stilte te verbreek, sal makliker gedoen kan word indien al die betrokke rolspeletters hul kant bring.

‘Shock is a staircase. There are many steps. We are not all standing on the same one…’ (Henning Mankel, 2009: 448).

I believe that every child looks up to an adult for safety, protection and guidance and for loving warmth. Not for an adult to take advantage of the love that the child is giving back to them as thanks for looking after me. A child’s mind is something that is free, with no worries. It should stay that way until they grow up, not living in fear of what will happen next when an adult is around who they had looked up to.

I am saying all this because I never thought that I would have to live my childhood in fear of getting hurt by a family friend. In my early years, I was a cute, bubbly, fun kid with no worries. I was loving, and in turn loved by so many. I thought that every adult I met was my guardian, someone I could ask for help when in need. I remember the day the guy called Lucas changed my life.

It was a regular day when my sister’s boyfriend would come by and they would chill in the house and I would play anywhere in the yard. I knew this routine. Lucas, who was the son of my mother’s best friend, would also show up sometimes. He began to visit once a week so I took him as part of the family. As usual, my sister would accompany her boyfriend to a taxi after his visit, while I would continue playing while my sister was gone. But that day when I was alone, Lucas took me to my parent’s bedroom. I was nine years old. I can’t remember why I was not at school that day. He did not waste time. He undressed me and
Chapter 3

started raping me. I cried and told him it is painful, but all he said was ‘I am finishing, sorry.’ He repeated the rape during that week and, like every rapist, he told me it is our secret and I should not tell anyone. I did that until the following week when my mother wanted us to go visit her parent’s house. I refused to go there because I was scared that Lucas would rape me again. So my mother asked me why I was refusing to go. I told her that I was scared of Lucas. Then she started asking me why I was scared of him. I told her that he said, that I must not tell anyone.

Right there my mom started panicking and told me that I must tell her. I started by saying that I was sore underneath as I pointed at my private part. I remember that I was scared talking about it. But then I told my mother and father what happened. My dad was furious. He wanted to go to Lucas’ house and beat him up but my mom said that he must calm down and that they should focus on me first. From there, my mother took me the doctor to check if I was okay. I was not pregnant or infected. The doctor confirmed that I was raped and he gave me medicine to cleanse me inside. The doctor then suggested that we report a case of rape. We went to the police station with a confirming letter from the doctor and opened a case against Lucas. And then later that day my parents went over to his house and told his family what he had done. The police came at the same time and arrested him. He went to trial and he got a 15-year sentence in jail. Since I did not have to go to court, my parents explained to me what had happened and that he won’t hurt me again. I was 9 years old then and I started living in fear each time a stranger came by our house. I did not know about counselling and I didn’t receive any counselling. I wish I had, but I just lived in fear.

A year went by. I was 10 going on 11 years old. In May, I got very sick and went to the hospital for about a month. Then I stayed home for about one year. I still do not know what was wrong with me. Several years after I was raped, I lost my voice. I could not speak! That’s when my confusion really started. My mom took me to all different places where she was told I could get help. She wanted me to get better and get my voice back, so we went to all these places, doctors, hospitals and traditional healers. We heard a lot of different stories from these people and I drank medicine given to us. Some were sweet, some bitter, and some were just tasteless. One person told my parents that losing my voice must be due to being raped. I still do not know what caused me to lose my ability to speak.

Today, I am living my life. When I think back about the journey I had in trying to get my voice back I just laugh and think what a waste of time and money! But all they wanted was to have their baby girl healed and bubbly again. Today I have my voice back. I use a tablet – a new mobile computer device that lets me say what I want when I type. Again I am a fun, bubbly, young lady ready for new adventures and challenges.

However, last year I had the shock of my life. A friend of mine came to visit and we went to buy lunch at a local take-away shop. When we got there, we placed our order and chilled while we waited for our food. As we waited, I heard people talking and something inside me said, ‘Turn around’. When I did, to my shocking surprise, I saw Lucas, the man who had raped me 15 years ago. I panicked and all the heartache and hatred came back. I had changed completely since I was 9 years old, and I could tell he didn’t recognise me. My friend asked me why I was looking at the guy with such hate. I couldn’t tell her. I just said she was imagining things. Since that day I walk around looking over my shoulder. I am afraid and angry. I started to plan his death. I wanted to murder him. No one else knows how I feel about that guy. I used to curse him in my heart and hope that he
dies terribly. When I went to church, I was told to let go of the past and forgive a person who has done me wrong. I should just leave things to Christ and that He shall punish him for his sins. I did that. I stood up and gave my life to Father and the priest prayed for me and I let go. However, it is hard to forget. I try to forget. If it is up to me, I wish to never see him again. When I walk around, I try to always be with someone.

Recently, my cousin and a friend suggested that maybe I should go for some counselling. I think that maybe I should. As a survivor of rape, I would like to tell other little girls and other young women to speak out because it is not your fault. You did not ask to be raped.

Constance Ntuli, January 2013

Introduction

South Africa holds the shameful record as the country with the highest per capita incidence of sexual abuse and rape in the general population. In fact, Interpol named South Africa as the world’s rape capital. According to a report by BBC news, a female born in South Africa has a greater chance of being raped in her lifetime than learning how to read (Dempster, 2002). While women’s groups in South Africa estimate that a woman is raped every 26 seconds, the South African police statistics estimates that a woman is raped every 36 seconds (Itano, 2003). The completely outrageous incidence figure for sexual abuse and rape is unfortunately reflective of the high overall crime rates in South Africa (Kapp, 2006). According to the BBC, an estimated 2.1 million serious crimes were reported in 2009.

Understanding abuse and violence is the proverbial ‘ugly onion’. With every layer that you peel off, it becomes more and more ugly. As Henning Mankel (2009) so aptly described it, the extent to which we are shocked by this depends on our knowledge and exposure. Being shocked is indeed like a staircase, and each one of us needs to know on which step we stand.

Evidence suggests that women with disabilities are at greater risk than nondisabled women, but that children with disabilities are most at risk in this country (Phasha & Nyokangi, 2012; Elphick, 2012). The reason for this is that they form a group with multiple minority status factors, such as gender-bias, poverty, inaccessibility to and reliance on support services, stigmatisation and isolation (Grobbelaar-du Plessis, 2007; Powers, Curry, Oschwald, & Maley, 2002). Although the focus of this chapter is on

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1 We hope to arrange the counselling that Constance wants. We also hope to help her to program her cell phone with a 911 emergency telephone so that she can call for help if needed. We are also helping her program her communication tablet with important phrases, such as, ‘Go away’; ‘Do not touch me’; ‘Stop or I will call the police’ Her communication tablet also has a camera, so she can photograph the person who might be harming her. These are a few ways that we can reduce her fears and also reduce her risk of being a repeat victim of violence.
individuals with little or no functional speech, frequent reference is made to disability as a generic term (including this specific population) due to the scantiness of published relevant South African literature. Furthermore, the various disability groups share certain commonalities such as economic dependence and social isolation, which gradually carves away their self-esteem on the basis of the disability, thus heightening their susceptibility to abuse (Nosek & Howland, 1998).

Scope of the problem in South Africa

Although violence against men with disabilities has not been studied as extensively as that of their female counterparts internationally, it has been shown to be a serious problem, with a male: female ratio of 56:44 for physical abuse (Powers, Hughes & Lund, 2009). This United States-based study of 345 men with physical or intellectual disability, showed that 65% of the participants reported a lifetime of abuse and 24% a lifetime of sexual abuse. Research also suggests that men with disabilities share many similarities with women with disabilities regarding the type of abuse and the impact thereof, although gender-role expectation discourages men from acknowledging the abuse, as a stereotypic view exists that men cannot be abused (Powers & Oschwald, 2004; Powers et al., 2009). No South African statistics could be found, but nothing suggests that the scope of abuse of men with disabilities would be less in this country. The few available resources have therefore necessitated me to explore abuse and rape from a children’s and women’s perspective in this chapter.

Children with disabilities are particularly vulnerable to various kinds of abuse. A large recent international meta-analysis, with a sample of 18,374 children with disabilities (Jones, Bellis, Wood, Hughes, McCoy, Eckley, Bates, Mikton, Shakespeare & Officer, 2012), reported that up to a quarter of children with disabilities will experience violence in their lifetime, and that children with mental or intellectual disability have an even higher risk of experiencing violence. They contributed societal stigma and discrimination, negative traditional beliefs and ignorance within communities, lack of social support for primary caregivers, the type of disability, with increased vulnerability in the presence of a communication difficulty and heightened vulnerability as a result of the need for increased care, to these high prevalence factors. However, Jones et al. (2012) caution that reliable estimate figures are missing for most low- and middle-income countries. This is of great concern, as evidence suggests that these countries generally have higher incidence rates for disability, higher levels of violence and fewer support services compared with high-income countries. In South Africa, children with disabilities are three to four times more likely to be abused than their typically developing peers (Elphick, 2012). Moreover, they are often repeat victims, and research has shown that the longer the period of the child’s exposure to abuse, the more traumatic it becomes (Spies, 2012).
Another factor that should never be ruled out when investigating the link between disability and abuse, is the potential for reverse causation, i.e., that the disability arose as a result of the abuse (Jones et al., 2012). Although many childhood disabilities seem to have occurred from birth or developed soon after, the actual onset of the disability, and whether violence occurred before or after development, is difficult to ascertain. This is particularly important for children with mental illness, when early exposure to violence may contribute to the development of behavioural and/or emotional problems at a later stage.

Jean Elphick of Afrika Tikkun (2012), a non-governmental organisation focused on nurturing children and youth, mentions several reasons as to why children with disabilities living in Orange Farm, a township close to Johannesburg, are more vulnerable to abuse than their typically developing peers. These factors appear similar to those reported in the Jones et al., (2012) study. A study conducted in Tembisa (a different but comparable township to Orange Farm) with individuals with physical disabilities, reported similar findings regarding discrimination, stigmatisation and isolation despite laws that have tried to eradicate it (Leshilo, 2004), and hence it is hypothesised that the reasons put forward by Elphick (2012) would translate well to the rest of the country:

- **Discrimination:** Children with disabilities have a low status in the community and are discriminated against by most people, including some family members. There is a common myth that individuals with intellectual disability ‘do not experience the same emotions as their nondisabled counterparts’ or that they ‘do not mind abuse because they do not regard it as abusive’ (Phasha & Nyokangi, 2012: p. 310).

- **Isolation:** These children are often out of school and stay at home (habitually indoors), which amplifies their invisibility in the community, and reduces the opportunity to establish contact with people outside the home in whom they can confide, should they experience abuse.

- **Stigmatisation:** The interweaving patterns of stigmatisation between disability, gender, sexuality and HIV/AIDS increases vulnerability (Hanass-Hancock, 2009), and sends out negative messages, such as evilness, shamefulness and guilt around the abuse.

- **Shame:** Girls with an intellectual disability (who attend special schools) might experience name calling and threats as a way to humiliate and degrade them (lowering their self-esteem) and also to instil a sense of fear for refusing to accept sexual advances by male peers who attend the same school (Phasha & Nyokangi, 2012).

- **Disempowerment:** They do not know about their rights and are often unsure whether they have been abused or not.

- **Dependence:** They may be dependent on others to take care of them. Perpetrators are often family members or others known to the child. (This factor will be discussed at length later in the chapter.) Another practical example is that parents and teachers at special schools pair girls with an intellectual disability with boys from the same school in an attempt to
protect the girls from sexual exploitation by nondisabled men in the community (Phasha & Nyokangi, 2012). Parents in this study did not regard sexual activity among school peers as a form of abuse, but rather as a way of growing up, and making it easier for parents to trace the girls in case they never came home. Not all of the girls in the study viewed these arrangements positively, as they felt exploited by their ‘partners’.

- **Vulnerability**: The nature and severity of the disability impacts on independence and participation in daily activities. Girls with significant communication difficulties may be less able to defend themselves, making them easy targets.
- **Little access to resources**: They have poor access to education, health, psychological, child-protection and legal systems, including mechanisms for reporting crime. In cases where they find the right people to speak to, they are often referred somewhere else, dismissed or not taken seriously.

Cell phone pornography has been found to be a growing phenomenon among the youth in South Africa, including teenagers with an intellectual disability (Phasha & Nyokangi, 2012). This is also seen as a form of gender-based violence, as it negatively impacts on self-worth, leading the girls to feel increasingly powerless and betrayed by those peers they trusted (Coetzee, 2005). Given the dramatic increase in cell-phone use in this country, the current cell phone pornography information might be regarded as only the ears of the hippo.

**Women with disabilities**: Gender inequality legitimises male violence over women (Jewkes, Abrahams, et al., 2009). International studies have estimated that more than 70% of women with a wide variety of disabilities have been violently assaulted at some point in their lives (Farrar, 1995). Some women (and children) with disabilities are even more vulnerable, namely those with challenging behaviour, intellectual disabilities, as well as communication difficulties (Sullivan, 2000). Anecdotal evidence from several Southern African countries show that women with disabilities who are experiencing gender-based violence, have inadequate support from the relevant support systems, as well as poor access to the criminal justice system (Centre for Disability, Law and Policy & Gender, Health, and Justice Research Unit, 2012).

In Australia, Keilty and Connelly (2001) found that the high level of vulnerability to sexual violence could be attributed to: emotional deprivation, social isolation, a dependent relationship with the personal assistant, feelings of helplessness and powerlessness, ignorance about violence, repressed sexuality and susceptibility to coercion, bribery and other incentives.

In conclusion, it can be stated that the abuse against women and girls with disabilities is magnified by their social isolation and dependence (Grobbelaar-du Plessis, 2007; Rousso, 2003). Their strong desire to be valued and respected by friends in the nondisabled population, makes them extremely vulnerable to coercion, since they might do almost
anything they are told or made to believe, that will help them fit in (Coetzee, 2005). One case study documented a young girl with an intellectual disability who slept with several men just to feel ‘loved’ (Hanass-Hancock, 2009).

**Types of violence**

The next logical question then relates to the types of violence that children and women with disabilities suffer. Some authors prefer to divide violence into active violence (which includes physical, emotional, sexual and economic abuse) and passive violence (which includes physical and emotional neglect, as well as discriminatory actions that may result in further physical or psychological harm to the victim (Naidu, Haffejee, Vetten & Hargreaves, 2005). This classification highlights the fact that violence can sometimes refer to what is not done, rather than actions that are done – a form of violence idiosyncratic to people with disabilities, who are reliant on others for care. Other forms of disability-specific violence have now also been documented. Examples include the destruction of medical equipment and communication devices, withholding, stealing or overdosing of medication, physical neglect and financial abuse (Powers, Hughes & Lund, 2009).

From their large meta-analysis, Jones et al. (2012) reported that although children with disabilities are vulnerable to both active and passive violence, the majority of studies reported on physical and sexual violence, neglect and emotional abuse. No information is available on other forms of violence, eg witnessing domestic violence, experiencing war or bullying. In their study in South African special schools for children with intellectual disabilities, Phasha and Nyokangi (2013, 2012) found evidence of all the most common forms of sexual violence. This included pornography (including cellphone pornography which appears to be increasing), sexual intimidation, coercive sex/rape, name calling, sexual touching and kissing, grabbing of private parts and sexually explicit behaviour.

In 2010, serious abuse allegations were made against teachers at a special school for the blind in the Greater Pretoria area by students and former students (Sunday World, 2010). At the time, Ms Hendrietta Bogopane-Zulu, the current Deputy Minister for Women, Children and Persons with Disabilities, and the then Deputy Minister of Public Works, who also attended this school, stated that she was also a victim, and that the abuse at that particular school had been continuing for more than 20 years. She explained that when she reported her ordeal to the headmaster at the time, she was called a liar and expelled (Sunday World, 2010). Four teachers, three security guards and a cook were accused of raping disabled learners on the school and hostel premises. When the Deputy Minister followed up two years later, she found, to her surprise and shock, that although the three teachers at the school were dismissed and had been
deregistered by the Department of Education and that the fourth teacher had resigned, no criminal charges were laid against these teachers (Gabara, 2012). Furthermore, 14 girls with disabilities at this specific school were pregnant.

Apart from pregnancy, one of the most immediate impacts of violence is seen in health-care facilities. In South Africa, more than 1.75 million people annually seek health care for injuries that are a direct result of violence (Jewkes, Abrahams et al., 2009).

In addition to the type of violence experienced by children and women with disabilities, reports show that the violence tends to be more severe, appears to consist of multiple different forms and also appears to have longer duration (Powers, Hughes & Lund, 2009). Research has also pointed out that if abuse continues over a period of time (save for cases that involve sadism) the effect of the trauma is more severe than for once-off events (Coetzee, 2005).

Who are the perpetrators?

In a South African study involving 225 complainants with intellectual disability, mostly related to rape, an obvious power difference was noted between the complainant with intellectual disability and the nondisabled accused (Dickman et al., 2006).

Abuse of women with disabilities by their personal assistants (persons assisting those with a disability, with tasks which they would typically do themselves if they had not had a disability) has been identified as a particularly significant problem (Powers et al., 2002; Grobbelaar-du Plessis, 2007). This could refer to paid personal assistants, but also to unpaid personal assistants, such as spouses, ex-spouses, parent’s family members or friends (Powers, Hughes & Lund, 2009). The Powers et al. study (2002) also found that, like women without disabilities, the abusers are often men who are known to the victim and that most assaults occur within the home or place of residence (eg residential care facility).

Abuse has a unique meaning for a person who relies on a personal assistant for personal care, equipment, medication, finances, transport and so forth, due to the power imbalance created by the dependence vs the interdependence experiences. This implies that when abuse occurs at the hands of the caregiver, a woman’s ability to engage in daily life activities is compromised, along with her personal health and safety. This type of abuse is often not reported, because of fear and dependency on the abuser (Powers et al., 2002; Nosek, & Howland, 1998). The forms of personal-assistant violence include both active and passive violence, as discussed earlier, such as physical, sexual, verbal and financial abuse, threats of...
physical abuse, neglect, withholding or destruction of equipment, and inappropriate administering of medication.

A scarcity of published research on women with disabilities, who experience violence by an intimate partner exists, which might be due to the societal myth that these women are asexual and/or single (Brownridge, 2006). Perceptions around sexuality are dealt with in more detail in the section on rape. Ironically though, evidence suggests that the most common perpetrators of violence against women with disabilities are their male partners (Millberger et al., 2003). As a result of society's negative perceptions, as well as the myths that surround disability, many women with disabilities remain in these trapped relationships, as they find themselves dependent on the abuser for assistance, affection, communication, financial assistance and physical support (Grobbelaar-du Plessis, 2007; Powers, Hughes & Lund, 2009; Coetzee, 2005). Other common barriers that keep women with disabilities from escaping interpersonal violence include embarrassment, not having a trusted person to talk to, not being believed, fear of losing independence of connections with family and fear of retaliation (Powers, Hughes & Lund, 2009).

To summarise, stranger assault is not common, and typically the perpetrator is well known to the victim and is usually in a position of trust and authority in relation to the victim (Farrar, 1995). Constance's case at the beginning of this chapter is a classic example.

Understanding sexuality and rape from a cultural perspective

No text on violence in South Africa would be complete without a dedicated focus on rape, especially with the media naming this country the rape capital of the world. There are various studies of rape in South Africa from which statistics may be extracted, but none of these studies were specifically designed to measure the prevalence (how many cases there are altogether, at a given point in time in the country, for example, on the day of a census) and/or incidence (the number of cases over a specified time period, for example, the number of children per 100 000 of the population that were born in a given year). However, despite the different approaches used by these studies, they come up with roughly similar patterns (Orkin, 2000). No comprehensive prevalence or incidence figure for rape of persons with a disability could be found, as police are not required to indicate disability when investigating a rape.

Although the rape rate is higher in South Africa than in countries such as the US, it is difficult to know whether it is worse in South Africa than in other developing countries such as India, which also do not have sophisticated statistics to report this (Kapp, 2006). Unfortunately, South Africa also has a high prevalence of key rape-risk factors, with many men
experiencing trauma in childhood and a strong gang mentality (Jewkes et al., 2008; Jewkes et al., 2009).

Despite these terrifying statistics, rape cases in South Africa barely make the news (Naidu-Hoffmeester & Kamal, 2013). The last massive public outcry was about a year ago, when a 17-year-old mentally disabled girl from Soweto was gang raped by young men who videotaped her and offered her 25 cents to keep quiet.

In South Africa, various cultural beliefs regarding rape hinder the problem of decreasing and reporting rape. On the one hand, many girls and women believe that they cannot say no to sex, even forcible sex if they know the man (Meier, 2002), while many men, on the other hand, believe that they are entitled to sex, or that women enjoy being raped. In a study done in the Gauteng area, 80% of men believed women were responsible for causing sexual violence and 30% believed that the women ‘asked for it’ (Human Rights Watch, 2001). Approximately 50% of male youth believed ‘no’ to sex meant ‘yes’, and nearly one-third said forcing sex on someone they knew was not sexual violence (Human Rights Watch, 2001). A recent study in the Eastern Cape and in Kwa-Zulu Natal showed that one in four men (27,6%) admitted to having forced a woman or girl to have sex against her will (Jewkes, Sikweyiya, Morreill, & Dunkle, 2008). Three-quarters of these men admitted raping for the first time while still in their teens: 9,8% said they were under 10 years old, 16,4% were 10 to 14 years old and 46,5% were 15 to 19 years old, with only 27,6% being adults (20 years and older). A majority of men thought ‘jack rolling’ (‘recreational’ gang rape) was bad, but boys between the ages of 15 and 19 thought it was ‘good’ or ‘just a game’ (Human Rights Watch, 2001).

Rape cannot be considered without examining beliefs around sexuality. The sexuality of individuals with disabilities is often misunderstood. At the one end of the continuum they are regarded as sexually innocent – perpetual children. This belief implies that these individuals have little or no understanding of their bodies, making them prime targets for those individuals who base abuse on sexuality (Rousso, 2003). Certain beliefs regarding sexuality and sexual practices, which affect persons with disabilities, have been reported by South African authors. In some South African communities, sex with girls and women with an intellectual disability is done in the name of Ukuthwala (Phasha & Myaka, 2009). Perpetrators believe that they will become powerful, feared by others and wealthy if they have sexual intercourse with a ‘mermaid’ (described as a wealth-giving creature) – a spirit who is believed to live within persons with an intellectual disability.

Another cultural belief is that virgin cleansing (sex with a virgin) is a cure for HIV/AIDS. This has led to sexual abuse of many girls and women with disabilities by men with HIV/AIDS. A survey in East London, South Africa, by the University of South Africa found that 18% of 498 workers
believed that sex with a virgin could cure AIDS (Earl-Taylor, 2002). In Gauteng, 32% of those interviewed believed this myth. Given the HIV/AIDS pandemic in this country, rape and sexual assault is often a death sentence (Hanass-Hancock, 2009). An estimated 16% of all HIV infections in women can be prevented if women did not experience domestic violence from their partners (Jewkes, Abrahams, Mathews, Seedat, van Niekerk, Suffla, & Ratele, 2009). Others blame the high rate of violence, including rape, on a culture of violence that existed in South Africa for decades.

On the other side of the continuum, it is believed that individuals with disabilities have a heightened, uncontrolled sex-drive. This misconception could be exacerbated by their friendliness towards all people, as well as inappropriate sexual expressions or behaviours that differ from the norm, such as public masturbation. The real reasons might be the lack of information that these individuals have about acceptable and unacceptable behaviours, and their difficulty in making sense out of images portrayed in the media, such as music videos, television and magazines. A teenage boy’s parents complained, for example, that when trying to teach their son with intellectual impairment to stop putting his hand in his pants, he simply pointed to Michael Jackson in one of his well-known poses, grabbing his crotch! It is therefore easy for those with intellectual disabilities to become confused about what society condones as appropriate sexual behaviour and what not.

Furthermore, some individuals who are not cared for at home might appear in public with torn clothes or without underwear, leading potential perpetrators to believe that the person wants sex (Phasha & Myaka, 2009). Sometimes, sexual abuse of the women with disabilities is interpreted as a blessing, in that the woman with the disability should ‘count herself lucky’ to have sexual intercourse (Hanass-Hancock, 2009). The truth is that individuals with disabilities have the same range of sexual thoughts, attitudes, feelings and desires as their peers without disabilities.

**Implications for individuals with little or no functional speech**

Not only is the sexuality of these children misunderstood, but also they have been regarded as undeveloped, lacking basic capacities for understanding, communicating and making choices. Children with disabilities, who also have difficulty in expressing themselves verbally, face a double vulnerability (Coetzee, 2005). They are voiceless and invisible in society. There are many reasons for this increased vulnerability. They are often seen as defenceless and unable to fight back. There is also the very real risk that they are unable to make themselves heard and call for help (Hanass-Hancock, 2009). As a direct consequence of their communication disability, they are also seen as being unable to tell about their
victimisation. Furthermore, when they do tell, they are less likely to be believed because they may not be understood due to their communication disability. There is also the perception that they are unable to testify in court on their own behalf due to their poor ability, as well as the legal regulations regarding hearsay, confrontation and leading the witness. All of these factors result in perpetrators having little or no fear for the consequences of their acts (Ericson, Perlman & Isaacs, 1994).

Perpetrators recognise this vulnerability and see these individuals as easy targets, taking the opportunity to abuse those (Grobbelaar-du Plessis, 2007). Victims, on the other hand, fear backlash from the perpetrator, particularly when the perpetrator also provides personal assistance to the child. Children, who depend on adults to assist them with dressing and going to the toilet, have an increased risk of abuse, due to the intimate nature of these activities. In order to make caregiving as easy as possible, these children are trained from infancy to comply with adult instructions, not to put up a fuss, and to let strangers look at their naked bodies. Often misplaced trust in others develops, owing to their increased dependence on others for assistance (Coetzee, 2005). It becomes very difficult for these children to be assertive and to say no. Their inability to protect themselves, strangely enough, might also be, the direct result of society's traditional approaches to 'protecting' them, by isolating them from society and placing them in special schools. In doing so, we have kept these children from accessing the tools and resources needed for protecting themselves (Rousso, 2003).

Legal aspects: South African law

Although laws, statutes and other legal instruments are important, they alone cannot change the lives of vulnerable citizens (Boezaart & Skelton, 2011). That requires planning and provision by the government to ensure that these individuals have access to the services the law promises them. There are three main international and regional treaties that South Africa has ratified, which entrench the rights of all people with disability (including children):


The 1990 United Nations Convention on the Rights of the Child was the first human-rights treaty to explicitly prohibit discrimination against children on the basis of disability (Boezaart & Skelton, 2011). This was followed by the United Nations Convention on the Rights of Persons with Disabilities, which
complements existing international human-rights treaties and clarifies the legal duties of states to ensure and respect the equal enjoyment of all human rights by people with disability.

The South African Constitutional and Legislative Framework which entrenches the rights of all people with disability (including children), comprises the following:

- The Constitution of the Republic of South Africa, which includes the Bill of Rights
- Children’s Act 38 of 2005
- Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007
- Mental Health Care Act 17 of 2002
- Case law

So, what is the relationship between international law and South African law? South Africa follows a dualistic system, which means international law and the law of the country are regarded as two distinct systems of law (Boezaart & Skelton, 2011). Therefore, although the international laws are binding, they cannot be applied directly by the court, and individuals cannot derive rights and obligations directly from these laws or treaties, although national legislation reflects international law. Furthermore, the South African Constitution specifically deals with international law, and states that when the Bill of Rights is interpreted, international law should be considered (Section 39(1)(b)).

The legal protection of all South Africans, including individuals with disability, is acknowledged through various national laws. The Bill of Rights in the Constitution aims to ensure the rights of all of the people in South Africa with the democratic values of human dignity, equality and freedom (Republic of South Africa, 1993). Furthermore, it specifically mentions the right to freedom and security, including freedom from all forms of violence. Apart from the Constitution, children with disability are also protected by the new Children’s Act (2005) in terms of both provision rights (eg family care, other appropriate special care and social services) and protection rights (eg protection from maltreatment, abuse and neglect) and by the Mental Health Care Act 17 of 2002.

The Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (also referred to as the Sexual Offences Act) is an act that reformed and codified the law relating to sex offences. This law was received favourably by disability advocacy groups throughout South Africa, as it created certain new sexual offences against children and persons who are mentally disabled. At the same time, certain old offences, similar to offences created in respect of adults, were expanded or amended to address the particular vulnerability of children and persons who are ‘mentally disabled’ (Khumalo, 2007).
Chapter 3

The following offences, specifically related to disability, are prohibited by the Act:

- Sexual exploitation of a person who is mentally disabled; being involved in, furthering, benefiting from or living from the earnings of the sexual exploitation of this person; or promoting sex tours with persons who are mentally disabled (sec. 23)
- Sexual grooming of a person who is mentally disabled or promoting the sexual grooming of this person (sec. 24)
- Exposing or displaying or causing the exposure or display of child pornography or pornography to a person who is mentally disabled (sec. 25)
- Using, or benefiting from using a person who is mentally disabled for pornographic purposes (sec. 26)

However, this law was clouded in controversy after a full bench of the Western Cape High Court ruled in May 2012 that 29 offences contained in the Sexual Offences Act, including the sexual offences against mentally disabled people, were not legally enforceable. The judges argued that because legislators omitted to prescribe sentences for the offences in this Act, perpetrators arrested for these 29 offences could not be formally charged, thereby making the offences ‘unpunishable’ (Rondganger, Cole & de Lange, 2012). Following a huge public outcry, President Zuma signed an amendment to the Sexual Offences Act after members of Parliament had engaged in a bipartisan lawmaking session by quickly drafting and agreeing to the amendment, which sailed through the laborious legislative process in record time, and in doing so, closing the loophole (de Lange, 2012).

Access to the law: Low rates of reporting

It is estimated that overall (not only in cases where a person with disability is involved), only one in every nine rape cases are reported to the police (Kapp, 2006; Middleton, 2011; Coetzee, 2005). While there are higher rates of crimes against people with disabilities, there are simultaneous lower rates of disclosure and reporting of the crime. Women with disability are less likely to report having been sexually abused (Brownridge, 2006). The reasons for this are complex.

Women's advocates say that this is because of lack of confidence in the criminal justice system, the stigma attached to reporting rape in a heavily patriarchal society, and the lingering belief that somehow the victims are to blame (Kapp, 2006).

Many girls and women with disability and their families are reluctant to report sexual or other forms of violence. This may be due to social isolation and discrimination against these individuals, as well as their high levels of dependence on caregivers (who are often the perpetrators). The
complainant with intellectual disability might also feel afraid or guilty, either due to co-operation with the accused before the assault or, in an ill-defined way, due to any other sexual feelings or activities (Dickman et al., 2006). Likewise, if a woman's husband is raping children in the household, she may be reluctant to go to the police if he is the only source of income (Meier, 2002).

If rape allegations are made, the perpetrator is humiliated and angered, causing the family of the accuser to face intimidation and revenge (Elphick, 2012). If the perpetrator is found guilty and convicted (as in Constance’s case), the family feels safe, but if the perpetrator is acquitted, the accuser must continue to live in the same community.

The difficulties of having a successful conviction, combined with the close-knit nature of South African townships, makes the reporting of a crime that is unlikely to result in a conviction, counter-intuitive (Elphick, 2012). Moreover, the attitudes and prejudices of law-enforcement agencies and other government personnel and the inaccessibility of services, particularly in rural areas, are also part of the problem. In the past, the police represented the oppressors and hence it has taken time for individuals to go to the police for help after a rape or other violent act (Meier, 2002).

According to a survey that questioned rape victims who did not report the crime to the police, 33.3% of the victims cited they feared retaliations, 9.6% cited that they felt the police would not be able to solve the crime, and 9.2% cited embarrassment as their reasons for not reporting the crime (Meier, 2002). In some cases the caregiver might believe that the process of telling and subsequent investigation will do more harm than good for the person concerned, and will therefore refrain from reporting (Dickman et al., 2006; Hanass-Hancock, 2009). This increases the individuals’ vulnerability, as they are perceived as not being able to tell anyone.

In their study of 200 adult women with disability, the authors report that the participants identified calling the police as one of the least helpful strategies in stopping abuse (Powers et al., 2002). While this finding implies that the women need increased knowledge of when abuse qualifies as a crime, and that police can be a useful resource, it also points to a need for boosting the knowledge and sensitivity of police officers and their response to abuse against women with disability.

Once police are involved, they may respond poorly due to incorrect assumptions about disability or an inability to recognise the need for additional support (Dickman, Roux, Manson, Douglas & Shabalala, 2006). Some research has also shown that police did not always treat crimes against people with intellectual disabilities seriously, as they feared that these individuals would make unreliable witnesses (O’Mahony, 2009). An Australian study found that police views reflected the general
community stereotypes of people with intellectual disability, and that this impacted on taking their statements, namely that 1) these individuals lie; 2) that they are sexually promiscuous; and 3) that they cannot be reliable witnesses (Keilty & Connelly, 2001). Another social myth that police officers sometimes subscribe to, is that people with disability cannot be victims of crime as long as they are in the ‘safety’ of an institution or family home, and hence they doubt the legitimacy of abuse allegations by persons with disability, leading them to not investigate a case (Naidu, et al., 2005).

Police officers use different strategies to decide whether they will take a statement by a person with disability (Keilty & Connelly, 2001). Sometimes they would consider whether the person has the capacity to give evidence in court – a strategy that is obviously premature. Any person should be entitled to lay a complaint and have it fully investigated, irrespective of whether the complaint will proceed further or not (Naidu, et al., 2005). Another strategy employed by police officers is to consider whether they think the person with disability understands the oath before taking a statement. When the women with intellectual disability had communication and/or language difficulties, police officers felt unable to take a statement (Keilty & Connelly, 2001). In a British study, a widespread belief was found under police officers that their promotion depends on a record of successful prosecutions and, therefore, if they view crimes against people with disability as unlikely to lead to convictions, their interest in and support for this population are restricted (Williams, 1993).

In a preliminary South African study, researchers reported that police officers staffing community service centres, appear to have an entrenched view of people with disability (specifically towards individuals with intellectual or psychosocial or mental disabilities) and regard them as ‘mad’, ‘unreliable’ and generally unable to provide adequate statements (Centre for Disability Law and Policy & Gender, Health, and Justice Research Unit, 2012). Furthermore, police officers also often believe the sexuality-based myths, for example that women with intellectual disabilities are ‘over-sexed’ and ‘go looking for it’ (Naidu et al., 2005).

However, a study by Milne and Bull (2001) showed that if witnesses with learning disability are questioned appropriately, they can produce accurate reports of events. In these cases where communication difficulties make reporting the abuse and/or testifying in court difficult, the cycle of abuse can be further perpetuated (Coetzee, 2005).

In 1986, the Child Protection Unit, a specialised unit within the South African Police Service was established to combat, and prevent crimes against children and render a sensitive service endearing to the child victim. In the following years, the need for the expansion of the sensitive service to adult victims of family violence and sexual offences was identified, leading to the establishment of the Family Violence, Child
Protection and Sexual Offences Unit in 1995 (South African Police Service, 2012). The objective was to transform all Child Protection Units to Family Violence, Child Protection and Sexual Offences Units, depending on available resources and the occurrence of crimes.

In 2003/2004 there were 32 Child Protection Units and 13 Family Violence, Child Protection and Sexual Offences Units in the main cities across the country (South African Police Service, 2012) and by 2006 they had increased to 17 Child Protection Units and 49 Family Violence, Child Protection and Sexual Offences Units (Frank, Waterhouse, Griggs & Rontsch, 2009). However, in 2006 the South African Police Service announced a national restructuring (viewed by many as a political decision) to disband all specialised units in South Africa, shifting the services situated at ‘area’ level, either downwards to station level or to the provincial level, despite these units being viewed as international best practice (Stevenson, 2009). A comprehensive desktop review was undertaken by Rapcan (Frank, et al., 2009), of international trends relating to the provision of specialised police services victims of crimes against children, sexual offences and family violence. Disability is only mentioned once in this report, where mention is made to Queensland, Australia where the issue of violence against women and children involves significant cooperation between departments and agencies, including the police, in a very structured manner (Frank, et al., 2009). The Rapcan report also showed that victims had been impacted negatively through the restructuring and that the services provided to them were of questionable quality in many areas. It was recommended that the South African Police Service undertake a revision of the then current structure for the delivery of Family Violence, Child Protection and Sexual Offences services, and in 2010 the Minister of Police announced the reintroduction of the Family Violence, Child Protection and Sexual Offences Units, as sexual offences, particularly rape against women, children and the elderly have continued to increase (South African Police Service, 2012).

An investigation by the Family Violence, Child Protection and Sexual Offences Unit is a process, and briefly comprises the obtaining of the statements (by victim and other witnesses), the collection of all relevant evidence (hair, semen, fingerprints, etc) and forwarding it to the Forensic Science Laboratory (where applicable), facilitating the medical examination of both the victim and alleged perpetrator (where applicable) by a qualified medical practitioner, the photographing of external injuries, the tracing of the alleged perpetrator, as well as the preparation and provision of support to the victim during the court procedures in conjunction with other relevant role-players, social workers, teachers, victim support organisations, etc (South African Police Service, 2012). The Family Violence, Child Protection and Sexual Offences Unit(s) also have a role to play in awareness raising and educating the public, through meetings, lectures and talks and articles in the media.
In the course of the crime investigation, or after completion of the case when the state prosecutor evaluates the case, there are a number of reasons for referral to a professional for a forensic assessment interview (Fouche & Joubert, 2009), including cases where the child has learning disabilities and communication problems. In South Africa, a child must testify, irrespective of the statement taken by the police or assessment reports from professionals (Fouche & Joubert, 2009).

Access to the law: Low conviction rates

As discussed in the previous section, victims who cannot communicate effectively are less likely to report crimes or abuse (Bryen, Carey & Frantz, 2005). They are also not likely to access the justice system and counselling services when they become victims of crime (Farrar, 1995).

Conviction rates are one way of telling us how well the criminal justice system is doing. Earlier South African research (as cited in Lancaster, 2012) reported a conviction rate of 6% for violent crimes (murder, rape and aggravated robbery). Since then, the capturing of crime statistics in this country has changed, with data collected and reported in a compartmentalised way with little integration. Due to the inability of the criminal justice system to implement an integrated information-management system with comparable conviction rates between the South African Police System and the National Prosecuting Authority, conviction rates are not comparable, and hence the scope of the problem and possible solutions are unknown. From the perspective of a victim of crime, it makes no difference if the system fails them at the stage of the police investigation, the prosecution in court or because of a disjointed interaction between the two.

On the legal side, far more should be done. It is estimated that in total, only 14% of rape perpetrators in South Africa are sentenced, mainly because of the child rape convictions (Kapp, 2006). For adult women the conviction rate drops to 3%. It would be safe to suggest that the conviction rate would be lower for children and women with disabilities, and in particular those with communication difficulties.

The low conviction rates and consistent increase in incidents of violence is a serious infringement of human rights and dignity, and makes a mockery of the South African law and other ratified international treaties (Phasha & Nyokangi, 2013). Recently, a 15-year-old girl with intellectual disability was reportedly playing outside her home in Khayelitsha (near Cape Town), when she was lured to a shack with the promise of money. Her three alleged perpetrators abused her for two hours before she could escape. News 24 reported that the community found the men, beat them with sticks and fists, and only then handed them over to the police (News
24, 2013). More and more cases of communities taking the law into their own hands are reported in the media.

In the light of this, there has been a huge public outcry for the establishment of special courts to deal with sexual domestic and family violence. Justice Navi Pillay, the United Nations High Commissioner for Human Rights, stated that she was disturbed by the low arrest and conviction rates of rape perpetrators, as this not only denies justice for thousands of victims, but that it also contributes to the ‘normalisation’ of rape and violence against women in the South African society (Naidu-Hoffmeester & Kamal, 2013).

The question thus remains as to why the conviction rate for sexual abuse of people with disabilities is so low. The reasons are numerous, but among other things, it could reflect the inadequate support staff and services for police and prosecutors who bear large caseloads (Dickman et al., 2006). Furthermore, despite, policies and laws being in place (as discussed earlier), the enforcement of these policies is not well managed. Laying a charge depends on the attitudes of the relevant police officers, many of whom hold false beliefs and have deep-rooted prejudices related to disability and sexuality, as already discussed. Furthermore, there is a prevailing scepticism about witness competency (Ericson, Perlman & Isaacs, 1994).

**Legal implications for individuals with little or no functional speech**

Research has shown that persons with disability, in particular, and individuals with little or no functional speech, face five main barriers when attempting to access the criminal justice system (O’Mahony, 2009; Phasha, & Myaka, 2009; Borthwick & Crossley, 1998), as follows:

- Difficulty in accessing the legal system
- Difficulties in coping with police interviews and legal formalities
- Difficulties with testimony and giving evidence
- Difficulties with understanding the complex maze of rules and practices that make up the court proceedings
- Difficulties with decision-making tasks

Preliterate and nonliterate persons who use AAC are particularly vulnerable, as they are unable to construct their own messages, for example, by using an alphabet-based system. According to the United Nations Development Programme (UNDP) Report for 2011, South Africa has an average literacy rate of 88%, which is lower than that of other comparable countries, eg Zimbabwe that has a rate of 91,9%. In South Africa few adults with disabilities are literate (because the special-school
curriculum did not focus on ‘academic tasks’ such as literacy for these children (Leshilo, 2004; Integrated National Disability Strategy, 1997), and some communication partners may also be illiterate. This is particularly true in the rural areas where the incidence of disability (and consequently abuse) is the highest. It was with these individuals in mind that the *You Can Tell and be Heard Communication Boards* were developed (Bornman, Bryen, Kershaw & Ledwaba, 2011).

Furthermore, in a multilingual country, such as South Africa, many interactions would involve at least two languages. Often the speaker and the communication partner do not share the same language. In order to assist with this process, all the boards contain two languages, i.e., English and either Afrikaans, isiZulu or Sepedi. The individual who relies on AAC will therefore point to the pictographic symbol, and the partner will be able to read the gloss in their preferred language. However, for clarity’s sake, the partner can then read the gloss aloud for the person who uses AAC’s first language – thereby indicating that the message had been understood.

In South Africa, it appears that the few reported crimes relating to individuals with communication difficulties were typically handled administratively rather than through the criminal justice system. This might be due to the fact that the police, lawyers, judges and even rape-crisis counsellors, who all form part of the legal protection system, often have no knowledge of how to help a person with a severe communication disability. However, one piece of South African case law was created when a 15-year-old girl, ‘Thandi’ (not her real name) with cerebral palsy testified in a South African court to being abused sexually, using a Bliss communication board (Toefy, 1994). Initially the prosecuting team thought that she was not capable of producing reliable evidence, due to the fact that she had little or no functional speech. The speech-language pathologist at Thandi’s school then explained Thandi’s academic achievements in mathematics and other content subjects. It was also the first time that a graphic symbol-based system, where the Bliss symbols were accompanied by written glosses, was used. Prior to this, only manual signs (South African Sign language) had been used in court. The judge insisted on a neutral interpreter (the court social worker), who was trained by the speech-language pathologist. Thandi testified successfully, resulting in a 20-year conviction.

The South African government is under obligation to protect all its citizens, in particular those individuals like Thandi and Constance who cannot fend for themselves. If the Government is serious about ending the silence of crimes against children with disabilities, several strategies are required. Children with disabilities should be seen and heard, by providing them with communication strategies (e.g., sign language, communication boards or communication devices) if they cannot speak. They should engage in appropriate sexuality education, similar to that of their peers without disability, and learn about protective behaviours. Often
individuals with disability are not provided sexuality education, as some caregivers and service providers believe that one does not want to ‘wake sleeping dogs’ (Hanass-Hancock, 2009). Children should be taught what to do if they have been a victim, and parents and families should be supported to address their fears when reporting a crime. Partnerships between different people involved in the criminal justice system should be fostered, and all involved should work systematically to support investigation and eventually prosecution. Only then will South Africa stand a chance to lose its alarming status as world leader when it comes to abuse and rape of children, including those with disabilities.

**Possible and promising approaches to risk reduction:**

**The way forward**

A multidisciplinary approach is required in which all role-players can collaborate, and a network is needed in order to build a strong and sustainable service for persons with severe disability, and in particular for those individuals who require AAC. Most organisations work in silos with little interaction (Naidu, et al., 2005). So, while possible approaches for specific groups are presented separately in this section (see Figure 3.1), these suggestions should be viewed in the broader framework of collaboration. The artificial splitting of recommendations was simply done to ensure that aspects are covered sufficiently and that the importance of the respective role-players is highlighted.

![Figure 3.1](image.png)

**Figure 3.1.** Different individuals who should be involved to pave the way forward in preventing abuse of people with little or no functional speech
Recommendations for people who use AAC

Persons who use AAC should be seen as the most important partners in the process of reducing vulnerability and preventing abuse. A number of strategies specifically related to them are discussed below:

- **Empowerment:** No one can give another person the power – you have to be an active agent and take it. Empowerment is something that comes from within when one realises your own potential and start exercising choice and taking control. Furthermore, it can grow and be strengthened, the more it is exercised. Trusted significant others (eg parents, professionals, allies) can help to foster empowerment skills.

- **Knowing their rights and responsibilities:** Abuse is against the law! Persons who use AAC should be taught that they have rights and that they have the right to set limits, eg how close they want to allow people to come to them, and when, how and by whom they want to be touched. They also have to be taught that they have the responsibility to decide what they will and will not do; to listen to what others want; to communicate clearly what they mean; to trust their own feelings; to tell someone they trust if anything or anyone is bothering them and to ask for help.

- **Independence and the role of the personal assistant:** People with disabilities should have control over their lives in terms of services and supports (Powers & Oschwald, 2004). A back-up personal assistant should always be available, and the person with the disability should be allowed to choose his or her own personal assistant, to assign clear duties and set appropriate limits with this person and to ensure clear communication on both sides.

- **Interpersonal violence-awareness education to reduce vulnerability:** Persons who use AAC should be taught how important it is to not send out the message that they are vulnerable – as perpetrators can immediately sense powerlessness.

- **Learning to say ‘NO!’ if you are a person who uses AAC:** Persons who use AAC should be taught how important nonverbal signals are, eg to look serious and not to smile; to use a strong voice to say ‘I don’t want you to…’ or ‘I want you to stop!’; to put out their arms and say ‘No!’; to shake their heads to and fro and say ‘No!’; or to say ‘No!’ or ‘Stop!’ over and over.

- **Appropriate vocabulary:** Persons who use AAC should be taught to store some prerecorded messages on their devices, as suggested for Constance at the beginning of the chapter. Persons who use AAC should familiarise themselves with all the prestored messages on their devices, and also have a backup system, eg a copy of the You can Tell and be Heard communication boards to disclose abuse. The person’s communication system should be available at the appropriate level of representation (eg graphic symbol level or traditional orthography) and in an accessible language format (particularly in multilingual contexts).

- **Personal safety training/self-defence classes:** Persons with disability should be taught to trust their own instinct when they feel uncomfortable in a situation, together with some personal safety tricks, such as
  - making a fuss (eg loud noise) when they feel uncomfortable;
- reducing their risk by turning around so that they face the possible perpetrator;
- establishing personal boundaries and knowing what to do to;
- unwanted touch, eg saying ‘No’; and
- discriminating between different types of touch (touch should never hurt, safe loving refers to touch that somebody wants to give to you and that you want to receive).

- Developing a ‘Plan of Action’ if violence should be experienced.

- **Increased access to resources:** Telephone numbers needed for crisis situations, such as emergency transport, shelters and support groups should be stated on the person’s device and/or phone (Powers et al., 2009). They should also become familiar with their local police station and be taught what the procedures are regarding reporting crimes to the police. However, these options are sometimes inaccessible for women with disabilities due to their specific disability-related needs, including communication needs (Nosek & Howland, 1998).

- **Disclosing and reporting crimes:** Persons who use AAC should be reminded that they have the right to be safe and that they should report crimes against themselves, as well as crimes they may have witnessed. These individuals should also understand that reporting these crimes is an important part of keeping themselves (and others) safe.

### Recommendations for AAC professionals

This category is not discipline specific, and refers to any professional who is supporting the person who uses AAC, eg a speech-language pathologist, an occupational therapist, a teacher, etc:

- **Ensuring that all communication aids are in place,** including hearing aids, glasses, communication devices (ensure backup battery support) and a low-technology communication board as a backup. If a person uses a high-tech device, special arrangements can be made to connect the device to a data projector in court, in order to display the message in such a way that the whole court can see what is being typed.

- **Teaching phone use:** All persons who use AAC should be taught how to use a phone (either text message or call) to make an emergency call.

- **Training persons with disability and their personal assistants** to recognise abusive behaviour and how to report this behaviour (Powers et al., 2002).

- **Guaranteeing appropriate vocabulary:** Develop appropriate communication boards; adapt existing boards or help users discover what is currently programmed on their boards. This should include vocabulary related to
  - protection, with messages such as ‘Leave me alone! No! Stop! Don’t! I won’t! Stop that! I’ll tell!’
  - sexuality, including sexual abuse – this includes storing the terms for the genitals that are familiar to the person who uses AAC on the AAC system, even if these terms might be slang or swear words (Dickman, et al., 2006); and

- discriminating between different types of touch (touch should never hurt, safe loving refers to touch that somebody wants to give to you and that you want to receive).
legal concepts which includes words that are applicable to the court proceedings, such as ‘I don’t know; truth, lie, bail, court, guilty, acquit, defence lawyer, judge, jail, plead, perjury, sentence’ (Collier, 2000).

- Demonstrating the ability to take the oath (swear ability). This requires that the person can understand the difference between truth and falsehood. The concept of ‘the whole truth and nothing but the truth’ requires an understanding of saying everything that happened, without making up any part of the story (Dickman et al., 2006). The persons who use AAC also need to understand that perjury is punishable. This can be done by using simple language with concrete examples, eg the magistrate can ask what day of the week it is. If the person can correctly indicate the day, eg ‘Tuesday’, the magistrate can use a follow-up question, eg ‘That’s right. Now if I say today is Friday, am I telling the truth?’ It is also important to explain beforehand that everybody who makes a statement to the police and who goes to court is required to swear to tell the truth, so that the complainant does not perceive the interviewer to doubt his or her account.

- Becoming an expert witness in court. An expert witness is someone who has specialised knowledge and/or experience regarding a subject (eg AAC), can deduce correct conclusions and can formulate an accurate opinion, and who is in court to educate the court about specific technical, behavioural and/or scientific issues (Carstens, 2012). As such, the AAC expert witness is expected to work within the theoretical approach of the field and to defend the value of this approach in court (eg the strategies that can be used to reduce the possible leading of the witness when a graphic symbol set is used). The expert witness should also be seen as neutral and independent of a case, although they are typically paid by one of the parties.

- Training criminal justice professionals in interviewing techniques when a person uses AAC. Police officers, defence lawyers, prosecutors, magistrates and court intermediaries need to be taught to avoid questions that contain negatives, double negatives and multiple questions (O’Mahony, 2009). Literature identifies three barriers to effective communication in interviews, namely memory, recall and suggestibility (Keilty & Connelly, 2001). AAC professionals are well-equipped to assist with this. Using graphic symbols to support questions aids memory, as it reduces the cognitive load of having to hold parts of the question in short-term memory. However, this type of prompting by using graphic symbols should be general enough to avoid suggesting a response, as that would impact recall negatively. People with intellectual disability are more open to suggestions, acquiescence (the extent to which statements and their logical opposites are confirmed) and confabulation (the extent to which imaginary experiences, which the person believes is true, are reported) (Keilty & Connelly, 2001). Leading or close-ended questions are particularly likely to produce errors in interviews with people with intellectual disability. Cognitive Interviewing has been claimed to be an effective interview technique, eliciting up to 65% more relevant data than traditional interrogatory techniques (Keilty & Connelly, 2001). Cognitive interviewing seeks to elicit a narrative description of an event from the person with disability, with the interviewer using only open-ended questions and few interruptions. Narrative descriptions might be difficult for preliterate or nonliterate persons who use AAC or graphic symbol sets.
Research has shown that open-ended questions yield more accurate information than specific questions (Coetzee, 2005). The interviewer encourages the person to contextualise the event by reliving the incident, and recalling it from different chronological points in time. Finally, the interviewer can probe important aspects by using open questions. Several international guidelines exist concerning interviewing children, but in South Africa there are no such protocols (Fouche & Joubert, 2009).

- **Alerting the court about intellectual functioning in cases where the person who uses AAC has an intellectual disability.** IQ scores cannot be seen as the sole benchmark for witness competence or for ability to consent to sexual intercourse (Dickman et al., 2006). AAC professionals should alert the court to this in relevant cases. A functional assessment, using multiple sources of information, is preferred. Police and justice officers often refer to the concept of ‘mental age’ but the important differences between a child with disability and an adult with disability is not appropriately captured in this concept. The myth of the ‘perpetual child’ has been damaging to the rights of people with intellectual disability (Dickman et al., 2006). A comprehensive discussion of this aspect is unfortunately beyond the scope of this chapter.

- **Providing appropriate sexuality education and assertiveness training.** This training should be adapted to suit the specific needs and skills of the individual. Knowing about healthy sexuality and boundaries of privacy helps persons who use AAC to recognise and protect themselves from sexual abuse (Collier, 2000).

- **Training teachers at special schools to identify and handle sexual violence, act as role models and as resource persons for accurate information in their disturbing study about sexual violence in South African special schools.** The authors have noted that avoiding sexuality matters in the school context, gave these children the message that sexual violence was ‘normal and part of growing up’ (Phasha & Nyokangi, 2013). Therefore teachers should be empowered to not simply refer the children elsewhere, as children might prefer to disclose to a trusted teacher. Teachers should also be equipped with knowledge and skills to not assume that ‘boys will be boys’ or ‘boys do things for fun’ (Phasha & Nyokangi, 2013:183).

- **Running ‘anti-abuse campaigns’.** Resource material relevant to a variety of persons who use AAC (eg using various unaided and aided systems such as graphic symbol sets and systems) using the appropriate language, should be displayed in visible areas around the school (staff rooms, corridors, toilets, notice boards, etc). The material should provide guidelines about decision-making, empowerment and the right to say ‘No!’ as well as the value of disclosing and reporting to the relevant authority.

**Recommendations for AAC manufacturers**

The recommendations related to manufacturers should be kept in mind for designers and manufacturers of high-tech and low-tech systems. It also does not only refer to the vocabulary, but to the development of appropriate graphic images that keep research-based evidence for symbol development in mind.
Chapter 3

- **Ensuring appropriate vocabulary** (e.g., sexuality, body parts, crime, court): These symbols should also keep specific cultural elements in mind. As new concepts develop, new symbols are required, e.g., ‘cyber bullying’. Widgit (Burr, 2013) have developed, with the help of Janet Larcher, a registered court intermediary, a set of symbols called Talk About Abuse, that can be used in court (www.widgit.com/talkaboutabuse). This is explained in more detail in Chapter 7.

- **Ensuring an easy interface with cellphone technology**: this aspect is critically important as being able to make an emergency call is one of the main methods in which personal safety can be increased.

- **Building awareness and building skill** with persons who use AAC, parents, families, teachers, police, correctional services, legal system, etc., through the vocabulary available on the system. In their marketing drives, manufacturers can briefly refer to the value of communication for protection against violence and explain how the particular AAC system or device can enhance that aspect, thereby building increased awareness.

### Recommendations for AAC criminal justice professionals

The criminal justice system, irrespective of the country in which it operates, is often profoundly confusing: it has its own language, customs, rules and traditions and operates in a courtroom which is both unfamiliar and intimidating (Burr, 2013). For individuals who use AAC, the difficulties appear almost insurmountable. In this section, ‘criminal justice professionals’ refer to defence lawyers, prosecutors, magistrates, judges, court intermediaries and criminologists.

One of the most provoking questions that criminal justice professionals often have to deal with is that of competency. It appears as if the legal system often frames questions (e.g., related to rape) in a dualistic manner: yes/no; consent/non-consent; penetration/non-penetration, resistance/ submission, often with a disqualifying effect for vulnerable victims (Mandal, 2013). If this is explored in more depth it becomes clear that competency has historically been regarded as a capacity or skill that is inherent to the specific person – hence an attribute that is either present or absent (Ericson, Perlman & Isaacs, 1994). In the legal sense, it would imply that a person is either competent or not. This type of binary approach to a complex construct, such as ‘competency’, disregards environmental factors and the degree to which the environment supports (or not) how competency is determined. Individuals with intellectual disabilities may be regarded as incompetent and/or unreliable witnesses, as they are vulnerable to the demands of authority figures (Ericson et al., 1994) and then come across as confused or inconsistent in their responses in court. This is a direct result of these individuals being reinforced for complying with authority figures (e.g., teachers, caregivers, group-home managers, supervisors, etc) far beyond the age and circumstances for their
typically developing peers. In court this might play out as the person agreeing with everything the defence lawyer suggests, eg when leading questions are asked, such as, 'The man had his socks on, didn't he?'. If this type of detail is required, the leading questions should be asked in a more neutral way, eg, 'Was the man wearing socks?'. Suggestiveness should also be avoided during questioning, eg, 'Did he touch you on your bottom?' would be highly suggestible if the individual had not already mentioned inappropriate touching (Coetzee, 2005).

Furthermore, inappropriate and ill-planned questions have a significant effect on the responses provided. For example, a person with an intellectual disability might be unable to answer the question, 'Describe the accused', but respond quite competently if the question were to be phrased as 'What did the man look like that hurt you?' Another complication might occur when the person mistakenly believes that he or she knows what is being asked, while being unaware that a word has more than one meaning, eg in court the word 'sentence' refers to the punishment awarded to the person convicted in a criminal trial, and not to the more common meaning of a set of words that contain a verb.

In the court context, individuals might also not understand the legal agenda or intent behind certain questions, eg, 'Did you not see these things on television?' The person could answer 'yes', reflecting that she might have been exposed to pornographic material in addition to being abused, or that she interpreted the question to mean, 'Is it possible to see these things on television?' without realising that the real intent of this question was to show confusion between real-life events with television events (Ericson et al., 1994).

There is a need to shift the competency onus for individuals with intellectual impairment (and other vulnerable witnesses, such as persons who use AAC) to both the legal and health-care professionals (eg speech-language pathologists and social workers) (Ericson et al., 1994). Professionals must become competent interviewers and carefully think of how questions are phrased, by bearing in mind that individuals with intellectual disability often have little vocabulary with reduced understanding of abstract words and ideas, as well as a shorter attention span and short-term memory skills (Ericson, et al., 1994).

Apart from the competency challenges described above, what other roles and responsibilities should criminal justice professionals be aware of?

- Publicising their AAC expertise by using the international symbol for equal communication access and including it on letter heads, business cards, web pages, etc.
- Provide legal information to clients who use AAC through the use of accessible information about their legal rights, and the pros and cons of all legal options. Clients who use AAC should be treated with courtesy,
compassion and respect for their personal dignity and privacy (Collier, 2010a). Privacy can be a complex issue for a person who relies on the support of a communication assistant, and the role of and relationship with this person is critical and delicate. Collier (2010a) cautions lawyers to be aware that concerns might arise in situations where there could be an issue of confidentiality or conflict of interest.

• Using forensic interviews, specifically Victim Impacts Statements (Fouche & Joubert, 2009). Criminologists are often used as expert witnesses in South African courts, but this does not exclude other professionals. Fouche and Joubert (2009) suggest a seven-phase protocol, comprising the following:

- Rapport-building through the use of specific techniques, such as a house- and-community plan, family pictures and emotion cards.
- Establishing ground rules (e.g., the individual should understand the importance of telling everything, stating when she doesn’t understand, when she cannot remember or when she does not want to answer).
- ‘Truth-and-lie’ and morality check (this is tested with a neutral topic).
- Free narrative (individual relates the story from his or her own reference and in the sequence he or she prefers). Neutral encouragements can be given, and all nicknames (of persons, genitals, places, etc) should be clarified. If the individual can draw, then drawings are encouraged.
- Questioning phase, where themes for the free narrative are further explored. These authors also suggest specific strategies that have proved to be effective for children and these might, in my opinion, work equally well with persons with disability. This includes avoiding legal words and phrases; clarifying all labels/concepts/names and ‘big words’. Use the words that are familiar to the individual; using pronouns selectively and avoiding vague referents; avoiding double negatives; avoiding ‘why questions’; avoiding ‘Do you remember?’ questions; avoiding close-ended questions and questions starting with ‘can’, ‘have you’ and ‘do you’; keeping questions and sentences simple and using one main thought per utterance. Using open-ended questions that start with who, what, where, when and how can also be effective. Multiple choice-questions are leading if the list of choices offered is not exhaustive enough.
- Investigate multiple hypotheses, as lawyers often use this to attack the individual’s credibility.
- Closure: conducting forensic interviews should be done with great caution, as it not only has serious implications for the victim but may also change the life of an alleged perpetrator forever.

• Using a trained court intermediary and separate room: The South African Children’s Act (Section 42(8) (d)), allows vulnerable witnesses to provide evidence from a separate room within the court building via a CCTV link (O’Mahony, 2009; Meier, 2002). This room provides the child with security, as he or she can be seen in the courtroom but cannot see the alleged perpetrator. At no point will the child be forced to ‘face’ the accused. The intermediary sits next to the child and assists him or her by translating complex questions into easier language for the child, and by informing the court if the child needs a break for the toilet, food or rest. The chapter on children’s courts in the Children’s Act already makes provision for courts to ensure accessibility to disabled persons, by providing that the children’s court must be held in a room that is accessible.
to persons with disability. Court intermediaries should also be made available to persons who use AAC in court.

- **Training court intermediaries** as a special measure to help facilitate communication between the police, courts and vulnerable witnesses (O’Mahony, 2009). Apart from only assisting during the trial, intermediaries should also assist the police in communicating with the witness when the statement is taken and participate in pretrial meetings and court familiarisation visits (O’Mahony, 2009). Intermediaries have an impartial role and do not work for either the person who uses AAC or the ‘other side’. Typically they are trained professionals with backgrounds in disciplines such as psychology, speech-language therapy, social work, nursing or teaching.

- **Preparing the person who uses AAC for court**: Arrange for the person who uses AAC to visit the court before the proceedings start, in order to familiarise him or her with the setting, and honestly explain what could be expected in court, and prepare the person for all the possible outcomes, including the fact that the perpetrator may not go to jail. Furthermore, the person who uses AAC should be advised that it is acceptable to say, ‘I don’t know’ when he or she is uncertain of the answer, and that he or she can be allowed to ask for clarification when necessary and think before answering (Dickman et al., 2006; Ericson, et al., 1994).

- **Using appropriate questioning strategies**: Be aware that time concepts, as well as terms such as ‘before’ and ‘after’, are difficult and hence caution should be taken about trying to pinpoint specific dates (Ericson, et al., 1994). Contextual cues with a meaningful point of reference, eg, ‘Did it happen before your birthday?’ ‘Was it after Christmas?’ can be provided. Likewise, pronouns in questions should be avoided if possible and when ‘he’ or ‘she’ is used, clarification should be asked in terms of whom the person is referring to.

- **Protecting persons who use AAC against negative questioning tactics**: Persons with intellectual disabilities (some of whom may use AAC) have a greater susceptibility to suggestion and acquiescence and a well-known desire to please authority figures, making them particularly vulnerable to intimidation, deceit and more prone to self-incrimination (Mercier, 2010). Lawyers should be aware of this and protect vulnerable victims against defence lawyers who use this type of questioning strategy in court.

- **Demonstrating basic disability knowledge and skill**: All criminal justice professionals should be taught the basic facts about disability during their standard training, through handbooks, and during specialised in-service training programmes, to ensure that they bear in mind the possibility of disability when confronted by somebody who is ‘different’ (Mercier, 2010).

- **Allowing for the use of anatomical dolls in court** (Dickman et al., 2006): Although demonstration using these dolls might be a valuable addition to *viva voce* evidence, some persons who use AAC might not have the physical ability to manipulate these dolls (eg persons who use AAC with significant physical impairments).

- **Developing specialised services for persons who use AAC**: In the Western Cape Province of South Africa, an exemplary program, ‘SAVE’ (Sexual Assault Victim Empowerment) was established by the Cape Mental Health Society to provide assessment, support and court preparation services to people
with intellectual disabilities, who had been victims of sexual assault (Centre for Disability, Law and Policy & Gender, Health, and Justice Research Unit, 2012). Numerous cases have successfully proceeded through the criminal justice process and have resulted in convictions as a result of the SAVE program. It should be noted though, that although these cases involved intellectual disability, they could all easily refer to all individuals who cannot rely on speech as their primary form of communication. The SAVE program should be supported to enable them to also assist victims who require or who use AAC systems. Furthermore, this project should be expanded to other provinces as a matter of urgency.

- **Forming a National Child Protection Register** to monitor victims of abuse and neglect.

- **Developing a comprehensive national protection strategy for vulnerable victims:** Although most children are cared for by their own parents or other family members, some are not as fortunate. They suffer abuse at the hand of these protection figures and hence should be removed from these detrimental conditions. The Children’s Act foresees that the Minister of Social Development should develop a comprehensive national strategy aimed at ensuring appropriate care facilities, spread throughout the country, that will be equipped to deal with children with disability (Boezaart & Skelton, 2011).

- **Using impact litigation:** This is an effective strategy of using the law to bring about changes in law, not only for the specific individuals, but for all of those who are in a similar situation (Boezaart & Skelton, 2011). In South Africa, court cases (case law) create precedents that are binding on lower courts or courts at the same level, and hence case law is an invaluable tool for closing the gap between law and practice.

- **Recording evidence in court:** In order to create a permanent, verbatim record, audio recordings or written recordings are often made. However, for individuals who use AAC, a video recording will more accurately capture the original message (Collier, 2010b). This video can also be reviewed at a later date if any questions arise regarding the authenticity, accuracy and authorship of the message.

### Recommendations for police officers

Recommendations for police officers refer to both police officers in Community Service Centres and those from the Family Violence, Child Protection and Sexual Offences Units.

- **Empowerment:** Research has shown that police officers felt powerless when they had to take statements from people with disability and that they were confused about what constitutes disability, how it impacts on the person and how they should alter their approach to allow for the person to make a statement that has forensic value (Keilty & Connelly, 2001).

- **Improving awareness** of the importance of providing equal access and justice for persons with disability, including those individuals who use AAC. This should include disability-specific training, as well as training on the
Children’s Act and the Sexual Offences Act (Centre for Disability Law and Policy & Gender, Health and Justice Research Unit, 2012).

- **Knowledge training:** Police officers should understand that uniformity in treating people with disability (e.g., when taking a statement) is not the goal, but rather that they need to respond to individual needs of the person and the situation (Keilty & Connelly, 2001). They should also understand that AAC is recognised as a valid communication system for reporting crime, for making a statement and for testifying in court.

- **Skill training:** Police officers need additional skills related to the way in which they question persons who use AAC (formulation and structure of their questions), in how to take statements from these individuals and how to integrate theoretical knowledge with practical skills. Concern has been raised that the training of police officers does not allow sufficient opportunities for role-play and other practical skill demonstration (Coetzee, 2005).

- **Allowing a support person:** When police officers interview the person who uses AAC for the purpose of taking a statement, the person with disability should be allowed to have a support person present throughout the interview (Keilty & Connelly, 2001). In some cases this might be the personal assistant, but not in all.

- **Supporting police officers through ongoing trauma debriefing:** To work more effectively through ongoing trauma debriefing is required. Police officers have a heightened risk of becoming vicariously traumatised (Coetzee, 2005) and hence require ongoing trauma debriefing in order to work effectively.

### Recommendations for policy makers and disability advocates

Although excellent laws are in place, a number of other factors should also be considered by disability advocates and policy makers.

- **Capturing disability-specific data in government databases:** National data on crimes against children and adults with disability are basically non-existent, making it difficult to understand the full scope of the problem. Therefore it is imperative that a question on disability be asked when crime statistics are captured. Furthermore, data should be kept on complainants with intellectual disability within the justice system. It is unacceptable that South Africa does not have accurate data on the prevalence of abuse against persons with disability, given the large available literature on the general population. Reliable estimates of the extent of the problem are critical for the development of national programs to prevent abuse against people with disabilities and improve their health and quality of life (Jones et al., 2012). Furthermore, the disturbing findings of that have come from the research (Powers et al., 2002), and the powerful anecdotal evidence in the media should make this issue one of the pertinent vocal points in government.
• Conducting high-quality epidemiological research that focuses on all types of disabilities (for both children and adults) with clear effective definitions and measurements of disability and violence (Jones et al., 2012). This type of robust evidence can be used effectively to drive change for this vulnerable population.

• Improving data on conviction rates: Improve national and local efforts to measure rates of crime and victimisation and ensure tighter collaboration between data kept by the South African Police Service and the National Protection Authority

• Using the media more effectively: Media coverage of crimes against people with disability could be done sooner and more comprehensively, as this could lead to more crimes being solved with less devastating outcomes (Coetzee, 2005).

• Ensuring accountability: Police officers and other criminal justice officials should be held accountable for serving persons with disability, in particular the most vulnerable people within this group.

• Ensuring reasonable accommodations in court, eg trained intermediaries, accessible courtrooms, via a closed-circuit TV link.

• Formulating school policies on violence: All schools should formulate policies on sexual violence and put programs in place regarding reporting procedures and the consequences when such behaviour has been reported or is suspected (Phasha & Nyokangi, 2012).

• Ensuring specialised sexual offenses courts in all the major centres in the country: These courts allow evidence to be given via closed-circuit television, and if not possible, a screen with the assistance of a trained intermediary (Dickman et al., 2006). Furthermore, videotaped statements, as well as pretrial statements should be considered (Williams, 1993).

Recommendations for family members and other significant others

The purpose of this section is not to repeat earlier suggestions, but to highlight those that are deemed particularly important to family members and other significant others of people with disability.

• Training of others: There is an African saying that one lives in the shelter provided by others. This captures the essence of ‘Ubuntu’ which roughly translates to ‘human kindness’. Family members of persons with disability forever find themselves busy with educating people around them about disability – and in this case about protection from abuse and violence as well.

• Managing personal assistants: Encourage the person who uses AAC to have multiple trained personal assistants (Powers & Oschwald, 2004). Emergency backup personal assistants should also be available (these could be family members, friends or formal, paid assistants).
• Using storybooks to explain sexual abuse to younger children, e.g. ‘My body is special’ (Geisen, 2006), and equip them with a clear sense of personal boundaries, as well as a plan of action if those boundaries are violated.

• Being the ‘trusted person’. Create a sense of being there for your child or loved one so that you will be trusted enough for them to share their most intimate concerns – and trust you that you will take their concerns seriously.

• Explaining the concept ‘secret’ effectively: The concept ‘secret’ needs to be explained in a frank way by alluding to the fact that some secrets are fun to keep, such as the Christmas gift a child plans to give to his or her Mom or a surprise visit to Granny. But there are some secrets that are important not to keep – e.g. if somebody has touched them in a way that hurts or confuses them, even if they have received strict orders to keep that as a secret.

• Explaining the dangers of cellphone pornography and the effect it has on relationships (e.g. feeling betrayed and powerless when it is sent out to peers).

**Recommendations for John Doe and civil society**

In the last, but definitely not the least cases, some strategies for the broader community in which persons with disability live are suggested:

• Using the media: The media is becoming more active in exposing cases of abuse against people with intellectual disabilities (Phasha & Nyokangi, 2013). They should be seen as allies by disability service providers and provided with information so that more and more cases become reported.

• Changing public perceptions around violence towards people with disability: The ways in which ordinary able-bodied people think about (or make sense of people with disability) will determine how they respond to these individuals. More public education on disability and abuse and violence is needed.

• Addressing misconceptions and debunking myths that individuals with disability are promiscuous, have high sex drives, don’t understand what is happening to them, have no feelings, and so forth, as these misconceptions continue to increase the vulnerability of these individuals by strengthening their position as subordinates.

• Networking: Organisations for people with disabilities, non-profit organisations, universities and private practitioners who have specialised knowledge and skills around disability and/or abuse should form partnerships with government and other role-players (Centre for Disability Law and Policy & Gender, Health and Justice Research Unit, 2012). A stronger interaction between these different partners would assist persons with disability in getting better access to justice.

• Debating: A public debate on the way forward to assist persons with disability should be held.

• Strengthening leadership: Men, from the top to grassroots, should take responsibility to show leadership and change attitudes and come out strongly against rape and sexual violence against women.
Conclusion

Knowing that sexual violence and other forms of abuse against people with disability, and in particular persons with little or no functional speech, exist in South Africa, but pretending that they don’t, will only aggravate the problem, and further reinforce the vulnerability of these individuals. Therefore, it should be the aim of everybody involved in the disability field, regardless of the specific role, to support all individuals with disabilities, and in particular those with little or no functional speech.
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Overview

Silent revolution – violence against people with disabilities, who have little or no functional speech: A view from India

In this chapter, we provide an overview of the violence experienced by people with disabilities in India. We describe the general lack of awareness of the issue and the complete silence of Indian communities in doing anything to prevent violence and abuse.

We also look at how the new Indian law – the Act for the protection of children from sexual offence, 2012, is being implemented. This law has specific provisions that address issues of violence against people with disabilities. The way these disability issues were included in the law is also discussed. The chapter ends with a few suggestions that might improve the personal safety of people with disabilities.

Abstract

Chapter 4 provides an overview and an Indian perspective on violence against people with disability in India. It also focuses on the lack of awareness and the complete silence maintained by the community in addressing this issue. At the same time, this chapter also highlights the enactment of new legislation: ‘Act for the Protection of Children from Sexual Offence 2012’ (http://wcd.nic.in/childact/childprotection31072012.pdf). This act has specific provisions that address issues of violence against people with disabilities. The process of including disability issues in the formation of the Act is also discussed. This chapter concludes with a few suggestions that might improve the personal safety of people with disabilities.
Introduction

Ramesh, a young man of 20 years (with severe multiple disability and no speech) objected when his mother or a woman caregiver helped him with his daily living activities. He has no father and no male relations. Since he comes from a low economic group, his mother could not afford to get him a male caregiver. The organisation where he was studying (a centre working with disability) hired a male caregiver to help him and other young men with disability for their daily needs. In a week's time the teachers noticed that Ramesh was wetting his pants and the other young men were very distressed after their toileting session. Immediately, the young men with disability were questioned, and using a communication board they reported that the caregiver was touching them inappropriately.

The matter was reported to the police, but after a few queries the violator was let off. He was let off because the police did not believe that a person with disability, who could not speak, could actually communicate the subtle difference between being touched for toileting and being touched inappropriately.

In this case the non-governmental organisation that was working with disability took it up. Because this non-governmental organisation was trained in handling sexual abuse of people with no functional speech, their communication systems had the appropriate vocabulary, and the people with disabilities were empowered enough, to communicate it to their teachers.

This non-governmental organisation was trained by another voluntary organisation that worked with issues of child sexual abuse. The partnership between these two organisations had enabled them to work in this highly volatile and important area. But this was a drop in the ocean.
Scope of the problem in India

A conservative estimate of disability in India is reported to be 5% – 8% of the Indian population. The disability activists claim that it is 10%. People who are nonspeaking or have little or no functional speech, have not been established. India being a large country with a population of about 1,241,491,960, one can estimate that the people with disabilities would be around 12,414,919,60.

Not only is India large but it is also a unique country – a country where opposites co-exist. Whatever you say about India is true, but the opposite is also true! It worships the mother Goddess but it also burns women for dowry. It has some of the richest people in the world, but it also has some of the largest numbers of malnourished children. In every sphere there exists a dichotomy, which is unparalleled.

If this is our India – a country of contradictions – it follows that persons with disabilities are in a similar situation. You have a large number of people with disability, who are at home with parents who believe that it is their karma and they just have to bear it. But there is also a vibrant, forward-thinking disability movement that is pushing boundaries and asserting themselves.

Today, the Indian government is in the process of passing The Right of Persons with Disabilities Bill (2011), which is in line with the United Nations Convention on the Rights of Persons with Disabilities (2006), which has been ratified by India. Disability activists are advocating equal rights, universal design, access, legal capacity, inclusive education and political participation. They are also in the process of working on local issues of national importance such as incorporating the views/demands of the sector in the national and the respective state plans, and influencing the budget of the Union Government. They are linking with cross-sectoral groups in submitting the universal periodic review to the United Nations, country reports on the United Nations Convention on the Rights of the Child (1990) and the United Nations Convention on the Rights of Women (1979).

They are also monitoring the various policies for their inclusiveness vis-à-vis persons with disabilities. Additional, disability activists are doing legal reviews and advocating for including the issues of persons with disabilities in various proposed national legislations. Finally, the sector is also engaged in the preparation of a parallel report on the implementation of United Nations Convention on the Rights of Persons with Disabilities (2006).

In spite of the huge strides that the disability movement has taken in the last decade, surprisingly very little work has been done in the area of violence against people with disabilities, and almost no work in the area of violence and abuse against people with little or no functional speech.
There is some (again very little) information on abuse against women with disability. The report from the Swabhiman disability resource centre in India (Mohapatra & Mohanty, 2005) reported figures on abuse against women with disability in Orissa – a state on the eastern coast of India. This is shown in Figure 4.1.

It states that ‘women with disabilities were subject to significant domestic abuse and sexual abuse, and that the situation was sharply worse for women with mental impairments relative to women with other types of disabilities. The results for rape are the most shocking, with fully one quarter of women with mental disabilities reporting having been raped (with the large majority carried out by family members), and almost 13% of women with physical, visual and hearing disabilities also having been raped. In only a small share of cases did the women report the abuse to her family, and in the vast majority of those cases the reaction of the family was either not to listen or to pretend nothing that happened’.

Figure 4.1. Rates of physical and sexual abuse of women with disability in Orissa, India (Mohapatra & Mohanty, 2005)

Hughes, et al. (2012) state in a report commissioned by the World Health Organization, that ‘the prevalence of sexual abuse against people with disability has been shown to be higher than those without disabilities.’ Again it reiterates ‘Evidence suggests that people with disabilities are at higher risk of abuse, for various reasons, including dependence on a large number of caregivers and barriers to communication. Safeguards to protect people in both formal and informal support services are therefore particularly important’.
Why this silence?

It would be pertinent to ask at this point: why has this area been so completely overlooked? Why has it not even been addressed by disability activists, the Indian government, or the non-governmental organisations working with disability.

The United Nations Convention on the Rights of Persons with Disabilities (2006) clearly states in Article 16 that, state parties have to ensure 'freedom from exploitation, violence and abuse'. The new draft of The Rights of Person with Disability Bill (http://socialjustice.nic.in/pdf/draftbill-pwd.pdf) in India does have a chapter on 'Protection from Abuse, Violence and Exploitation.'

Has violence become a way of life in the land of Gandhiji and Budha? Or are people with disability so marginalised that they do not even count? Is this one of the reasons for this lacuna? Within the disability sector, people with disability with little or no functional speech are definitely on the last rung of the ladder. This can be illustrated by the fact that the India chapter of the International Society for Augmentative and Alternative Communication (ISAAC) has only 28 members. Although there are other organisations in India promoting AAC and assistive technology developed indigenously, the impact has been miniscule.

The road ahead

To end on this note would be unfair. There is a lobby, which has succeeded in the enactment of an Act in 2012 for the protection of children from child sexual offences (http://wcd.nic.in/childact/childprotection310720 12.pdf). This Act is a huge milestone that will impact the lives of children. This is one of the very few Acts that has provisions that specifically include persons with disabilities. This is very different from most Acts where disability issues had to be pushed in as amendments. This Act and its regulations have included the disability component right from the start.

This obviously could not happen automatically. In India, where issues related to sexuality are hardly ever discussed, and sexuality and disability are not even thought about. There is an organisation that works with sexual violence, focusing especially on children. In the process of their work and their association with a non-governmental organisation working with disability, disability and sexual offences became an important issue. It was recognised that children with disabilities are much more vulnerable than the other children. This vulnerability becomes much greater when the child has intellectual disability and difficulties in communication. This non-governmental organisation spearheaded the formation of this Act and
ensured that at every stage of consultation the disability sector was represented by an expert working with disability.

The first task of the representative from the disability sector was to put forth the following to other participants:

- People with disabilities are not asexual. They have sexual needs; they could be victims who have to be protected. There are chances that they could also be perpetrators.
- There are very few opportunities for children with disabilities to be aware of sexual issues. Their dependence on other people makes them much more vulnerable.
- The officials need to understand various modes of communication in case the victim has communication difficulties. People are aware of Braille and sign language but have no knowledge of any alternative form of communication. The hardest task is to put across the fact that persons with intellectual and other developmental disabilities are able to communicate if given enough time and assistance. The child also needs access to information in a manner in which the child would understand.

Emphasis of the Act, therefore, was laid on a child-friendly environment, access to information and varied forms of communication to meet the needs of the child. If the child was given a mode of communication that he or she was familiar with while reporting and during the court proceedings, the child could then have access to justice.

The provision of the Act and rules are now in place. The guidelines for implementation are being formulated in each state of India. The disability component will be a part of all the guidelines for all the training and awareness programmes for officials, such as the police, magistrates, etc. Guidelines will also have to include accessible information materials and availability of communication aids.

However, there are still a number of challenges. The issues put forth during the consultation with smaller groups of participants will now have to reach a larger section of society. Information material to train children with disability in the areas of awareness and safety has to be developed. There is a pamphlet in Braille to meet the needs of children with low vision and those who are totally blind, but relevant vocabulary has to be incorporated in communication charts and communication systems. Staff and parents have to learn to use language, which is more explicit so that people with disability can understand clearly.
A little further down the road

Finally, we have to ask ourselves why is it that violence and sexual abuse of people with disability, particularly those with no functional speech, have not been addressed? The World Report on Disability 2011 brought out by World Health Organization and the World Bank mentions this area in passing. ‘People with disability in India: From Commitments to Outcomes’ brought out in 2009, again by the World Bank, also barely mentions it. A book, ‘Child abuse. A multi-disciplinary perspective’ (Shanti, et al., 2013) does not talk about it.

This question has to be answered by the Government of India, civil society and disability activists. The Government of India has formed a department of disability in May 2012. This department has to facilitate the recognition of all modes of communication. One of its major tasks should be research and development in this area. This department also needs to address the systems where victims of crime have redress, once a case has been reported. All this needs budget is allocation which has to be ensured.

It is also important to recognise that developing/emerging countries may not have relevant statistics and data. This in no way suggests that disability rights violations do not happen.

Finally, one incident is as important as a hundred. And in a country where numbers are large and resources few, it becomes the responsibility of civic society to see that justice is accessible to all.
References


Overview

Ending the violence: A view from Australia

In Australia there is a significant problem with crime against children and adults with little or no functional speech – a group that is extremely vulnerable. We do not know the exact size of the problem, owing to many incidents that go unreported. We believe the ones that are reported are only the tip of the iceberg.

People with little or no functional speech, have little access to the justice system and often their support staff do not help with reporting these crimes. However, in the state of Victoria, where they have a specialised support service for people with little or no functional speech, some efforts have been made to improve the reporting of such crimes and people’s access to justice.

Abstract

Crimes against people with little or no functional speech in Australia are a significant problem due to their increased vulnerability. We do not know the exact statistics because the problem is largely hidden, owing to the fact that there is an underreporting of these crimes. What is reported is only the tip of the iceberg. People with little or no functional speech have little access to the justice system and often their support staff does not facilitate the reporting of these crimes. However, in the state of Victoria, where they have a specialised advocacy service for people with little or no functional speech, some efforts
have been made to improve the reporting of such crimes and access to justice.\(^1\)

**Introduction**

I would like to begin this chapter with an event that happened shortly prior to the chapter’s completion. One Saturday afternoon I was waiting at home for my friend who has no speech, to come over and finalise a presentation. She was a little late, so I texted her and asked if she had been caught up in public transport. She texted back ‘No I have been assaulted.’ Immediately a thousand things started running through my head. Has her communication device been stolen? Will she be able to communicate her story to police? Will she be believed? When I told my mother, knowing the work I do, the same questions came into her head. When I had texted her back to see if she needed any assistance, she had managed to contact her mother and the police had been called. My friend is highly intelligent and is a proficient person who uses AAC. This event made the topic of this chapter even more real to me. Suddenly, I was not just talking about people who I hadn’t met nor random statistics, I was talking about a problem that was very real.

**Mark**

This case study involves a man called Mark who has cerebral palsy and uses an E-Tran board to communicate. An E-Tran board is a transparent plastic board with letters and numbers around the outside and involves the communication partner following the person’s eye gaze to see which letters or numbers they are looking at.

Mark was sexually abused.\(^2\)

Initially Mark reported the incident to a friend who also used AAC. Mark’s first attempt at reporting the incident to the police failed because Mark had difficulty conveying the details of his story and consequently his friend’s report did not match his attempted description of events.

Mark persisted and sought advocacy support from Communication Rights Australia. This ultimately led to police successfully taking a statement from Mark and the Office of the Director of Public Prosecutions prosecuting the accused. Mark and his advocate had to convince the police that Mark had intellectual capacity (ie, he completely understood what he was saying). Getting a statement from Mark took significant time due to the slow nature of his communication.

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1 Population statistics in Australia – Total Australian population = 23 million
Sydney, capital of New South Wales = 4.6 million (State total = 7.2 million)
Melbourne, capital of Victoria = 4 million (State total = 5.5 million)
Mildura, country town in Victoria = 60,000
Adelaide, capital of South Australia = 1.2 million (State total = 1.6 million)
State of Queensland = 4.5 million.

Three years after the incident a committal hearing took place in the Magistrate's Court. The matter then proceeded to a full trial by jury in the Melbourne County Court.

Speech pathologists acted as communication support workers for Mark in both hearings. This was not easy to organise, particularly when sessions were scheduled at the last minute. In addition, Mark was given little time to develop rapport with his communication support workers, which was especially important, given the sensitive nature of what he was giving evidence about.

Despite the initial committal hearing resulting in the offender being committed for trial before a jury, the prosecution was ultimately unsuccessful. The jury took a full week to turn in a “not guilty” verdict. However, Mark was successful in securing compensation through the government's Victims Compensation Scheme. He also received counselling through an advocacy support organisation.

It was noted that a major gap in the system was the absence of a communication support-worker booking service which could operate along similar lines to the Australian Sign Language Interpreters service (funded by the federal government) whereby, through telephone or Internet contact, people can arrange for an interpreter to be provided. This resulted in Mark’s initial police statement not being credible, as he had to rely on family members. At the hearing Mark was forced to rely on speech pathologists to act as communication support workers, at greater cost because of the absence of a communication support-worker booking service. It was highlighted that because the advocacy service is not a service provider it was unable to take up this role and urged the State Department responsible for disability to fill the need within the department and create a similar service to what is already in place for interpreters for the deaf.

Scope of the problem in Australia

People with little or no functional speech in Australia are victims to the full range of crimes that people with speech are victims of. These crimes include theft, fraud, assault, sexual assault and murder. However, people with little or no functional speech are likely to be more vulnerable, owing to their lack of speech and because they are often reliant on others to provide them with intimate personal care. Increased vulnerability may be due to the fact that perpetrators think the abuse is unlikely to be reported or believed.

Generally speaking, the most common place where crimes occur against people with disability, including those with little or no functional speech, is in residential settings including group homes, large residential centres and aged-care facilities. ‘Sexual assault within disability and age-care residential settings ... is a fact. These assaults occur for a variety of very complex reasons, including the vulnerability of the residents, a service culture of secrecy and hidden violence, disbelief that such vulnerable
people would be victims of sexual assault and services’ lack of understanding of appropriate preventive measures.4

There is a long history of cover-up of crime in residential facilities. For example, there were allegations of abuse and fraud by two staff members at a residential facility in the state of Queensland, including the illegal use of restrictive practices. The former manager of the facility has since stood down and denies any allegations of abuse or fraud. A spokeswoman for the facility said they were undertaking investigations with Disability Services Queensland, but there was no mention of involvement of police.5

It was noted by Kelly and Blyth from the Northern Sydney Sexual Assault Service in the state of New South Wales, that offenders often moved from facility to facility. They move when suspicions arise.6 The consequences are that they avoid being properly investigated and identified as sexual offenders.

Family members, who may also provide care, have also been identified as perpetrators.7 Often the closer the relationship is the greater the opportunity there is for abuse.

Paid in-home attendants are another group of perpetrators because there are elements of trust and reliance on the attendant. Furthermore, people with little or no functional speech come into contact with a greater variety of people due to high staff turnover possibly increasing their risk. However, this has not been documented in the research literature.8 In addition, specialised transport providers, such as bus drivers and taxi drivers, are also common perpetrators of crime against people with little or no functional speech.

A significant problem in Australia is that victim reports of personal-care service providers are not dealt with as crimes and therefore are seldom reported to police, let alone prosecuted.

Perhaps the most significant crime, abuse or human rights violation against people with little or no functional speech in Australia is the outright denial, in some cases, of the use of AAC. Although, removing or denying the use of AAC is not a crime on the Australian statute books, gagging is.

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6 Ibid., p. 12.
7 Ibid., p. 4.
8 Ibid., p. 5.
For people with little or no functional speech denying access to an AAC device is functionally the equivalent of gagging a person who uses speech.

Particularly, in light of Article 21 of the United Nations Convention on the Rights of Persons with Disabilities (2006), which states ‘States Parties shall take all appropriate measures to ensure that persons with disabilities can exercise the right to freedom of expression and opinion, including the freedom to seek, receive and impart information and ideas on an equal basis with others and through all forms of communication of their choice…’

According, to the Victorian Department of Education, it is up to the school’s discretion whether students are allowed to a speech-generating device – a recognised form of AAC. It should not be up to any individual family, attendant or school to determine whether an individual who has little or no functional speech should use AAC. Denying someone the use of AAC could prevent someone’s ability to seek medical attention or report abuse or crime. The key question is whether such an act of AAC device removal or omission of access to an AAC device should be classified as a crime, abuse or human rights violation? This is yet to be tested by the courts.

The psychological, physical and financial costs of crimes against people with little or no functional speech are significant. Crimes against people with little or no functional speech create a large psychological burden on the victims because they are often unable to express their feelings about how the crime has affected them and are left to suffer in silence.

This story reflects the psychological and financial costs of crime.

A volunteer bus driver/teacher abused 36 children with intellectual disability in Adelaide, capital city of the state of South Australia. Four sets of parents filed compensation claims of Australian$1 to $4 million. Victims finally received counselling at Yarrow Place (a rape and sexual assault service in North Adelaide) 10 years after the event. The extent of the victims’ psychological harm is still unknown because of their communication difficulties.

Supports available and those needed

Need for Independent Communication Support Workers. As demonstrated by Mark’s story, it is imperative that Independent Communication Support Workers be made available to people with little or no functional speech during their interactions with police, courts and

victims’ assistance programs along the same lines as Australian Sign Language (AUSLAN) interpreters are. Independent Communication Support Workers can greatly assist people with little or no functional speech in these interactions by word and sentence completion, taking the pressure off the individual to complete whole words or sentences. They can also clarify what the speech-generating device has provided when the ‘voice’ is either synthesised or digitised. An independent central booking service for Independent Communication Support Workers also needs to be established in each State and Territory. This service should be funded by the State and Territory, Attorney General’s Departments.

Women, children, and people with intellectual disability are at most risk of crime. However, the research indicates that people with little or no functional speech are in the more vulnerable group of disabilities when it comes to falling victim to sexual assault.10 This is because people with little or no functional speech are less able to tell people what happened.

**Need for Specialised Advocacy Services.** People with little or no functional speech are often dependent on perpetrators for care and assistance. They may also lack the empowerment and supports needed to tell someone for fear of losing that assistance. They are therefore less likely to report crime or abuse. Furthermore, facilities have a tendency of watering down crimes committed by staff by labelling sexual assault as simply an incident. People with little or no functional speech find assertion of their rights an effortful and complex process.11 Finally, when attempts are made to report the violence to a law-enforcement officer, police have a particularly poor track record when it comes to dealing with people with little or no functional speech.

Given their vulnerability along with difficulty in reporting, people with little or no functional speech require a specialised advocacy service to assist them to report to police.12 However, the only specialised advocacy service for people with little or no functional speech in Australia is in the State of Victoria. This service needs to be established in other States and Territories.

There have also been issues with police failing to accept evidence when the victim was using a communication device. For example, a woman used a communication book to communicate that she was sexually assaulted by a taxi driver. However, the communication book didn’t have the words ‘penis’ or ‘rape’ at the time of the incident, the woman could not

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11 Submission by Australian Group on Severe Communication Impairment Access to and Interaction with the Justice System for People with Disabilities. Select Committee of the Legislative Council, Parliament of South Australia.

spell, and the police said that adding these two words after the incident would be leading the witness.13

**Legal Responses.** Generally speaking, the legal responses to victims of crime with little or no functional speech have been poor. There has been little legislative response to providing accommodations for victims or witnesses with little or no functional speech. The exception to this general rule is s.31 of the *Evidence Act 2008* (Victoria Government Australia, 2008). It provides the following:

Deaf and mute witnesses
- A witness who cannot hear adequately may be questioned in any appropriate way. (Sub-section 1)
- A witness who cannot speak adequately may give evidence by any appropriate means. (Sub-section 2)
- The court may give directions concerning either or both of the following:
  - The way in which a witness may be questioned under Sub-section 1.
  - The means by which a witness may give evidence under Sub-section 2.

**Communication Accommodations.** It has been noted in research that communication boards lack vocabulary such as ‘genitalia’ and ‘rape’14 so that victims of sexual violence can effectively tell, report, and be believed. The courts have used speech pathologists to assist with communication and training of independent third persons or communication support workers in sexual assault.15 This was highlighted in the case study provided at the beginning of the chapter. In addition, independent communication support workers have been used in court and with police in the following situations in Victoria:

- Speech pathologist in court as a communication support worker for an individual who had been allegedly assaulted by a staff member at a nursing home and was seeking a restraining order.
- Speech pathologist as a communication support worker at the magistrate’s court for an individual using a Lightwriter (a speech generating device), who was seeking a restraining order against a carer who had allegedly robbed him.
- Several times during police investigations and statement taking, communication support workers were employed and paid for by police.

**Access to Personal Safety and Sex Education.** Access to personal safety training for people with little or no functional speech is scarce in Australia. However, there have been pockets of success. For example, in 1997, a specialist program for students with intellectual disability was developed

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by Family Planning Victoria and the Centre for Sexual Assault in conjunction with Mildura Special Development School and intellectual disability consultant, Patsie Frawley. This program was piloted at the school and is now part of the school curriculum.\textsuperscript{16}

There is also a general lack of sex education that is available to people with little or no functional speech in Australia, particularly in the special education system. Kelly Vincent notes that someone who was 18 didn’t know what a condom was and that a girl who was 15 freaked out when she started menstruating.\textsuperscript{17}

People with little or no functional speech are often seen as asexual and therefore do not require sex education. Involuntary sterilisation is seen as the answer, and, of course, this may be a cover-up for abuse. At the time of writing this chapter, there was a federal parliamentary inquiry into the issue of involuntary sterilisation. It is shameful that Australia has an interpretative declaration on Article 17 of the United Nations Convention on the Rights of Persons with Disabilities (2006) that permits sterilisation to continue with permission of a tribunal or court that has \textit{parens patriae} (a doctrine that grants the inherent power and authority of the state to protect persons who are legally unable to act on their own behalf) jurisdiction.

\textbf{Access to Counselling for Post-traumatic Stress Disorder.} People with little or no functional speech may not be aware that counselling is available. They also may be concerned that the clinician may not understand them.\textsuperscript{18} Time and speed of conversation is a key issue. Typically in spoken conversation the rate is 200 words per minute. Even with proficient AAC use the rate is slowed to 15 words per minute, and some persons who use AAC are much slower.\textsuperscript{19} The impact of this on access to therapy is that people with little or no functional speech need more sessions to get their stories out. It is also important to note that people with little or no functional speech who have been victims of crimes are likely to be emotionally distressed, which will have a further impact on their ability to use their AAC system. A guide for practitioners in counselling people with little or no functional speech has been developed by Scope Victoria.\textsuperscript{20}

\begin{thebibliography}{9}
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Access to the Justice System. Access to the justice system is a major problem for people with little or no functional speech in Australia. They have problems contacting police in the first instance, as they may have trouble physically and programmatically accessing the phone or a police station.

It is interesting to note that the Western Australia’s police service has an SMS Assist for people who are hearing or speech impaired for non-urgent policing. However, this system is not satisfactory for people who need urgent assistance.

Public Policy and Research on Needs. There needs to be public policy development and research conducted on crimes committed against people with little or no functional speech in Australia. In the first instance, there needs to be improved data collection mechanisms on the prevalence of crimes committed against this population, and this involves greater reporting. Currently, the Australian Bureau of Statistics (2013) does not record whether or not crime victims have disability. Given this situation, there is no way to disaggregate this important variable, as is done with other important demographics such as age, race or gender.

There is a wide body of literature that supports the need for Independent Communication Support Workers to be established and accredited throughout Australia to help people with little or no functional speech in their quest for justice. Australia has a relatively small population, which makes it difficult to obtain government commitment to funding new programs targeted for a relatively small section of the community. As such, the onus is placed on people with little or no functional speech to lobby for such services. However, for the most part, those who have little or no functional speech also have multiple disabilities, so just living day-to-day is generally more than one can manage. Therefore, there is a critical need for stronger advocacy services and allies.

Australia should have a Royal Commission into disability care providers as recommended by the Victorian Public Advocate. At the time of this writing, a Royal Commission into Child Abuse was being conducted in Australia. The Australian Government is expected to release its final report at the end of 2015. It will be interesting to see what this reveals about sexual abuse of children with disabilities and particularly those with little or no functional speech.

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21 Australian Group on Severe Communication Impairment op.cit.,
Chapter 5

It will also be interesting to see whether the National Disability Insurance Scheme (NDIS) (a scheme where funding for care and support goes to the individual as opposed to an organisation) has an impact on reducing crimes against people with little or no functional speech. There is a need for a longitudinal study to be conducted as the National Disability Insurance Scheme is phased in.

Conclusions

In Australia, international conventions, such as the United Nations Convention on the Rights of Persons with Disabilities (2006), do not automatically become domestic law, even though they have been ratified. In order for the United Nations Convention on the Rights of Persons with Disabilities (2006) to be enforced in Australia, it must be put into domestic legislation. Currently, one can bring a complaint to the Australian Human Rights Commission. If the complaint cannot be resolved at this level, the complainant can take the matter to the United Nations Committee on the Rights of Persons with Disabilities. Hopefully, once the United Nations Convention on the Rights of Persons with Disabilities (2006) becomes domestic law in Australia, protection against violence and abuse (Article 16), as well as access to justice (Article 13), will become an instrument for positive change throughout Australia.
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Overview

The right of people with disabilities to legal justice: A view from Israel

Chapter 6 shows how the justice system in Israel is being made accessible to people with disabilities, especially to those with little or no functional speech. This has been made possible by the Israeli Investigation and Testimony Procedures Law of 2005. We look at how this policy has been implemented and what has been learned along the way. This includes the use of simplified language, having people accompanied throughout the justice system, the use of AAC and more.

We look at related issues such as research and identifying and treating the victims of abuse, and we finish with work developing AAC as a tool that can be used throughout the justice process and other state services.

Abstract

The chapter presents means by which justice systems in Israel are made accessible to persons with disabilities, particularly in the area of language. The main emphases of the Investigation and Testimony Procedures (Adaptation to Persons with Mental or Psychological Disability) Law-2005, manifesting policy in Israel, and their application in various proceedings through the development of knowledge and roles are described, as well as the use of language simplification, accompaniment, means of AAC and more.

We touch on tangential subjects such as research, identifying and treating abuse victims and, finally, present a program that aims to develop
Introduction

In late 2005, the Investigation and Testimony Procedures (Adaptation to Persons with Mental or Psychological Disability) Law-2005 became law in Israel. The law was applied gradually, beginning in 2006 until full application. It is currently meant to be fully applied. The law determines the rights of persons with mental, intellectual, cognitive disabilities or autism spectrum disorders, to access in criminal proceedings and, in particular, the accommodations that can be provided at the investigation stage and later on during the trial. The law is most innovative enabling, among other things, specific accommodations such as: a special investigator (someone specialising in investigating persons with intellectual disabilities whose role includes preparing recommendations in regard to accommodations in the taking of court testimony, adapting the surroundings in the investigation room and later on in court, to the needs and abilities of the suspect or witness, as well as additional select assistive devices meant to assist in the coherent investigation of the person with disabilities).

Already before the application of the Investigation and Testimony Procedures (Adaptation to Persons with Mental or Psychological Disability) Law-2005 in Israel, through a special project the Bizchut organisation (http://bizchut.org.il/en/), accompanied persons with mental and intellectual disabilities through criminal proceedings, and that project formed a substantial basis for the selection of accommodations that were included in the law. Upon enactment of the law, the State of Israel took upon itself the responsibility for the adapted investigation and testimony of persons with disabilities.

Regulations are now being approved in Israel for the Accessibility section of the Equal Rights for Persons with Disabilities Law (1998). Two
sections of these regulations deal with issues of accessibility in police and court system services and complement the *Investigation and Testimony Procedures (Adaptation to Persons with Mental or Psychological Disability) Law-2005.*

This investigation system now enables persons with disabilities to take active part in processes that have an impact on their lives, which is to say, to understand the legal proceedings in which they are involved, to give expression to their full versions of the events in question, and thus to fully exercise their civil rights.

**Case descriptions**

Presented below are two case descriptions of two different persons being examined, not expressing themselves verbally and using a communication board. The first is R’s story that occurred in 2006, prior to the law going into effect. She was examined and testified in court, thanks to the Bizchut organisation’s accompaniment and effort. The second is G’s story that occurred in 2012, after the application of the law, entirely within the framework of the special investigators’ on-going work without need for intervention by external parties. In G’s experience, the case did not reach the court, since the perpetrator was a minor with disabilities and, in practice, since the application of the law, no testimony had been given in court using tools permissible by law.

**R’s Story (2006)**

**Background.** R is a young lady who lived a normal life until the age of 12, when she received a severe head injury in a car accident. She uses a wheelchair for mobility, since she can no longer walk, has little or no functional speech and she has moderate intellectual disability. She communicates with the help of a binder with pictures that describe day-to-day situations, family members, emotions, holidays and events, etc. She thumbs through its pages and points to the picture that represents what she wishes to say.

One day, in a flurry of emotions R told her teacher about her ongoing sexual assault by her father. She did so by pointing to her sexual organs and a picture of her father. The teacher called the police. When it became clear to the investigator that R could not be investigated in the usual way, he called Bizchut, the human rights centre for people with disabilities (http://bizchut.org.il/en/), which, among other things, handles adapting legal proceedings for people with disabilities, and requested assistance conducting the examination.
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The interrogation. The examination, which was conducted at the school, was made accessible by means of a communication board and was filmed using three cameras, capturing the subject, the facilitator and the table on which the symbol cards were placed. R communicates using a communications binder containing many pictures, arranged according to subject. She points to the picture that represents what she wants to say. After briefly becoming acquainted with R and the linguistic and cognitive challenges dictated by her situation, we began the examination. Using the pictures in her binder and others that were especially added for the purpose of the examination, R described how and when her father sexually assaulted her. As a result of the interrogation, the attorney’s office decided to put R’s father on trial with the charge of rape.

The submission of an opinion on the subject of the disability and the necessary accommodations. At the start of the trial’s evidence stage and a moment before R was called up to testify, an opinion was placed on the court bench, listing R’s difficulties and suggested adaptations to the proceedings that would enable her to provide coherent testimony. The adaptations suggested by the opinion were: closed-door deliberations, R’s giving testimony not in the presence of the defendant, the use of means of AAC, the assistance of a person assigned to accompany R and being responsible for interpreting the questions asked of her so that she will understand them and be able to answer them and for helping her understand the discussion. The defendant’s attorney denied R’s ability to testify. In addition, he placed doubt on the credibility of the communications accompanier and feared that he would translate R’s account in a manner compromising her testimony. In response, it was suggested that R’s ability to master the AAC system would be determined directly by the court and that the accompanier’s account would always be given aloud so that the court could gain an impression of his credibility. At the conclusion of the discussion, R’s demands were accepted and the accommodations given enabled her to provide coherent testimony despite her severe disability.

R’s testimony. R’s testimony lasted several hours over two sessions. The entire testimony was given by use of communication boards with pictures and puppets in specific situations where she sought to describe a certain position or location within a space. There were several breaks in the session, particularly when R appeared to be having difficulty concentrating.

The chief obstacle for which a solution almost could not be found arose during the cross-examination. The police investigation and the main interrogation by nature do not pose great difficulties to the witness. He is required to describe what happened to him without being confronted as to the verity of that being described. The goal of the cross-examination, however, is the opposite. In the cross-examination, the attorney tries to find breaches and weak points in the testimony, thereby weakening it. He
does not ask the witness to provide information, but rather tries to prove that the information provided in the investigation and the main interrogation is not credible. He does this through questions which require the witness to provide interpretation of facts. In such situations, AAC that relies on pictures, rather than on letters, words or speech, is rather little and limiting. It is not sufficiently developed (at least at the moment, as long as no solution has been found to the problem) to enable its user to explain contradictions in his testimony (such as in the question: How do you explain the contradiction regarding a certain detail between the testimony you provided the police and the testimony you provided in court?). R was faced with this chief obstacle and it made her cross-examination relatively weak, without comprehensive answers.

The verdict. The verdict in the case was given after an additional year of deliberations, of dealing with R’s physical and cognitive state, her ability to understand the difference between a father’s legitimate care of his daughter, sexual assault and more. In the end, the three judges decided to acquit the defendant because of the benefit of the doubt. Thus they wrote in the summary:

*We have before us a pleasant, smily and innocent young lady, one with a merciless fate. Her severe disability made her voiceless, intellectually feeble and hopeless. Our obligation as society is to protect her, to extend a hand and to hear her call for help. With that, due to her severe disability, we place doubt on her account. The fear that such a young lady could find herself forsaken and abandoned, easily taken advantage of, does not loosen its grip.*

*On the other hand, we have before us a defendant who also has rights, fundamental rights. The right to defend himself reasonably, the right to examine witnesses, to conduct a worthy cross-examination and the right to benefit from the assumption of innocence. And the defendant, he too calling out, that these things never occurred. That we are talking about his daughter, whom he loves and for whom he is concerned. That he is revolted by the acts described in the indictment and attributed to him. We are dealing with a criminal proceeding and must be precise in our dealings with the rights of the defendant lest they be harmed.*

*Due to R’s special circumstances, the defendant’s right to properly defend himself has been harmed, as the possibility to cross-examine R as is accepted practice was discounted. The acts attributed to the defendant are most grave. His minor, disabled and helpless daughter pointed to him as one who perpetrated sexual acts upon her body. This is a grave and serious accusation. The fear is daunting – that R has not in vain pointed to her father as one who perpetrated acts upon her.*

*At the same time, due to R’s severe disability, the intellectual or mental disability from which she suffers and her inability to communicate except on the most basic level – it is not possible to base findings upon her version with the required certainty for the purpose of criminal conviction, beyond a reasonable doubt. For the same reasons, it was also not possible to conduct the proceedings in a proper manner and enable the defendant to defend himself from the serious accusations attributed to him, through efficient cross-examination of the complainant.*

*Under these circumstances and for the reasons mentioned, I will recommend that my colleagues award the defendant an acquittal due to benefit of doubt.*
G’s story (2012)

G, at the age of 17, studies at a special education school. He travels to school on a special school bus and is accompanied at school by an assistant teacher. When the assistant teacher, who accompanies him, noticed a change in his mood, she asked him what happened and he told her that another student who travels with him to school touched his sexual organ, and not for the first time. However G’s response was not a simple sentence in response to a simple question. In order to understand what happened to him, the assistant teacher opened his communication board, a sort of booklet with symbols and drawings that represent actions, people, places and experiences from his day-to-day life, and asked questions—

‘How do you feel?’

G opened the page containing line after line of mood symbols. He had to select his response from among the symbols appearing there. He examined the symbols and chose the SAD symbol.

‘Is it because of something that happened today?’

G touched his shoulder. The assistant teacher knows that a touch on the shoulder means YES and a touch on the thigh means NO.

‘Where did it happen?’

G opened the page that contains symbols of places and pointed to the ‘school bus’.

To the question what happened on the school bus, there were no answers on G’s communication board. Seemingly, there is no reason for his speech-language pathologist to put a symbol for sexual assault on his communication board. Fragmented explanations through body language and close familiarity made it clear to the assistant teacher that something happened that must be reported, that had happened more than once. She immediately turned to the school advisor who reported to the youth-law social worker.

Referring to special investigation. Until the application of the Investigation and Testimony Procedures (Adaptation to Persons with Mental or Psychological Disability) Law-2005, all the social worker could have done was to turn to the family, develop a defence plan together with the school, refer to treatment and follow up. She did not have at her disposal the possibility to turn to a special investigator who would know how to interrogate a person with cognitive disabilities. She had no reason to believe that anyone would believe a person with a cognitive impairment, physical disability that causes his head to toss from side to side, makes him drool and prevents him from expressing himself through spoken language.

After the social worker had encouraged the parents to lodge a complaint with the police, the investigation was referred to a special investigator: a social worker who was qualified as a child investigator, and
A view from Israel

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after special training was also qualified to conduct special investigations. The investigator summoned to the investigation a speech-language pathologist who is an expert in AAC, who works with the Ministry of Welfare and Social Services and who possesses an AAC kit that was developed especially for investigation and testimony in abuse and assault cases in cooperation with the Ministry of Welfare and Social Services, ISAAC Israel¹ and JDC-Ashalim.²

Data collection and pre-investigation preparation. Prior to the examination, the speech-language pathologist collects data from the educational and paramedical professionals who know the witness. Does he have his own communication board, what symbols does it include? What are his cognitive level, sensory abilities/disabilities and psychological state? An appropriate location (quiet, calming, if possible, familiar to the witness) for the examination is found, and a figure who will be present at the examination in order to calm the witness and mediate if asked to. In addition, the examiner is prepared to bring two cameras – one that is meant, as in any examination, to film the witness, and the other is brought by the investigator in case the AAC kit (presented extensively later in this chapter) is used, and is aimed at the communication board throughout the examination.

The speech-language pathologist spoke with the teacher and G’s speech-language pathologist, heard from them that his cognitive abilities are borderline but that he is familiar with time, and she saw his communication board. In accordance with the complaint and prior clarifications, the speech-language pathologist prepared in advance, cards with the vocabulary expected to be useful, but of course all the other symbols are immediately at hand. The examination was conducted in a pleasant room, with the investigator, the speech-language pathologist and G’s mother present. G enjoyed seeing himself on camera and getting to know the investigator during a pleasant initial discussion.

Progressing in the examination. According to the information collected prior to the examination, the investigator characterises the information that can be collected in the examination (times, numbers, content, etc) and phrases the questions. The speech-language pathologist does not intervene in the examination and does not phrase the questions, but rather helps the witness find his way on the communication board and presents the symbols among which the words that express the answers to

¹ The Israeli chapter of the International Society for Augmentative and Alternative Communication (ISAAC), an association of professionals, people who use AAC and their families, manufacturers, researchers, developers and others. The goal of the organisation is to promote and develop the field of AAC in Israel.

² Ashalim is a strategic partnership between JDC-Israel, the Government of Israel and the UJA-Federation of New York. The organisation is engaged in the development and structuring of services that meet the needs of at-risk children, youth and young adults in Israel and their families.
the investigator’s questions are likely to be found. If the witness has his own communication board, a specific supplemental communication board for examinations is provided, containing only the symbols that are lacking on his personal communication board.

According to the data collected during the preliminary clarification, the investigator asked the questions at the appropriate level – in simple language and some of the questions being closed, some being yes/no questions and questions for which the possible answers are prepared in advance, and the witness can choose the answer closest to his position. A speech-language pathologist helped G find his way on the communication board, for example, opening the page containing the people who are part of his daily routine when he was asked ‘Who did this to you?’ or the numbers page after he indented with his fingers his response to the question ‘How many times did it happen?’ When he was asked questions, the answers to which did not appear in the communication board (questions pertaining to body organs or relativity – more, less, etc.) the speech-language pathologist suggested G use the communication board prepared especially for examinations. Thus, G explained that the alleged perpetrating student touched his sexual organ over his pants with his hand, and to whom he told about these occurrences. In the examination, it was possible to understand exactly when the sexual abuse took place, who carried it out and where and what G did in response.

In summary. It is difficult to make comparisons between the two cases, one presenting a complete sequence relating to the exposure of a suspected abuse and the other focusing on investigation, one relating to a woman and the other to a boy, but one thing is clear. The first case description involved a difficult path, accompanied by the struggles of the young woman and of a non-governmental human rights organisation. There was a need to struggle for the right to accessibility and to accommodations, and non-governmental AAC tools were utilised. In the second case description, the accessibility and accommodations were given immediately and naturally as part of the state’s services. The special investigator summoned a speech-language pathologist immediately upon receiving the request for the investigation, the communication board that the speech-language pathologist brought with her is from the Ministry of Welfare and Social Services, and the other accommodations were given without the involvement of an external party and without need for struggles and special requests. The first case description is the only case in Israel through today that made use of AAC in the taking of testimony in court. It manifests a precedent and until today serves as a test case for study and a milestone in the subject’s development in Israel.
Scope of the problem in Israel\(^3\)

In Israel, there is no concentration of data that reflect the scope of violence persons with disabilities. Since the proportion of the population with disabilities in Israel is identical to the world average, and the obstacles are similar, we assume that the data regarding the scope of violence and abuse are also similar.

The treatment of persons with disabilities who have been victims of violence is divided among and shared by agencies within various government ministries, most of which do not recognise them as a separate group in their bureaucratic reports and as such cannot provide figures. This is the case in the Ministry of Social Services, the agency responsible for identifying and reporting, and in the Ministry of Justice (State Attorney's Office) and the police.

The only agency that maintains a registry and follow-up of the number of service recipients is the Children's Investigations and Special Investigations Service at the Ministry of Social Services.

A total of 219 children with disabilities up to age 14 were investigated by the service in 2011, of whom 60.5\% were investigated in connection with sexual offenses and 39.5\% were investigated in connection with other offenses of violence and neglect.

89.5\% of them were victims of an offense, 3.2\% were witnesses to a sexual offense or violence and 7.3\% were suspected of sexual offenses.

The 140 children who were investigated in connection with sexual offenses were of the following ages:

- 17 were of the ages 4 to 6 years
- 28 were of the ages 7 to 9 years
- 29 were of the ages 10 to 12 years
- 66 were of the ages 12 to 14.

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\(^3\) For 2011, data was received from the Children's Investigations and Special Investigations Service, Ministry of Social Services.
Table 6.1  Types and Frequency of Violence or Abuse

<table>
<thead>
<tr>
<th>Types of violence or abuse</th>
<th>Frequency</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rape by use of force/Intercourse with a minor; sodomy</td>
<td>36.3%</td>
</tr>
<tr>
<td>Emotional and physical abuse</td>
<td>2.3%</td>
</tr>
<tr>
<td>Injury/Severe injury</td>
<td>3.4%</td>
</tr>
<tr>
<td>Indecent acts</td>
<td>52.3%</td>
</tr>
<tr>
<td>Indecent exposure</td>
<td>4.5%</td>
</tr>
<tr>
<td>Oral acts</td>
<td>1.2%</td>
</tr>
</tbody>
</table>

Table 6.2  Various Types of Disability

<table>
<thead>
<tr>
<th>Types of disability</th>
<th>Frequency</th>
</tr>
</thead>
<tbody>
<tr>
<td>Autism</td>
<td>13.4%</td>
</tr>
<tr>
<td>Asperger</td>
<td>1.6%</td>
</tr>
<tr>
<td>Rehabilitation population</td>
<td>20.5%</td>
</tr>
<tr>
<td>Special education</td>
<td>22.8%</td>
</tr>
<tr>
<td>Mild cognitive/Developmental disability</td>
<td>27.6%</td>
</tr>
<tr>
<td>Moderate cognitive/Developmental disability</td>
<td>7.1%</td>
</tr>
<tr>
<td>Severe cognitive/Developmental disability</td>
<td>0.8%</td>
</tr>
<tr>
<td>Unknown</td>
<td>5.5%</td>
</tr>
</tbody>
</table>

**Israeli law**

Main provisions of the *Investigation and Testimony Procedures (Adaptation to*
Persons with Mental or Psychological Disability) Law-2005, include the following:

**Police questioning**

- Prior to or during police interrogation, when a police investigator has cause to assume that the witness or suspect about to be questioned is a person with an intellectual or mental disability, the police investigators must refer this person to a ‘special investigator’, and shall cease the regular investigation.
- If denied a ‘special investigator’, a police suspect is entitled to appeal to the Magistrate Court.
- If a witness or suspect is mistakenly referred to a ‘special investigator’ and thus questioned in an accommodated manner, the testimony shall nevertheless have full legal validity (Section 14).
- ‘Special investigators’ are trained psychologists, social workers, clinical experts in criminology or people with special training in the field of special education (Section 6).
- Only under special and urgent circumstances (i.e., disruption of the interrogation, prevention of risk to human life, enabling the arrest of additional suspects, avoiding disclosure of evidence), are the police exempt from referring the person to a ‘special investigator’. In this case, a report detailing the special circumstances is required (Section 4).

**Notifying the guardian**

Upon referral to a special investigator, the police must notify the legal guardian of a person with disability, except in special circumstances.

**Appointment and training of special investigators**

The Minister of Welfare and Social Services is in charge of appointing special investigators, with the cooperation of the Minister of Public Security, and provides training for this role.

**Questioning by a special investigator**

- The special investigator has the full authority of a police officer.
- The special investigator must caution the witness and advise the suspect of his or her rights in a comprehensible manner, as set forth under general law, before commencing the investigation (Section 9).
- The special investigator may be aided by a professional expert as to how to question the person.
At the end of the questioning, the special investigator must compose a statement detailing the course of the interrogation, the difficulties encountered and whether he or she received any help from a professional expert. He or she may add recommendations regarding accommodations needed for court testimony.

Accompanying a person with an intellectual disability

- A person with an intellectual or mental disability is entitled to choose and have a person to accompany him or her and be present during police questioning, unless the special investigator views this as interfering with the interrogation.
- A person with a mental disability is also entitled to have his or her professional caregiver accompany him or her during the police questioning (Section 16).

Documenting police questioning by the special investigator

- The special investigator will document the entire interrogation via audiovisual documentation (combined recording of image and voice).
- The documented testimony shall be admissible as evidence in court and is part of the investigation file (Sections 13, 20).
- If charges are pressed, attorneys for the defendant and the state are entitled to review and copy the documentation (Section 11).

Extra-interrogation investigative tools

In cases where a police investigation requires the participation and cooperation of the person with intellectual disabilities in forms of investigation other than questioning, police must consult with the special investigator and abide by his or her instructions.

Court procedures

Prior to testimony

- On the basis of the special investigator's documented interrogation, the person with disabilities shall testify in court. Both parties are entitled to examine him (Section 20).
- Prior to witness examination, the court will be presented with a statement by an expert witness regarding the witness's/criminal defendant's disabilities and their potential implication on testimony (Section 21), as well as the special investigator's testimony (Section 20).
• The court may exempt the person from testifying, if, according to the expert witness's opinion, it finds that the testimony may harm the witness, or that the witness cannot testify due to his intellectual or mental disabilities, even if the court grants all the accommodations detailed in the law or postpones the testimony. In such a case, a criminal defendant cannot be convicted solely on the basis of the statement of an exempted witness, without corroborative evidence (Section 20).

Giving testimony – accommodations for persons with mental or intellectual disabilities

• The court will caution the person according to general procedure law, unless it finds that due to his intellectual disabilities, the witness cannot understand the obligation of telling the truth. In such a case, a criminal defendant cannot be convicted solely on the basis of this testimony, without corroborative evidence (Section 18).

• The court has the discretion to forbid a criminal defendant from single-handedly cross-examining a witness with intellectual disabilities and will appoint the defendant special counsel for this purpose, free of charge (Section 19).

• Upon finding that the witness has intellectual disabilities and that testifying in the regular manner may harm him or her or the testimony, and after considering the witness's preferences, the court may rule that the testimony should include one or more of the following accommodations (Section 22):
  - Testimony without the presence of the criminal defendant in the courtroom, and only in the presence of the defence attorney
  - Testimony behind a partition
  - Testimony not on the witness stand
  - Judge and attorneys not in formal attire
  - Testimony in the judge's chambers
  - Testimony outside the court hall
  - Testimony using means of AAC, including the assistance of people, computerised aids, communication boards, photos, symbols, letters or words
  - Testimony of a witness while accompanied
  - A special advisor who advises the counsellors about phrasing, simplifying questions and addressing the person, and who cautions against potential harm to the witness.

Linguistic simplification

Israeli law also requires the justice systems to make the various proceedings accessible by means of linguistic simplification. The following are general guidelines for linguistic simplification, based on a book of guidelines published by the Ministry of Welfare and Social Services (Uziel-Karl, Tene-Rinda, & Yalon-Chamovitz, 2011):
Linguistic access is a process in which written or spoken information is adapted to the needs of persons with disabilities through the use of various (linguistic/sensory) means.

Linguistic simplification is a structured process of editing and processing information and of making it simple, clear and easy to understand for persons with cognitive disabilities. The process involves three stages:

**Stage 1: Planning**

- Determining ideas – the target population, the goal of conveying the information, and the main emphases of the information.
- Mode of conveying the information – characteristics of target population in terms of communication, most efficient means of conveying information (written, spoken), conditions under which the information will be conveyed, resources at the disposal of the person conveying the information.
- Means of conveying information – visually, vocally, by touch.

**Stage 2: Implementation**

- Organising content – main ideas, appropriate phrasing, refraining from using simplified terms, refraining from referring.
- Adapting language – simple language is clear language that aims to make it easier for the reader or the listener to interpret the information. As much as possible, linguistic simplification should involve the following:
  - The information should include only the main essence.
  - The information should be conveyed through the presentation of a clear and organised sequence, such as a chronological sequence of actions or conditions and their possible results.
  - Sentences should be constructed with short and simple syntax.
  - Maximal use of common, day-to-day vocabulary; as minimal as possible the use of professional jargon, words from foreign languages that are not in day-to-day use and dialect. If it is necessary to use such words or terms, they should be clarified as closely as possible to the first time they are mentioned (ie by defining them or by giving an example).
  - Minimal use of acronyms and abbreviations.
  - Use of verbs in active and non-passive forms, such as ‘Danny wrote the book’, rather than ‘The book was written by Danny’.
  - Use of pictographic signs to scaffold the written text.
- Adapting means of conveying information – visual means (legible print, integrating familiar and understood signs, vocal means).

**Stage 3: Assessment**

- Repeatedly examining intermediary results.
- Final examination of results with persons with cognitive disabilities.
Accompanying persons with disabilities through criminal proceedings

As mentioned earlier in this chapter, Israeli law enables accommodations and accessibility adaptations, but understanding rights is not a simple matter, and neither is the ability to exercise those rights. Bizchut (http://bizchut.org.il/en/), the human rights centre for people with disabilities, accompanies free of charge, the persons with disabilities who are party to criminal proceedings. The organisation’s professionals accompany the person throughout the police investigation and the legal proceedings, and advise the investigators, attorneys and judges regarding the required adaptations to his investigation and testimony. Among other things, Bizchut

- accompanies the person to the police to provide support;
- informs the investigator of the significance of the person’s disabilities and its impact on the investigation, and regarding the proper manner of investigating the complainant or the suspect;
- assists in the questioning of persons with mental or intellectual disabilities or severe communications impairments;
- in certain cases where it is decided to close the case solely due to the complainant’s disabilities, submits an appeal to the Attorney General;
- advises attorneys and the state prosecutor when they are representing persons with disabilities; provides assistance to attorneys in making contact with clients who are persons with intellectual or mental disabilities; and recognises their abilities and provides tools that can be used during the taking of testimony;
- suggests custody alternatives, due to the unsuitability of prisons for suspects who are persons with disabilities;
- conducts a preliminary site visit in the courtroom, prior to the opening of court proceedings, so that the place will be familiar and less threatening to the witness/defendant who is a person with disabilities;
- accompanies the person with disabilities throughout the trial and provides him or her with explanations regarding its various stages;
- suggests accommodations to the court to respond to the needs of the witness with disabilities;
- per the request of the police or prosecutor, providing an expert opinion, submitted to the court, regarding the nature of the disabilities of the witness and its implications regarding the police investigation and court testimony; and
- refers the victim, who is a person with disabilities, to psychological support at one of the assistance centres accessible to people with mental or intellectual disabilities.

During the past 11 years, the support of Bizchut (http://bizchut.org.il/en) has aided about 500 persons with disabilities through criminal
Referrals come from the police, prosecutors and even judges (as ‘friends of the court’). Since implementation of the *Investigation and Testimony Procedures (Adaptation to Persons with Mental or Psychological Disability) Law-2005* began, the number of requests has diminished, and almost no persons with cognitive disabilities have been accompanied.

**Augmentative and Alternative Communication (AAC)**

After implementation of the *Investigation and Testimony Procedures (Adaptation to Persons with Mental or Psychological Disability) Law-2005*, children’s investigators were trained and given new authority for special investigations through the law. The authorisation was developed in such a way that the investigators themselves are considered a ‘tool of the investigation’, which is to say, the investigators learned how to conduct an accessible interview (eg linguistic simplification, relating to times and quantities, using open and closed questions, etc). Along with 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 has been 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 for those who are deaf.

**Prevention, detection and treatment services**

About a decade ago, an interministerial forum was convened, dealing with systemic thinking on the subject of violence and abuse against children and adults with disabilities. The forum included representatives of three ministries: the Ministry of Welfare and Social Services, the Ministry of Education, the Ministry of Health and other institutions dealing with the field in Israel. After a process of studying the data, presenting existing services for the nondisabled population and thorough deliberations, a shared decision was made regarding strategic action to be shared by the three governmental ministries. Until then, existing services were very basic and sparse, and primarily services which the state is required by law or specific services for emergency situations.

The forum defined four junctures along the intervention sequence in cases of violence or abuse against children or adults with disabilities: (1) prevention; (2) detection; (3) investigation; and (4) treatment. A program was developed for each of the four areas and additional initiatives sprouted as a result, ie government and local, which expanded services. The interministerial cooperation yielded several services that enabled the collection of data and development of knowledge based on knowledge and information from overseas, adapted to local characteristics. Several examples are provided here:
**Prevention.** Programs that were developed provided knowledge of sex education for children and adults with disabilities, their parents and professionals. These and other programs provide persons with disabilities tools to assert themselves and protect their bodies. Other prevention programs are intended for professionals and parents, providing tools to identify in advance, situations liable to become violent and abusive, and ways to prevent them through listening to themselves and to others.

**Detection.** Surprisingly, relatively little had been done in the context of detection among children with disabilities. Research from abroad clearly indicated that children with disabilities are at least three times more vulnerable to abuse and violence than others, but the number of cases detected and reported is smaller. As such, a comprehensive program was developed, dealing with reducing the obstacles to detection and reporting and distributing information and instructional materials for use by professionals. In the framework of the program carried out over a 4-year period until the end of 2012, dozens of seminar days were conducted with the participation of some 4,000 professionals from the social services, education and health fields. Thousands of instructional manuals and hundreds of facilitator kits were distributed. Films, live performances and presentations were produced. In-depth processes were undertaken in 10 municipalities across Israel for training professionals to ensure continued dissemination of information. Additionally, procedures were developed for more efficient and effective interdisciplinary and interagency work. The tools produced in this nationwide detection program should impact on the development of future services and will be integrated into them, not as a separate service, but rather as part of these services.

**Investigation.** Immediately upon application of *Investigation and Testimony Procedures (Adaptation to Persons with Mental or Psychological Disability) Law-2005*, dozens of child investigators were trained and authorised as special investigators. About 6 years later, we are beginning to utilise the special AAC kits mentioned earlier, and a program has been developed for them, which will be described below.

**Treatment.** The Ministry of Welfare and Social Services is the governmental agency primarily responsible for the treatment of victims and perpetrators of crime. Other than children and adults with intellectual disabilities for which there is a long-standing and well-developed treatment system (based on a separate law), the division responsible for the treatment of nondisabled children and youth is also responsible for the treatment of children with disabilities. Since professional services are developed within a division responsible for serving persons with disabilities (and in the context of violence and abuse the legal responsibility rests upon them only in regard to adults), some of the services for children fall between the cracks. The adults are treated by social workers from the field of disabilities, who function in accordance with defence laws, but here too, specific, suitably trained personnel are lacking. In the past few years,
several dozens of social workers from the field of rehabilitation were trained to treat adults in accordance with defence laws. This is a ground-breaking start but the shortage remains great. The Ministry of Welfare and Social Services provides adult victims with individual treatment services at several centres throughout the country. The treatment is professional and advanced, but the person is oftentimes required to travel an hour or more between home and the nearest centre. The treatment services have developed and expanded over the past decade, but the road to a situation that will enable accessible and comfortable treatment to all victims is long.

The services for children and adults with disabilities who are victims of abuse and those who display harmful behaviour are insufficient. When compared to treatment provided for elder abuse, battered women and nondisabled children, services for children and adults with disabilities are more varied, more dispersed geographically, and less advanced. However, in the past decade the scope of treatment services for children and adults with disabilities has increased dramatically, and new services are being developed.

An interministerial forum was again convened this past year, studying the contemporary needs and existing services and working to define shared action directions for the coming years. The forum is discussing the need to make existing services in the area of violence and abuse accessible to children and adults with disabilities, who are victims of violence or abuse. The forum is grappling with several questions. The first question is: which services should be provided in a separate and specialised manner, and which should be provided within the framework of general services that are made accessible to children and adults with disabilities? The second question is: which population segments can be best served through universal services made accessible and which are in need of different specialised services? Additional questions are: what is the best way to make services accessible, and who are the right partners for this purpose?

**Policy and research in Israel**

Much of the information and the basis for developing services in Israel come from research conducted abroad. Only isolated studies dealing with the phenomenon of children and adults with disabilities, who are victims of abuse, have been conducted in Israel. Few studies (primarily research conducted within the framework of doctoral theses) examined different abuse-related components of frameworks outside clients’ homes, the positions of professionals, the stories of women with physical disabilities who have experienced abuse and more.

Some of the researchers have difficulty collecting information and each additional study makes a significant contribution to encouraging more research and expanding the body of knowledge and existing figures.
Some of the services, still in their development stage, are accompanied by research, but these studies usually focus on the service’s efficiency and on figures directly connected with the service. The research results were well suited to the research results overseas, for example:

A study (Shachar, 2004) that compared youth with cognitive disabilities and youth without disabilities, found that youth with cognitive disabilities experience greater financial exploitation, sexual abuse and emotional abuse than youth without disabilities. Likewise, it was found that many of them inform adults (parents, teachers, instructors) and, nevertheless, only a small number of cases are reported to the police and only in one case was an indictment served.

Another study (Argaman, 2003) examined the scope of sexual abuse at two residential centres, where 49.5% reported sexual abuse and 85% of them reported repeated abuse. Half of the perpetrators were others with cognitive disabilities and half were acquaintances or other strangers. Half of the abuses took place in residential facilities or in the community.

A further study (Morali-Sagiv, 2013) examined the various factors that influence the behavioural intentions of social workers in relation to the identification of persons with disabilities, who are victims of violence and reported them. A correlation was found between the perception components of the social worker (positions, subjective norms and perception of control) and their identification and reporting intentions. The research findings indicate an influence of the type of disability and type of violence over the rate of reporting and the willingness of the social workers to identify and report. However, no correlation was found between characteristics of the social worker and identification and reporting intentions.

A quantitative study (Bloch-Geiger, 2011) examined the subjective significance of physical violence for women with physical disabilities. The study focused on the effect of social suppression on the women's ability to cope and on the category of suppression specific to the “body domain”. The study indicates deficiencies in professional and accessible services for women with disabilities, who are victims of sexual violence.

**Fundamental principles for policy and legislation**

Providing accommodations for persons with disabilities in criminal proceedings in essence removes specific obstacles that may preclude their chances in the criminal-justice process. The great challenge in making justice accessible is identifying the specific obstacles that might constitute barriers for persons with disabilities and finding balanced solutions that will not influence the nature of the criminal process. Below, we specify the fundamental principles upon which policy and legislation should be based.
to ensure the right to access to justice for persons with disabilities in the context of criminal proceedings.

**Ensuring full capacity to testify**

Every person with disability must be ensured full legal capacity at every stage of the criminal process and must not be inherently or automatically rendered incompetent to testify. It should be assumed that if a person with an intellectual, psychosocial or communication disability is in fact provided with the required assistance, accommodations, translation or language facilitation, there is no objective reason to render him or her incompetent or lacking the capacity to give testimony, give a deposition or be questioned and cross-examined and take an oath. Furthermore, placing structured limitations on one's capacity to participate in a trial or allowing claims to this effect is not only unnecessary but legitimises stigma and misconceptions about persons with disabilities. Therefore, the law must avoid structures that limit capacity on the basis of disability.

**Accommodation, not alleviation**

The object of making proceedings accessible is not to ease the process for the person with disabilities nor improve his or her wellbeing during the police inquiry or trial. Rather, it is to enable him or her to participate fully in these processes without having restrictions or limitations placed due to the disability. It should be stressed that providing accommodations for a person with disability does not entail a substantial change in the procedure or the law. If, for example, a person with a psychosocial disability has high levels of anxiety, the courtroom may be exchanged for a less formal setting in which the person can give his or her testimony and be cross-examined. Testimony could be given in the judge's chambers or via videoconference and yet have no negative impact on the substantial procedural rule.

**Ensuring the interests of the other parties to the proceedings**

Accommodations for persons with disabilities must not be at the expense of the essential rights of the other parties to the proceedings. Thus, if a rule or procedure might prevent a person with disability from efficiently participating in the process, then that aspect of the procedure should be made accessible, but the substantial rule of law and the delicate balance between the interests of both parties therein remain unchanged. For example, the cross-examination of a witness by the defence attorney cannot normally be waived, even if it is very difficult for a person with disability, as it serves a substantial purpose. Instead, the court must ensure
that the cross-examination of the witness is carried out in the setting most suitable for him or her.

**Individualised accessibility**

The spectrum of intellectual, psychosocial and communication disabilities is broad and highly varied. Thus, creating accommodations requires maximum flexibility in order to provide every person, with each kind of disability, with accommodations that meet their specific needs in accordance with the characteristics and severity of their particular disability. Thus, some people may require moral support and reassurance, some will require simplification of the questions, others may need to take a short recess during the testimony when they are unable to concentrate, and some individuals may require the use of an interpreter or speech-to-speech transmittal in order to testify. Thus the law should not restrict itself to a little set of accommodations, but rather allow court discretion on an individual basis.

**Accommodations at each stage of the proceedings**

The criminal process is by its nature complicated and tightly structured. Therefore, providing accommodations for persons with disabilities requires policy makers and legislators to examine each stage and aspect of the process in order to determine which elements may prevent the full and efficient participation of a person with disability. This includes all stages of the process: police investigation, line-up, re-enactment of the event, confrontation with the attacker, preliminary hearings, taking an oath, being advised of one's rights, entering a plea, giving testimony in court or cross-examination.4

**Accessibility as a professional matter**

Assisting persons with disabilities in the criminal process and facilitating his or her participation in the process requires professional input and knowledge from the different disciplines associated with the criminal field: police, lawyers and justices on the one hand, and speech-language pathologists, social workers, psychologists and treatment professionals on the other. Each of these disciplines, as applicable, must contribute both to the making of policy and law and in specific and concrete cases.

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4 It is also important to create adaptations in the framework of serving a sentence or public service. But this discussion is not within the scope of this chapter.
Independent accessibility, not on behalf of the defence or the prosecution

Ideally, the different accommodations to which a person with disability is entitled should be granted by the judicial system and the police and on their behalf, rather than have the parties bring experts of their own to make the proceedings accessible. This is important in order to minimise the likelihood that a certain accommodation will actually be used as part of the defence or prosecution tactics. If the accommodation is provided by a professional assigned by the court, such as a facilitator, he or she should be forbidden to take sides or to express their personal position regarding the judicial outcome.

Recommendations for application of principles

An array of practical tools may be applied within the existing criminal procedure in order to make processes accessible to persons with intellectual, psychosocial or communication disabilities. Below are our main recommendations:

- **Special Investigators.** The first barrier encountered by persons with disabilities is at the police investigation. Most police personnel lack training, know-how, and expertise in questioning persons with disabilities. They may be predisposed regarding the witness's overall credibility and ability to give testimony in the first place, especially in cases of communication and intellectual disabilities. Police may be deterred from taking their testimony, misinterpret what they say and in turn deem their testimony flawed. Lastly, they often have little knowledge or training to handle substantial behavioural disorders. Therefore, all too often, especially in cases where the person with disability is the key witness, cases are closed without indictment at the police investigation stage.

- **In order to address these difficulties, the Ministry of Welfare and Social Services in Israel employs special investigators, in accordance with the law, who are social workers, ministry personnel, whose training includes knowledge of the criminal process and procedures, as well as information about the implications of intellectual, linguistic, psychosocial, and behavioural disabilities in regard to the legal process and different professional tools which may be employed in this context.**

- **Basket of accommodations.** Every person with disability, whether a defendant or a witness, should be entitled to an array of accommodations, depending on his or her individual requirements. The decision as to which accommodations will be provided during a trial should be predetermined at the beginning of the trial. The court's decision to this effect should be based on expert witness testimony.

- **Facilitator.** The judicial process is complex, especially for a person with an intellectual, psychosocial or communication disability. It is both technically intricate to comprehend and morally difficult to bear. A
personal facilitator who is assigned to the person with disability can take the following steps to make the proceedings more accessible:

- **Simplify and give meaning.** Persons with intellectual disabilities or complex psychosocial disabilities may have little vocabulary or difficulties in understanding complex and abstract questions or arguments, as well as concepts of time, distance and relativity. Questions such as, ‘State the dates on which you were attacked’; ‘What was the distance from the bed to the wall?’ or ‘Was the defendant standing on your left side or right side?’ may generate inaccurate or vague responses, which can impede the testimony. A facilitator can assist by simplifying questions and legal arguments so the person with disability can understand them.

- **Support.** The facilitator can assist the witness psychosocially during the proceedings, reduce his or her anxiety, and inspire confidence and reassurance. Typically, the facilitator sits near the witness, calms him or her, and helps the person understand what is happening during the trial. The facilitator should have suitable training and not have previous acquaintance with the person with disabilities in order to remain objective.

- **AAC.** Persons who have little speech or communications skills are able to testify and describe complex events if provided with professional speech therapy related tools. These enable the lawyers and the judge to effectively communicate with the witness and reliably convey the witness’s answers. Possible accommodations could include an interpreter who will deliver the words that the defendant or witness has said, speech-to-speech transmitter or assistive technology tools, such as a communication board, which is a visual way of representing speech, words or sentences. The witness will therein point to the symbols on the board in order to structure a sentence and can be assisted by a speech-therapy professional.

- **Adaptation in the courtroom settings.** The unfamiliarity of the courtroom or the police station, the strikingly ceremonial atmosphere, the judges' and attorneys' robes, the special seating in the courtroom, and the rigid code of conduct might all seem especially threatening to persons with intellectual or psychosocial disabilities, so much that they are unable to testify. Flexibility regarding these technical issues provides for changes in the police and court process without sacrificing substantive legal processes. For example, conducting the police investigation of a person with disability in his home rather than at the police station, giving testimony in the judge's chambers without the formal attire, giving testimony not on the witness stand, or videotaped testimony can all significantly remove barriers without jeopardising substantive legal processes.

- **Speeding up the process.** People with intellectual or psychosocial disabilities may have difficulties with long-term memory. In cases where there is a concern that a witness with disability will forget important details, it should be made possible, in appropriate cases, to expedite the proceedings as quickly as possible: to obtain testimony from a witness with disability, question him or her as well as carrying out cross-examination.

Below is an example that applies some of the principles presented above:
AAC in investigation and testimony

Background and rationale

The Unit for the Investigation of Children and Special Investigations of the Ministry of Welfare and Social Services is responsible for carrying out the investigation of children up to the age of 14 and the special investigation of children and adults with intellectual-developmental disabilities in accordance with the Investigation and Testimony Procedures (Adaptation to Persons with Mental or Psychological Disability) Law-2005. Article 7 of the Investigation and Testimony Procedures (Adaptation to Persons with Mental or Psychological Disability) Law-2005 describes the role of special investigations:

A special investigator is authorised to be of assistance to a professional expert in the field of the witness’s or suspect’s disability, or to another person who is likely, in the opinion of the special investigator, to assist him in taking testimony.

Article 22A-7 of the Act lists the scope of AAC meant to make testimony accessible:

Being aided by means of AAC, including being aided by persons, computer devices, communication boards, pictures, symbols, letters or words.

Naturally, one might think this speaks of the witness’s or suspect’s communication board, but there are several obstacles to such, stemming from the characteristics of the personal communication board and the vocabulary it contains. Due to the great differences among the boards, the need arose to create a standard communication board that would serve as an alternative or supplement to a personal communication board and could be adjusted to reflect the nature of the investigation and the working procedures of the investigative and justice systems, plus allowing for the required flexibility for the witness or suspect, himself.

AAC tool kit

The AAC tool kit, developed based on the framework of this program was based, among other things, on the initial experience of Bizchut (http://bizchut.org.il/en/) and on the facilitation component of a professional as mentioned in the Law (in this case, a speech-language pathologist), the AAC kit is a tool that enables a person with disability to express him or herself without changing the legal proceedings itself. It is used by a professional from the disability field. Currently only the Ministry of Welfare and Social Services has committed to using the AAC kit within the framework of the special investigations. In the future, the AAC kit can
serve the witness or suspect with disability in all stages of the legal process, from the investigation, to the provision of testimony, to the cross-examination. Developed in partnership with the Attorney’s Office and the Police, we are hopeful that they too will adopt the tool for their use and under their responsibility.

**Target population.** Children, youth and adults with intellectual and developmental disabilities who are victims, perpetrators or witnesses to offenses, or children with difficulty expressing themselves through spoken language are entitled to investigation by special investigators according to the *Investigation and Testimony Procedures (Adaptation to Persons with Mental or Psychological Disability) Law-2005* will have access to the AAC kit.

**Goals.** The goals of the AAC tool kit are to develop AAC tools for investigations and to integrate their use by the Unit for the Investigation of Children and Special Investigations of the Ministry of Welfare and Social Services

- to reduce obstacles to the referral of children, youth and adults with disabilities to investigation by increasing awareness and changing attitudes; and
- to reduce obstacles to giving of testimony in court by children, youth and adults with disabilities by increasing awareness and changing attitudes.

**Implementation.** A half-time director was recruited to manage the program in the development stage. The program is supported by a steering committee that includes representatives from the Ministry of Welfare and Social Services, the Ministry of Justice – State Attorney’s Office, the Israel Police, ISAAC Israel, JDC Israel (a non-governmental organisation that concerns itself, among other things, with developing services for the Government of Israel) and the Haruv Institute (a non-governmental organisation that provides training and develops knowledge on the subject of child-abuse victims).

**General development.** The specific AAC tool kit must suit the requirements of the investigation and court testimony (which are somewhat different) and must have clear and uniform standards, as well as remaining flexible to additional adaptations according to the characteristics of the witness or suspect and his personal communication board, should one exist.

**Considerations in developing the AAC kit**

- **Vocabulary.** Creating a standard kit with as clear and simple symbols as possible, that will suit as many people as possible (utilisation of Picture Communication Symbols by Mayer-Johnson, which is accepted and widely used in AAC, not only in Israel, but around the world). The kit includes words and concepts that are generally lacking in regular and
personalised communication boards, but which were added by the special investigators as those likely to be useful over the course of investigations and testimonies (subjects connected with violence and abuse, sexuality, etc).

- **Admissibility in court.** The symbols must be devised so as not to create a bias in favour of either the witness or suspect. In other words, the witness or suspect will not choose the symbol due to aspects unconnected to their content. They must be uniform in shape and size (so that they won't be chosen according to size), and colour (black and white, so that they won't be chosen according to colour). The use of a communication board through computer software (we chose Grid 2) during the investigation and testimony will enable independent selection while surveying the options, without outside intervention, which in turn contributes to uniformity and the reduction of interventions that may lead to bias.

- **Ease of maintenance.** The boards or cards, when a computer is not used, are laminated to prevent moisture and are made of thick cardboard to prevent wrinkling. The computerised communication boards will make use of easily maintained computers and familiar, supportable software.

- **Ease of operation.** The boards or cards are sorted by category and are stored in a user-friendly box. The category and serial number of each card is written on the back to make it easier to find during investigation and to replace them afterwards.

- In the framework of initial development, a small number of kits were printed, which have provided some experience in special investigations. Through this experience, the need for continued development and adaptation in five main areas arose:

- **Vocabulary.** In developing the initial kit, much thought was devoted to developing the vocabulary. However, the need arose for additional words and structured options, such as making the symbol “no symbol available” a permanent symbol that always appears, without change, to relate to a situation where none of the symbols offered reflect the right answer.

- **Cultural adaptation.** Israel has a diverse culture from the point of view of nationalities, ethnicities and religions. The differences among the cultures are reflected in language, how certain symbols are likely to be understood by the witness or suspect, and how characters are drawn (certain dress, skin colour, etc). There is a need to consult with an expert from each of the major cultures to identify where additional adaptations are required.

- **Packaging enhancement.** The AAC kit includes several parts as described above: a book of symbols, symbol cards, letter boards of different types and a portable computer. Packaging must be devised to promote optimal durability, mobility (investigators and speech-language pathologists carry it from place to place), easy storage, conservation and retrieval of the parts. Planned packaging includes a tray that can be removed from the box and has slots for the sorted cards, a deep box that will hold the booklets and letter boards and a tray upon which the communications therapist can position the cards within defined frames (several boards will enable the placement of a changing number of cards), so that no particular card will stand out more than another, to reduce bias.
Accessibility of the AAC kit to additional populations. Making the AAC kit accessible to children and adults who, for example, are visually impaired, by relating to colour contrasts, the option of increasing the size of symbols, and the possibility of the software reading the selected word, to name just a few.

Computerisation. The use of computers will reduce potential of witness or suspect bias and assist the recognition of the device in court by virtue of the complete uniformity among the symbol layout. Computer use will also minimise the real or perception of interference by the assisting speech-language pathologist. (For example, the witness or suspect chooses the symbol and the computer states what symbol was chosen.) The computer will contain Grid 2 software enabling speech-language pathologists to update vocabulary definitions, the number of symbols that appear on each page, the size of the symbols and the gender of the computer’s voice prior to each investigation. The use of computers also enables the use of special access devices that may be needed for operation by the witnesses or suspects (eg, head switches, eye switches, adapted computer mice, etc). The kit does not include the assistive devices, but assistive devices used by and adapted to the needs of the witness or suspect can be interfaced with a standard computer.

As such, it was decided to develop an AAC kit that would include:

- Approximately 1,000 black and white Picture Communication Symbols (PCS) of uniform size, laminated and catalogued by category and serial number. The symbols are printed in two formats: (1) Some 20 content boards arranged by category, and (2) Individual cards.
- Different kinds of letter cards (print and script, with diacritical dots and signs representing vowel sounds between Hebrew consonant letters and in several additional languages (such as English and Russian).
- A user manual.
- A portable computer with a touch screen, containing all the symbols and boards described above and featuring Grid 2 software displaying and reading out the sound of the presented symbol or word.

The computerized device’s modularity enables individual adaptation to each user’s language and access needs.

Training for special investigators and speech-language pathologists

There are structured gaps between the work methods of the special investigators and the speech-language pathologists. The investigators are accustomed to asking open-ended, non-leading questions and to working alone vis-à-vis the witness or suspect. The therapist is accustomed to asking yes/no ‘closed’ questions, to providing assistance in phrasing the answers to questions, and to facilitating the client’s communication with others. Each of professional is likely to be unfamiliar with the work methods of the
other, and the two must learn to develop joint work methods and adapt their approaches to special investigations.

Through training, some altogether and some separately, the investigators will learn how to phrase questions in a manner that enables responding by means of a communication board and working with the speech-language pathologist. The speech-language pathologist will have to study the investigation brief that details the investigation’s development, reduce their level of involvement in the suspect’s or witness’s responses, familiarise themselves with the support services provided by law and know how to give testimony in court.

**Integrating New Special Investigation Framework within the Ministry of Welfare and Social Services**

In order for new process of Special Investigation to be implemented nationwide, the Ministry will need to integrate these new procedures by

- utilising new roles, tools, and procedures needed within the framework of special investigations;
- composing adapted investigation minutes;
- including the training model, which will be structured in the ongoing qualification training of special investigators;
- funding the employment of a speech-language pathologist as an investigation facilitator; and
- including the training model for the accompaniment of the municipal social workers in the training programs of the disability departments.

**Integrating the Special Investigation Framework within police and court services**

The Police and State Attorney’s Office in the Ministry of Justice are partners in the Special Investigation program, with the clear intention of advancing it within all of its agencies. However, it is still unclear just how this integration will happen. At the time of the writing of this chapter, several forums are being convened to systemically address how this is to take place.
Marketing and reducing obstacles – training professionals in the community

Work with professionals in the community will include ongoing training programs for them, as well as for law-enforcement and justice-system personnel (police, courts, etc), to respond to two needs:

• **Raising awareness** and diminishing obstacles to referrals to special investigations and taking testimony from persons with communication disabilities; producing informational and marketing materials (fliers, instructional films, information booklets, position papers, etc) and specific training programs, appropriate seminar days, staff meetings and a variety of forums in order to raise awareness and diminish obstacles to investigation and testimony.

• **Training and supporting social workers** who will accompany victims and family members throughout the proceedings, from referral to investigation, in giving testimony and when hearing the court's verdict. Often the social workers themselves are not familiar with legal proceedings and do not know how to support and assist the witness or the suspect, the victim's family and other agents involved in the proceedings. A training module will be developed and integrated in training programs for disability department employees.

Summary and next steps

Israeli law has established the right to an accessible investigation and testimony for persons with mental and intellectual disabilities in criminal proceedings. However, the law only responds to the needs of persons with mental and intellectual disabilities and persons with little or no functional speech – both victims and perpetrators – in criminal proceedings. In recent years, investigation has been further expanded in order to also respond to the needs of persons with physical and sensory disabilities and persons with mental and intellectual disabilities, who are involved in civil proceedings.

In 2012, Israel ratified the **United Nations Convention on the Rights of Persons with Disabilities** (2006), thereby agreeing to Article 13 – Access to Justice. In doing so, the State of Israel has increased its commitment to making court proceedings accessible to the entire population of persons with disabilities in all of its courts.

Among other things, the **Equal Rights for Persons with Disabilities Law** (enacted in Israel in 1998) includes a section dealing with physical access and the accessibility of services. The regulations for this section were only just signed and approved, and they also include regulations regarding accessibility and the police, the court and judicial committees (medical, National Insurance, diagnosis and psychiatric and rehabilitation
committees). These regulations expand the responsibilities of the Police and the Court, requiring them to provide accommodations in civil proceedings rather than only in criminal proceedings. Moreover, the regulations expand the responsibilities for all disability types and require the provision of accessible services to people with physical and sensory disabilities. These services include accompaniment, linguistic simplification, AAC (including sign language) and more.

Alongside these encouraging developments, there is still a significant gap between legislation in Israel and its application. The narrowing of this gap requires increasing exposure to the subject, collecting precise data, training agents in the various systems (the courts, police, prosecutors, defence attorneys, etc) and further development of knowledge and tools.

The main tasks before the State of Israel today in the field of accessibility in legal proceedings are as follows:

- Developing a methodical data collection system in the police, prosecutors, and public defence attorney’s agencies that will enable follow-up of the application of law and determining its efficiency.
- Developing a body of knowledge and a system that will provide a response to all suspects and witnesses (juveniles and adults) who are eligible for accommodations, with clear and easy referrals and operation (special investigations are now given as part of the Juvenile Investigations Unit).
- Specific legislative changes, beginning with the application of investigations by special investigators for persons with profound mental disabilities and persons with severe communication disabilities, who are unable to speak but able to comprehend.
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Overview

Crime against people with little or no functional speech: A view from the UK

Crime statistics for people with disabilities in England and Wales are available separately from the general population. In this chapter, we look at the different arrangements for the provision of AAC across the four countries of the United Kingdom: England, Wales, Scotland and Northern Ireland.

New laws have different special measures to assist vulnerable witnesses or victims of crime, for example, the Youth Justice and Criminal Evidence Act 1999 and the Coroners and Justice Act 2009. The UK Crown Prosecution Service and the Advocacy Training Council (responsible for overseeing the training standards for lawyers in England and Wales) have also provided guidance on how to interview and cross-examine children or other vulnerable witnesses. A key measure in the 1999 Act is the ability to appoint a Registered Intermediary, who can support vulnerable people through their contact with the police and legal professions. Early research has shown many benefits of having intermediaries and getting better access to justice for vulnerable people.

Abstract

Each of the four component countries of the UK – England, Wales, Scotland and Northern Ireland – has its own laws, budget priorities and provision arrangements for AAC equipment and support. Crime statistics for England and Wales are given for the general population and for people with disabilities, and AAC arrangements in the four components of the UK are outlined.
Various special measures to assist vulnerable witnesses or victims of crime in the UK were introduced by the *Youth Justice and Criminal Evidence Act 1999* and the *Coroners and Justice Act 2009*. Additionally the UK Crown Prosecution Service and the Advocacy Training Council (responsible for overseeing advocacy training standards for barristers in England and Wales) have provided guidance on interviewing and cross-examination of child and other vulnerable witnesses. A key special measure of the 1999 Act is the permitted appointment of a Registered Intermediary, whose role is to provide support to vulnerable people in their interaction with the police and legal professions. This intermediary scheme has been operable in England and Wales since 2008, but is yet to be established in Scotland or Northern Ireland. Analysis of early use of the service has shown many benefits of the scheme, not least of which is better access to justice for vulnerable people.

Anonymised details of a specific intermediary case are given, to show how the scheme operates. Recent refinements of the scheme and useful resources are discussed, and outstanding problems are highlighted.

**Introduction**

At the time of writing this chapter, there are major changes under way in the United Kingdom (UK) in terms of provision of equipment and support for people who use AAC and in access to support for them when they interact with the police and Courts.

Although the UK looks very small on a map it is made up of four countries – England, Scotland, Wales and Northern Ireland. Each of these countries has its own laws, budget priorities and provision arrangements for AAC equipment and support. There is, of course, considerable overlap in the arrangements in the four countries but all four are currently reviewing or making changes to their method of provision of AAC equipment and their supports they offer in access to the justice system.

**Scope of the problem in the UK**

Shown in Table 7.1 below are figures on the incidence of crime in the population as a whole in England and Wales in the year 2011 – the most recent to be published. It is divided into household crime and crime against the person. The second part of Table 7.1 indicates the percentage risk of being a victim of crime in England and Wales.
As shown in this table, household crime exceeds crimes against the person. Overall, the percentage of risk of being a victim of crime is a little more than 20% or 1 in 5.

**Crime statistics for people with disabilities**

In September 2012 the British Broadcasting Corporation (BBC) reported that there has been a rise in hate crimes against disabled people, based on police figures for England, Wales and Northern Ireland. More than 2 000 such offences were recorded in 2011, up a third on 2010 (British Broadcasting Corporation, 2012). Police said this was partly due to an increased willingness to report crimes. Overall, hate crimes linked to race, religion, sexual orientation and disability fell by 3 600 to 44 500. Hate-crime monitoring began in 2008 to raise awareness of the problem. An offence is considered a hate crime if the victim, or any other person, considers it was motivated by hostility based on a person’s race, religious belief, sexual orientation, disability or where the victim was perceived to be transgender. In 2011, a total of 44 519 hate crimes were recorded – compared with 48 127 in 2010 (http://www.bbc.co.uk/news/uk-19589602).

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**Table 7.1** Incidence of crime and percentage of risk in England and Wales based on British Crime Survey interviews, September 2011 (2012)

<table>
<thead>
<tr>
<th>Type of crime</th>
<th>Incidence (thousands)</th>
<th>Percentage risk</th>
</tr>
</thead>
<tbody>
<tr>
<td>Vandalism</td>
<td>2 090</td>
<td>6.0</td>
</tr>
<tr>
<td>Burglary</td>
<td>733</td>
<td>2.5</td>
</tr>
<tr>
<td>Vehicle-related theft</td>
<td>1 224</td>
<td>5.5</td>
</tr>
<tr>
<td>Bicycle theft</td>
<td>458</td>
<td>3.6</td>
</tr>
<tr>
<td>Other household theft</td>
<td>1 290</td>
<td>4.3</td>
</tr>
<tr>
<td>Household acquisitive crime</td>
<td>3 705</td>
<td>11.6</td>
</tr>
<tr>
<td>All household crime</td>
<td>5 795</td>
<td>16.3</td>
</tr>
<tr>
<td>Theft from the person</td>
<td>599</td>
<td>1.2</td>
</tr>
<tr>
<td>Other theft of personal property</td>
<td>1 104</td>
<td>2.1</td>
</tr>
<tr>
<td>All violence</td>
<td>2 199</td>
<td>3.1</td>
</tr>
<tr>
<td>with injury</td>
<td>1 162</td>
<td>1.7</td>
</tr>
<tr>
<td>without injury</td>
<td>1 037</td>
<td>1.5</td>
</tr>
<tr>
<td>Personal acquisitive crime</td>
<td>1 940</td>
<td>3.7</td>
</tr>
<tr>
<td>All personal crime</td>
<td>3 901</td>
<td>6.1</td>
</tr>
<tr>
<td>All British Crime Survey crime</td>
<td>9 696</td>
<td>21.6</td>
</tr>
</tbody>
</table>
Who is most at risk: Gender, age, race, type of disability

Figure 7.1 shows the monthly analysis of the Witness Intermediary Scheme results (Plotnikoff & Woolfson, 2007) classifying vulnerability (i.e. most at risk) by under 18, physical disability, learning difficulty and mental health. Some victims and witnesses may have more than one vulnerability. Sadly no details are kept of the number of people with little or no functional speech. However, people with learning disabilities, also known as intellectual disabilities, have the highest risk. Many of these individuals experience communication disabilities along with their learning disability.

Figure 7.1 Monthly Analysis of Requests to the Matching Service Classified by Witness Vulnerability

Supports available

*The Youth Justice and Criminal Evidence Act 1999* provides for a range of special measures to assist vulnerable and intimidated witnesses in giving their best evidence in court. Children under 18 years are automatically eligible for special measures unless they choose to opt out. The special measures available for use singly or in combination include screens around the witness box to shield the witness from seeing the defendant when giving evidence, evidence by live link (usually a video link to another room in the building, but has also been a video link to a hospital and to a care home), the removal of wigs and gowns worn by lawyers and judges in
Crown Court cases (in Crown Courts in England, Wales and Northern Ireland, judges and barristers normally wear long black gowns and white wigs), evidence in private (available in sexual offence and cases of intimidation only), video-recorded evidence-in-chief, aids to communication and the examination of a witness (or victim) through an Intermediary.

This legislation was recently amended to improve assistance to young witnesses by giving them more choice and greater flexibility in the way they give their evidence (subject to the agreement of the court) and making specific provision for the presence of an appropriate supporter for the witness in the live link room. Useful information and video clips are available to the general public on http://www.cps.gov.uk/victims_witnesses/index.html.

**Lack of empowerment and fear of telling**


The presumption of the special measures legislation is that child witnesses should give their evidence by video recorded statement (if one is taken) and by live link, where a supporter will usually accompany them. The aim is to minimise the number of times a child is questioned and to enable them to give evidence from outside the courtroom. Thus if the child’s statement is video recorded, they are questioned once at the investigation stage and once again during cross-examination. This approach, by minimising the number of times a child must repeat and therefore relive the experience, should reduce the fear generated by the telling and retelling the details of the incident.

In addition, *Achieving Best Evidence in Criminal Proceedings: Guidance on Interviewing Victims and Witnesses and Using Special Measures* (Ministry of Justice, 2011) sets out best practice for police officers conducting video-recorded interviews with vulnerable and intimidated witnesses, and others tasked with preparing and supporting such witnesses during the criminal justice process and questioning the witness in court. The guidance considers preparation and planning for interviews with children and advises that staff interviewing children should be suitably trained and that the interview should be conducted in a way that considers the needs and views of the witness in order to minimise their distress. Through this training they have received, interviewing police officers and other staff should be aware of how to minimise fear in the witnesses and empower them to give full and frank details of the incident.
**Police responses**

My personal experience of working with the police is that the standard of police interviewing of vulnerable witnesses has improved considerably with the start of the Witness Intermediary Scheme and is generally now of a high standard. (The intermediary scheme is explained in detail in a later section of this chapter – *Provision of support to vulnerable people in interaction with the police and legal professions*).

**Legal responses**

My personal experience of working with barristers in court was far more mixed than my experience when working with police (who had received training and were experienced in interviewing vulnerable witnesses). Some barristers followed recommendations to the letter, whereas others required constant reminders that their questions were too complex or that they were not giving the witness long enough time to answer, etc.

Some of these problems may be addressed by the document *Raising the Bar* (Advocacy Training Council, 2011) that can be retrieved by clicking on this link: http://advocacytrainingcouncil.org/images/word/raisingthebar.pdf. The Advocacy Training Council is the body responsible for overseeing standards of advocacy training for the Bar of England and Wales, reporting to the Council of the Inns of Court. The opening lines of the forward to this document set the tone:

*The manner in which the vulnerable are treated in our Court system is a mark of how civilized a society we are. The effective handling by advocates of vulnerable witnesses, victims and defendants is crucial for the good and fair administration of justice and requires skill, experience, education and understanding. This Report is the first major research project in England and Wales specifically directed to considering the training barristers need to develop the right skills and understanding in how to interview, examine and cross-examine those in our Court system – whether witness, victim or defendant – who are most vulnerable by reason particularly of their young age, learning difficulties, or state of mental health.*

The Advocacy Training Council set up a Working Group on vulnerable witness and defendant handling in June 2009 following a number of striking cases that emphasised the urgent need to ensure that all advocates, in whatever field, were equipped to handle and question vulnerable people in court, in a manner which was appropriate, sensitive and effective. This area is, rightly, a matter of growing public and professional concern.
Communication needs and accommodations provided

Special measures introduced in the *Youth Justice and Criminal Evidence Act 1999* and *Coroners and Justice Act 2009* are available to assist vulnerable and intimidated victims and witnesses to achieve their best evidence in the investigation and trial stages of a criminal case. Whenever possible, when witnesses have either been identified as vulnerable or intimidated or when they have expressed concerns about coming to court, court staff will make appropriate arrangements for the witness. This can include enabling the witness to enter and leave the court by a separate entrance, ensuring they are met by a member of Witness Service at a pre-arranged time and escorted around the court building by them (between the waiting room and courtroom/video link room/exit, etc) and providing separate secure waiting accommodation so they do not come into contact with the opposing party. Arrangements can also be made for a witness to attend a pretrial court visit, where a Witness Service volunteer will spend time with the witness and ensure they are shown the courtroom where the trial will take place to help them to feel more confident about attending court to give evidence. In addition to this, 80% of magistrates’ courts and all major Crown Court centres now have video-link facilities, which enable witnesses to give evidence from another room in the court building or from another building altogether.

Access to the justice system

Through the Special Measures introduced in the *Youth Justice & Criminal Evidence Act 1999* and *Coroners and Justice Act 2009*, courts can help to ensure that arrangements and reasonable adjustments are in place for child witnesses in advance of the trial to alleviate some of the stress of giving evidence. A pretrial visit to the court building can be provided and is an opportunity to identify and address any potential difficulties for the witness in respect of the courtroom layout, entering and leaving the building and the waiting area.

In addition to this, all members of the judiciary should consider the implications for achieving best evidence in any trial involving young witnesses. Where appropriate, they should use their powers to compensate for any resulting disadvantages without causing prejudice to the other parties. This can include measures such as ensuring there are frequent breaks when the witness is giving evidence, considering the order that the evidence is heard so that witnesses are not kept waiting any longer than necessary and being aware of their powers to stop inappropriate questioning.
Public policy and research on needs


The research findings suggest there is need for improvement in the identification of victim and witness needs at the charging stage by prosecutors, particularly in terms of identifying the need for special measures. The findings from the workshop revealed concerns among practitioners in respect of the manner in which some prosecutors communicate with vulnerable or intimidated witnesses. It was thought that more training and guidance might be required in this area to ensure that whenever prosecutors (and those who prosecute on behalf of the Crown Prosecution Service) speak to vulnerable or intimidated witnesses, whether in a special-measures meeting or in a court, the language used and approach taken are appropriate. Existing guidance (Crown Prosecution Service, 2006) sets out the standard by which prosecuting advocates should communicate with victims and witnesses in general, but there may be need for similar guidance for Crown Prosecution Service prosecutors.

AAC provision in the UK

England has a population of 53 million people. For years the provision of Communication Aids and supports was the subject of an English and Welsh postcode lottery whereby some Regional Health Authorities made provision for children but not adults, some for adults but not children, and some for neither, although paediatric provision was often funded by Education. Where Regional Health Authorities made provision for both, this was invariably inadequately funded to meet the identified need. Following a report by John Bercow (2008) [http://dera.ioe.ac.uk/8405/1/7771-dcsf-bercow.pdf](http://dera.ioe.ac.uk/8405/1/7771-dcsf-bercow.pdf) the subsequent appointment of a Communication Champion and an AAC advisor (Czar), funds were made available in April 2012 for a study of how the recommended Hub and Spoke approach to the provision of AAC equipment and services in England could be specified and managed. In this approach there are a small number, probably 10, centres (hubs) which are highly resourced in terms of equipment and specialist personnel who will assess the most complicated clients and fund equipment. The spokes will vary in expertise and staffing, but will carry out the day-to-day support of clients and assess some less complicated clients, depending on their level of expertise. This Hub and Spoke provision was scheduled to start in April 2013. Since some of the Regional Specialist Commissioners did not take up their appointments
until April 2013 it is likely to be a bumpy start to the new service structure, but at least Communication Aids now appear in the range of equipment and services to be provided throughout England.

Most of the people actively involved in the research, as well as developing the structures and services that underpin the Hub and Spoke approach to AAC services, are members of Communication Matters: ISAAC UK. In parallel to this work, members have been active in developing Quality Standards and Outcome Measures for the provision of AAC services as well as a Competencies Framework for those who work with people who use AAC.

Wales has a population of approximately three million of which three to five thousand are thought to be in need of AAC services. Wales has seven Health Boards and is considering a Hub and Spoke style of service with the hub in Cardiff, but the Welsh Assembly has as yet made no decisions.

Northern Ireland has a population of 1.7 million of whom approximately a third live in the Greater Belfast area; the rest are spread within very rural communities. All speech-language pathologists are employed by Health and Social Care Trusts and, therefore, work in Education or Care environments as well as the health service. Funding for the provision of communication aids and services to people who are referred to Belfast Communication Aids Centre has not been problematic since the re-opening of the centre after a two-year closure period. It is currently anticipated that the current style of provision will continue and that a Hub and Spoke style of service will not be practical in Northern Ireland.

Scotland has a population of 5.4 million people and fourteen health boards. In 2012, the report “A Right to Speak: Supporting Individuals who use Augmentative and Alternative Communication” (Scottish Government, 2012) was published. To support implementation of the recommendations within this report, the Scottish Government made 4 million pounds available over 3 years (April 2012 – March 2015). In essence, the aim of the funding is to develop sustainable AAC services for people throughout Scotland as well as to develop learning opportunities and resources to promote universal support for people who use AAC in Scotland.

Through the auspices of Communication Matters: ISAAC UK, people who are active in developing AAC services in all 4 countries within the UK do meet regularly to share ideas and resources.
Provision of support to vulnerable people in interaction with the police and legal professions

England was the first to make changes to its laws and hence to provide support to vulnerable people when they interact with the police and courts. The Witness Intermediary Scheme has been available in all 43 police forces and Crown Prosecution Service areas in England and Wales since September 2008. Wales is covered by the same legislation as England.

Scotland carried out a consultation process and an informative report (2008) is available at http://www.scotland.gov.uk/Resource/Doc/237778/0065308.pdf. To date, the proposals have not been implemented. There were only 32 responses to this consultation process available for analysis on the use of intermediaries. These were received from members of the wider justice system, including voluntary organisations, professional social workers, the legal profession, and various official professional organisations. Because the numbers were small, none could be regarded as representative of their interest group, with the exception of those who endorsed the Justice for Children’s response. The report found significant barriers to communication with child and adult vulnerable witnesses, and then went on to discuss the role and remit of intermediaries if made statutory and the possible status of intermediaries within the Scottish criminal justice system and the possible impact of the use of intermediaries on the court process.

From April 2013, the Department of Justice Northern Ireland is piloting the introduction of Northern Ireland Registered Intermediaries for vulnerable victims, witnesses and defendants.

The Youth Justice and Criminal Evidence Act (1999: England and Wales) allowed for a range of special measures to assist vulnerable or intimidated witnesses (regardless of age) to provide their best evidence. One of these special measures permitted the appointment of a Registered Intermediary, whose role is to act as an impartial conduit so that communication between police or the court and a witness may be as complete, coherent and accurate as possible.

Six Pathfinder projects in England piloted the use of intermediaries between February 2004 and June 2005. These were the subject of an independent evaluation that took place between March 2004 and March 2006 with the aim of establishing a model for national (England and Wales) implementation. The Pathfinder projects were considered successful, and nationwide (England and Wales) implementation of the use of Registered Intermediaries began in June 2007 and was completed by April 2008.
For the start of the pilot study, 60 people with skills in communicating with people with communication impairments were recruited and trained in the relevant aspects of the legal system. As of March 2013 there are now 107 Registered Intermediaries.

The special measures made available by *The Youth Justice and Criminal Evidence Act 1999* include giving evidence in court by a TV link or being screened from the defendant in court – video-recorded evidence-in-chief (main evidence); removal of wigs and gowns; clearing the public gallery; and aids to communication. The special measures are available to prosecution and defence witnesses but were not initially available to defendants. Registered Intermediaries are now available to defendants but the defence must meet costs for these services.

Section 29 of this Act made available the use of an Intermediary to the following categories of vulnerable witness: those under 17, and adults whose quality of evidence is likely to be affected by a mental disorder or impairment of intelligence and social functioning or who have a physical disorder or disability. Following assessment of the witness, the Intermediary’s role at investigative interview and trial is to enable complete, coherent and accurate communication to take place. Intermediaries are approved for use by the court and are allowed to explain questions to, and answers from, the witness, but not to change the substance or meaning of evidence. Their role may assist questioners to test the witness’s evidence but Intermediaries cannot provide an opinion on whether the witness is truthful although they give a prior assessment of the witness’s general ability to distinguish between truth and falsehood.

The Ministry of Justice now funds recruitment and training of intermediaries, and a section of the *National Policing Improvement Agency* maintains the register of intermediaries and responds to requests by appointing intermediaries with appropriate skills and availability. Although most intermediaries are speech-language pathologists, other disciplines include psychology, occupational therapy, health, social services and education. Few difficulties have been encountered in recruiting well-qualified candidates. At the start of the service there were some difficulties in responding to requests for the appointment of an intermediary and in identifying the specific skills required for the case. These issues were addressed in the evaluation, through further recruitment rounds, and in redesign of the skills information held on the register of intermediaries.

The training that the intermediaries receive is solely concerned with the English legal system and what their role within this system will be. Since the system has now been running long enough to learn from the practical experience of intermediaries in their work with the police and in court, the training has been progressively updated, with intermediaries
contributing to the courses, to better prepare future intermediaries for the
challenges they may face.

From analysis of early use of the service (Plotnikoff & Woolfson,
2007), adults accounted for 61% of appointments and children for 39%.
They were divided almost equally by gender. Information from criminal
justice personnel indicated that 128 (91%) were White British and 12 (9%)
were non-White. All but two of the 140 early appointments were for
prosecution witnesses; two were for witnesses for the defence. The grounds
of eligibility for use of an intermediary were as follows, with several
eligible under more than one category and those with communication
impairment could fall into the first three categories below:

- 57% had significant impairment of intelligence and social functioning
- 35% had a physical disability or disorder
- 14% were eligible on the basis of age alone (under 17 years of age)
- 9% suffered from a mental disorder

A total of 19% of witnesses lived in care homes or assisted living at the time
of the offence. Of 109 witnesses for whom offence information was
available, 54% witnessed sexual offences, 25% physical assaults, 19% theft
deception or burglary, and the remaining 2% abduction and an attempted
murder.

Feedback from witnesses and carers in trial cases was uniformly
enthusiastic. Carers felt that intermediaries not only facilitated
communication but also helped witnesses cope with the stress of giving
evidence. Appreciation of the role was also almost unanimous across the
judiciary and other criminal justice personnel in pathfinder cases.

A range of other benefits from the use of intermediaries was identified.

**Potential assistance in bringing offenders to justice.** Thirteen cases
(involving 15 witnesses for whom an intermediary was appointed) ended
in a conviction, five after trial. Of the 29 appointments where a suspect was
charged or cautioned, 15 (13 cases) ended in a conviction and two in a
cautions. Of the remaining appointments, nine (six cases) ended in an
acquittal. A further case was for a defendant where the prosecution was
dropped before trial, one case resulted in a hung jury and one case was
where an appointment for an intermediary was not followed through to
trial. It is not possible to say whether use of intermediaries affected case
outcomes.

Even where a case did not result in any further action after the police
interview, a number of witnesses indicated to me that they felt better
because someone in authority – the police – had listened to them. Some
witnesses also indicated that the interview had resulted in a sort of closure
of the incident for them.
Increasing access to justice. Participants estimated that, in their opinion, at least half of the 12 trial cases would not have reached trial without the involvement of the intermediary. Although the number of cases reaching court was low and the impact on case outcomes is unknown, this does provide an indication of the value criminal justice practitioners’ perceived intermediaries to have.

Potential cost savings. Participants felt that intermediaries facilitated more efficient use of police time by flagging at an early stage those cases where it was not feasible for the police to interview the witness or, following interview, by informing a decision not to prosecute. It was felt that the use of intermediaries also had the potential to save court time by keeping witnesses focused, reducing the time that might otherwise have been needed to question them.

Benefits at the investigative stage. Participants in the research reported that there were a number of benefits during investigations. These included identifying that the witness’s comprehension level was lower than it appeared; assisting in efficient planning of interviews; assisting witnesses with identification procedures; and helping inform the Crown Prosecution Service’s decisions about witness suggestibility, ability to cope with cross-examination and how the witness should give evidence. In addition, in one instance, a victim interview facilitated by an intermediary revealed that the suspect in custody was not the assailant, thus assisting with the delivery of justice in this case.

Benefits at trial. Participants also reported benefits during the trial stage. These included facilitating communication in a neutral way, through informative reports and appropriate interventions; and ensuring that witnesses understood everything said to them, including explanations and instructions.

Other reported potential uses. These included facilitating victim personal statements for witnesses or relatives of victims of murder and manslaughter; pretrial witness interviews by prosecutors; and non-criminal proceedings (Care Standards Tribunal hearings).

Addressing wider criminal-justice objectives. It was reported that the use of intermediaries had the potential to have an impact on mainstream criminal-justice objectives, particularly in relation to witness satisfaction, public confidence (provided scheme achievements are publicised) and delivery of the enhanced service set out in the Code of Practice for Victims of Crime (Criminal Justice System, 2005) http://www.justice.gov.uk/downloads/victims-and-witnesses/working-with-witnesses/victims-code.pdf.

A recent report was provided by Professor Penny Cooper (2012) of the City of London Law School, following the third annual survey of Ministry
of Justice Registered Intermediaries http://www.city.ac.uk/__data/assets/pdf_file/0008/126593/30-April-FINAL-Tell-Me-Whats-Happening-3.pdf. This report concluded that late applications for Special Measures and long waiting times before cases came to court were negatively impacting on vulnerable witnesses. It also highlighted that although Ground Rules Hearings were on the increase, some counsel were still not following these Ground Rules. Many more intermediaries were being requested for Defendants and there is a need for a statutory system for funding and supplying such support. This report also highlights the positive effects of using intermediaries in the Family Justice System for which there is currently no statutory provision.

Initially no intermediaries were full time in this role, although currently there are two or three people for whom this is their major form of work. Area support groups were established for intermediaries to meet and share experiences. The intermediaries run these support groups, themselves, and no financial support is available to run or attend these groups. Intermediaries find them so useful that most do regularly attend meetings, which occur between three and six times a year.

The general view amongst intermediaries is that no two cases are the same because of the nature of the cases, the people involved (witness, police officers, court personnel, barristers and judges), the quality of the information initially available before meeting the witness, and the experience of the police and judicial personnel in dealing with vulnerable clients, particularly those with little or no functional speech.

In a sexual-abuse case at one of London's most famous courts (the Old Bailey) involving three witnesses who were using speech generating devices (one also using letters and two using pictographic symbols) and one of the witnesses also using a communication chart (different symbol system), an intermediary with wide experience with these methods of communication, but with no knowledge of, or other involvement in, the case, was called to speak to the full court and jury before the witnesses gave evidence, to explain the difficulties these witnesses had in communication and demonstrate what was involved in using each of the communication systems.

Interesting intermediary case

A. The witness for whom I was the intermediary

The 25-year old witness was the claimant in a sexual abuse case. The offence had occurred on an ocean liner and had been reported to the police when the liner docked. She had cerebral palsy affecting all four limbs and her speech. She was dysarthric but did not use a communication aid. She had a computer, but said she only used it for going on Facebook and neither of the two word processors on the computer had
been initiated when I opened the computer. I provided a key guarded keyboard for this computer, and a flat lap tray to rest it on, because she hit several keys at a time – partly because nothing was at the ideal height for her to operate it. She also had epilepsy that had been well controlled until three days before the trial, when she had a significant seizure. She had attended a special school and had mild/moderate learning difficulties, and was easily distracted. Her spelling gave a good idea of the word she was trying to say but her spelling was not as in the dictionary. She was adamant that she wanted to do everything in the same way as her able-bodied sister – walk into court, stand throughout.

B. Unusual features

• The case arose and was dealt with by officers from the south coast of England, although the witness lived in North Wales.

• Before the officers travelled to North Wales to do an Achieving Best Evidence interview they did not realise how poor the speech of the witness was.

• The officers used the witness’s sister to help when they could not understand the witness, but the sister was also a witness who had already given her statement before she sat in on the Achieving Best Evidence for the claimant.

• The defence argued that the sister had led/coached the claimant in what to say in the Achieving Best Evidence.

• The judge recommended that the claimant did not see the DVD of her Achieving Best Evidence nor be read a transcript of the content before the trial, so the claimant gave her evidence from her memory of events (approximately 1 year ago).

• Although the Achieving Best Evidence had been done without a Registered Intermediary, two had subsequently become involved and had written full reports on the witness’s capabilities and special needs in order to give evidence at court. The first Registered Intermediary was no longer registered.

• When the case was to be heard they suddenly realised that no one had requested a Registered Intermediary for the trial, and the second Registered Intermediary was believed to be in China. I was asked on a Thursday to take the case and agreed.

• On the Friday afternoon I was phoned and told that the second Registered Intermediary was available, but the defence objected to this Registered Intermediary because he already knew the facts of the case (and the prosecution described him as too authoritarian for this case).

• It was agreed that I would be the Registered Intermediary and it was arranged that I would meet the claimant on Monday at the hotel where she was staying with her sister and brother-in-law.

• This meeting took place for an hour in the bar of the hotel, which by the end was full of noisy senior citizens – and together with the police officer, sister and brother-in-law.
Chapter 7

- The trial began on the Tuesday morning, with the claimant as the first witness.
- The defence asked me how much I knew about the case – which was only that it was of a sexual nature.
- Despite the fact that the use of the video suite was recommended by both intermediaries, the claimant was insistent that she should give her evidence in open court, but with screens around her so that she could not see the defendant.

C. My additional recommendations to the court

- I did not write a report for the court because they already had two, which agreed with each other, and I agreed with what was written in them.
- However, following a London Area Intermediaries meeting on the Monday evening before the trial where difficulties experienced by intermediaries were discussed, I went home and provided the following for the court in the morning:
  - The interview needs to be conducted in a relaxed, friendly and informal style.
  - Questions need to be directed clearly at the claimant and regularly prefixed with her name to ensure that she is concentrating.
  - Each question will need to be spoken clearly, calmly and at a relaxed pace.
  - Questions will need to be short and to the point. Long preambles to a question will result in her losing concentration and being unable to answer the question once asked.
  - Ensure that there is a maximum of three information-carrying words in any sentence eg, HE WENT to the SHOPS.
  - Particularly complex questions, the use of double negatives and other complex vocabulary, grammar and constructions, are likely to confuse the claimant and to result in her being unable to give her Best Evidence.
  - Avoid using intonation to imply a question.
  - Avoid the use of tag questions eg, ‘………….do you agree?’ or ‘…………….that’s what happened, isn’t it?’
  - Multi-part questions are likely to result in only one part being answered.
  - Do provide a context for questions – eg, ‘When you were in X, what happened’?
  - The claimant is likely to be suggestible to, or will acquiesce to, leading questions
  - She should not be expected to concentrate for longer than 30 minutes at a time. She will need frequent breaks.
D. Outcomes

- I met with the judge and two barristers before the case began, and they said they would try to follow my additional recommendations.
- The claimant gave her evidence.
  - Initially three witnesses had been planned for the first day; however, the claimant took the entire day.
  - She was very emotionally labile and burst into tears as soon as she entered court. There were several occasions when she collapsed in tears, particularly when talking about the sexual part of the incident.
  - Everyone was very patient and did not rush her or show any signs of annoyance.
  - Initially I was rushing from one side of the screen to the other to see her face to interpret what she was saying to the court and then to mop her up when she cried. Later, one of the ushers took on the support and mopping role and I did the interpretation and use of the keyboard to help with words that no one understood.
  - The two barristers and the usher joined in the interpretation but the usher was asked by the prosecution barrister not to attempt to repeat what the witness said, and by the judge not to give so much verbal support eg, ‘you are doing very well’.
  - Both barristers did exceedingly well at following my recommendations regarding questioning.
  - At one stage the prosecution barrister advised the defence barrister on rewording so that the only two-stage question asked was broken down.
  - The defence barrister made the point right at the beginning that she did need to test the witness and that might require some leading questions.
  - During one of the breaks the defence barrister said she had never in any previous case written down so many questions and also never crossed out so many questions as unsuitably worded.
  - Nevertheless, she managed to ask all her questions but in such a way that the claimant was not (or did not appear to be) intimidated and was able to answer as she recalled events.
  - The judge managed the movement of the witness and defendant efficiently, politely and respectfully.
  - Given the situation, I cannot suggest any improvements to the events of the day.
  - I hope that the claimant felt that she had had a fair opportunity to put her case. I felt that she did.

E. Conclusion

I congratulate everyone involved – the judge, both barristers and court officials, and particularly the defendant for hanging in despite her tears and a minor seizure.
Recent innovations

Intermediaries

From a promising initiative when it started in 2004, the intermediary service has grown and changed. While the core attributes have remained constant, the selection method for Registered Intermediaries has been refined, training changed and improved (based on feedback from both the intermediaries themselves and the judiciary), a new procedural guidance manual (Ministry of Justice, 2012) http://www.cps.gov.uk/publications/docs/RI_ProceduralGuidanceManual_2012.pdf has been produced to form a reference base for what may befall an intermediary, and regular, continuing professional development training involving all parties involved in interacting with intermediaries has been instituted.

Information

Considerable effort has been put into promoting and providing information about Registered Intermediaries to all sectors involved – police, barristers and judges, as well as to social workers, court officials and witness support workers. Many training and information days have been run for barristers’ chambers and detailed information, past judgements and guidance are now available on the Judges’ Intranet.


New special measures

The Ministry of Justice is currently considering implementation of the last of the special measures of The Youth Justice and Criminal Evidence Act 1999, which provides not only for video recording of evidence-in-chief of witnesses to be shown at trial, but additionally for prerecorded cross-examination and re-examination to be shown as evidence where deemed appropriate. This would mean that a child victim might never have to suffer the stress of waiting for and attending the trial.

With regard to implementation of this last special measure, the statement below was provided on behalf of the Justice Minister Helen Grant in January 2013:
We constantly look for new ways to support and protect vulnerable witnesses when appearing in court, including using new technology to change the way they give evidence. While no decision on potential pilots has been made, we are currently in discussion with a number of partner organisations.

In addition, as the result of disquiet over what was viewed as the overzealous cross-examination of witnesses and victims involved in rape cases, a small panel of specially trained judges has been established to conduct such cases and thus control the nature and style of cross-examination of these witnesses.

Useful resources

**Toolkits.** The people who carried out the original evaluation of the Registered Intermediary project (Plotnikoff & Woolfson, 2007) have remained interested and very committed to the service. They have lectured widely and have actively promoted the service. They have developed a series of free evidence-based toolkits on the treatment and questioning of vulnerable witnesses and defendants. These will be available on *The Advocates’ Gateway* ([www.theadvocatesgateway.org](http://www.theadvocatesgateway.org)), which was launched by the Attorney General in April 2013.

*The Advocate’s Gateway,* [http://blogs.city.ac.uk/advocategateway](http://blogs.city.ac.uk/advocategateway) is designed to give advocates easy access to practical guidance for working with witnesses and defendants with communication needs and to give trainers resources to use when teaching advocates about the handling of vulnerable witnesses and defendants. It is a central source of information, toolkits, legislation, and other guidance relating to this subject. Joyce Plotnikoff and Richard Woolfson have developed it with the assistance of Registered Intermediaries and in collaboration with Professor Penny Cooper, of Kingston University Law School, London (and in her previous post as Associate Dean, City Law School, City University London).

*The Advocate’s Gateway* is hosted by the Advocacy Training Council [http://www.advocacytrainingcouncil.org/index.php?option=com_content&view=article&id=98&catid=35] and managed by a committee including representatives of the Advocacy Training Council, Judicial College, Law Society of England and Wales, Solicitors Association of Higher Court Advocates, Criminal Bar Association, Crown Prosecution Service, Ministry of Justice and Joyce Plotnikoff and Richard Woolfson. Professor Penny Cooper chairs the committee. The toolkits were developed in response to a recommendation of the Advocacy Training Council (2011) report *Raising the Bar: The Handling of Vulnerable Witnesses, Victims and Defendants in Court* that ‘all advocates be issued with “toolkits” setting out common problems encountered when examining vulnerable witnesses and defendants, together with suggested solutions’.
Some judges are already requiring lawyers to read the relevant toolkit before questioning witnesses. The plan is to add further toolkits once reaction to the initial series has been considered.

**Making communication even better.** This web resource was developed as one way of supporting health professionals and other staff to make their communication as effective as possible when working with people with little or no functional speech. By inviting people with little or no functional speech to express their vision for an inclusive health service, this web resource ensures that their views have a central role in getting health-service staff to think about the impact on health interactions of communication difficulties [www.nes.scot.nhs/making-communication-even-better/](http://www.nes.scot.nhs/making-communication-even-better/).

**Symbol vocabulary to talk about abuse.** During the time that I worked as a Registered Intermediary I was faced by many people who wished or needed to talk about abuse that they had experienced and yet had trouble finding a method or the language to ‘say’ what they wanted. In a legal setting it is imperative that the witness is not led and words are not put into their mouths. Some witnesses had had some very disturbing experiences and their lives would have been much easier if they had already been exposed to the type of vocabulary that they might need in such circumstances. I therefore worked with a UK symbol company (Widgit), members of the legal profession, and numerous speech-language pathologists to agree on a range of symbols that would be helpful to be included in all communication books and devices and/or to have in a separate book to be called upon if and when necessary, but whose existence is known to all staff and residents/clients/school children. I grouped the symbol vocabulary into topic pages, which can be copied in any symbol system that is used by the client – assuming the symbols are available in that symbol system.

These symbol sets can be bought ready-made but they can be freely created by anyone willing to put in the work. This work is reported and the symbol grids displayed in the article by Larcher (2012). This vocabulary is available from Widgit as a package containing three formats: pdf (for printing directly), in files for use in Communicate in Print, and in files for use in the Grid 2 (so that the vocabulary can also be used on the iPad via Gridplayer) [www.widgit.com/talkaboutabuse](http://www.widgit.com/talkaboutabuse).

**Equality and Human Rights Commission.** This organisation works to create a fairer Britain and is active in promoting, amongst many other things, reasonable adjustments for disabled students in education [http://www.equalityhumanrights.com/advice-and-guidance/education-providers-schools-guidance/key-concepts/reasonable-adjustments/](http://www.equalityhumanrights.com/advice-and-guidance/education-providers-schools-guidance/key-concepts/reasonable-adjustments/).
Outstanding problems

Problems associated with an adversarial system of court proceedings

The adversarial legal system practised in the UK and elsewhere does not lend itself to vulnerable people giving their evidence in court in circumstances that do not intimidate or overwhelm them. Despite the presence of Registered Intermediaries, the aim of barristers’ cross-examination of a witness is to get that witness to adopt an alternative version of events or to discredit their evidence. A method of supporting the vulnerable person to give their best evidence, while allowing an opportunity to check that they are telling the truth, is a challenge yet to be met.

Time delays between events and court proceedings

Despite guidelines that cases involving vulnerable witnesses should be brought before the courts as soon as possible, particularly in cases involving abuse, long delays (on occasions more than a year) continue to occur. These delays increase stress and decrease the ability of the person to give their best evidence.

The Jimmy Savile effect

It has emerged, since the death of a famous television personality and charity fundraiser, that he had been abusing girls, boys, and women, some with disabilities and some without, for many years. It transpires that many of these abused people had reported these incidents to police and others in positions of authority. However, because the personality was so high profile, none of the reported incidents were believed or followed up. Most of the reports were not recorded and where they were, because they were in different police authorities, the reports were not correlated. Police investigations following the large number of disclosures following his death have resulted in investigations into other high-profile potential abusers. While the use of Registered Intermediaries has allowed many more cases to reach the courts (and encouraged many more people to plead guilty when they realise that the abused person has support to go through the legal process), it clearly remains a challenge to be believed and to initiate proceedings against high-profile individuals. Hopefully, following the public outcry resulting from the Jimmy Savile case, both the police and others in positions of authority will be more respectful of allegations and alert to possibly misplaced trust.
References


Overview

Testifying in Court in the USA

Individuals with disabilities, who have little or no functional speech, are doubly vulnerable when it comes to crime, abuse and neglect. They are often the voiceless and invisible members of society who have limited access to the court system.

This study had two aims:

• To describe court rulings in the United States that show what happens when people with little or no functional speech using AAC, give evidence in court.

• To describe the outcomes of court cases when victims with little or no functional speech give evidence.

A search of cases that involved people with little or no functional speech was undertaken. We then applied the results of the study to policies and practices for people with little or no functional speech, the professionals who support them and those who work in the court system.

Abstract

Crime against people with developmental and other disabilities is similar in scope to that of women, children and the elderly. However, their victimisation remains largely invisible and unaddressed. Individuals with disabilities who have little or no functional speech face a double vulnerability when it comes to crime, abuse and neglect, as they are too often the voiceless and invisible members of society and have limited access to our court system.
The purpose of this study was twofold: (1) describe court rulings in the United States that clarify the impact that having a little or no functional speech and relying on the use of AAC plays in testifying in court, and (2) describe the outcomes of court cases when someone with little or no functional speech testifies in court as a witness in their own defence when they have been a victim of a crime. In order to accomplish these dual purposes, a comprehensive search of federal and state cases involving people with little or no functional speech and their ability to successfully testify in court, a comprehensive search of federal and state cases involving people with little or no functional speech and their ability to testify in court was performed using LexisNexis. The results of this study are discussed in terms of policies and practices that affect people with little or no functional speech, themselves, professionals who support them, and the court system.

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Introduction

Crime against people with developmental and other disabilities is similar in scope to that of women, children and the elderly. However, their victimisation remains largely invisible and unaddressed (Bryen, Carey, & Frantz, 2005; Sobsey, 1994). Individuals with disabilities, who have little or no functional speech, face a double vulnerability when it comes to crime, abuse, and neglect, as they are often the voiceless and invisible members of society (Bryen & Frantz, 2004; Bryen, Carey, & Frantz, 2005; Davies, 2002). There are many reasons for this increased vulnerability. Firstly, there is the very real risk that they are unable to make themselves heard or unable to call for help (Hanass-Hancock, 2009). Secondly there is the misconception that these individuals are undeveloped, that they lack basic understanding (poor receptive language abilities), are unable to make choices and that they cannot communicate their intent, which seems attractive to potential perpetrators. Thirdly, they are seen as being unable to tell about their victimisation due to their communication difficulty (Howe, 2000). Fourthly, when they do tell they are less likely to be believed because they may not be understood due to their communication disability. In some instances this has led to caregivers believing that the process of telling and subsequent investigation will do more harm than good for the person with the disability (Hanass-Hancock, 2009). Finally, there is the perception that they are unable to testify in court on their own behalf due to competency issues and other criminal codes about hearsay, confrontation, and leading the witness (Borthwick & Crossley, 1998; Bryen, 2009). Ending the silence means understanding the court system so that all stakeholders know how to negotiate the court system, so that crime victims with little or no functional speech can successfully appear in court as witnesses in their own defence.
Method

In order to address one of the many problems associated with the high rates of crime, abuse, and neglect against individuals with little or no functional speech, the purpose of this study was twofold: (1) describe court rulings in the United States that clarify the impact that having little or no functional speech and relying on the use of AAC plays in testifying in court, and (2) describe the outcomes of these court cases when someone with little or no functional speech testifies in court as a witness in their own defence when they have been a victim of a crime. In order to accomplish these dual purposes, a comprehensive search of federal and state cases involving people with little or no functional speech and their ability to testify in court was performed, using LexisNexis. The results of this search were analysed to identify common issues regarding the ability to testify, common resolution of issues or tests applied to analyse the issues, and were analysed to determine if the discussion of the issues was a holding or merely dicta to warrant citation on a given issue. Cases to which these cases cited for principles were analysed in the above-mentioned method. All cases which were found to be relevant were saved, reread and sorted into which issues they were pertinent for, and a look for a common pattern or different patterns began.

A total of 13 cases were found spanning the years from 1972 through 2006. An additional court case was included since the first author had personal knowledge and participated in this court preliminary hearing. This resulted in a total of 14 cases involving a person with a disability, who alleged to be a victim of a crime and who took their course through the court system in the United States. All of these individuals had little or no functional speech. The 14 court cases were tried in the following states:

- Three in New York State
- Four in the Commonwealth of Pennsylvania
- One each in Arkansas, California, District of Columbia, New Jersey, North Carolina, Ohio and Texas.
Chapter 8

Table 8.1  Information about the victims in the 14 court cases (n=14)

<table>
<thead>
<tr>
<th>Demographic</th>
<th>Frequency</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gender of victims (female)</td>
<td>12</td>
<td>86%</td>
</tr>
<tr>
<td>Age status (adult)</td>
<td>13</td>
<td>93%</td>
</tr>
<tr>
<td>Primary medical diagnosis</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cerebral palsy</td>
<td>7</td>
<td>50%</td>
</tr>
<tr>
<td>Autism</td>
<td>1</td>
<td>7%</td>
</tr>
<tr>
<td>Intellectual disability</td>
<td>5</td>
<td>36%</td>
</tr>
<tr>
<td>Neurological disease</td>
<td>1</td>
<td>7%</td>
</tr>
<tr>
<td>Primary method of communication</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Speech-generating device</td>
<td>3</td>
<td>21%</td>
</tr>
<tr>
<td>Communication board</td>
<td>1</td>
<td>7%</td>
</tr>
<tr>
<td>Speech-to-speech transmittal</td>
<td>3</td>
<td>21%</td>
</tr>
<tr>
<td>Own speech</td>
<td>4</td>
<td>29%</td>
</tr>
<tr>
<td>Yes/No gestures</td>
<td>1</td>
<td>7%</td>
</tr>
<tr>
<td>Facilitated communication</td>
<td>1</td>
<td>7%</td>
</tr>
<tr>
<td>Charges</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sexual assault or rape</td>
<td>12</td>
<td>86%</td>
</tr>
<tr>
<td>Physical assault</td>
<td>1</td>
<td>7%</td>
</tr>
<tr>
<td>Witness not competent</td>
<td>1</td>
<td>7%</td>
</tr>
<tr>
<td>Gender of offender (male)</td>
<td>11</td>
<td>79%</td>
</tr>
</tbody>
</table>

Table 8.1 provides some basic information about these 14 cases with respect to age, gender, primary medical diagnosis, means of communication and nature of the crime. As shown in the table, the majority of the victims were female, adult, had been raped or sexually assaulted by a male. Primary medical diagnoses were mostly either cerebral palsy or mental retardation (now referred to as intellectual disabilities). While not shown in the table, several had a combined diagnosis of both mental retardation and cerebral palsy. All had little or no functional speech. A variety of communication approaches were used in court, including the use of a speech-generating device, a communication board, yes-no and gestures, speech-to-speech transmission, facilitated communication, and their own slow and difficult spoken language. All were competent to stand trial regardless of their disability and their means of communication.
Findings

Testimony by individuals with significant communicative difficulties due to cerebral palsy and other disabilities is a novel one in many jurisdictions. Although the issue may be novel, the legal issue, which is implicated in the jurisdiction, is not.

Presumed ability of people with little or no functional speech to testify

Competence to testify in court is different than competence in other areas of the law and society. In state proceedings and federal proceedings in which state law is applied, competence is determined according to state law. In federal courts, Federal Rule of Evidence 601 determines whether someone is competent to testify in a court proceeding. A person is presumed to be competent unless it is shown otherwise under federal law. The burden to show that a person is not competent to testify weighs on the party who wishes to exclude the testimony. Many state rules are similar to the Federal Rule of Competence; however, it is necessary to consult the applicable jurisdiction's rules on competence to see if the particular state rule differs.

The determination of competence in federal courts has four major concerns: the ability to communicate testimony in court; the ability to understand the implications of the oath and consequences of lying; whether the memory is sufficiently reliable on the topic of the testimony to communicate what was perceived; and that the testifying party has the first-hand experience of perceiving what they will testify to. All four factors must be met before a witness will be deemed to be competent to testify. The trial judge determines a witness's competence out of the presence of the jury and preferably before a trial begins.

The second factor, the ability to understand the implications of the oath and consequences of lying, is one that is often raised to challenge the competence of people with disabilities to testify. This factor must be shown to be met with people with little or no functional speech; however, the prominent challenge is on the ability of the witness to communicate to the court what the witness perceived. A few different courts have directly addressed this issue and found that individuals with cerebral palsy can be competent to testify by themselves, with a speech-to-speech transmitter or through facilitated communication. Unless a particular case takes place in the venue in which it is being litigated or a higher court to which you could appeal from your current venue, these cases would not have to be directly followed in your jurisdiction, but could be advisory to know what other states and jurisdictions have done. Although examination by the lawyer who calls forth the witness, called direct examination, is usually little to
non-leading questions – questions which do not lead the witness to a purported answer – many courts have allowed for the use of leading questions on direct examination for people with disabilities, including those individuals with cerebral palsy and other disabilities which make communication difficult.

In *People v Augustin*, the court of appeals of California held that a crime victim with cerebral palsy and a related speech disability was competent to testify. In this case, the defendant had struck the victim on multiple occasions and was charged with assault. At trial, the victim testified without the use of an interpreter. She was the chief witness for the prosecution and the defendant was convicted of assault. On appeal, the defendant challenged the victim’s competence to testify by saying that she was unable to communicate her testimony to the court.

The California evidence law on competence to testify stated, 

\[\text{'[a] person is disqualified to be a witness if he or she is: (1) Incapable of expressing himself or herself concerning the matter so as to be understood, either directly or through interpretation by one who can understand him [or her]...}^{2}\] To this allegation, the court held that the defendant had not properly raised the issue before, so that the appeal did not have to be decided on the grounds of whether or not she was competent to testify.\(^3\) The court continued, however, to state that the witness was competent to testify because she had not proved that the witness was incapable of expressing herself.\(^4\) The moving party has the burden of proving a witness’s incompetence according to California state precedent.\(^5\) In this case, the court stated that even though there were numerous occasions where the court reporter recorded the testimony as unintelligible, a witness who is merely difficult to understand is not inherently or automatically incompetent to testify under the state evidence rules of competence.\(^6\)

In *Lopez v Meluzio*, the federal court of the Eastern District of New York held that even though a possible witness was found incompetent under state law for the purposes of obtaining a guardian to manage his personal needs and/or property management, he was still competent to testify at a deposition under the Federal Rule of Evidence 601. The Federal Rule of Evidence 601 states that '[e]very person is competent to be a witness except as otherwise provided in these rules.'\(^8\) The competence of a witness depends upon ‘a capacity to observe, to remember, to communicate and to understand the nature of an oath and the duty it

2 *Id.*, at 447.
3 *Id.*, at 448.
6 *Id.*, at 448-49.
8 *Id.*, at 10.
imposes to tell the truth. 9 This court also held that the burden of proving incompetence rests on the objecting party. 10 The court also found that the competency of a witness to testify is ‘a threshold question of law which lies exclusively in the trial court’s discretion’. 11 The court in Lopez also relied upon the language from United States v Benn for its opinion.

In United States v Benn, 12 two men assaulted and attempted to rape an 18-year-old woman with mental retardation, who did not have significant communicative difficulties. The court held that there are cases where mental retardation may be so severe and where the testimony may be so prejudicial that the testimony should be excluded by the judge, but if there are sufficient indications of a witness’s capacity and of the reliability of the witness’s testimony, it should be heard and assessed by a jury. 13 The court in Lopez applied this test, even though a different disability affecting the testimonial competency of the witness, in determining that the possible witness was competent to be deposed.

A witness must be capable of expressing him or herself in order to be found competent. Aside from the cases mentioned above, there are other cases in which a witness with cerebral palsy and little or no functional speech was found to be competent and allowed to testify. 14 Even if a witness is more difficult to understand than another witness without a disability, the witness is not incompetent to testify unless the other party shows that the method of communication lacks reliability.

**Use of interpreters and technology to assist in testimony**

In People v Augustin, the court also addressed the use of an interpreter or speech-to-speech transmittal to testify. Under California rule of evidence 701, ‘a person who cannot express himself or herself directly and who would otherwise be disqualified, may be competent to testify if the person is capable of communicating through interpretation by one who can understand him [or her]’. 15 The defendant contended that the court was required to appoint an interpreter under state law, but the court rejected this in saying that even though the statute was broad enough to allow for an interpreter for people with physical disabilities, since the witness was

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9 Id., at 7-8 (citing United States v. Bloome, 773 F. Supp. 545, 546 (E.D.N.Y. 1991)).
10 Id., at 12.
11 Ibid (citing United States v Gerry, 515 F.2d 130 (2d Cir. 1975)).
12 People v Benn, 476 F.2d 1127 (D.C. Cir. 1973).
13 Id., at 1130.
found to be able to communicate effectively enough to be competent a witness, no interpreter was required. Further, when a rule is permissive regarding the appointment of an interpreter, it is at the discretion of the court whether or not an interpreter is needed. The court pointed out that the defence counsel understood the witness enough to make evidentiary objections to her testimony and that the court reporter was able to record all of what was said. The court suggested that the appointment of a speech-language pathologist or medical professional, but not a member of the witness’s family, as an interpreter may have been appropriate if the witness was not able to testify.

In *People v Miller*, a speech-language pathologist was a qualified interpreter for a 52-year-old victim with severe cerebral palsy when the interpreter (or in this case a speech-to-speech transmitter) was able to give a word-for-word repetition of the witness’s responses. The court stated the following in dicta:

> Just because a procedure is unusual does not mean that it should not take place in a courtroom. The courts today should make every effort to open their doors to all who seek to come through them. We can no longer take the attitude that if it has not been done in the past, it should not be done in the future. The age-old stereotyping of people with physical or mental disabilities or a combination of both should be dispensed with as soon as possible. The courts have come out of the dark ages with respect to the treatment of the deaf and hearing impaired, and we should likewise do so with respect to other physical and mental disabilities. If the power to appoint an interpreter in cases of an unusual disability does not exist directly by statute, then it does by statutory interpretation.

The New York state court found it was within the court’s discretion under the section 387 of the Judiciary Law of the state of New York, which was typically only employed to appoint translational interpreters, extended to those with disabilities.

The qualifications of the interpreter, however, must also be inquired into to determine if they are qualified to act as an interpreter. The interpreter must be able to give the court word-for-word repetition of the witness’s responses and not merely provide a summary of the answers because the witness must be competent to give answers and relied upon for those answers. In this way, like in *People v Guzman*, where an American Sign Language interpreter testified she was able to understand the witness

16 Ibid.
17 Id., at 451
18 Ibid.
19 Ibid.
20 *People v Miller*, 530 N.Y.S.2d 490 (City Ct. Rochester Cty. 1988).
21 Id., at 492.
22 Id., at 491 (internal citations omitted).
23 Id., at 492 (citing *People v. Johnny P.*, 445 N.Y.S.2d 1007, at 1010 (N.Y. Crim. Ct. 1981)).
24 Id., at 492.
25 Ibid.
and communicate word-for-word what was said, they were not truly acting as an interpreter, merely as a tool of transmittal. The court held that the speech-language pathologist was a qualified interpreter because she held a bachelor’s degree in Communicative Disorders and Sciences, had extensively worked both in the academic and in the workplace with people with communicative difficulties, and testified that she was able to understand the witness and would communicate word-for-word what was said.

In People v Webb, a witness testified in front of a grand jury using facilitated communication. The court held that even though the process did not involve interpretation because there was no involvement of interpretation by a third party, the case law dealing with interpreters was helpful. Since the communication aid in this case relied upon scientific conclusion, the court held a hearing in limine (a motion before the trial begins) was appropriate to determine if the technology met the Frye test. At this hearing, the party looking to support the witness’s testimony would have the burden of showing the technology met the requirements of Frye. The purpose of this in limine hearing is not to determine the competence or credibility of the witness. The court held that since the technology did not appear to interpret or change the witness’s testimony, rather to transmit it word-for-word, and the facilitator swore to communicate his answers without adding to, subtracting from, or changing them, the facilitated communication and use of a facilitator was appropriate.

In Commonwealth v Tavares, the Superior Court of Pennsylvania held that a witness with cerebral palsy could use a speak-and-spell communication device in court in order to testify. Under Pennsylvania law, ‘a court must look to three factors to determine the competency of a witness: (1) capacity to communicate, including an ability to understand questions and to frame and express intelligent answers; (2) mental capacity to observe and remember the occurrence; and (3) a consciousness of the duty to speak the truth.’ The court held that testifying in this manner was

26 Ibid.
27 Id., at 492-93.
29 Id., at 568-69.
30 The Frye test has been since replaced by the Federal Rules of Evidence per Daubert v Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993) for determining the admissibility of expert testimony. This test focuses on whether the source of the testimony was based on knowledge scientific in nature, whether the testimony assists the trier of fact in understanding the evidence, and whether the testimony is sufficiently based on reliable reasoning or methodology. The effects of this ruling on the scope and purpose of the in limine hearing to determine the appropriateness of the particular assistive technology used to testify in court have not been addressed by any court that could be located.
31 Id., at 569.
32 The court distinguishes this case from two other cases because the facilitated statements were out-of-court statements which did not comport with the Frye test discussed above.
34 Id., at 204.
appropriate because even though his ability to communicate may be slower than that of the average person, it does not reflect his inability to understand the questions and frame answers.³⁵

In *In re. Luz P.*³⁶ a child with autism and mental retardation used facilitated communication by spelling out words on a keyboard while a facilitator supported her hand to alert school officials to being sexually abused by parents. The court, citing *Miller*, held that the proper question in these cases is whether interpreter or facilitator can effectively communicate with the witness and reliably convey the witness’s answers to the court.³⁷ The court held that this question could be answered through empirical proof.³⁸ In this case, the approved method was asking questions without the presence of the facilitator and having the facilitator return to facilitate the answer.³⁹ The court proceeded to a *Frye* test analysis to determine if this facilitated communication method was appropriate.

Facilitated communication or interpreters are often used and found statutorily for people who are deaf or for individuals who do not speak English.⁴⁰ These statutes should be interpreted to encompass the facilitation of testimony by otherwise competent to testify individuals with physical disabilities. The qualification of an in-person communication facilitator to assist in testimony is necessary in order to ensure that the facilitator can understand the witness and relay the words of the witness exactly without adding, removing, or changing any words. The use of technology to facilitate in communication may require application of the *Frye* or *Daubert* tests.

**Use of leading questions**

In *People v Augustin*, the court stated that the use of leading questions permitted in ‘special circumstances’ required by the ‘interests of justice’ authorised by state law can apply to individuals with physical disabilities.⁴¹ The court held this because it was the most efficient and least biased way of eliciting the testimony of the witness with the physical disability.⁴²

In *Jordan v Hurley*,⁴³ the Court of Appeals applying state law held that the use of leading questions with a crime victim with Down syndrome

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⁴¹ *People v Augustin*, at 449.
⁴³ *Jordan v Hurley*, 397 F.3d 360 (6th Cir. 2005).
functioning at a very basic level was proper in spite of a state rule which forbid the use of leading questions except to develop testimony. The court pointed out that precedent held that the state of Ohio had permitted leading questions where the victim in tender years and since the victim functioned at a very basic level, leading questions were permitted. The court also pointed out that this is also the case in federal court.

In Commonwealth v Tavares, the court held that the use of leading questions with a victim who experienced difficulty in answering questions, used a speak-and-spell [a communication device] was proper under state law.

In summary, the first purpose of this study was achieved. Based on the above analysis of federal and state law, people with little or no functional speech are presumed competent to testify in court, at depositions, and in other court proceedings so long as they have the ability to communicate what they saw, that they perceived what they will testify to, whether they have the memory needed to recall and communicate what happened, and that they understand the implications of the oath. Just because they have difficulties communicating their testimony or do so slower than others doesn't exclude them from serving as a witness. They may so testify if the court finds that they can communicate effectively, although not without difficulty, so as that the trier of facts may understand their testimony. It is at the court's discretion to appoint an interpreter or speech-to-speech transmitter or use facilitated communication so as to allow the witness to testify. The courts are able to appoint an interpreter broadly construing the court's powers to allow individuals with communicative disabilities to participate in court proceedings. If the interpreter is a person, they must be properly examined to see if they are qualified to understand what the witness is saying and understand their duty to communicate the witness's words exactly without alteration, summation or interpretation. If the facilitated communication is via communication technology, there may be a Frye or Daubert consideration in order to determine that the scientific technology employed is accurate and will communicate the witness's testimony accurately. Use of leading questions is proper in many jurisdictions when examining a person with a communicative difficulty on direct examination.

44 Ibid.
45 Commonwealth v Tavares, at 204.
46 Ibid (citing United States v Ajmal, 67 F.3d 12, 15-16 (2d Cir. 1995); United States v Castro-Romero, 964 F.2d 942, 943-44 (9th Cir. 1992); United States v Grey Bear, 883 F.2d 1382, 1393 (8th Cir. 1989); United States v Goodlow, 105 F.3d 1203, 1207-08 (8th Cir. 1997).
47 Commonwealth v Tavares, at 204.
Outcomes of actual court cases

In order to address the second purpose of this study, the 14 cases were analysed (13 published cases found through NexisLexis and 1 personal experience). The criminal charges brought before the court were sexual assault or rape (13) and physical assault (1). The defendants were all known to the crime victim, all of whom had disabilities with concomitant communication difficulties. In each all of the cases, the defendant was found guilty. All but one of the convictions was appealed to a higher court based on one or more of the following legal standards: competence of the witness to stand trial, confrontation, hearsay, leading the witness, and ineffective assistance from council.

Competence to testify

Eight of the 14 cases were challenged, based on the notion that ‘lack of understandable spoken language’ rendered the person incompetent to be a witness on their own account. However, all of the rulings noted that the inability to speak does not render a person incompetent. To hold otherwise would render a segment of society incompetent more because they cannot communicate as effectively and in the same manner as those who can communicate through oral, written or signed language. As such, these cases set a legal precedent that if competence is challenged, a victim of a crime who does not speak can testify in court as long as he or she demonstrates ‘(1) the ability to understand the obligations of an oath; (2) an understanding of the consequence of false swearing; (3) the ability to receive and retain accurate impressions; and (4) the extent that the capacity exists to transmit to the fact finder a reasonable statement of what was seen, felt, or heard (Rules of Evid., Rule 601).’

Confrontation

Seven of the 14 cases used the confrontation clause as a challenge. The 6th Amendment of the US Constitution states that ‘In all criminal prosecutions, the accused shall enjoy the right to be confronted with the witnesses against him.’ It was argued that use of an interpreter, a speech-to-speech transmitter, or unintelligible/hard to understand speech violated the defendant’s due process rights in that they could not effectively cross-examine the witness. None of these challenges were upheld on appeal. The courts ruled that (1) the court has an obligation to provide an interpreter if necessary; (2) the qualified interpreter or speech-to-speech transmitter must give word for word repetition of the witnesses’ responses; and (3) cross-examination was invited. These 7 cases support the use of interpreters or speech-to-speech transmitters when the witness demonstrates need for one.
Leading the witness

Leading the witness is defined as asking a question during a trial or deposition that allegedly puts words in the mouth of the witness or suggests the answer. Leading questions may often be answerable with a yes or no. In five of the 14 cases, leading the witness was used by the defence attorney in challenging the lower court's ruling. The defence in each case argued that the lawyer used yes/no questions when questioning the witness. However, the higher courts have ruled that where a witness is experiencing difficulty in answering questions, as in the case of a victim who has little or no functional speech, it is not an abuse of the discretion of the court to permit leading questions. Leading questions can also be used when it takes a long time to spell out a long sentence, noting that the court has the discretion to permit counsel to use leading questions requiring only short answers in the interest of time and to avoid confusion.

In the past, it has been the belief of many that a person with little or no functional speech who must rely on answering yes/no questions posed by counsel is not likely to be a reliable witness in court. These five cases do not support this widely held erroneous belief.

Hearsay

Another challenge that was made by defence attorneys in three of these cases was that the preprogrammed words and phrases of the speech-generating devices used by the witness were hearsay and should be excluded. Additional challenges based on hearsay were that cross-examination did not occur and that the witness's statements were hearsay because the defendant was not given the opportunity of confrontation. Hearsay is the basic rule that testimony or documents that quote persons not in court are not admissible. Use of a computer — in these cases a computer designed with speech output — did not constitute hearsay since the victim chose from thousands of words or phrases programmed into the computer. In addition, cross-examination of the witness was invited.

Ineffective counsel

Ineffective assistance of counsel is defined as occurring when a client's lawyer does not devote full effort to the client, oftentimes due to a conflict of interest. Ineffective assistance of counsel denies a client of his 6th Amendment right to a lawyer, as well as denying the defendant's 14th Amendment right to due process. In one of these cases, the defence used ineffective assistance of counsel as a challenge arguing that trial counsel failed to file post-trial motions. In another case, it was argued that counsel failed to raise the question of competence of the witness before the trial.
The judges in both cases ruled against these challenges claiming that the charges failed to meet the two required elements of ineffective assistance of counsel. These two required elements are that (1) counsel's representation of the defendant was so seriously deficient that counsel was not acting as a counsel and (2) counsel's performance, or lack thereof, prejudiced the defence so as to deprive the defendant of a fair trial.

Discussion and conclusions

The findings of this analysis provide important lessons to victims of crime who have little or no functional speech, their allies, professionals who serve them, and the court system. Lessons relevant to each of these stakeholders are discussed below.

Based on the findings of these cases, courts do permit individuals with little or no functional speech to testify in court if at all possible. The most important and possibly determinative step for making sure that an individual with little or no functional speech is able to testify is to alert the court of the likelihood of the person to testify and the reason it could be challenged in court as soon as possible. The capability of an individual to testify in court is a matter of law at the discretion of the court. If it were to be appealed on the basis that the testimony shouldn't have been allowed, the appellate court can only overturn the lower court if the judge abused his or her discretion — a very high legal standard to overcome where even if the appellate court judge thinks the lower court judge was wrong, he cannot overturn the ruling unless allowing the person to testify was also unreasonable. This is why it is extremely important to raise the issue with the court in a manner appropriate to the jurisdiction as soon as it is likely that the individual will testify. The court will likely research the law and precedent on this issue as well as any scholarly writing on the issue such as this article. Courts have large discretion in crafting proper remedies so as to provide for a trial that is fair and just, and this includes setting the methods and manner of testimony.

The next step in ensuring that a person with little or no functional speech is able to testify in court and his or her testimony is not to be excluded is to sufficiently prepare the witness. If the individual is using assistive technology, the lawyer representing the individual should go over all the questions, which the individual will be asked and the individual should respond as they would in court. This will ensure that all words needed to testify are able to be given in court. If there are words that are missing, the lawyer should work in conjunction with the individual or their guardians to ensure that the individual will be able to use those words in court. If the individual is using an interpreter or a speech-to-speech transmitter in court, such as a qualified speech-language pathologist the lawyer must make clear to the therapist that they must provide a word-for-word recitation of exactly what the individual says. They are not allowed
to reformat, rearrange, or supplement it, even if they believe that is what the individual means or the person's answer seems incomplete. The judge and the jury will be evaluating the credibility of the witness and their ability to respond, not the ability of an interpreter to respond. If the interpreter does not exactly repeat what is being said, the judge may strike the testimony.

For an individual who is using facilitated communication in court, the judge should hold a session outside the presence of the jury in which the ability of the testifying individual to understand and respond to the questions, asked out of the presence of the facilitator, and then the answers are facilitated when the facilitator returns is tested.

For individuals with little or no functional speech who will testify, preparation for testifying at trial is the most important aspect. The lawyer should review all questions that the individual should expect from their own lawyer as well as opposing counsel. The individual should have a full understanding of the proceedings of the court and what is expected of them. The family of the individual can assist to make sure that all questions of their own or the individual are answered by the lawyer.

Competence to testify differs by jurisdiction and not all jurisdictions have addressed the competence to testify of individuals with little or no functional speech. The jurisdictions, which have addressed the issue, have looked to other non-binding jurisdictions to address each case. Individuals with little or no functional speech are presumed competent to testify in court, at depositions, and in other court proceedings so long as they have the ability to communicate what they saw, that they perceived what they will testify to, whether they have the memory needed to recall and communicate what happened, and that they understand the implications of the oath. Just because they have difficulties communicating their testimony or do so slower than others with or without assistive technology doesn't exclude them from serving as a witness. They may so testify if the court finds that they can communicate effectively, although not without difficulty, so long as the trier of facts may understand their testimony. It is at the court's discretion to appoint an interpreter or use facilitated communication so as to allow the witness to testify. The courts are able to appoint an interpreter broadly construing the court's powers to allow individuals with little or no functional speech to participate in court proceedings. If the interpreter is a person, they must be properly examined to see if they are qualified to understand what the witness is saying and understand their duty to communicate the witness's words exactly without alteration or interpretation. If the facilitated communication is via a communication device, there may be a Frye or Daubert consideration in order to determine that the scientific technology employed is accurate and will communicate the witness's testimony accurately. Use of leading questions is proper in many jurisdictions when examining a person with a communicative difficulty on direct examination.
In summary, based on the 14 legal cases analysed for this article and the outcomes of their trials, victims with disabilities who have little or no functional speech have the right to and the support of legal precedents, to testify in court proceedings. While it is impossible to prevent being a victim of a crime, facing the alleged offender in court as a witness is one way of reducing the risk of continuing to be a victim of crime. Only then will people with little or no functional speech begin to end the silence as victims of crime.
References


Overview

Using the lessons we have learned to inform the future

In the final chapter, we discuss what we have learned about the violence experienced by people with little or no functional speech from across the world. These lessons show how new ways of working can change services and support systems.

Six specific recommendations are given, each referring to the case studies discussed in the book:

• Listening to and believing communication attempts to disclose violence, is important.
• Collaboration between various disciplines and service providers, for example professionals from education, social work, health and the justice system, is valuable.
• Using intermediaries in the justice system is very important.
• The role of education in prevention and intervention practices is non-negotiable.
• There is a worldwide need to address violence against people with little or no functional speech, especially the violence against children.
• The use of the United Nations Convention on the Rights of Persons with Disabilities can be used as an instrument of change.

We believe that these recommendations will help everywhere to reduce the violence against people with little or no functional speech.
Abstracts in English, Hebrew and Afrikaans

In this final chapter the lessons learned from across the globe regarding violence against individuals with little or no functional speech are given. These lessons are then used to provide examples of emerging practices that can lead the way to advocate for services and supports needed to change the current status quo. Six specific recommendations are given, each with a reference to the case studies provided in the different chapters. First, the importance of listening to and believing the attempt of the individual with little or no functional speech at disclosing the violence they had been exposed to or are experiencing, is highlighted. Secondly, the strategic value of collaboration amongst the various disciplines and service providers, including education, social work, health and the justice system is discussed. Thirdly, the critical value of the intermediary in the legal justice system is shown. Fourthly, the non-negotiable role of education in prevention and intervention practices is unpacked. Fifthly, the global need for addressing violence, especially violence against children is raised. Finally, in the sixth position, the use of the United Nations Convention on the Rights of Persons with Disabilities as an instrument of change is discussed. These recommendations, which are the result of insights from professionals from all over the world, might provide some direction in the future for reducing violence against individuals with little or no functional speech.
Using lessons learned to inform the future

Introduction

The purpose and uniqueness of this book is its focus on people with disabilities who have little or no functional speech. Although they are part of the larger disability community and linguistic minority communities, they have unique needs that are only recently being recognised. For example, in most countries, the linguistic needs of the deaf have been acknowledged in access to services, including the courts. It is rare that sign language is not provided via recognised and, in most cases, registered sign-language interpreter services when deaf individuals want to disclose being hurt, report to the police, appear in court, or request medical care. Furthermore, someone who does not speak the official language of the country may be entitled to a language interpreter. So they have linguistic access to legal justice and medical services. However, this is not yet the case for people with little or no functional speech. This book provides...
examples of emerging practices that can lead the way to advocate for these needed services.

**Cultural diversity**

In spite of cultural diversity in nations throughout the world and the countries represented in this book (ie different ethnicities, different languages, different cultures and different legal justice systems), the issue of violence against people with disabilities, especially those with little or no functional speech, appears to be a universal phenomenon. In every chapter we have shown that people with significant communication disabilities are at higher risk than their nondisabled peers. This applies to both children and adults with communication disabilities. Therefore, there continues to be unmet needs in prevention and education, identification and reporting, intervention, counselling and recovery, and access to the justice system.

**More than sexual violence**

In some of the chapters in this book, the full range of active and passive forms of violence is described, that is to say, physical, sexual, verbal and even financial violence. This is in line with the World Health Organization report of 2012 (http://www.who.int/gho/publications/world_health_statistics/2012/en/), which shows that violence is not limited to that of a sexual nature. However, many chapters identified sexual violence as the most frequent and repetitive form of violence. This may give the false impression that sexual abuse is the only form of violence experienced by individuals with little or no functional speech. We must continue to focus on ways to address the high risk of sexual violence, but not at the exclusion of other forms of violence against those with significant communication disabilities. For example, depriving children or adults of their communication devices or wheelchairs, is denying them their human rights to dignity and freedom. However, this type of frequent abuse remains largely invisible, yet equally harmful as other types of abuse and violence. How can we use existing civil and human-rights treaties and laws to address this type of daily abuse?

Many of the chapters have noted that increased vulnerability to violence and abuse is influenced by a complex intersection of demographic factors, such as disability, age, gender and poverty. Each of these factors increases one’s vulnerability. When there are double and/or triple interacting factors, there is likely to be double and/or triple jeopardy of being a victim of violence.
Basic human rights

Today, there is a consensus that individuals with disabilities are entitled to basic human rights, as expressed in the United Nations Convention on the Rights of Persons with Disabilities (2006). This entitlement is acknowledged in all of the chapters. Even though each country may have its own civil rights about violence against people with disabilities, the human rights expressed in the United Nations Convention on the Rights of Persons with Disabilities (2006) has the potential to inform and guide future policy and practice. These basic human rights were described in the first chapter when the United Nations treaties on human rights were discussed.

However, regardless of the potential power that these international human-rights treaties and national civil-rights laws have for change, there must be a change in how the public views people with disabilities, including those with little or no functional speech. Without these normative and attitudinal changes, they will continue to be excluded from existing human and civil rights. This places an additional responsibility on professionals and people with disabilities, themselves, to become active and vocal agents of social change. The United Nations Convention on the Rights of Persons with Disabilities (2006) can provide an important human-rights framework for this expanding role.

Technological revolution across the globe

The world is undergoing a dramatic information and communication revolution, owing to technological advancements that can make it possible to share information and to speak out. On the one hand, technology has made it easier for perpetrators to develop and disseminate childhood pornography and for cyber bullying to occur. As one example: A school principal, a teacher, a retired teacher, a dermatologist, and a lawyer were recently arrested in South Africa by Interpol. These men allegedly form part of a huge child pornographic ring with Canadian links (Van der Merwe, 2013).

On the other hand, technological aids – both generic and specialised – such as, speech-generating devices, social media, smart phones, tablets and computers can improve 'being heard'. Information and communication technologies must be included in all the phases of addressing violence against children and adults with little or no functional speech: education, prevention, detection, intervention and rehabilitation/recovery. In many of the chapters in this book, the use of emerging technologies has been described with special reference to improving access to the justice systems, regardless of the nature of the legal justice system in a country. However, in some countries (eg South Africa) there is not an effective link between the various systems, such as police records and the data from the National
Prosecuting Authorities. Consequently, no reliable conviction rates exist. Furthermore, there is not an “open register” of sex offenders in many countries where potential employers can check before employing a person as a teacher, for example, who will work with children.

The chapters presented in this book show many promising approaches to address violence against both children and adults with little or no functional speech. However, these chapters also point out that we have not fully nor adequately addressed this grim issue. The following recommendations should be helpful in addressing these continued challenges.

**Recommendations**

Recommendations emerging from several countries stress the importance of empowerment of individuals with disabilities, the value of education, and the benefits of cross-system collaboration, the need to address violence against children and youth, and the potential of the *United Nations Convention on the Rights of Persons with Disabilities* (2006) as an international instrument for change. Each of these recommendations is briefly described below:

**Recommendation 1**

Listen to and believe the child or adult with disability who attempts to disclose violence experienced.

*Luis Murillo said his 7-year-old autistic son had kept coming home from school with bruises on his body since early in the school year. The school told him it was from children fighting, Murillo said. The child also returned home with the knees of his pants ripped out, as if he had been pulled across the ground.*

*The boy cannot speak but started drawing this year, and he drew like crazy with coloured markers on lined paper in a binder: Pictures of stick-figure children looking scared and sad, saying ‘no.’ Tall stick-figure women – three of them – with angry brows and giant teeth. A stick figure saying, ‘help.’ Jessica Sanchez said her 8-year-old son, who has Down syndrome, came home with deep scratches on his face in early March, and the mark of what looked like an adult’s hand on his forearm last Thursday. An aide wrote a note that the boy scratched himself on a table, but the teacher told her the aide scratched him by accident.*

*Sanchez picked him up early one day for a doctor’s appointment, and her son scurried behind her as soon as he saw her.*

*‘He grabbed me, hid behind me and pointed at the teacher,’ Sanchez said. ‘I was like, OK, what is the teacher doing that he’s pointing at her?’*

*(FitzPatrick, 2013)*

Children and adults with disabilities have the same emotions as their peers without disabilities and experience the same pain, humiliation and fear as
these peers do. All too often, however, even professionals regard individuals with disability as being more like objects than as human beings, denying them their human dignity and sensitivity. For example, a school psychologist remarked to an inquiry about a possible sexual abuse of a student with significant intellectual and communication disability, ‘Why is this important, since they can’t really feel the abuse?’

Furthermore, too frequently, violence experienced by individuals with disabilities is not believed. If professionals and trusted family members fail to believe and recognise the impact of the violence, survivors of violence will be deprived not only of legal justice, but also of needed services that can lead to recovery and hope. This is likely to lead to post-traumatic stress syndrome, with devastating and costly results.

In a recent USA newspaper article (FitzPatrick, 2013), it was reported that a teacher was physically violating a child in the classroom, who could not speak. Instead of being able to ‘tell’ in a more traditional way, the young boy drew elaborate pictures illustrating the type of violence he was experiencing, as well as who the person was that was doing it to him. Additionally, photos of bruises provided forensic evidence of the physical violence. Despite this evidence, several people commented that ‘no teacher would do that,’ and ‘the bruises must have been the result of another student’s violence towards the boy.’ These two quotes from the article, among several other responses from readers, reflect a continued belief that children with disabilities, especially those who cannot speak, cannot be reliable witnesses.

**Recommendation 2**

Processes for better collaboration and coordination among disciplines, such as education, social work, health, disability agencies, and the various components of the justice system, must be established.

In April 2012, Clarence J. Sundram, Special Advisor to Governor Andrew M. Cuomo on Vulnerable Persons, issued a report on New York State’s systems for the protection and safety of individuals served by facilities operated, licensed or certified by six state agencies: the Office for People With Developmental Disabilities, the Office of Mental Health, the Office of Children and Family Services, the Office of Alcoholism and Substance Abuse Services, the Department of Health, and the State Education Department.

Mr Sundram’s report, entitled ‘The Measure of a Society: Protection of Vulnerable Persons in Residential Facilities Against Abuse and Neglect,’ laid out a series of sweeping recommendations, the foremost of which was the establishment of the Justice Center for the Protection of People with Special Needs.
The Justice Center would be created to consolidate the relevant responsibilities of these agencies within one central agency solely dedicated to protecting this population. Its mission would also be to ensure consistency in the application of standards for investigations and discipline, and to provide independence of investigations from State oversight agencies.

New York State Justice Center (2013, p.2)

The opening of the New York State Justice Center in June 2013 came in response to different disciplines and different agencies failing to coordinate their services. In the state of New York, as in many other states and countries, there has been the practice of different disciplines and different agencies working in silos of expertise. This practice has been at the expense of children and adults with disabilities.

Violence against children and adults who have little or no functional speech frequently requires collaboration and coordination among several disciplines and service providers. At the prevention level, education must play a key role, not only educating children themselves but their parents as well. As children age out of the education system and enter the formal or informal disability sector, social workers and other service providers can play a key role in violence risk reduction. Social workers and disability advocates can support the empowerment of adults with disabilities by providing courses in personal safety and the legal justice system. When violence is suspected, better collaboration and coordination is needed for effective intervention among the disability, legal-justice and health and medical communities. These are complex communities with disciplines that do not have a history of communicating with each other. Finally, at the rehabilitation and recovery phase, victim service personnel and counsellors generally have limited or no experience providing supports and services to people with disabilities, who have little or no functional speech. To address this need, the establishment of interdisciplinary forums at local level is needed.

Recommendation 3
The role of the intermediary should be formally integrated into the justice system.

One estimate of the number of vulnerable persons who were prosecution witnesses, which includes those with a learning disability, was as high as 24% of witnesses. If correctly identified, these vulnerable witnesses may be more responsive to questions if they are posed by skilled and specially trained interviewing officers.

Brendan O'Mahony (2009, p.233)

Being interviewed by the police as a witness can be a frightening experience for any one of us. For people with disabilities, especially those with little or no functional speech, these encounters can be traumatising. According to O'Mahony (2009) and repeated in several of the chapters in this book, people who have little or no functional speech worry that the
police will not understand their story, and therefore they are reluctant to disclose if they had been the victim of crime and/or abuse. They may also keep quiet because they do not understand what is happening during a police investigation and when making an official statement. Similar fears occur when they appear in court. The use of intermediaries can help the individual communicate with the police and when appearing as a witness in court. It is important to specify that the intermediary is a neutral person who does not act on behalf of the person with the disability, but who acts on behalf of the court. According to O’Mahoney (2009, p.233) a trained intermediary can do the following:

- Assist the police in communicating with witnesses at the investigation stage, especially when a video is made or a statement is taken. Videos should be allowed in court as an acceptable form of evidence.
- Participate in pretrial meetings and court familiarisation visits.
- Assist in communicating with the witness during the trial.
- The use of impartial intermediaries in England, Wales, South Africa and Israel provides emerging evidence that this is one way to improve access to the justice system, not only for people with little or no functional speech, but for other vulnerable populations as well.

Recommendation 4
Education must play a critical role in prevention and intervention.

*Parents, educators, and counsellors are often uncomfortable about discussing sexual and reproductive health with young people with disabilities, who are therefore denied access to basic information about how their bodies develop and change with age, or how to negotiate safe relationships. Many children and young people with disabilities are taught to be compliant and trust others, and often lack experience, setting limits regarding physical contact.*


Unfortunately because of the social and communication difficulties and often a lack of understanding of what is and isn't acceptable, much of the victimisation of individuals with autism goes unreported unless a parent, carer or third party becomes aware of it. When incidents are reported, the police or Crown Prosecution Service through ignorance of the condition may often mistakenly believe that the victim will not meet the legal requirements of a ‘reliable witness’ and fail to proceed appropriately. The reality in cases involving those at the more able end of the spectrum is that if dealt with appropriately and ‘reasonable adjustments’ are made in the investigation and subsequent court appearance, they can be excellent witnesses.

_Archer and Hurley (2013, p. 55)_
The opening quotes from UNFPA/WHO (2009) and Archer and Hurley (2013) call for better education of children and adults with little or no functional speech, for parents and educators, and for professionals in the justice system. It has also become clear from many of the chapters that basic education has neither adequately addressed sexuality, nor sexual and other forms of violence. Children with disabilities, especially those with little or no functional speech, lack education about the role of the police and how the court system works. Without this education, people with little or no functional speech will continue to be at high risk of becoming victims of violence and of experiencing barriers throughout the justice system.

In a similar fashion, police, lawyers, judges and victim-service personnel lack education and experience with people with disabilities, especially those individuals with little or no functional speech. This must change so that they are able to provide equal access to the justice system and to provide follow-up counselling, where needed.

**Recommendation 5**
The Issue of Violence, Especially Violence Against Children, must be addressed.

- Twenty young children were massacred at a school in Newtown, Connecticut, USA.
- Fourteen-year-old Malala Yousafzai was shot in Pakistan.
- Gang rapes of girls have been reported in India and South Africa.

Children with disabilities are children first. This is a mantra often asserted by parents of children with disabilities, as well as by disability advocates. However, at a recent meeting at the United Nations in New York City (UNICEF, July 31, 2013), UNICEF called for a global campaign to protect children across the globe.


**Recommendation 6**
The *United Nations Convention on the Rights of Persons with Disabilities* can and must be used as an instrument for change.

*The United Nations Convention on the Rights of Persons with Disabilities* (2006) is the first human-rights treaty that contains detailed provisions on the establishment and functioning of national monitoring and implementation frameworks. The incorporation of such provisions has been celebrated as a
measure to consolidate the institutional preconditions necessary to ensure the realisation of the rights of the Convention.

Human Rights Council (2009, p. 18)

The United Nations Conventions on the Rights of the Child (1990), the United Nations Convention on the Rights of Women (1979), and most recently, the United Nations Convention on the Rights of Persons with Disabilities (2006), can be powerful frameworks for change. However, until the ratification of these conventions, they were only frameworks rather than instruments to be used by people who have the skills and the will to use these human-rights treaties to reduce the violence and to improve access to the justice system. As such, developing and supporting a well-educated and empowered civil society in each country may be the greatest challenge, yet the greatest resource for reducing violence against children and adults with little or no functional speech.
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Appendix A: Communication boards so that ‘you can tell and be heard’

As the result of the collaboration between Professors Bryen and Bornman, a series of picture-based and letter-based communication boards have been developed. These boards are intended to enable children and adults with little or no functional speech to tell that each has been a victim of physical, sexual, financial or verbal violence. They are not designed to testify in court, although we hope to develop boards to enable credible testimony in court.

Recognising that, throughout the world, children and adults with little or no functional speech are at high risk of being victims of violence because they cannot speak, these boards have been translated into several languages using native speakers in a back and forth translation process. This has resulted in 27 You Can Tell and be Heard communication boards in the following languages, which can be found on the Centre for Augmentative and Alternative Communication’s website (www.caac.up.ac.za).

- Afrikaans
- Arabic
- Chinese Mandarin
- Croatian
- English
- Finnish
- Greek
- Hebrew
- Hindi
- isXhosa
- isiZulu
- Italian
- Kiswahili
- Korean
- Malagasy
- Mauritian Creole
- Polish
- Portuguese
- Sepedi
- Sinhala
- Spanish
- Swedish
- Tamil
- Tshivenda
- Twi Asante
- Xitsonga

For each of these languages there is a picture-based board that is for adults and children. In addition, a spelling board for adults and children is also provided for individuals who have literacy skills.