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# ENSURING ACCESS TO INTERMEDIARIES FOR CHILDREN WITH DISABILITIES IN LEGAL PROCEEDINGS

**Model Rules-Based Process for Special Representatives,  
Intermediaries, and Support Persons**

**March 2026**



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## **EXECUTIVE SUMMARY**

Children with disabilities who are victims of crime face compounding barriers to justice due to justice systems that were not designed to vindicate their right to access to justice. Across Europe, these children are disproportionately likely to experience violence, yet disproportionately unlikely to see that violence addressed through the criminal justice process.

This Model proposes the implementation of three professional roles to support child victims with disabilities in criminal proceedings: the Special Representative, who provides independent legal representation where a conflict of interest exists or the child is unaccompanied; the Intermediary, who facilitates effective communication between the child and justice actors; and the Support Person, who provides psychosocial and emotional support throughout the justice process. The Model bases these supports on international human rights law and is also informed by empirical research conducted across Austria, Romania, and Serbia as part of the ENSURE project. The Model also draws on qualitative data collected from jurisdictions where a form of these supports operates, as well as the insights of the project's Disability Advisory Board, which is made up of persons with disabilities with experience of several justice systems.

The Model addresses how each role should be defined, when it should be triggered, what professional standards and ethical obligations apply, and how the three roles should be coordinated with one another and with a network of justice and child protection professionals. It also sets out an individual assessment framework designed to identify children's support needs at the earliest possible stage, a menu of procedural and communication accommodations, and guidance on phased national implementation.

The Model is intended to be adapted to national legal contexts. It does not prescribe a single structure but instead establishes principles and standards that any national implementation must meet in order to fulfil States' obligations to child victims with disabilities.

## LIST OF ABBREVIATIONS

**AAC** — Augmentative and Alternative Communication

**CPD** — Continuing Professional Development

**CRC** — UN Convention on the Rights of the Child

**CRPD** — UN Convention on the Rights of Persons with Disabilities

**ECHR** — European Convention on Human Rights

**ECtHR** — European Court of Human Rights

**EU** — European Union

**GDPR** — General Data Protection Regulation

**NGO** — Non-Governmental Organisation

**VRD** — Victims' Rights Directive

## GLOSSARY

**Augmentative and Alternative Communication (AAC):** Tools and techniques (including communication devices and symbol systems) used by individuals who do not use speech alone to communicate.

**Barnahus:** A "Children's House" model of multidisciplinary care in which child victims are supported by justice, health, social services, and other professionals working from a single, child-friendly location.

**Child-friendly justice:** An approach to legal proceedings that respects children's rights, including ensuring that proceedings are accessible and age-appropriate.

**Human rights model of disability:** A model of disability set out in the UN Convention on the Rights of Persons with Disabilities. It locates disability not within the individual but in the interaction between a person's impairment and the barriers created by society.

**Individual assessment:** A process conducted collaboratively with the child to identify their communication needs and support requirements in order to enable their effective participation in legal proceedings.

**Intermediary:** A professional who facilitates effective communication between a child with communication needs and justice actors. Their duty is to the court. As such, they are neither an advocate for the child nor an interpreter or expert witness.

**Intersectionality:** The interaction between a person's multiple identities (e.g. disability, gender, ethnicity, language, and socioeconomic status) which can compound barriers and give rise to distinct and multiplied forms of discrimination.

**Procedural accommodation:** A modification to procedural rules or practices designed to facilitate the effective participation of a child with a disability in legal proceedings and vindicate their right to access to justice. This is distinct from, but often complementary to, reasonable accommodations.

**Reasonable accommodation:** A necessary and appropriate modification or adjustment made to remove barriers to the enjoyment of rights on an equal basis with others, provided it does not impose a disproportionate or undue burden.

**Secondary victimisation:** Additional harm caused to a victim by their contact with the justice system itself, e.g. as a result of insensitive questioning, repeated recounting of traumatic events, or inadequate support.

**Special Representative:** An independent legal professional appointed by order of the court to represent a child victim and advocate for the legal interests and views during criminal proceedings.

**Supported decision-making:** Where a person is assisted to make and communicate their own decisions rather than having decisions made on their behalf.

**Support person:** A trusted adult (a professional or someone from the child's own life) appointed to provide psychosocial and emotional support to a child throughout the legal proceedings.

**Trauma-informed approach:** A way of working that recognises the multi-faceted impact of trauma and seeks to avoid retraumatisation.

**Universal design:** The design of environments and services in a way that is accessible to all people, regardless of disability, and therefore reduces the need for individual adaptations/accommodations.

# 01

INTRODUCTION

AND

PURPOSE

## INTRODUCTION AND PURPOSE

### 1. Rationale for the Model

Children with disabilities who are victims of crime face obstacles to accessing justice due to multi-factorial barriers within justice systems. These can include communication barriers when support needs are not recognised or inadequately provided for by way of procedural accommodations, attitudinal barriers arising from low expectations and stigma,<sup>1</sup> systemic barriers in legal procedures and judicial environments, and/or intersectional barriers when disability combines with other vulnerabilities to compound the structural exclusion experienced by child victims with disabilities within the justice system.

This Model seeks to delineate how three roles can facilitate access to justice for children with disabilities who are victims of crime: Special Representatives (providing legal representation), Intermediaries (facilitating communication), and Support Persons (providing psychosocial/emotional support). In some EU countries, these roles already exist but with inconsistent standards, professional requirements, quality assurance, and, in some jurisdictions, overlapping mandates. This model proposes universal principles for the three roles, which should then be interpreted and applied in national contexts.

The need for this Model is supported by the empirical findings across the three ENSURE project countries. For example, in Austria, judges reported encountering only one or two cases involving children with disabilities over several years.<sup>2</sup> Given the disproportionately high levels of violence perpetrated against children with disabilities<sup>3</sup>, this would rather indicate a concerning level of invisibility of children with disabilities within the criminal justice process and a lacuna in meeting their support needs. In addition, in Romania, children and young people with disabilities described feeling excluded from proceedings they could not understand: “They spoke between themselves,

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<sup>1</sup> Jennifer Kline and Dr Eilíonóir Flynn, *Access to Justice for Children with Cognitive Disabilities: Ireland Country Report* (Centre for Disability Law and Policy, National University of Ireland Galway, 2015) pp. 7–10

<sup>2</sup> Ludwig Boltzmann Institute of Fundamental and Human Rights, ENSURE – National Report Austria (October 2025) [hereinafter AT Report], Section II.2.2, reporting that both judges interviewed “stated that cases involving children with disabilities are extremely rare in court — sometimes only one or two in many years of service.”

<sup>3</sup> World Health Organisation, *Global Report on Health Equity for Persons with Disabilities* (2023), referenced in AT Report, Section III.2.

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not to me. It felt like I was invisible."<sup>4</sup> In Serbia, the project research found that crimes against children with disabilities are underreported and that “administrative figures almost certainly understate true prevalence”.<sup>5</sup>

### 2. Purpose of This Model

This model is intended to serve as a guide to the process of planning and implementation of one/multiple of these supports into national justice systems to allow children and young people with disabilities who are victims of crime to access justice. It is also designed to serve as a mechanism by which justice actors can examine existing policies and practices and engage in rights-based reform, with the goal of providing supports to children with disabilities who are the victims of crime which enable them to access justice and participate on an equal basis with others in legal processes.

The model contains standards that outline how these three roles can and should function based on international human rights law and existing good practice. Its approach seeks to recognise and address age, disability type, gender, migration status, socioeconomic factors, and other intersecting identities so that child victims are fully recognised and supported during their involvement with legal systems.

### 3. Methodology

This model is informed by desk research on international legal standards on the rights of child victims with disabilities (with a particular focus on their right to access to justice), qualitative research by way of interviews with experts on supports for children with disabilities in legal proceedings, as well as comparative research on how these support roles have been implemented internationally. It is complemented by an international synthesis report which consolidates the findings of national reports from Austria, Serbia, and Romania on existing supports for child victims with disabilities in legal proceedings. Feedback received on the first draft of this Model from the

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<sup>4</sup> Terre des Hommes Romania, ENSURE National Research Report (2025) [hereinafter RO Report], Section: "How Children and Their Legal Representatives Are Informed About Their Rights and Procedures"

<sup>5</sup> Child Rights Centre, *National Report – Serbia* (September 2025) [hereinafter RS Report], Section 6

## INTRODUCTION AND PURPOSE

ENSURE Project's Disability Advisory Board (which is made up of persons with disabilities with experience of justice systems) was integrated into this final version.

### 4. Scope of the Model

This Model is intended to apply to children with disabilities who are the victims of crime. This is to be distinguished from children with disabilities who are accused of a criminal offence whose support needs are governed by a different set of legal and operational frameworks. A 'child' in this context is defined as any person under the age of 18.<sup>6</sup>

### 5. Human Rights Model of Disability

Article 1 of the United Nations Convention on the Rights of Persons with Disabilities (CRPD) defines persons with disabilities as including "those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others." This definition reflects the human rights model of disability, which underpins this Model.

The human rights model conceptualises disability not as a deficit or medical condition residing within the individual, but rather as the result of the interaction between a person's impairment and the environmental, attitudinal, and systemic barriers constructed by society.<sup>7</sup> This is to be contrasted with the medical model of disability, which views and interacts with disability as an individual pathology requiring treatment or management. The medical model, which is grounded in a charity and welfare construction of disability, remains embedded in many legal and social

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<sup>6</sup> United Nations, *Convention on the Rights of the Child*, Article 1, UN Doc. A/RES/44/25 (20 November 1989), entered into force 2 September 1990.

<sup>7</sup> Degener, T., 'Disability in a Human Rights Context' (2016) 5(3) *Laws* 35; Degener, T., 'A New Human Rights Model of Disability' in Della Fina, V., Cera, R., and Palmisano, G. (eds), *The United Nations Convention on the Rights of Persons with Disabilities: A Commentary* (Springer, 2017) 41–59; UN Committee on the Rights of Persons with Disabilities, 'General Comment No. 1 (2014) on Article 12: Equal Recognition before the Law', UN Doc CRPD/C/GC/1, paras 3–4; Lawson, Anna, and Angharad E. Beckett. "The social and human rights models of disability: towards a complementarity thesis." *The International Journal of Human Rights* 25.2 (2021): 348-379; Degener, Theresia, and María Gómez-Carrillo De Castro. "Toward inclusive equality: ten years of the human rights model of disability in the work of the UN Committee on the Rights of Persons with Disabilities." *Disability law and human rights: Theory and policy*. Cham: Springer International Publishing, 2022. 27-46

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systems, including justice systems, and can lead to the exclusion and disempowerment of children with disabilities. The human rights model requires that children with disabilities be treated as rights-holders with full legal capacity on an equal basis with other children, entitled to appropriate support to exercise their rights.

### 6. Intersectional Analysis

Communication and other forms of support provided to children and young people with disabilities who have been victims of crime should be viewed and structured through the lens of their multiple and intersecting identities.

Other examples include children/young people with disabilities whose primary language differs from the majority one in the jurisdiction who may need the additional support of qualified interpreters, as well as children/young people with disabilities who have experienced migration who may need additional support around fears of deportation.

In addition, previous research in this area has been confirmed by the ENSURE national reports, which show that girls with disabilities, particularly those with intellectual and/or psychosocial disabilities, are more likely to be victims of sexual and domestic violence (in both family homes and institutional settings)<sup>8</sup>, but are also more likely to not receive access to accessible support and to have their credibility questioned.<sup>9</sup> This therefore creates a double invisibility, with neither child protection frameworks nor disability-specific frameworks taking responsibility for the provision of this gender-specific support.<sup>10</sup>

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<sup>8</sup> RS Report, Section 7: "girls with disabilities, particularly those with intellectual disabilities, are disproportionately represented among child victims of sexual violence, including intra-familial abuse"; RO Report, Section 2.4: children with disabilities in residential care settings identified as a high-risk group for sexual and physical abuse by staff or co-residents.

<sup>9</sup> Lupo, Giampiero, Giada Pacifico, Andrada Antofie, Aleksandra Ivankovic, Antonio De Martin, David Banes, Sabine Lobnig, Aysegul Oz, and Bruno Monteiro. "Model Multidisciplinary Cooperation Systems.", Consiglio Nazionale delle Ricerche (CNR), Victim Support Europe (VSE), SL Consulting, and Validity Foundation, 30 June 2025, Part 1, Section 2.3: "Needs of child victims with psycho-social and intellectual disabilities," pp. 27-28

<sup>10</sup> AT Report, Section II.1: the Austrian Monitoring Committee confirming that "the intersection of gender and disability is not systematically addressed by either child protection or disability support services"; AT Report, Section II.2.2: female focus group participant (FG8) describing the absence of female intermediaries or female police interviewers as a structural gap.

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Children with disabilities who require sign language interpretation or use Augmentative and Alternative Communication (AAC) who are from ethnic minority communities may require a combination of coordinated supports. The Serbia national report recounts a situation of Roma girls with hearing impairments as an example of this compounding effect, as a child in that situation may require sign language interpretation, minority language interpretation in a Roma variety, and communication facilitation adapted to her support needs and trauma profile.<sup>11</sup> In addition, children with these intersecting identities may face other structural barriers, e.g. distrust of state institutions (including police and courts) arising from histories of institutional discrimination; geographic concentration in rural or peri-urban areas that are underserved by specialist support services; or family/community codes in which reporting abuse to authorities carries cultural risks of stigma and/or retaliation.<sup>12</sup>

Multiple marginalised identities compound and the discrimination that can be experienced by the child/young person based on these identities is not additive but is instead multiplied. The supports provided to the child must therefore recognise and respond to that cumulative impact, including the trauma they have experienced.

### Promising practice

In New Zealand, it is acknowledged that cultural background exerts a significant influence on communication processes. In order to provide support to individuals from the Māori community, Talking Trouble NZ has developed a range of tools and training programmes for intermediaries, with the aim of enhancing their cultural awareness while working with members of this community. The organisation also employs and trains communication specialists from these communities.

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<sup>11</sup> RS Report, Section 7: "Roma girls with hearing impairments may face stigma related to both ethnicity and disability, limited access to interpreters in both sign and minority languages, and transport and financial obstacles to attending court"; RS Report, Section 5.2: the near-total absence of sign language interpreters outside Belgrade confirmed.

<sup>12</sup> RS Report, Section 7; RO Report, Section 2.3: Roma children with disabilities identified as among the least likely to have cases reach prosecution.

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INTERNATIONAL  
STANDARDS &  
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### At a Glance: Guiding Principles

The below principles have informed the development of this Model. They are derived from international human rights law and the empirical findings of the ENSURE project, and should guide all decisions made in planning, implementing, and reviewing the roles set out herein:

- Children with disabilities are rights-holders on an equal basis with other children.
- Disability is understood through the human rights model. As such, barriers lie in the environment and in systems, not in the individual.
- Support needs must be identified at the earliest possible stage.
- The best interests of the child and their right to access to justice are the primary considerations.
- Children have the right to be heard and to participate actively in proceedings.
- All support must be non-discriminatory and trauma-informed.
- Accommodations enable participation; they are not a concession or a privilege.
- Children's privacy must be protected at all times.

*The international legal framework supporting these principles is set out in detail in Sections 2.1. The full Operational Principles are set out in detail in Section 2.2.*

## 1. Human Rights Framework

### International Law

The foundations of this Model are the international human rights obligations which EU Member States have signed up to and that set out the rights of children and persons with disabilities:

#### UN Convention on the Rights of the Child (CRC)

Article 3 of CRC provides that the best interests of the child shall be a primary consideration in all matters affecting children. The CRC Committee has stated that a child's best interests are a 'threefold concept':

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(a) **A substantive right:** The right of the child to have his or her best interests assessed and taken as a primary consideration when different interests are being considered in order to reach a decision on the issue at stake, and the guarantee that this right will be implemented whenever a decision is to be made concerning a child, a group of identified or unidentified children or children in general. Article 3, paragraph 1, creates an intrinsic obligation for States, is directly applicable (self-executing) and can be invoked before a court.

(b) **A fundamental, interpretative legal principle:** If a legal provision is open to more than one interpretation, the interpretation which most effectively serves the child's best interests should be chosen. The rights enshrined in the Convention and its Optional Protocols provide the framework for interpretation.

(c) **A rule of procedure:** Whenever a decision is to be made that will affect a specific child, an identified group of children or children in general, the decision-making process must include an evaluation of the possible impact (positive or negative) of the decision on the child or children concerned. Assessing and determining the best interests of the child require procedural guarantees. Furthermore, the justification of a decision must show that the right has been explicitly taken into account. In this regard, States parties shall explain how the right has been respected in the decision, that is, what has been considered to be in the child's best interests; what criteria it is based on; and how the child's interests have been weighed against other considerations, be they broad issues of policy or individual cases.

**Committee on the Rights of the Child, General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1), 29 May 2013, CRC/C/GC/14, para. 6**

Article 8 addresses the right to preserve identity, including nationality, name, and family relationships. As such, children, including those with disabilities, have rights as active participants in justice proceedings.

Article 12(1) of the CRC establishes that States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child. Article 12(2) requires that children be provided the opportunity to be heard in judicial and administrative proceedings, either directly or through a representative or appropriate body, in a

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manner consistent with national procedural law. Article 23 focuses on children with disabilities and recognises that children with disabilities have the right to ‘active participation in the community’<sup>13</sup>.

The UN Committee on the Rights of the Child has clarified that capacity to form views should be presumed and is not determined by age alone. On this basis, the Committee discourages states from introducing age limits for children's participation. ‘Capacity’ in this context does not mean a child must have comprehensive knowledge of all aspects of the matter at issue; instead, adequate understanding of the matter is sufficient.<sup>14</sup>

The UN Committee on the Rights of the Child is currently developing a General Comment on children’s right to access to justice and to an effective remedy.<sup>15</sup> When finalised, this General Comment will provide authoritative guidance on States Parties’ obligations to child victims with disabilities within justice proceedings and should therefore be consulted when implementing this Model.

### UN Convention on the Rights of Persons with Disabilities (UNCRPD)

Article 5 of the CRPD prohibits all discrimination on the basis of disability and requires States Parties to guarantee equal, effective legal protection against discrimination on all grounds, including denial of reasonable and procedural accommodations. For child victims with disabilities in criminal justice proceedings, this includes providing age-appropriate supports such as intermediaries, communication aids, and trauma-informed adjustments in order to enable their effective participation on an equal basis with other children.

General Comment No. 6 (2018) recognises that children with disabilities often face multiple and intersectional discrimination, especially as crime victims, and must enjoy all rights equally, with child-sensitive measures in justice systems to uphold their best interests and right to be heard.

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<sup>13</sup> Article 23(1) CRC

<sup>14</sup> UN Committee on the Rights of the Child, General Comment No. 12 (2009) on the Right of the Child to be Heard, CRC/C/GC/12, para 21.

<sup>15</sup> <https://www.ohchr.org/en/documents/general-comments-and-recommendations/draft-general-comment-no-27-childrens-right-access>

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There must be tailored accommodations to address heightened vulnerabilities, such as trauma from abuse, ensuring access to remedies without discrimination.<sup>16</sup>

Many of the overarching principles contained within Article 3 of the CRPD – non-discrimination, full and effective inclusion in society, accessibility, and respect for the evolving capacities of children with disabilities – are directly relevant to the form and provision of procedural accommodations and support to child victims with disabilities in criminal proceedings.

In addition, Article 12 states that States Parties reaffirm that persons with disabilities have the right to recognition everywhere as persons before the law and shall recognise that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life. Article 12(3) requires that States provide access to support needed to exercise legal capacity.<sup>17</sup> In no case shall the existence of a disability justify limitations on legal capacity. The CRPD Committee has been clear that States parties “must examine their laws to ensure that the will and preferences of children with disabilities are respected on an equal basis with other children”.<sup>18</sup>

Article 13 of the CRPD (access to justice) obliges States Parties to ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations so as to facilitate their effective role as direct and indirect participants, including as victims, in all legal proceedings (including at investigative and other preliminary stages). Article 13(2) requires States to promote appropriate training for those working in administration of justice, including police and prison staff.

Article 7 specifically addresses the rights of children with disabilities, requiring that children with disabilities enjoy all human rights and fundamental freedoms on an equal basis with other children, and that their best interests shall be a primary consideration. Article 9 establishes the right to

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<sup>16</sup> Committee on the Rights of Persons with Disabilities, General Comment No. 6 (2018) on equality and non-discrimination, paras. 18–20, 61–67

<sup>17</sup> See also, UN Committee on the Rights of Persons with Disabilities, ‘General Comment No 1: Article 12: Equal Recognition before the Law’ (19 May 2014) UN Doc CRPD/C/GC/1, para. 39

<sup>18</sup> Committee on the Rights of Persons with Disabilities, ‘General Comment No 1 (2014) on Article 12: Equal recognition before the law’ (19 May 2014) UN Doc CRPD/C/GC/1, para. 36

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accessibility, requiring states to take appropriate measures to ensure access to the physical environment, transportation, information and communication technology, and other facilities and services.

Article 21 of the CRPD requires States Parties to 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 on an equal basis with others and through all forms of communication of their choosing. For child victims with disabilities in justice proceedings, this means that information about their rights, the proceedings, and the roles of those involved must be provided to them in accessible formats appropriate to their communication needs (e.g. Easy to Read documents, pictograms, sign language, or AAC systems). Article 21 also requires that children with disabilities be able to communicate their views and testimony effectively throughout proceedings, including by way of communication support.<sup>19</sup>

Read together with Article 13 (access to justice), Article 12 (legal capacity), and Article 9 (accessibility), Article 21 forms part of a mutually reinforcing framework requiring States to ensure that children with disabilities can both understand and be understood at all stages of legal proceedings.

### Other Relevant International Instruments

The International Principles and Guidelines on Access to Justice for Persons with Disabilities<sup>20</sup> emphasise that access to justice includes both formal legal remedies and broader procedural accessibility. Of specific relevance, Principle 3 states that persons with disabilities, including children with disabilities, have the right to appropriate procedural accommodations.<sup>21</sup> This requires States to provide “gender- and age-appropriate individualized procedural accommodations” which

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<sup>19</sup> UN Committee on the Rights of Persons with Disabilities, 'General Comment No. 2 (2014) on Article 9: Accessibility', UN Doc CRPD/C/GC/2, paras 24–26; Office of the UN High Commissioner for Human Rights, *International Principles and Guidelines on Access to Justice for Persons with Disabilities* (Geneva, August 2020), Guideline 4 and para. 32(c)–(g)

<sup>20</sup> United Nations Office of the High Commissioner for Human Rights, *International Principles and Guidelines on Access to Justice for Persons with Disabilities* (Geneva, August 2020)

<sup>21</sup> *Ibid*, para. 31

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include “all the necessary and appropriate modifications and adjustments needed in a particular case, including intermediaries (sometimes called ‘facilitators’), procedural adjustments and modifications, adjustments to the environment and communication support, to ensure access to justice for persons with disabilities”.<sup>22</sup> Further, the Guidelines call for procedural adjustments and modifications to legal proceedings, as well as the provision of communication support, examples of which are set out in Section 4 of this Model.

Specifically on the role of intermediaries and facilitators, the Guidelines require States to establish, fund, and implement “a programme of independent intermediaries or facilitators trained to provide communication assistance to parties to the proceedings and the justice system to determine whether accommodations and support are necessary and which accommodations and support are appropriate, and to assist with communication throughout the course of the proceedings”.<sup>23</sup> They should also design and implement “a programme of independent intermediaries or facilitators in a manner consistent with local procedures and customs, and in line with the Convention on the Rights of Persons with Disabilities”.<sup>24</sup>

The ECOSOC Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime<sup>25</sup> contain standards on the treatment of child victims during criminal proceedings. Of relevance to this Model, the Guidelines establish that neither a child's age nor their disability may be used as a basis for presuming that their evidence is unreliable; provided a child can give intelligible evidence, whether with or without communication aids or other assistance, they must be treated as a capable witness.<sup>26</sup> Under the Guidelines, States should ensure that child victims can access trained professional support - from the initial reporting stage right through to the end of the proceedings. This includes child victim specialists, appropriate support persons, and, where necessary, persons

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<sup>22</sup> Ibid, para. 32(c)-(g)

<sup>23</sup> Ibid, para. 32(a)

<sup>24</sup> Ibid, para. 32(b)

<sup>25</sup> UN Economic and Social Council, *Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime*, Resolution E/RES/2005/20 (22 July 2005)

<sup>26</sup> Ibid., para. 18

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appointed to safeguard the child's legal interests.<sup>27</sup> The Guidelines also require that professionals working with child victims receive training covering child development, ethical standards, communication skills, trauma-informed interviewing, and cross-cultural awareness.<sup>28</sup> States must also incorporate procedural safeguards, such as limiting the number of times a child is required to give an account and the use of audio-visual recording to prevent repeated questioning.<sup>29</sup> The Guidelines also endorse the scheduling, interview settings, and the pace of proceedings being adapted to meet the needs of the individual child in terms of their age, maturity, and circumstances.<sup>30</sup>

### EU Law

Member States of the European Union are bound by a multi-layered legal framework which addresses the rights of children, persons with disabilities, and victims of crime. This gives rise to binding obligations to ensure that children with disabilities have access to justice.

#### Charter of Fundamental Rights of the European Union

The Charter of Fundamental Rights of the European Union (Charter) was solemnly proclaimed in 2000 and became legally binding upon the entry into force of the Lisbon Treaty in December 2009. The Charter now has the same legal status as the EU treaties themselves. It has several provisions which inform this model's determination of State obligations regarding child victims with disabilities' right to access to justice.

#### Article 24: Rights of the Child

Article 24 states that children have the right to such protection and care as is necessary for their well-being, and that the best interests of the child must be a primary consideration in all actions relating to children. They have the right to express their views freely and those should be taken into consideration on matters which concern them in accordance with their age and maturity.

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<sup>27</sup> Ibid., paras. 24–25

<sup>28</sup> Ibid., paras. 40–42

<sup>29</sup> Ibid., paras. 30–31

<sup>30</sup> Ibid., para. 10

### **Article 26: Integration of Persons with Disabilities**

This provision recognises and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community. Although framed in terms of ‘integration’, this provision grounds Member State obligations to ensure that persons with disabilities can participate fully in all aspects of society – including the justice system

### **Article 21: Non-discrimination**

Article 21 prohibits discrimination on the ground of disability, including within the justice system.

### **Article 47: Right to an effective remedy and to a fair trial**

Article 47 states that where someone’s rights are violated, they have the right to an effective remedy.

### **Directive 2012/29/EU: Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime**

The Victims’ Rights Directive, which has been in force since 2015 and, at the time of writing, is currently being revised<sup>31</sup>, sets out minimum standards for the rights, support, and protection of victims of crime.

With respect to children, the Directive requires a child-sensitive approach whereby the best interests of the child are a primary consideration throughout their involvement in criminal proceedings and should be assessed on the individual basis. This involves taking due account of the child’s “age, maturity, views, needs and concerns”.<sup>32</sup> Specifically in the context of disability, the Directive requires: the provision of information about rights, support services, and proceedings in

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<sup>31</sup> European Parliament, ‘Revision of the victims’ rights acquis’ (Legislative Train Schedule) <https://www.europarl.europa.eu/legislative-train/theme-protecting-our-democracy-upholding-our-values/file-revision-of-the-victims-rights-acquis>

<sup>32</sup> Directive 2012/29/EU of the European Parliament and of the Council establishing minimum standards on the rights, support and protection of victims of crime, 25 October 2012, Article 1(2)

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accessible formats<sup>33</sup>, an individual assessment of the person's support needs<sup>34</sup>; the right to be accompanied by a support person of the victim's choosing<sup>35</sup>; protection from secondary and repeat victimisation<sup>36</sup>; access to specialist support services appropriate to the victim's needs<sup>37</sup>. Under Article 22, children with disabilities benefit from a presumption of the need for an individual assessment of their needs and, flowing from this, Articles 23 & 24 of the Directive recognise the right of children with disabilities to procedural accommodations. Article 24(1)(b) expressly recognises the right of children to a 'special representative' where there may be a conflict of interest between them and the holders of parental responsibility, or where the child is unaccompanied or separated from the family.

As part of the revision process, the European Commission has proposed a number of changes to the Directive, including:

- Enhanced binding provisions on accessibility of information and support for victims with disabilities.
- Strengthened training requirements for justice professionals on disability rights and needs.
- Requirements for collection of disaggregated data on victims by age, gender, disability, and other characteristics.
- Enhanced protections from double victimisation, i.e. being retraumatised or harmed by the justice system itself.

The Victims' Rights Directive is supported by the EU's first Strategy on EU Strategy on victims' rights (2020-2025)<sup>38</sup> which has, as one of its key actions, the promotion of integrated and targeted

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<sup>33</sup> VRD, Preamble, para. 21

<sup>34</sup> VRD, Article 22

<sup>35</sup> VRD, Articles 3 & 20

<sup>36</sup> VRD, Article 22

<sup>37</sup> Article 8(3)

<sup>38</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: EU Strategy on victims' rights (2020-2025), COM/2020/258 final

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support to victims with disabilities<sup>39</sup>. Regarding child victims, the Strategy emphasises that the best interests of the child must be a primary consideration and that specialist services should be provided to them.<sup>40</sup> In addition, the Strategy calls for persons with disabilities to be provided with specialist support. It further states that “[p]rofessionals who are in contact with victims with disabilities should be trained to communicate with them in a way that takes into account any mental or physical impairment such as hearing or speech impairments”.<sup>41</sup>

Similar requirements are made in the EU's Anti-Trafficking Directive (Directive 2011/36/EU), which requires Member States to identify and protect all victims of trafficking, including children, and to provide them with access to support services.<sup>42</sup> Equally, the Directive on combating sexual abuse and sexual exploitation of children (Directive 2011/93/EU) mandates that the best interests of the child be a primary consideration in all decisions affecting child victims and requires access to appropriate support services - including counselling and victim support.<sup>43</sup>

### Directive (EU) 2016/800: Procedural Safeguards for Children Who Are Suspects or Accused Persons in Criminal Proceedings

Although this Directive focuses on minimum standards for procedural safeguards for children who are suspected of or accused of a crime, the principles it contains provide a normative framework for supports for all children with disabilities involved with the justice system.

Article 4 requires that information should be provided to the child in “simple and accessible language”, underlining the principle that understanding is not assumed but must be verified and supported where necessary. Article 7 echoes the Victims’ Rights Directive insistence on the right of the child to an individual assessment to determine what information the child needs to understand the proceedings and what, if any, procedural accommodations are necessary, and that

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<sup>39</sup> *ibid*, Section 2

<sup>40</sup> *Ibid.*, pp. 6-8

<sup>41</sup> *Ibid*, p. 4

<sup>42</sup> Directive 2011/36/EU of the European Parliament and of the Council on preventing and combating trafficking in human beings, Articles 4 and 10-14

<sup>43</sup> Directive 2011/93/EU of the European Parliament and of the Council on combating sexual abuse and sexual exploitation of children, Articles 15-20

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this assessment “take into account the child's personality and maturity, the child's economic, social and family background, and any specific vulnerabilities that the child may have”.<sup>44</sup> Similarly, the child also has the right to be accompanied by a holder of parental responsibility or another appropriate adult during police questioning, interviews, and court proceedings to support them to understand what is happening and to exercise their rights.<sup>45</sup>

### EU Strategy for the Rights of Persons with Disabilities (2021-2030)

The Strategy addresses the rights of persons with disabilities across EU policy areas. It is grounded in the CRPD, which the EU ratified in 2011. It contains several provisions which are directly relevant to access to justice for children with disabilities.

The Strategy sets out that persons with disabilities should have effective access to justice, including through the provision of adequate accommodations. Referencing the European Judicial Training Strategy, it commits to focusing on upscaling training of legal professionals on EU disability legislation, including the CRPD.<sup>46</sup>

### EU Strategy on the Rights of the Child (2021-2027)

The EU's Strategy on children's rights, adopted in March 2021, draws from the CRC and operates on the basis of several key principles: the best interests of the child must be a primary consideration; children's views must be heard and given due weight; non-discrimination; and a child-sensitive and age-appropriate approach.

It contains specific commitments to child-friendly justice, committing the EU to strengthening implementation of the Council of Europe Guidelines on Child-Friendly Justice; supporting judicial training on child rights and child-friendly justice procedures; ensuring that children can understand their rights and the proceedings affecting them; ensuring the participation of children in decisions affecting them, consistent with their evolving capacities.

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<sup>44</sup> Article 7(2)

<sup>45</sup> Articles 4(1)(a) & 15(4)

<sup>46</sup> EU Strategy for the Rights of Persons with Disabilities 2021-2030, adopted by the European Commission, Section 5.1

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It recognises that children with disabilities “experience difficulties due to reduced accessibility of justice systems and judicial proceedings and lack accessible information on rights and remedies” and that “[d]ata collection of children involved in judicial proceedings, including in the context of specialised courts, should be improved”.<sup>47</sup>

### **Council of Europe**

#### **European Convention on Human Rights (ECHR)**

The ECHR contains several protections relevant to the rights of children with disabilities in legal proceedings. These include the right to a fair trial under Article 6, the right to respect for private and family life under Article 8, and the prohibition of discrimination contained in Article 14.

#### **Revised European Social Charter**

The Revised European Social Charter establishes social and economic rights complementary to civil and political rights. Of relevance to this model is the protection against poverty and social exclusion<sup>48</sup>, as well as the right of persons with disabilities to “full social integration and participation in the life of the community in particular through measures, including technical aids, aiming to overcome barriers to communication ...”<sup>49</sup>.

#### **Guidelines on Child-Friendly Justice**

The Council of Europe’s 2010 Guidelines on Child-Friendly Justice<sup>50</sup> require Member States to ensure that children involved in judicial proceedings are treated in a child-sensitive manner. The guidelines detail the fundamental principles of participation, the best interests of the child, the child’s right to dignity and protection from discrimination, as well as the application of the rule of law to proceedings concerning them (including children’s right to information, to be heard, to representation, and to a child-friendly environment).

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<sup>47</sup> EU Strategy on the Rights of the Child 2021-2027, Section 4

<sup>48</sup> Preamble, para. 30

<sup>49</sup> Article 15(3)

<sup>50</sup> Committee of Ministers of the Council of Europe. Guidelines of the Committee of Ministers of the Council of Europe on Child-Friendly Justice. Adopted 17 November 2010, CM/Del/Dec(2010)1098/10.2

### 2. Operational Principles

Drawing on the requirements of international human rights law, as well as on desk and qualitative research, including national reports from the [ENSURE](#) project, this model adopts the following operational principles for supporting children with disabilities who are victims of crime in criminal proceedings:

- A. Children with disabilities are rights-holders as opposed to objects of protection. They are entitled to recognition as individuals with inherent dignity and agency, with rights to participation and free expression. Children with disabilities should be viewed as legal subjects with decision-making rights on an equal basis with their peers and should be able to avail of chosen support to exercise their legal rights. Assessments should be focused on identifying necessary supports and should never be used to determine whether a child victim with a disability is entitled to participate in proceedings.<sup>51</sup>
- B. Based on the human rights model of disability contained in the CRPD, the focus should be put on eliminating the environmental, procedural, communicational, and societal barriers which disable the child and prevent them from accessing justice, rather than the assessment and/or diagnosis of perceived impairments.
- C. The identification of the support needs of children with disabilities in justice systems should occur at the earliest possible stage so that appropriate support can be provided from the outset.
- D. Decisions and actions affecting the child should prioritise the child's best interests and their right to access to justice (with the former serving the latter). Best interests are determined in consultation with the child according to their evolving capacities. The child's best interests should be distinguished from their views, which are different concepts. Acting in a child's best interests is not the same as substituting a professional's judgment for the child's own expressed wishes.
- E. Children have the right to be heard and to participate actively in proceedings affecting them, including as victims. As such, children should be enabled to understand proceedings and express their views by way of continuous support.

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<sup>51</sup> UN Committee on the Rights of the Child, *General Comment No. 9 (2006) on the rights of children with disabilities*, CRC/C/GC/9, para. 32; CRPD/C/GC/1, para. 15

## INTERNATIONAL STANDARDS & OPERATIONAL PRINCIPLES

- F. Children with disabilities are entitled to access to justice and equal treatment within justice systems on an equal basis with other children and without discrimination based on disability, age, gender, and/or any other characteristic.
- G. Justice systems and all professionals working with child victims with disabilities should adopt a trauma-informed approach throughout all stages of proceedings. Any interventions should avoid secondary victimisation and minimise harm.
- H. The provision of appropriate accommodations and support to children with disabilities should be understood as enabling their effective participation on an equal basis with other children, as opposed to amounting to differential treatment. Where procedural accommodations are needed, these must be provided as a right and should not be dependent on the child proving a need or be overridden by 'undue burden' argument.
- I. Justice systems should employ the principles of universal design<sup>52</sup> so as to ensure that courts and justice procedures are accessible from the outset and to reduce reliance on individual accommodations.
- J. Children's privacy must be protected in accordance with applicable national and EU data protection law. As such, information about the child should be shared only when necessary and with appropriate safeguards, with the consent of the child/young person or, where the child is very young, with the consent of their legal representative, and in all cases applying data minimisation principles.
- K. Each child's intersecting identities shape their experiences and support needs. As such, professionals and supporters who interact with the child must identify barriers arising from the interaction of disability with other characteristics by way of individual assessment.
- L. A child should never be at risk of institutionalisation because of victimisation. Accordingly, support for children with disabilities involved in the justice system should be provided through community-based mechanisms.

### 3. Terminology

#### Special Representative

An independent legal professional, appointed by order of the court, who represents and advocates for the child's legal interests during the legal proceedings. The Special Representative acts in the

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<sup>52</sup> Article 4(1)(f) CRPD; UN Committee on the Rights of Persons with Disabilities (CRPD), 'General comment No 2 (2014) Article 9: Accessibility' (22 May 2014) UN Doc CRPD/C/GC/2, para. 15-16, 24, 35; Eilíonóir Flynn, *Disabled Justice?: Access to Justice and the UN Convention on the Rights of Persons with Disabilities* (Routledge 2015)

child's legal interests and is distinct from the child's parents, guardians, or any other party to the proceedings. They are generally appointed where there is a potential conflict of interest between the child's interests and those of another party to the proceedings.

The principal characteristics of the Special Representative are their legal expertise and their focus on the child's legal interests.

### **Intermediary (or Facilitator)**

A professional who facilitates effective communication between children who have communication needs and justice actors (police, prosecutors, judges, defence lawyers) as well as other supports such as child welfare services. This facilitation includes conducting individualised assessments of communication needs and providing the court with written or oral reports detailing those needs and recommending procedural and questioning modifications to address them.<sup>53</sup> The intermediary may also monitor whether the child can understand and participate effectively. The intermediary maintains neutrality and does not advocate for particular outcomes in a case, being instead focused on ensuring adequate and appropriate support for the child to communicate.

The two main functions of an intermediary are:

1. To improve the quality and coherence of evidence provided by the child/young person;
2. To contribute to understanding between all parties to the proceedings and the child/young person.<sup>54</sup>

This may be done in various ways, such as reformulating questions posed to a child into language they can understand, or by transmitting the child's responses back to questioners in a way that preserves their accuracy and completeness.<sup>55</sup>

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<sup>53</sup> The Advocate's Gateway, *Intermediaries: Step by Step*, Toolkit 16 (2 September 2019) p. 6, citing the Judicial College *Equal Treatment Bench Book* (2018) p. 2-21, para 82

<sup>54</sup> *Ibid.*, p. 7, citing Criminal Practice Directions 3F.1.

<sup>55</sup> *Ibid.*, p. 8, citing Section 29(2) of the Youth Justice and Criminal Evidence Act 1999 (UK). Section 29 defines the intermediary's function as: "to communicate (a) to the witness, questions put to the witness, and (b) to any person asking such questions, the answers given by the witness in reply to them, and to explain such questions or answers so far as necessary to enable them to be understood by the witness or person in question."

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In contrast, intermediaries are not expert witnesses and, as such, should not be requested to provide opinions on the accuracy or reliability of a child's recollection of past events. Equally, they should not be expected to assess a child's 'competence' to give evidence.<sup>56</sup> They are also not language interpreters – this is a distinct role which requires professional interpretation services in cases where the child/young person's language is different from the one in which the proceedings are being conducted. This distinction between an intermediary and a language interpreter is important. A language interpreter provides translation between two different languages. An intermediary, by contrast, addresses communication barriers arising from a child's support needs and/or trauma. These are separate needs (which may in some cases co-exist).

An intermediary's duty is to the court rather than to any party to the proceedings.

### **Support Person**

This is generally a trusted adult who provides psychosocial and emotional support to the child throughout proceedings. The support person helps the child navigate the justice process emotionally. They may coordinate access to other services (e.g. counselling, medical care), and advocate for the child's wellbeing during the legal process. The support person is therefore distinct from legal representation of the child and from the communication support that an intermediary provides.

A support person may either be a professional or a person from the child's life with whom they have a relationship of trust, such as a family member or teacher.

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<sup>56</sup> Ibid

# 03

**INDIVIDUAL ASSESSMENT  
& MATCHING SUPPORT TO  
NEEDS**

### 1. Individual Assessment

The ENSURE national research illustrated that no standardised individual assessment procedure which includes consideration of communication needs exists in any of the three countries. In Austria, "the need [for communication support] often only 'becomes apparent in the course of the proceedings,'" with the result that the approach "remains reactive rather than structural."<sup>57</sup> The Juvenile Court Assistance representative in Austria confirmed: "We rarely know in advance whether there is a diagnosis — disabilities (mostly learning difficulties) usually only come up in conversations with the young people."<sup>58</sup> In Romania, assessments are generally initiated at the request of judicial authorities and conducted by psychologists or neuropsychiatrists, but the Romania report finds that "there is no standardised, early disability screening and tailored communication plan in every case," that recommendations are "not always applied consistently," and that children are rarely informed of their right to request assistance.<sup>59</sup> In Serbia, individual assessment exists only informally and at the discretion of the prosecutor or judge, typically once criminal proceedings are underway, and there is "no established practice for systematically identifying and supporting children with disabilities in judicial proceedings."<sup>60</sup>

Effective support begins with individualised assessment which considers children's communication needs and, where relevant, trauma histories. Individual assessments should be a multidisciplinary process which include professionals with relevant expertise. This might include communication specialists (e.g. speech and language therapists), child psychologists, social workers, and justice professionals.<sup>61</sup> The child themselves should be involved in assessment in a manner consistent

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<sup>57</sup> AT Report, Section II.2.2 (Definition and Perception of Disability): focus group participant (FG8)

<sup>58</sup> AT Report, Section II.2.2 (Support Structures): Juvenile Court Assistance representative (FG1)

<sup>59</sup> RO Report, Sections: "Assessment of Children's Needs" and "Common Gaps and Implementation Problems."

<sup>60</sup> RS Report, Section 5.2

<sup>61</sup> Lupo, Giampiero, Giada Pacifico, Andrada Antofie, Aleksandra Ivankovic, Antonio De Martin, David Banes, Sabine Lobnig, Aysegul Oz, and Bruno Monteiro. "Model Multidisciplinary Cooperation Systems.", Consiglio Nazionale delle Ricerche (CNR), Victim Support Europe (VSE), SL Consulting, and Validity Foundation, 30 June 2025; Doyle Guilloud, S., Le Hô, A., Öz, A., & Monteiro, B. (2025). *Linking systems, hearing children's voices: International synthesis on adaptive and accessible child-friendly courts for children with intellectual and psychosocial disabilities*. Validity Foundation

## INDIVIDUAL ASSESSMENT & MATCHING SUPPORT TO NEEDS

with their age and capacity – the assessment should not be solely based on professional determinations, where possible.

This assessment should take place as early as possible in the justice process - ideally at first contact with authorities (police and/or social services). This is so that their support needs can be identified and accommodated from the outset and, in so doing, maximising their access to justice.

The core purpose of the assessment should be to determine how best to communicate with the child/young person and for them to communicate during the justice process<sup>62</sup>. As such, the assessment should consider:

- The child's preferred communication methods, including any assistive technology they may use
- Any support needs the child may have regarding communication, cognition, memory, or processing
- The child's own views and preferences regarding support
- The child's trauma history and current trauma responses
- The child's understanding of justice proceedings
- Cultural background, language needs, or any other aspects of their identity which may need to be accommodated
- Family circumstances and relationships
- Environmental needs/risks (e.g. living in rural area without easy access to transport, living in an institution, having been victimised by neighbours)
- Care arrangements and/or daily/weekly routine

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<sup>62</sup> The Advocate's Gateway. 2019. Intermediaries: Step by Step: Toolkit 16. 2 September 2019. London: The Advocate's Gateway, p. 13, section 4.2, step 8

## INDIVIDUAL ASSESSMENT & MATCHING SUPPORT TO NEEDS

The purpose of the assessment process is to identify the communication needs and support requirements which are necessary to enable the child's participation in the legal proceedings.<sup>63</sup>

The assessment(s) should **not** be used to:

- Make determinations regarding the therapeutic or treatment needs of the child outside of the context of their participation in the legal proceedings.
- Diagnose medical or psychological issues.
- Inform the outcome of the criminal case<sup>64</sup>

For a child/young person who communicates using non-verbal methods (e.g. sign language, AAC devices, pictorial systems), the individual assessment should be carried out by an expert in alternative forms of communication.<sup>65</sup> Where a child uses a non-standard form of communication, this individualised form of communication should be treated by justice professionals as valid and may require dialogue and coordination between supporters and external experts such as speech and language therapists in order to ensure that the voice of the child is heard.

A rights-based individual assessment has several components:

- It is conducted systematically from the child's first contact with justice authorities, with information documented and shared appropriately.<sup>66</sup> Where the child first discloses that they have been the victim of a crime to someone other than the police (e.g. a school, hospital, or social services) referral and

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<sup>63</sup> UN General Assembly, Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3 (CRC) arts 3, 12, 19, 39; UN General Assembly, Convention on the Rights of Persons with Disabilities (adopted 13 December 2006, entered into force 3 May 2008) 2515 UNTS 3 (CRPD) arts 3, 9, 13; Committee on the Rights of the Child, 'General comment No 12 (2009): The right of the child to be heard' (1 July 2009) CRC/C/GC/12 paras 35–37, 57–64

<sup>64</sup> Justice Intermediary Starter Kit, Module 6: Assessing Needs and Report Writing ([www.justiceintermediary.org](http://www.justiceintermediary.org)), 'Purpose of Assessment' section - emphasises that assessment boundaries are essential to the impartiality and credibility of the assessment process.

<sup>65</sup> The Advocate's Gateway. 2019. *Intermediaries: Step by Step: Toolkit 16*. 2 September 2019. London: The Advocate's Gateway, p. 11, section 4.1

<sup>66</sup> International Commission of Jurists, Model Benchbook on the Rights of Persons with Disabilities in Criminal Proceedings, drafted by Karolína Babická, Cristina Giacomini, Tim Fish and Ian Seiderman, ENABLE Project (coordinated by the Validity Foundation), August 2024, Practical Guidance and Recommendations 1.A, and Systemic Recommendations 2.B

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information-sharing mechanisms should exist so that the child's already identified support needs are shared with justice authorities as early as possible.

- It respects the child's legal capacity and will and preference, involving the child in dialogue about their own needs rather than professional assessment alone.
- It takes a multidisciplinary approach which includes communication specialists, psychologists, social workers, justice professionals, and medical professionals as relevant.<sup>67</sup>
- It identifies barriers the child faces, including those experienced by the child due to their intersectional identities, and makes clear and actionable accommodations for the removal of those barriers.
- It should be continuous and adaptive, revisited at key transition points as the child's needs change.
- It should identify a contact person to whom the child can turn to request additional support and who leads on the individual assessment process.<sup>68</sup>

As such, a right-based individual assessment is one which places the child at the centre of the process. It should be conducted in an accessible way that is responsive to the child's communication and support needs. The child's understanding of the assessment process and its purpose should be verified at regular intervals. The assessment should produce actionable recommendations for accommodations based on the identified support needs of the child.

### Promising practices

In New Zealand, communication needs assessments are conducted in a neutral environment close to the child's home, between the intermediary, the child, and a third party, such as a police officer. These assessments are generally not carried out at the police station or school to help the child distinguish the role of intermediary from other actors.

Communication needs are assessed shortly before the hearing, taking into account the child's evolving development, so as to avoid placing undue pressure on the child.

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<sup>67</sup> International Commission of Jurists, Model Benchbook on the Rights of Persons with Disabilities in Criminal Proceedings, drafted by Karolína Babická, Cristina Giacomini, Tim Fish and Ian Seiderman, ENABLE Project (coordinated by the Validity Foundation), August 2024, Section IV.A: Process for Individual Assessment

<sup>68</sup> Lupo, Giampiero, Giada Pacifico, Andrada Antofie, Aleksandra Ivankovic, Antonio De Martin, David Banes, Sabine Lobnig, Aysegul Oz, and Bruno Monteiro. "Model Multidisciplinary Cooperation Systems.", Consiglio Nazionale delle Ricerche (CNR), Victim Support Europe (VSE), SL Consulting, and Validity Foundation, 30 June 2025, Part 1, Section 2.4.2: "Step 2: In-depth needs assessment," p. 32

## INDIVIDUAL ASSESSMENT & MATCHING SUPPORT TO NEEDS

It should be noted that an individual assessment of support needs can only be conducted if someone at the point of first contact recognises the need for one, or if they child or their legal guardian/carer requests one. In all three ENSURE countries, that recognition does not happen in a systematised manner. Children with non-visible disabilities pass through initial police contact without their support needs being identified. For example, in Austria, the Juvenile Court Assistance representative confirmed that "we rarely know in advance whether there is a diagnosis — disabilities (mostly learning difficulties) usually only come up in conversations with the young people."<sup>69</sup>

The remedy for this gap is the training of legal actors such as police officers and prosecutors in basic support-need screening who encounter the child at the early stages of the legal proceedings. This should not be a disability-specific training but should instead be focused on ensuring a universal, child-centred competency to be applied to all child victims on first or early contact. If this initial screening suggests that the child may have communication or other support needs, a formal individual assessment should then be triggered.<sup>70</sup>

The **Barnahus** ('Children's House) model, which originated in Iceland in 1998, now operates across several EU jurisdictions and is a best practice example of how mandatory multidisciplinary assessment at first contact can be systematised – ensuring that it is not dependent on individual knowledge or discretion. Adapted from the Children's Advocacy Centre (CAC) model developed in the United States, the model is built on the "one door" or "under one roof" principle - rather than children being moved between agencies and institutions, professionals from criminal justice, child protection, physical health, and mental health services are co-located and coordinate their responses in a single setting. The model provides for the use of child-friendly environments and pre-interview multidisciplinary coordination as compulsory minimum procedural standards.

A central aspect of this is the joint investigative interview. This is observed by a multidisciplinary team from an adjacent monitoring room, with the purpose of reducing the need for children to repeatedly recount their experiences to multiple professionals and therefore minimise secondary victimisation.

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<sup>69</sup> AT Report, Section II.2.2: Juvenile Court Assistance representative (FG1)

<sup>70</sup> Susanna Johansson, Kari Stefansen, Elisiv Bakketeig, and Anna Kaldal, eds., *Collaborating Against Child Abuse: Exploring the Nordic Barnahus Model* (Cham: Palgrave Macmillan, 2017)

A common feature of this model is that children's pre-recorded interviews serve as evidence – avoiding the need for them to testify in court and protecting them from cross-examination, while nevertheless preserving the defendant's right to a fair trial.

### Report of Individual Assessment

Relevant information to record in the assessment report includes the venue, date, and duration of the assessment meeting(s); attendees at the meeting(s) and their professional roles; evidence of informed consent to the assessment from the child/young person and/or guardian; observations about the child's communication needs and preferences; people who are currently involved in the child's care and support.

The report should include recommendations accompanied by practical examples, rather than more general recommendations such as "avoid tag questions" or "use signposting". These might include: "Instead of 'Do you remember telling the police officer about the incident that occurred on [date]?' ask 'Tell me what happened on [date].'"<sup>71</sup>

The report may also include other matters, such as any other measures or procedural accommodations which may be necessary (e.g. special representative, support person), as well as the logistics of how the role will work in practice (e.g. if an intermediary: where will they be positioned in the interrogation room/courtroom, how will they signal to police/the court if they detect communication barriers/issues).<sup>72</sup>

Assessment reports should make clear the distinction between communication support needs and any assessment of the child's credibility or the reliability of their testimony. While some communication differences may superficially appear to have implications for reliability, these should not be conflated. This is particularly important so as to prevent secondary victimisation and

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<sup>71</sup> Ibid., p. 32, section 9.4

<sup>72</sup> Ibid., p. 31-32, section 9.4

## INDIVIDUAL ASSESSMENT & MATCHING SUPPORT TO NEEDS

ensure that communication differences are addressed through appropriate accommodations rather than through discounting the child's testimony.<sup>73</sup>

A copy of the assessment record should be shared with the child (and, where appropriate, their guardian).<sup>74</sup> They should be invited to verify the information and propose amendments where possible. Established protocols for information-sharing should be followed (see **section 8.1** below). In particular, the report should not be treated as a clinical assessment. As such, it should only be supplied to those who need it for the purposes of communication with the child/young person (e.g. police, prosecutors, defence counsel, and the court). It should not be shared with other parties without the consent of the child or their guardian or a court order.<sup>75</sup>

### 2. Role Allocation

It is important to note that not every child victim with a disability may require all three roles – special representative, intermediary/facilitator, support person. This is because these roles are distinct but complementary, having distinct functions and associated competencies in supporting children with disabilities during the legal proceedings<sup>76</sup>. The three roles can work together, sharing information (within confidentiality limits) and coordinating to ensure the child's needs are met, but an individual assessment should determine the nature of the support the child requires to participate in the legal proceedings. The final decision on the appointment of one or more of the supports contained in this Model will generally rest with the judge, based on the individual assessment and the views of the child/young person.

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<sup>73</sup> Communication Facilitators Bulgaria, "What is CF? – Communication facilitators," section "Identifying a person with communication needs," <https://communication-facilitators.bg/en/what-is-cf/>

<sup>74</sup> Justice Intermediary Starter Kit, Module 6, 'Recording Assessment Information' section.

<sup>75</sup> Ibid., p. 14, section 4.2

<sup>76</sup> Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime OJ L315/57 arts 8–10, 22–24; European Union Agency for Fundamental Rights, Child friendly justice – Perspectives and experiences of children involved in judicial proceedings in the 28 Member States of the European Union (Publications Office of the European Union 2017) [https://fra.europa.eu/sites/default/files/fra\\_uploads/fra-2017-child-friendly-justice-children-s-perspective\\_en.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/fra-2017-child-friendly-justice-children-s-perspective_en.pdf), pp. 15-16

## INDIVIDUAL ASSESSMENT & MATCHING SUPPORT TO NEEDS

A decision framework in Appendix B of this model is intended to guide practitioners in determining which role(s) should be appointed on this basis.

04

ACCOMMODATIONS &  
ACCESSIBLE PROCEDURES

## ACCOMMODATIONS & ACCESSIBLE PROCEDURES

As noted above, the purpose of individual assessments is to determine the types of support/accommodation the child victim with disabilities may require to participate effectively in justice proceedings.<sup>77</sup> Once that has been determined, it is good practice for formal discussions to take place between the relevant actors so as to establish the accommodations and/or supports which should be put in place based on the assessment.<sup>78</sup>

Consistent with States' obligations under Articles 7 and 12 of the CRPD and the principle of supported decision-making, children with disabilities themselves should also be actively involved in decisions concerning the procedural aspects of their participation in legal proceedings. This should, at a minimum, include consultation on: the choice of support person; communication aids and accommodation measures; the format and setting of any interview or testimony; and any other matter that materially affects how the child engages with the justice process.

In determining and implementing accommodations, intersectional factors must always be considered. These might include the child's linguistic and cultural background, their social and family circumstances, their living context, and any additional support needs arising from the interaction of disability with other characteristics such as ethnicity, migration status, gender, or socioeconomic background, in accordance with the non-discrimination principle under Article 5 of the CRPD.

### 1. Reasonable Accommodations vs. Procedural Accommodations

Under the CRPD, two distinct types of accommodations are recognised:

Reasonable accommodations<sup>79</sup> are necessary and appropriate modifications and adjustments made to remove barriers to the enjoyment of rights on an equal basis with others. However, this is subject to the limitation of "disproportionate or undue burden", i.e. a State may decline to provide

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<sup>77</sup> UN Committee on the Rights of Persons with Disabilities, 'General Comment No 1: Article 12: Equal Recognition before the Law' (19 May 2014) UN Doc CRPD/C/GC/1, para. 39

<sup>78</sup> Ibid., p. 18, section 4.2

<sup>79</sup> Article 2 CRPD

## ACCOMMODATIONS & ACCESSIBLE PROCEDURES

a reasonable accommodation if doing so would impose a disproportionate cost or organisational change.

Reasonable accommodations are to be distinguished from procedural accommodations.<sup>80</sup> The latter are modifications to procedural rules and practices which are intended to facilitate the effective role of persons with disabilities in all legal proceedings “including at investigative and other preliminary stages”<sup>81</sup>. These are not subject to the “undue burden” limitation<sup>82</sup> and, as such, States must provide procedural accommodations as a matter of right when needed to ensure effective participation in justice proceedings.<sup>83</sup> Procedural accommodations which, consistent with Article 13 of the CRPD are non-discretionary and have to be provided to enable children with disabilities to effectively enjoy access to justice in an age-, gender- and disability- sensitive manner<sup>84</sup>, can take several forms, as set out below.

Considering their centrality to the right to access to justice of children with disabilities and the fact that they require changes or alterations to the legal process, the accommodations set out in this model are procedural accommodations.

Article 13(1) of the CRPD also refers to “age-appropriate accommodations” as forming a key part of access to justice - this is of particular relevance to child victims with disabilities.

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<sup>80</sup> Article 13 CRPD

<sup>81</sup> Article 13(1) CRPD

<sup>82</sup> United Nations Office of the High Commissioner for Human Rights, *International Principles and Guidelines on Access to Justice for Persons with Disabilities* (Geneva, August 2020)

<sup>83</sup> Committee on the Rights of Persons with Disabilities, *General Comment No. 6 (2018) on Equality and Non-Discrimination*, UN Doc. CRPD/C/GC/6, para. 55; United Nations Office of the High Commissioner for Human Rights, *International Principles and Guidelines on Access to Justice for Persons with Disabilities* (Geneva, August 2020), p. 9; International Disability Alliance, ‘Article 13 – Access to justice’ (Compilation of CRPD Committee’s Concluding Observations), October 2022 [https://www.internationaldisabilityalliance.org/sites/default/files/article\\_13\\_crpdpdf](https://www.internationaldisabilityalliance.org/sites/default/files/article_13_crpdpdf)

<sup>84</sup> Lupo, Giampiero, Giada Pacifico, Andrada Antofie, Aleksandra Ivankovic, Antonio De Martin, David Banes, Sabine Lobnig, Aysegul Oz, and Bruno Monteiro. "Model Multidisciplinary Cooperation Systems.", Consiglio Nazionale delle Ricerche (CNR), Victim Support Europe (VSE), SL Consulting, and Validity Foundation, 30 June 2025, Part 1, Section 2.12: "Setting procedural accommodations to respond to the needs of victims," p. 48

## ACCOMMODATIONS & ACCESSIBLE PROCEDURES

Accommodations may fall into different categories:

(a) General Environment: Location of interviews and proceedings; formality level of environment; sensory considerations (noise, lighting); provision of child-friendly spaces; accessibility of transport and facilities. <sup>85</sup>

(b) Times and Breaks: Scheduling in relation to the child's optimal functioning (e.g. time of day when medication is most effective or concentration levels are highest); frequency and duration of breaks; permission for flexibility in break-taking. <sup>86</sup>

(c) Seating and Positioning: Proximity to questioners; sight lines and visual access; arrangements to minimise anxiety or trauma-related triggers; accessibility for children with mobility needs. <sup>87</sup>

(d) Uniforms and Physical Presentation: Modification of formal attire worn by justice professionals (e.g. removal of wigs and gowns) where this reduces anxiety; preference for specific gender of interviewer or lawyer where trauma-informed or culturally appropriate. <sup>88</sup>

(e) Presence of Support Persons: Availability of a familiar trusted adult, carer, or support person during assessment, interview, and testimony, where appropriate and where doing so does not compromise evidence integrity. <sup>89</sup>

(f) Other Procedural Accommodations: Extended timeframes for different stages; video-recorded testimony or remote testimony via live link; screens or other measures to shield the child from the accused; pre-trial familiarisation visits; closed proceedings to protect privacy; proceedings conducted in alternative settings; modification of cross-examination (limits on duration, number of questions, use of 'putting the case' technique).<sup>90</sup>

## 2. Types of Procedural Accommodations

### Communication accommodation

These ensure the child can communicate and understand information. Communication accommodations can include the adaptation of verbal communication, as well as the provision of

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<sup>85</sup> Justice Intermediary Starter Kit, Module 7, 'General Environment' subsection

<sup>86</sup> Ibid., 'Times and Breaks' subsection

<sup>87</sup> Ibid., 'Seating and Positioning' subsection

<sup>88</sup> Ibid., 'Uniforms/Physical Presentation' subsection

<sup>89</sup> Ibid., 'Presence of Support Persons' subsection; Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime OJ L315/57 arts 8–9, 20–24; UN Special Rapporteur on the rights of persons with disabilities and others, International Principles and Guidelines on Access to Justice for Persons with Disabilities (UN, 2020) Guideline 7(d); Committee of Ministers of the Council of Europe, 'Guidelines of the Committee of Ministers of the Council of Europe on child friendly justice' (adopted 17 November 2010) CM/Del/Dec(2010)1098/10.2 <https://rm.coe.int/16804b2cf3>

<sup>90</sup> Ibid., 'Seating and Positioning' subsection (regarding remote testimony and screens); and 'Managing Novel Situations' subsection (regarding pre-trial visits)

## ACCOMMODATIONS & ACCESSIBLE PROCEDURES

written information in accessible formats (e.g. Easy to Read, pictograms, visual schedules, or other formats suited to the child's communication needs and preferences). They include:

- *Speed and delivery*: Slowing the pace of questioning, allowing processing time, and permitting silence whilst the child formulates their response.<sup>91</sup>
- *Vocabulary and language simplification*: Using commonly understood words, avoiding legal jargon and complex terminology, replacing passive constructions with active voice, and avoiding negatives and 'tag questions' (e.g. "you agree with that, don't you?").<sup>92</sup>
- *Grammatical accommodation*: Using past rather than present tense when discussing traumatic events; avoiding double negatives and complex grammatical structures.<sup>93</sup>
- *Question structure*: Keeping questions short with a single part; avoiding unnecessary introductory phrases; avoiding questions that provide multiple choice answers unless essential.<sup>94</sup>
- *Communication aids and devices*: Augmentative and alternative communication (AAC) systems, interpreters for sign language, speech-to-text interpretation, and other assistive technology adapted to the child's needs. The following technologies have been shown to be effective: AAC pictographic browsers and communication boards; speech-to-text real-time transcription (CART); screen reader software and magnification software; assistive listening systems and devices; open, closed, and real-time captioning systems; video relay services; and voice, text, and video-based telecommunications products.<sup>95</sup> The selection should always consider user

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<sup>91</sup> Justice Intermediary Starter Kit, Module 7: *Accommodations*, 'Speed and Tone of Delivery' subsection

<sup>92</sup> Ibid., 'Level of Vocabulary' and 'Level of Grammar' subsections.

<sup>93</sup> Ibid., 'Level of Grammar' subsection

<sup>94</sup> Ibid., 'Complexity of Questions' subsection

<sup>95</sup> International Commission of Jurists, Model Benchbook on the Rights of Persons with Disabilities in Criminal Proceedings, drafted by Karolína Babická, Cristina Giacomini, Tim Fish and Ian Seiderman, ENABLE Project (coordinated by the Validity Foundation), August 2024, Section IV.B: Right to Information and Communication in Accessible Formats, citing CRPD Article 2 and Article 9 on accessibility

## ACCOMMODATIONS & ACCESSIBLE PROCEDURES

preferences, possibly combining technologies alongside unaided communication (e.g., gestures or vocalisations).<sup>96</sup>

- *Visual supports:* Body maps, timelines, pictorial choice indicators, emotion recognition charts, and courtroom diagrams to support understanding and expression.<sup>97</sup>
- *Additional time and breaks:* Extra time for the child to respond; breaks at regular intervals to prevent fatigue and maintain concentration.

### Court process accommodations

Modify how proceedings are conducted:

- Extended timeframes for different stages.
- Regular breaks during interviews and cross-examination.
- Presence of a familiar person or support person during proceedings.
- Modifications to cross-examination (limits on duration, number of questions, aggressive questioning).
- Video-recorded testimony, testimony given remotely to avoid live courtroom appearance, testimony given with the support of other formats such as photos or drawings made by the child/young person about an event.
- Screens or other measures to shield the child from the accused.
- Pre-trial meetings with court personnel to familiarise the child with the courtroom environment.
- Closed proceedings when appropriate to protect privacy.
- Proceedings conducted in alternative settings.

### Environmental accommodations

Make physical spaces accessible:

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<sup>96</sup> Lupo, Giampiero, Giada Pacifico, Andrada Antofie, Aleksandra Ivankovic, Antonio De Martin, David Banes, Sabine Lobnig, Aysegul Oz, and Bruno Monteiro. "Model Multidisciplinary Cooperation Systems.", Consiglio Nazionale delle Ricerche (CNR), Victim Support Europe (VSE), SL Consulting, and Validity Foundation, 30 June 2025, Part 2, Section 6: "AAC Technologies for Victims," pp. 120-124

<sup>97</sup> Ibid., 'Visual Aids' subsection; see also Module 6, 'Use of Visual Aids for Assessment' section

## ACCOMMODATIONS & ACCESSIBLE PROCEDURES

- Accessible courtrooms<sup>98</sup> and interview rooms.
- Accessible transport to and from court.
- Quiet rooms or child-friendly spaces for waiting.
- Accessible toilets and facilities.
- Seating arrangements that allow the child to sit comfortably and see proceedings.
- Adjustments for sensory needs (reduced noise, lighting adjustments, reduced visual clutter for children with autism or sensory sensitivities).

### Psychological supports

Reduce trauma and anxiety:

- Presence of a trusted adult.
- Pre-trial preparation and familiarisation.
- Continuity of personnel (same interviewer, same support person across proceedings).
- Trauma-informed interviewing and questioning techniques.
- Access to counselling or mental health support before, during, and after proceedings.

### 3. Who Determines What Accommodations

Judges will likely have a central role not only in determining what supports are provided to the child victim with a disability (see Section 3.2), but also on authorised accommodations during the justice process. For example, where an intermediary has been appointed, they will have a central role in assessing accommodation needs and recommending specific accommodations to facilitate the child's communication needs, but the final decision will likely rest with the judge.<sup>99</sup> Justice actors (judges, prosecutors, police) also have an important role in ensuring the implementation of accommodations recommended by the intermediary. Given their central decision-making and

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<sup>98</sup> The European Court of Human Rights has held that the physical inaccessibility of a court building to a person with a disability can itself constitute a violation of the right of access to a court under Article 6 of the ECHR (*Farcaş v. Romania*, Application No. 32596/04, Judgment of 14 September 2010, para. 48)

<sup>99</sup> Justice Intermediary Starter Kit, 'Module 2 – Defining the Justice Intermediary' (JusticeIntermediary.org, 2023) <https://justiceintermediary.org/wp-content/uploads/jisk-module-2-defining-the-justice-intermediary.pdf>

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implementation roles, judges and other justice actors should receive training on procedural accommodations and communication support in the context of child victims with disabilities.

Further, the child/young person and their family should be consulted about what accommodations will be most helpful. Older children and young people should be treated as the experts in their support needs and necessary accommodations and should be regularly consulted on the ongoing adequacy and suitability of the support they are being provided with.

05

**SPECIAL REPRESENTATIVE  
– OPERATIONAL MODEL**

## SPECIAL REPRESENTATIVE – OPERATIONAL MODEL

The absence of an independent legal representative for child victims in criminal proceedings emerged in all three ENSURE project countries.

In Austria, one judge argued for "an independent, legally established child representation in court proceedings — analogous to custody conflicts, where a guardian ad litem can be appointed," noting that "child law lags behind adult protection law" and that "children overall have weaker representation."<sup>100</sup> The Children's Advisor (Kinderbeistand), which is the closest existing mechanism, is restricted to civil family proceedings and contains no disability-specific requirements; it is wholly unavailable to child victims in criminal proceedings.<sup>101</sup> In Romania, court-appointed lawyers were described in the national research as "often just decorative," with the judge noting: "the court-appointed lawyer is often just decorative... the dialogue becomes intrusive and distressing for a victim with intellectual or psychosocial disabilities."<sup>102</sup> Children described their appointed support as misaligned with their interests: "They appointed a social worker, but I didn't feel helped. It seemed they were there for them, not for me"; "The lawyer was in a hurry. The social worker seemed on their side. If my family hadn't been there, I wouldn't have understood anything."<sup>103</sup> In Serbia, the right to legal representation for child victims with "particularly sensitive witness" status exists in law, but the Serbia report notes there is "no guarantee that the lawyer would indeed be appointed or whether the same attorney would accompany the child from the earliest stage of the proceedings throughout the whole process. Instead, multiple attorneys may be appointed at different stages, undermining continuity and failing to uphold the best interests of the child."<sup>104</sup> Judges and prosecutors interviewed do not perceive legal representatives as "adding significant value to proceedings in terms of safeguarding children's rights," a perception attributed directly to the "lack of specialisation and limited practical capacity of attorneys."<sup>105</sup>

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<sup>100</sup> AT Report, Section II.2.2 (Support Structures): District Court Judge (E3)

<sup>101</sup> AT Report, Section II.3.3

<sup>102</sup> RO Report, Section: "How Children and Their Legal Representatives Are Informed About Their Rights and Procedures," citing Judge.

<sup>103</sup> RO Report, *ibid*, citing Child 1 and Child 3

<sup>104</sup> RS Report, Section 5.3

<sup>105</sup> RS Report, Section 5.3

## SPECIAL REPRESENTATIVE – OPERATIONAL MODEL

These national findings demonstrate that the formal presence of a legal representative is insufficient without: appointment at the earliest stage of proceedings; continuity across all stages; training in child rights and disability-inclusive practice; and a mandate that is explicitly oriented to the child's interests rather than procedural compliance. This is the gap the Special Representative role is designed to close.

### 1. Mandate & Functions

#### Mandate

The Special Representative is an independent legal professional appointed by court order to represent the rights and views of a child who is a victim (or a witness) of a crime where the child's default legal representative (usually a parent or guardian) is unable to do so because of a conflict of interest or because the child is unaccompanied or separated from their family.<sup>106</sup> The Special Representative recognises the child as a rights holder, their duty is to them alone<sup>107</sup>, and they work to ensure that the child's support needs and effective participation are supported during their involvement with the justice system.<sup>108</sup>

The role of the Special Representative should be established by legislation so as to avoid any reliance on administrative or judicial discretion. The legislation should set out:

- The circumstances in which a Special Representative must or may be appointed
- The powers and duties of the Special Representative

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<sup>106</sup> Committee of Ministers of the Council of Europe, 'Guidelines of the Committee of Ministers of the Council of Europe on child friendly justice' (adopted 17 November 2010) CM/Del/Dec(2010)1098/10.2; European Union Agency for Fundamental Rights, Child-friendly justice – perspectives and experiences of professionals: Summary (Publications Office of the European Union 2015) [https://fra.europa.eu/sites/default/files/fra-2015-child-friendly-justice-professionals-summary\\_en\\_0.pdf](https://fra.europa.eu/sites/default/files/fra-2015-child-friendly-justice-professionals-summary_en_0.pdf), p. 4; Guardians ad Litem' (Irish Legal Blog) <https://legalblog.ie/guardians-ad-litem/>

<sup>107</sup> UN Committee on the Rights of the Child, General Comment No. 12 (2009), CRC/C/GC/12, para. 37: "the representative must be aware that she or he represents exclusively the interests of the child and not the interests of other persons such as the parent(s), institutions or other legal bodies." See also Council of Europe, European Convention on the Exercise of Children's Rights (1996), Article 10, which specifies that the task of the child's representative in family proceedings is to determine the views of the child and present them to the judicial authority, and to provide the child with relevant information and explanations.

<sup>108</sup> Margaret E. Sjoström, 'What's a GAL to do? The Proper Role of Guardians Ad Litem in Disputed Custody and Visitation Proceedings' – Children's Legal Rights Journal (2004)

## SPECIAL REPRESENTATIVE – OPERATIONAL MODEL

- The procedures for appointment and termination, the national authority or court office nominating professionals
- Training and qualification requirements
- Funding and resource mechanisms

Crucially, the appointment of a Special Representative does not relieve the state/other legal actors of their obligations to provide procedural accommodations, and communication supports to the child, which are independent of the provision of legal representation.<sup>109</sup>

### Functions

Throughout the legal proceedings, the Special Representative ensures that the views, opinions and best interests of the child are conveyed to the judge to inform any decision concerning the child. They make legal submission on behalf of the child, advocate for the child's rights and interests, and ensure that procedural accommodations necessary for their effective participation are implemented.

In order to conduct this role effectively, the Special Representative should establish and maintain direct contact with the child throughout the proceedings. This will generally mean spending sufficient time with the child to build trust, to understand their views, and to explain the proceedings in an age-appropriate and accessible way.<sup>110</sup> Where representatives have large caseloads or wide geographical jurisdictions within which they practice, this can impact upon personal contact with the child, resulting in their role being simply the filing of formal submissions to the court that do not

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<sup>109</sup> CRC, Article 2; Convention on the Rights of Persons with Disabilities (CRPD), Article 13. See also Čulo Margaletić & Šimović (2024) at 49

<sup>110</sup> General Comment No. 12 (2009), para. 36: the representative "must have sufficient knowledge and understanding of the various aspects of the decision-making process as well as experience working with children" and must transmit the child's views "correctly to the decision maker." See also Lundy, L., Tobin, J. & Parkes, A. (2019). 'The Right to Respect for the Views of the Child.' In J. Tobin (ed.), *The UN Convention on the Rights of the Child: A Commentary*. Oxford: Oxford University Press, p. 428

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reflect the child's real views or circumstances.<sup>111</sup> The ECtHR has found that representation of this kind is not adequate to vindicate children's rights.<sup>112</sup>

It may occur that a tension arises between the child's expressed wishes and the Special Representative's determination of their best interests. The UNCRC has made clear that the Special Representative's main role is to convey the child's views to the decision-maker. As such, they cannot simply substitute their own judgment for those views.<sup>113</sup> Nevertheless, there may be circumstances in which a child's wishes may not always be the same as their best interests, e.g. the child is being subjected to pressure from their parent or caregiver or is being impacted by trauma. In addition, there is evidence to indicate that a representative acting in the purported 'best interests' of the child may unconsciously substitute their own values for the child's views.<sup>114</sup> In such cases, the Special Representative should be guided primarily by the child's views, while also exercising professional judgment where those views may not align with the child's best interests –

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<sup>111</sup> Lucić, N. (2021). 'Child's Special Guardian – International and European Expectations and Croatian Reality.' *Balkan Social Science Review*, Vol. 17, pp. 109–112. Data from Croatia's Special Guardianship Centre showed that in 2020, 19 special guardians held a combined caseload of 11,469 cases — an average of over 600 cases per guardian. Special guardians attended only 16% of scheduled court hearings that year. In many cases representation was reduced to a written statement submitted without any personal contact with the child. Lucić concludes that a special guardian "who has never made personal contact with the child to get acquainted with the child's opinion and who has not personally participated in the court hearing but only made a written statement... has not actually fulfilled his or her role.

<sup>112</sup> ECtHR, *N. Ts. and others v Georgia*, App. No. 71776/12, 2 February 2016, paras. 75–77. The Court found representation inadequate where assigned representatives met the children only a few times for the sole purpose of drafting reports, with no regular contact maintained to establish a relationship of trust. The Court held that attendance at hearings and drafting of reports without the requisite engagement with the children could not be classified as "adequate and meaningful representation" within the meaning of the applicable international standards.

<sup>113</sup> Mol, C. (2019). 'Children's Representation in Family Law Proceedings.' *The International Journal of Children's Rights*, Vol. 27, No. 1, p. 70: "the representative should represent the child's views and not merely his or her own views as to what is in the best interests of said child." See also Lundy, Tobin & Parkes (2019), p. 428

<sup>114</sup> Forsman, M. (2017). 'The Swedish "Special Representatives for Children" and Their Role in Barnahus.' In S. Johansson et al. (eds.), *Collaborating Against Child Abuse*. Springer, pp. 234–235. Forsman identifies this as "the child lawyering dilemma" and notes that the best interests model "has inter alia been contested from the viewpoint that the lawyer may, subconsciously, insert their own views of what is best for children into the representation of an individual child." See also Lucić (2021), p. 112, finding that the majority of Croatian special guardians "practice what they consider to be the best solution for the child, regardless of the child's opinion."

## SPECIAL REPRESENTATIVE – OPERATIONAL MODEL

underlining the need for the Special Representative to have direct knowledge of the child and their circumstances.<sup>115</sup>

As such, when communicating the child/young person's views to the court, the Special Representative should convey those views accurately and completely, irrespective of whether they regard them as consistent with the child's best interests. The Representative's own assessment of the child's best interests shall be identified as such and distinguished from the child's expressed views. This obligation reflects the CRC Committee's guidance that the child's views — not the representative's judgment as to those views — are the object of the right to be heard, and that hearing a child through a conflicted or substitutive representative risks an infringement of that right.<sup>116</sup> Consequently, where the Special Representative also exercises a guardian ad litem-type function, the risk that this function is used to override/substitute for the child's own voice must be actively guarded against.<sup>117</sup>

The Special Representative should also ensure that the child with a disability understands their rights by communicating in an age-appropriate and accessible way to support their active participation in the legal process. This will likely include information on the procedural framework (including any procedural accommodations which may have been put in place) as well as the roles and mandates of the legal professionals involved in the proceedings. The Special Representative should generally lead on ensuring that an individual assessment (see Section 3.1) is carried out in order to determine what procedural accommodations the child requires to achieve their effective participation. They should also engage in ongoing monitoring of those adjustments throughout the proceedings.

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<sup>115</sup> Forsman (2017), p. 235: "close contact with the child is fundamental in assessing the child's best interests, as is valuing the child's own opinions."

<sup>116</sup> Anica Čulo Margaletić and Ivan Šimović, "Child Representation in Cases Before the European Court of Human Rights," *Pravni Vjesnik* 40(4) (2024): 31–53, at 34. General Comment No. 12 (2009), paras. 36–37 makes explicit that hearing the child through a conflicted representative "risks an infringement of the child's right to be heard, because there is reason to believe that views of the child are not going to be transmitted correctly to the decision maker."

<sup>117</sup> Kvalø (2025) at 469, warning that "[t]he role of the guardian ad litem is different from the role of the child's lawyer, and they do have different mandates in the case," and that "[c]ombining the roles of the two should be avoided, because of the potential conflict of interest that may arise."

## SPECIAL REPRESENTATIVE – OPERATIONAL MODEL

Some legal systems provide for the appointment of a ‘guardian ad litem’, ‘conflict guardian’, or equivalent court-appointed representative whose mandate is to act in the best interests of the child where the child is unable to represent themselves or where a conflict of interest exists with the child's parents or legal guardians. Where such a mechanism exists in a national jurisdiction, it may be adapted to fulfil the Special Representative function described in this Model, subject to the conditions set out below. Its existence does not, however, discharge the separate obligations to appoint an intermediary and a support person.

For an existing guardian ad litem or equivalent mechanism to satisfy the requirements of the Special Representative role, two conditions must be met. First, the mandate of the role must be clarified - whether through legislative amendment, professional guidance, or training - to prioritise the child's expressed views and wishes, treating access to justice as itself serving the child's best interests. Second, where the guardian ad litem is not a lawyer, and are themselves legally represented in proceedings, the responsibilities of the Special Representative must be clearly assigned as between the guardian and the instructed lawyer.

Where neither of these conditions can be met within the existing framework, the Special Representative must be treated as a new role. The fact that a child already has a court-appointed guardian, case worker, or legal representative does not satisfy the requirement.

### 2. Operational Rules

A Special Representative may be requested by the child/young person with a disability, their family, their legal representative, social services, or the judge hearing the criminal proceedings. Where such a request is made, or on the judge's own motion, the judge should determine whether the below criteria are met:

- There is suspected or confirmed intra-familial abuse or exploitation.
- There is a conflict of interest between the child's interests and those of their parents or guardians.
- The child is unaccompanied, in state care, or separated from family.

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Where one of those criteria exists, a Special Representative should be appointed by court order. It should be noted here that child social services and child protection authorities will likely play an important role in identifying and informing the court of whether any of the above criteria are met, as well as providing relevant supplementary background information to the court to inform its decision.

The Special Representative should be appointed at the earliest possible stage of the proceedings as delays reduce the time available for the representative to build trust with the child and gather information about their views and circumstances so as to be prepared for interviews or court hearings. Indeed, the ECtHR has found that long delays in appointing a Special Representative can constitute a violation of the child's rights.<sup>118</sup> This is applicable to children with disabilities, who are more likely to require legal support to navigate the justice process.

In proceedings where the alleged perpetrator of the crime of which the child with a disability is the victim is a parent, guardian, household member, or other person ordinarily responsible for the child's care, appointment should take effect before the child's first investigative interview. If the child has already been interviewed before the appointment of the Special Representative, the latter should review that interview and advise relevant stakeholders as to whether a supplemental interview would be in the child's interest.<sup>119</sup>

A competent authority should assess any conflict of interest which led to the appointment of the Special Representative in broad terms, e.g. it should include both substantive conflicts such as where a parent/guardian disagrees with the child's account of a rights violation and procedural conflicts, e.g. where a parent/guardian agrees with the child's account but declines or fails to initiate or advance proceedings due to various reasons. This is because either form of conflict can lead to

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<sup>118</sup> ECtHR, *M. and M. v Croatia*, App. No. 10161/13, 3 September 2015, para. 129. The Court found a violation of Article 8 ECHR and held that the child's "precarious position had been further exacerbated by the fact that it took the domestic authorities more than a year and a half before she had definitively been appointed a special representative in the custody proceedings, as required by the European Convention on the Exercise of Children's Rights."

<sup>119</sup> Johansson, Stefansen, Bakketeig & Kaldal (eds.), *Collaborating Against Child Abuse: Exploring the Nordic Barnahus Model* (Palgrave Macmillan, 2017), Chapters 10–12.

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the child being deprived of effective access to justice.<sup>120</sup> Such a consideration of potential conflicts of interest should be a duty that applies 'ex officio', i.e. the competent authority should assess it on its own motion at the initial stages of the proceedings, and it should not depend on a request being made by the child or any other party.<sup>121</sup> For children with a disability, the Special Representative themselves should also conduct their own conflict assessment, considering in particular: institutional conflicts where the child has been resident in a facility that is itself implicated in the abuse; conflicts arising from the child's dependence on a caregiver who is also the alleged perpetrator; and conflicts in which the child's disability has been invoked to discount or dismiss the child's account. The ECtHR has affirmed that children with disabilities who encounter communication barriers may be in heightened need of an independent representative due to the increased risk that their interests will not be represented.<sup>122</sup>

### Pre-trial stages

The Special Representative may accompany the child in some or all pre-trial stages, including meetings with the investigating authority, the needs assessment, or the preliminary hearing. At this stage, the special representative also has the duty to ensure the child receives:

- **Assessment and provision of reasonable and procedural accommodations:** Before any hearing takes place, an individual assessment process (see section 3.1) should be undertaken collaboratively with the child to identify the accommodations and support they may require for the effective participation. Whether the child requires the support of an intermediary to ensure effective communication, or a support person for emotional safety during the proceedings, the Special Representative has the authority to request the appointment of such persons by the court. The Special Representative

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<sup>120</sup> Kirsten Kolstad Kvalø, "The Child as a Legal Actor: Access to Justice, Procedural Capacity and the Right to Adequate Representation," *International Journal of Children's Rights* 33 (2025): 452–476, at 466–469 and Table 1 (at 468)

<sup>121</sup> Kvalø (2025) at 469

<sup>122</sup> Čulo Margaletić & Šimović (2024) at 45–46, discussing *L.R. v. Northern Macedonia* (App. No. 38067/15, 23 January 2020), in which the ECtHR affirmed the heightened vulnerability of children with disabilities whose appointed guardian had failed in its protective obligations.

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should ensure that this process takes place at the earliest possible opportunity, and that its determinations are implemented.

- **Child-friendly justice procedures:** the Special Representative, in close collaboration with the relevant stakeholders, is responsible for ensuring that the proceedings comply with child-friendly justice standards. This includes: a child-friendly physical environment, minimising the number of times the child is interviewed (with a single recorded interview using audio-video technology as the preferred approach)<sup>123</sup>, the use of adapted questioning and non-leading questioning techniques, the possibility for the child to take breaks, the removal of concealment of formal court uniforms where this would reduce the child's anxiety, the involvement of a psychologist or other relevant specialist as appropriate<sup>124</sup>. The Special Representative may request to inspect the venue in advance to verify that appropriate conditions have been put in place.

### Hearings and trial

The Special Representative must accompany the child during all meetings and hearings to ensure the child's rights, dignity and best interests are safeguarded during the proceedings and to oversee the implementation of the procedural adjustments necessary to the child's participation. The Special Representative makes legal submissions on behalf of the child but does not give evidence on behalf of the child/young person. As proceedings risk resulting in further harms and trauma<sup>125</sup> for child victims with disabilities, the Special Representative must monitor the risk of secondary victimisation during the trial and bring to the judge's attention any situation in which the wellbeing, emotional safety or psychological safety of the child is at risk.

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<sup>123</sup> Guidelines of the Committee of Ministers of the Council of Europe on Child-Friendly Justice (2010), Guideline 42. See also Forsman (2017), pp. 238–239

<sup>124</sup> Council of Europe. 'Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice' (2010) <https://rm.coe.int/16804b2cf3> (p.64)

<sup>125</sup> J. Shapland and M. Hall. 'What do we know about the effects of Crime on Victims?'. International Review of Victimology (2007) [https://www.academia.edu/15259338/What\\_Do\\_We\\_Know\\_About\\_the\\_Effects\\_of\\_Crime\\_on\\_Victims](https://www.academia.edu/15259338/What_Do_We_Know_About_the_Effects_of_Crime_on_Victims)

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### Post-trial support

The special representative's role could continue upon resolution of the case to provide continuity of support to the child victim. This may be the case where the child has legal interests in civil protection, family law, or administrative proceedings arising from the criminal case. In such circumstances, there should be a presumption that the Special Representative's mandate continues unless the court orders otherwise on application.<sup>126</sup> At the appropriate time, there should be a gradual withdrawal of the Special Representative, avoiding trauma to the child to the greatest extent possible during the process by ensuring that arrangements are in place to support transition to other support services where necessary.<sup>127</sup> This may include introducing the child to those services and ensuring that relevant information about the child's support needs is transferred to those services (with the child's consent).

### 3. Professional Requirements

In general, Special Representatives should hold a legal qualification so that they can have recognised standing to make legal submissions and advocate on behalf of the child before the court.

In addition to their professional background, the Special Representative must undergo specialised training provided by an accredited body recognised by the relevant court or regulatory authority before being assigned to cases involving children. This training must cover:

- The legal framework and procedures applicable to child victims with disabilities.
- Child-friendly justice procedures and procedural accommodations.
- Understanding the support needs and the communication needs of children with disabilities.

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<sup>126</sup> Johansson et al. (2017), Chapter 12. Under the Swedish model, the Special Representative's authority formally extends only through the criminal investigation phase. Evaluations have identified this as a significant gap, as children's legal and welfare interests do not terminate when police investigation ends.

<sup>127</sup> UN General Assembly, Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3 (CRC) art 39; Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime OJ L315/57 arts 8–9

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- Trauma-informed and victim-centred approaches.
- Effective coordination with other professionals involved in the proceedings (intermediaries, support persons, social services, child welfare agencies).
- The ethical dimensions of child representation, including the tension between representing the child's expressed wishes and acting in their best interests

Gaining these skills in a practical context is critical, as the evidence shows that where they are absent, representatives may be unable to engage meaningfully with child clients.<sup>128</sup>

In addition to these elements, the special representative must be able to benefit from continuing education programmes to maintain and develop their expertise. They must also be able to interact with their peers to share and develop their skills and improve the sharing of best practices to meet the needs of child victims of crime with disabilities.

### 4. Codes of Conduct & Ethical Standards

#### Ethical Standards<sup>129</sup>

**Do no harm:** The safety and well-being of the child serve as a guiding principle for the Special Representative's mandate. The Special Representative should adopt working methods that respect the child's dignity and prevent secondary victimisation. To this end, the special representative can interrupt any interaction (hearing, individual assessment, etc.) that exposes the child to the risk of further trauma of victimisation.

**Respect and Dignity:** As rights holders and active participants in proceedings, all child victims with disabilities must be treated with respect and dignity. The Special Representative works to ensure that no barriers hinder the child's active participation and that due weight is given to each child's

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<sup>128</sup> Forsman (2017), p. 237. An evaluation of Swedish Barnahus found that special representatives were sometimes "passive and seemed unaccustomed to talking to or associating with children" and that "on occasions, the special representative neither greeted or talked to the child" — conduct Forsman describes as "inconsistent with the lawyering roles and ethics as well as the demands regarding particular suitability."

<sup>129</sup> Based on Inter Agency Standing Committee, 'Definitions and Principles of a Victim/Survivor Centered Approach' (2023)

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support needs, situation, and environment when requesting, providing, and implementing procedural accommodations.

**Best interest of the child:** In most cases, by putting the child's best interest at the core of his/her mandate, the Special Representative guarantees the child with a disability's voice is heard throughout the proceedings and that meaningful weight is given to their views on all matters affecting them, protecting their right to access justice.

**Confidentiality:** During their mandate and after its conclusion, special representatives are bound by professional secrecy and must handle sensitive information relating to child victims with great care.<sup>130</sup> Any information gathered should only be shared with a limited number of relevant and authorised justice professionals, and only to the extent necessary for the performance of the Special Representative functions in the proceedings

**Accessibility and Inclusion:** Children must not experience informational, physical or communication barriers that hinder their understanding of or participation in legal proceedings. The Special Representative should ensure that any reasonable or procedural accommodation is provided in time to meet the child's needs, including access to an individual assessment and the capacity to request support from a trained professional such as an intermediary to facilitate communication at all stages of the legal process.

### Code of conduct

**Respecting the scope of the role:** The Special Representative's role is limited to representing the child during legal proceedings. It does not extend to decisions about education, medical care or other areas outside the justice process.

**Informed consent:** All information sharing should be based on documented consent from the child or their guardian, with a clear explanation of how the information will be used before it is requested.

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<sup>130</sup> UN Committee on the Rights of the Child, *General Comment No. 24 (2019) on children's rights in the child justice system*, CRC/C/GC/24, para. 95; ECtHR, *Beuze v. Belgium*, Application No. 71409/10, Judgment of 9 November 2018, para. 133

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**Continuity and Timing:** The Special Representative's duties evolve as the judicial process progresses. The start and end dates of their involvement are determined by the order issued by the judge or the protective measures resulting from the judgment. The Special Representative should advocate for continuity in their work so that the child victim can benefit from having the same person working with them.

**Explaining the role:** The Special Representative may encounter individuals – including those in the child's close environment – who may have misconceptions about their role. These should be addressed openly, with a clear explanation of the Special Representative's responsibilities, to avoid frustration or misunderstandings that could undermine the child's support network.

**Responding to the child's needs:** The Special Representative must remain responsive to the child throughout the criminal proceedings and address any needs expressed by the child that could affect their ability to participate effectively in the proceedings.

### 5. Quality Assurance & Accountability

#### Performance indicators

Special Representatives should undergo regular evaluation against the following criteria:

- **Initial contact with the child:** The Special Representative should introduce themselves to the child, explain their role, outline the schedule of the legal proceedings, and inform the child of their rights (all in an accessible manner) at the earliest practicable opportunity and, in all cases, prior to any investigative interview or hearing.<sup>131</sup>
- **Implementation of support:** Where the individual assessment identifies a need for communication support, an intermediary should be in place; where emotional support is needed, a support person approved by the child should be present at hearings.
- **Compliance with procedural deadlines** as set by the judge.

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<sup>131</sup> In some existing systems, the Special Representative may be appointed on the same day as a scheduled investigative interview with the child, potentially leaving no time for prior contact at all. See Forsman (2017), p. 235–236, on the compressed timeframes that can arise in criminal investigations and the importance of the Special Representative having the opportunity to familiarise themselves with the child before any interview takes place.

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- **Conduct during hearings:** Supervision by a peer should be provided during court hearings to assess the quality of practice in real time. This is particularly important in the case of Special Representatives new to the role.

### Supervision and quality review

The Special Representative must be subject to regular supervision, particularly when new to the role. Supervision should be peer-led and should determine the extent to which their work is independent of any influence other than that of the child, and whether they place the best interests of the child, their views and opinions, and their right to participate at the forefront of their work.

### Complaints

A complaint mechanism must be established for the duration of the Special Representative's involvement. Both the child and the judicial staff should have the right to report conduct that is contrary to the Special Representative's mandate and responsibilities.

**Child complaint mechanism:** When making initial contact with the child following their appointment, the Special Representative must also explain in a way that is accessible for the child the complaint mechanisms available to the child.

**Legal professional complaint mechanism:** The judge also has the power to remove the Special Representative in the event of inappropriate conduct during the proceedings, any attempt to influence the child's testimony, or where the Special Representative oversteps their responsibilities by making decisions or interfering in matters outside the scope of the legal proceedings and their mandate.

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None of the three countries included in the ENSURE project has implemented a comprehensive and inclusive intermediary service as defined by this Model.

In Austria, sign language interpretation is guaranteed in law but "occurs in court practice only about once a year" in the experience of the juvenile judge interviewed, and "video interpreting is technically possible at the Vienna Regional Criminal Court" but frequency of use could not be confirmed.<sup>132</sup> More broadly, "assisted communication has so far not been officially recognised as a form of communication by either the police or the courts."<sup>133</sup> Staff of psychosocial court assistance reported resorting to "documents intended for very young children because there are no suitable formats for older children or young people with disabilities."<sup>134</sup> The Federal Disability Advocate observed a "field of tension": children with learning difficulties or psychosocial impairments often need more time, breaks, and preparatory explanations, "but rapid taking of evidence moves to the foreground, while individual communication needs recede."<sup>135</sup>

In Romania, sign language interpreters are "acutely scarce," with only 56 accredited interpreters for the entire country, and geographic disparities mean children outside major cities are particularly disadvantaged.<sup>136</sup> When no intermediary within the existing scheme is available, professionals described resorting to improvised strategies — written notes, non-verbal gestures, drawing — to try to ensure comprehension. Deaf children face particular exclusion: "Information reaches Deaf children very fragmented, very little. They hardly know their rights at all. They learn more from each other than from institutions."<sup>137</sup>

In Serbia, expert witnesses appointed by prosecutors or judges perform the closest existing function to the intermediary role. However, these experts focus on assessing the child's

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<sup>132</sup> AT Report, Section II.2.3, citing Juvenile Court Judge (E2); and President of the Austrian Deaf Association (E4)

<sup>133</sup> AT Report, Section II.2.4 (Right to Be Heard): representative of support organisation for women with disabilities (FG3)

<sup>134</sup> AT Report, Section II.2.3: Psychosocial court assistance representative (FG9)

<sup>135</sup> AT Report, Section II.2.3: Federal Disability Advocate (FG5)

<sup>136</sup> RO Report, Section: "Availability and Use of Intermediaries for Children with Disabilities."

<sup>137</sup> RO Report, Section: "How Children and Their Legal Representatives Are Informed About Their Rights and Procedures," citing Interpreter 2

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psychological and emotional state and capacity to testify (rather than communication needs) and their involvement is "ad hoc rather than systematically guaranteed from first contact."<sup>138</sup> The Serbia report finds that the CPC's provision for psychiatric assessment to test a witness's ability to testify, rather than to identify what accommodations are needed to support their participation, "conflicts with the rights-based standards enshrined in the CRC, CRPD and the International Principles and Guidelines on Access to Justice."<sup>139</sup> Communication accessibility is inconsistent across the justice chain, with "no routine practice of tailoring vocabulary to the child's developmental level or disability, nor of verifying comprehension at intervals," leaving many children — especially those with sensory, intellectual, or psychosocial disabilities — facing "a double barrier: intimidating settings and inaccessible communication."<sup>140</sup>

### Intermediary Scheme - Spain

The role of the *facilitador* is grounded in the constitutional right to effective judicial protection guaranteed by Article 24 of the Spanish Constitution and is given legislative expression through provisions of the Civil Procedure Act and the Criminal Procedure Code. The principle of equality before the law is operationalised through specific provisions within the Civil and Criminal Procedural Codes. *Facilitadores* are neutral and specialist professional who assist persons with disabilities to understand and participate in judicial and police proceedings.<sup>141</sup>

It is particularly noteworthy that Article 7 bis of the Civil Procedure Code, introduced by Ley 8/2021 of 2 June 2021, acknowledges the entitlement of persons with disabilities to receive procedural accommodations at each stage of the procedure. It also gives the possibility for persons with disabilities to be supported by a professional expert acting as a facilitator to carry out the adaptation and adjustment tasks necessary for the person with a disability to understand and be understood. Although this provision sits within civil procedure legislation, it applies subsidiarily across criminal, social, and administrative proceedings.

In cases involving children with disabilities who are victims of crime, the Criminal Procedure Code provides for the intervention of an expert witness to protect and support the child during the testimony process. The *facilitador's* role in this context is limited to communication support.

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<sup>138</sup> RS Report, Section 5.4

<sup>139</sup> RS Report, Section 4.5

<sup>140</sup> RS Report, Section 5.8

<sup>141</sup> Plena Inclusión España, 'Javier Luengo: "El facilitador permite el derecho de acceso a la justicia de las personas con discapacidad intelectual"' (2022), available at: <https://www.plenainclusion.org/voces/numero/468-especial-trastorno-del-espectro-del-autismo-o-tea/javier-luengo-el-facilitador-permite-el-derecho-de-acceso-a-la-justicia-de-las-personas-con-discapacidad-intelectual/>

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In practice, *facilitadores* conduct an initial assessment of the child's communication needs during the single forensic interview with the police and provide active support throughout that interview. Since the adoption of Ley 8/2021, children under the age of 14 who are victims of crime are protected by provisions promoting the use of pre-recorded testimony (*prueba preconstituida*), where their evidence is recorded in advance and subsequently used during the trial to prevent secondary victimisation. For young people aged 14 to 18, this practice is recommended but remains at the discretion of the presiding judge.

In May 2024, the Community of Madrid became the first region in Spain to formally regulate the role through Decree 52/2024, establishing the requirements and appointment procedures for *expertos facilitadores procesales* across all court proceedings in the region.<sup>142</sup> Eligible professionals include those qualified in psychology, law, speech and language therapy, criminology, social work, social education, and occupational therapy, all of whom must complete a specialist training programme of at least 100 hours.<sup>143</sup> In 2022–2023 alone, facilitators trained through Plena Inclusión Madrid's programme accompanied 108 persons with intellectual through various legal proceedings.<sup>144</sup>

To ensure the quality and integrity of the service, practitioners must undergo specialised training to be admitted to the official court register of *facilitadores*, which governs the assignment of cases to the most suitable professionals considering the particular needs of the person with a disability. At the time of writing, there is no national register of facilitators and no statutory definition of the role at state level, though legislative and policy developments, including the *Plan Justicia 2030*, indicate that there will be continuing actions towards greater formalisation.<sup>145</sup>

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<sup>142</sup> Decreto 52/2024, de 8 de mayo, del Consejo de Gobierno de la Comunidad de Madrid, por el que se regula la función de la persona experta facilitadora procesal en los procedimientos judiciales de la Comunidad de Madrid, *Boletín Oficial de la Comunidad de Madrid*, 10 May 2024.

<sup>143</sup> Plena Inclusión Madrid, 'La Comunidad de Madrid regula la figura del facilitador judicial impulsada por Plena Inclusión Madrid' (May 2024), available at: <https://plenainclusionmadrid.org/noticias/comunidad-madrid-figura-facilitador-judicial-plena-inclusion-madrid/>; ICAM (Ilustre Colegio de la Abogacía de Madrid), 'La Comunidad de Madrid regula la designación de expertos facilitadores para personas con discapacidad en sedes judiciales' (January 2025), available at: <https://web.icam.es/la-comunidad-de-madrid-regula-la-designacion-de-expertos-facilitadores-para-personas-con-discapacidad-en-sedes-judiciales/>

<sup>144</sup> Plena Inclusión Madrid, 'Facilitador de acceso a la justicia. Llega su regulación normativa' (May 2023), available at: <https://plenainclusionmadrid.org/noticias/propuestas-decreto-figura-facilitadora-justicia/>; the figure of 108 persons accompanied in 2022–2023 is drawn from this source and the 2024 update published by Plena Inclusión Madrid (see footnote 143 above). See also: Soriano-Ferrer, M. and colleagues, 'La figura de facilitación de acceso a la justicia: comparación internacional de un reto formativo' (2024) *Siglo Cero* 55(1), available at: [https://scielo.isciii.es/scielo.php?script=sci\\_arttext&pid=S0210-16962024000100002](https://scielo.isciii.es/scielo.php?script=sci_arttext&pid=S0210-16962024000100002)

<sup>145</sup> Ministerio de Justicia de España, *Plan Justicia 2030*, Proyecto de Accesibilidad de Grupos Vulnerables; Estrategia Española sobre Discapacidad 2022–2030, aprobada por el Consejo de Ministros el 3 de mayo de 2022, Eje Motor, Objetivo 3, p. 66. On the absence of a national register and unified statutory definition, see: SID-INICO, 'Facilitadores de comunicación, figura clave para superar la barrera de la discapacidad en los juzgados', available at: <https://sid-inico.usal.es/noticias/facilitadores-de-comunicacion-figura-clave-para-superar-la-barrera-de-la-discapacidad-en-los-juzgados/>

### Intermediary Scheme – England Wales

England and Wales introduced the Registered Intermediary (RI) scheme under Section 29 of the Youth Justice and Criminal Evidence Act 1999.<sup>146</sup> After an initial training cohort in 2003, the first RIs began accepting referrals in 2004. A pilot was conducted in six areas before national rollout from 2008 onwards.<sup>147</sup> The scheme is administered by the Courts and Tribunals Service, and RIs are registered with the Ministry of Justice.<sup>148</sup>

RIs are independent communication specialists who generally come from backgrounds in speech and language therapy, psychology, and social work.<sup>149</sup> Their mandate is to the court rather than to any party, and their role is solely to facilitate communication. Section 29(2) of the 1999 Act states that:

*The function of an intermediary is to communicate—*

*(a) to the witness, questions put to the witness, and*

*(b) to any person asking such questions, the answers given by the witness in reply to them,*

*and to explain such questions or answers so far as necessary to enable them to be understood by the witness or person in question.*

Eligibility for RI support is established by the court on the basis of age (under 18) or the existence of a mental disorder, significant impairment of intelligence and social functioning, or a physical disability or disorder.<sup>150</sup>

In practice, the involvement of the RI begins with a formal communication needs assessment after referral. The recommendations from that assessment are compiled into a written report for the court, covering the child's communication abilities and needs and setting out guidance for all those who will interact with the child during the proceedings.

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<sup>146</sup> Youth Justice and Criminal Evidence Act 1999 (UK), s. 29, which defines the intermediary's function as communicating questions to the witness and answers to the questioner, and explaining such questions or answers so far as necessary to enable them to be understood

<sup>147</sup> Cooper, P., & Wurtzel, D. (2014). Better the second time around? Department of Justice Registered Intermediaries Schemes and lessons from England and Wales. *N. Ir. Legal Q.*, 65, 39

<sup>148</sup> Ministry of Justice (England and Wales), *Registered Intermediary Procedural Guidance Manual* (2024)

<sup>149</sup> Plotnikoff, J. and Woolfson, R., *Intermediaries in the Criminal Justice System: Improving Communication for Vulnerable Witnesses and Defendants* (Policy Press, 2015)

<sup>150</sup> Youth Justice and Criminal Evidence Act 1999 (UK), s. 16

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Where a video-recorded investigative interview with the child is conducted, it must be carried out in accordance with the *Achieving Best Evidence* (ABE) framework, the Ministry of Justice's statutory guidance on interviewing 'vulnerable' and intimidated witnesses in criminal proceedings.<sup>151</sup> The ABE interview is a police investigative interview which is planned in advance by the investigating officers in consultation with the intermediary. That planning process should cover the child's communication needs as they were identified in the intermediary's report; the layout of the interview room; the use of any communication aids; the structure and pacing of questioning; and any other adjustments required to support the child.<sup>152</sup>

Under section 27 of the Youth Justice and Criminal Evidence Act 1999, the video recording of the ABE interview may be admitted at trial as the child's evidence-in-chief - thus avoiding the child having to give live oral testimony in the courtroom.<sup>153</sup> Where a section 28 direction is also granted, cross-examination and re-examination may also be pre-recorded in advance of the trial.<sup>154</sup>

In circumstances where the child is required to participate in any aspect of the trial, a 'Ground Rules Hearing' must take place at the pre-trial of the proceedings. In that hearing, the judge meets with the lawyers and the intermediary to establish communication ground rules for the examination of the child. Directions made at a Ground Rules Hearing may cover the length and complexity of questions, the prohibition on certain questioning techniques, the scheduling of breaks, and any language or communication requirements identified by the intermediary.<sup>155</sup> The directions are mandatory on all parties and deviations from them may be challenged by the intermediary during the proceedings.

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<sup>151</sup> Ministry of Justice, *Achieving Best Evidence in Criminal Proceedings: Guidance on Interviewing Victims and Witnesses, and Guidance on Using Special Measures* (4th edn, 2022), available at: <https://www.gov.uk/government/publications/achieving-best-evidence-in-criminal-proceedings>. ABE was originally published in 2002 as a successor to the Home Office *Memorandum of Good Practice on Video-Recorded Interviews with Child Witnesses for Criminal Proceedings* (1992); see Smith, K., (2024) *Twenty-Five Years of Achieving Best Evidence: Investigative Interviews with Victims and Witnesses in England and Wales*. *International Journal of Police Science and Management*, 26 (4)

<sup>152</sup> College of Policing, *Working with Victims and Witnesses* (Authorised Professional Practice), available at: <https://www.college.police.uk/app/investigation/working-victims-and-witnesses>; Ministry of Justice, *Achieving Best Evidence* (2022), paras 3.121–3.128 (on the role of the intermediary in interview planning)

<sup>153</sup> Youth Justice and Criminal Evidence Act 1999 (UK), s. 27

<sup>154</sup> *Ibid.*, s. 28. Section 28 was piloted from 2014 and rolled out nationally in Crown Courts in England and Wales from 2022; see Crown Prosecution Service, *Special Measures*, available at: <https://www.cps.gov.uk/legal-guidance/special-measures>

<sup>155</sup> Criminal Practice Directions (England and Wales), Part 3F; see also The Advocate's Gateway, *Ground Rules Hearings and the Fair Treatment of Vulnerable People in Court*, Toolkit 1 (updated 2022), available at: <https://www.theadvocatesgateway.org/toolkits>

The RI scheme is widely regarded as one of the most evidence-based and operationally developed models of intermediary practice internationally and it has informed the design of similar schemes in Northern Ireland, Australia, and New Zealand.<sup>156</sup>

### 1. Mandate & Functions

#### Mandate

An intermediary is a professional who has expertise in communication support. For the purpose of this model, their role is to facilitate effective communication between children/young people with communication support needs and justice actors and, in so doing, vindicate their right to access to justice.<sup>157</sup> The role differs from that of a special representative or support person, as an intermediary does not advocate for a particular outcome – their focus should solely be on ensuring that the child/young person can communicate effectively.<sup>158</sup> Further, the responsibility for deciding whether and how to implement an intermediary's recommendations will generally ultimately rest with the judge, at least during the trial.

Equally, an intermediary is not an interpreter or translator. The distinction is of particular constitutional importance in Austria, where Austrian Sign Language (Österreichische Gebärdensprache, ÖGS) is recognised as a minority language in the Constitution.<sup>159</sup> A language interpreter's role is to convert meaning between one linguistic code and another and is governed by stringent rules regarding fidelity to the original message.

In circumstances where an individual assessment reveals that a sign language interpreter is needed in addition to an intermediary, both roles must be filled. In practice, this would likely mean the interpreter converts between the relevant sign language and the spoken language of the

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<sup>156</sup> Kearns, Á., Gallagher, A.L., Hayes, A., O'Gorman, A.M., O'Muiri, S., and O'Rourke, L., 'Perspectives on the Role of the Intermediary in the Justice System: A Systematic Review and Qualitative Synthesis' (2024) 28(4) *The International Journal of Evidence & Proof* 239–263

<sup>157</sup> Justice Intermediary Starter Kit, 'Module 2 – Defining the Justice Intermediary' (JusticeIntermediary.org, 2023) <https://justiceintermediary.org/wp-content/uploads/jisk-module-2-defining-the-justice-intermediary.pdf>

<sup>158</sup> Terese Henning and others, *Facilitating Equal Access to Justice: An Intermediary/Communication Assistant Scheme for Tasmania* (University of Tasmania 2018) [https://www.utas.edu.au/\\_data/assets/pdf\\_file/0011/1061858/Intermediaries-Final-Report.pdf](https://www.utas.edu.au/_data/assets/pdf_file/0011/1061858/Intermediaries-Final-Report.pdf)

<sup>159</sup> Article 8(3) of the *Bundes-Verfassungsgesetz*

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proceedings; the intermediary would then be tasked with ensuring that the child's communication profile, cognitive processing needs, and trauma history are understood by all actors throughout the process, and that questioning is adapted accordingly.

Implementation of intermediary roles has taken place in at least thirteen jurisdictions globally and within differing legal systems. Some States have enacted dedicated legislation establishing this function, while others have developed intermediary services by relying on existing non-discrimination and accessibility frameworks.<sup>160</sup> The terminology employed to describe this role varies by jurisdiction. The use of intermediaries has been implemented and evaluated in a number of jurisdictions and has been found to result in better evidence gathering and greater access to justice for recipients of the support.<sup>161</sup>

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<sup>160</sup> Access to Justice Knowledge Hub for Fair Participation, "Report on Intermediaries for Justice Around the Globe" (November 2020), p. 12-13

<sup>161</sup> Plotnikoff, Joyce, and Richard Woolfson. 2007. The 'Go-Between': Evaluation of Intermediary Pathfinder Projects. London, England: Ministry of Justice, [https://www.researchgate.net/profile/Richard-Woolfson/publication/344219930\\_The\\_'Go-Between'\\_evaluation\\_of\\_intermediary\\_pathfinder\\_projects/links/5f5cfbd792851c0789608d24/The-Go-Between-evaluation-of-intermediary-pathfinder-projects.pdf](https://www.researchgate.net/profile/Richard-Woolfson/publication/344219930_The_'Go-Between'_evaluation_of_intermediary_pathfinder_projects/links/5f5cfbd792851c0789608d24/The-Go-Between-evaluation-of-intermediary-pathfinder-projects.pdf); Department of Justice Northern Ireland (2015) Northern Ireland Registered

Intermediaries Schemes Pilot Project, Post-Project Review, page 3 <https://www.justice-ni.gov.uk/sites/default/files/publications/doj/registered-intermediaries-post-project-review-Feb15.pdf>; Kearns Á, Clarke D, Cusack A, Gallagher A, Humphreys J, Kedge S, McKee A. Intermediaries in the justice system for people with communication disability: Enacting Sustainable Development Goal 16 in Ireland, Northern Ireland, and New Zealand. *Int J Speech Lang Pathol.* 2023 Feb;25(1):141-146; Brendan M O'Mahony, 'The emerging role of the Registered Intermediary with the vulnerable witness and offender: facilitating communication with the police and members of the judiciary' (2010) 38(3) *British Journal of Learning Disabilities* 232; Áine Kearns, Aoife Lily Gallagher, Anna Hayes, Anne Marie O'Gorman, Sadhbh O'Muirí, and Lisa O'Rourke, "Perspectives on the Role of the Intermediary in the Justice System: A Systematic Review and Qualitative Synthesis," *The International Journal of Evidence & Proof* 28, no. 4 (October 2024): 239–63; Kelly Howard, Clare McCann and Margaret Dudley, 'What is communication assistance? Describing a new and emerging profession in the New Zealand youth justice system' (2020) 27(2) *Psychiatry, Psychology and Law* 301; Rebecca Milne, Kevin A. Roberts, Brendan M. O'Mahony, and Kevin Smith, "The Early Identification of Vulnerable Witnesses Prior to an Investigative Interview," *British Journal of Forensic Practice* 13, no. 2 (May 2011): 114–23; Ruth Howard, Emma Phipps, Jane Clabour, and Kelly Rayner, "'I'd Trust Them If They Understood Learning Disabilities": Support Needs of People with Learning Disabilities in the Criminal Justice System," *Journal of Intellectual Disabilities and Offending Behaviour* 6, no. 1 (March 2015): 4–14; Claire Edwards, Gill Harold, and Shane Kilcommins, *Access to Justice for People with Disabilities as Victims of Crime in Ireland* (Dublin: National Disability Authority, 2012), <https://nda.ie/publications/access-to-justice-for-people-with-disabilities-as-victims-of-crime-in-ireland>; Plotnikoff, J., & Woolfson, R. (2015). *Intermediaries in the criminal justice system*.

Bristol, UK: Policy Press.

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The nomenclature used by different States to describe this function is reflective of differing conceptual frameworks and language traditions. Terms include "communication assistant" to "communication support specialist".<sup>162</sup> There is nevertheless cross-jurisdictional agreement that the core purpose centres on enabling effective communicative exchange between the child and justice system actors (as opposed to pursuing particular outcomes in legal proceedings or advocating for specific parties).<sup>163</sup>

Intermediary support should be provided to child victims with disabilities at no cost to the child or their family. Associated costs should be borne by the State as a procedural expense.<sup>164</sup> Further, where there are an insufficient number of court-appointed intermediaries, justice authorities should create working arrangements with appropriate civil society organisations and professional bodies to meet children's rights to communication support.<sup>165</sup>

### Functions

The work of an intermediary typically proceeds through three stages<sup>166</sup>:

#### **Stage 1: Assessment of Communication**

The intermediary conducts an assessment of the child's communication abilities. This involves gathering information about their speech and expressive skills (including narrative skills), comprehension of language (including different types of questions), concentration, attention and listening skills, and what types of communication strategies and resources will support their attention and participation. This assessment is conducted without reference to the facts of the case and focuses exclusively on communication methods and supports required. An innovation in some

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<sup>162</sup> Access to Justice Knowledge Hub for Fair Participation, "Report on Intermediaries for Justice Around the Globe" (November 2020), p. 12

<sup>163</sup> Access to Justice Knowledge Hub for Fair Participation, "Report on Intermediaries for Justice Around the Globe" (November 2020), 7-10

<sup>164</sup> International Commission of Jurists, *Model Benchbook on the Rights of Persons with Disabilities in Criminal Proceedings* (August 2024), pp. 114–115

<sup>165</sup> Ibid

<sup>166</sup> Adapted from Communication Facilitators Bulgaria, "What is CF? – Communication facilitators," section "How the CFs work?," <https://communication-facilitators.bg/en/what-is-cf/>

## INTERMEDIARY – OPERATIONAL MODEL

jurisdictions involves collaborative report development with the assessed person so that their perspective is reflected in the assessment, rather than relying entirely on professional determination.<sup>167</sup>

### **Stage 2: Report with Recommendations**

The intermediary drafts a report describing the results of the assessment and making recommendations to the appointing authority on how and where to communicate with the child for communication to be effective. The report should include guidance and explanations of the accommodations. The report may also identify that language interpretation will be required in for the child victim, but the provision of that interpretation is a distinct function which falls outside the intermediary's role.

Importantly, the intermediary's report should include a determination as to whether the intermediary needs to be further involved in real-time facilitation during proceedings. If the recommendation is that the guidance provided in the report is sufficient for the authority to conduct successful communication independently, then further intermediary involvement may not be necessary. However, the final decision on whether to proceed with intermediary involvement rests with the appointing authority.

### **Stage 3: Facilitation (where necessary)**

If either the intermediary's assessment or the appointing authority determines that further involvement is required, the intermediary may participate in proceedings and facilitate communication with the child. During such involvement, the intermediary regularly verifies that accommodations are operating effectively and may alert relevant justice actors and propose adjustments if accommodations are not working or are inadequately implemented.

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<sup>167</sup> Access to Justice Knowledge Hub for Fair Participation, "Report on Intermediaries for Justice Around the Globe" (November 2020), p. 43-46

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The assessment of communication may include consideration of:

- How the child normally communicates (verbal, non-verbal, sign language, using AAC devices etc.).
- The child's understanding of language and concepts, particularly concepts related to the justice process.
- Memory and processing abilities.
- Trauma responses affecting communication (dissociation, periods of non-verbality, varying levels of concentration).
- Fatigue or attention challenges.
- Suggestibility and tendency to leading or contaminated accounts.

That assessment then forms the basis for recommendations that the intermediary makes regarding the necessary accommodations for the child/young person to communicate effectively.<sup>168</sup> Examples of recommendations that might be made by the intermediary include: use of plain language, breaking questions into simple parts, allowing time for processing of information, regular breaks, the presence of a familiar/trusted person (this may be where a support person is engaged), visual supports, and/or the use of modified questioning techniques.

The intermediary's report should be disclosed in advance of the proceedings and made available to all parties. This transparency is both procedurally necessary and protects against challenges to the reliability of the child victim with a disability's evidence by defence lawyers.

To ensure that these recommendations are implemented, the intermediary should work with justice actors (police, prosecutors, judges, court officials) throughout the entirety of child/young person's engagement with the legal process. Determinations made by the intermediary of what accommodations should be shared with those individuals, as well as with the child's special representative and/or support person, where relevant. As such, there should be ongoing dialogue

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<sup>168</sup> Justice Intermediary Starter Kit, 'Module 2 – Defining the Justice Intermediary' (JusticeIntermediary.org, 2023) <https://justiceintermediary.org/wp-content/uploads/jisk-module-2-defining-the-justice-intermediary.pdf>

## INTERMEDIARY – OPERATIONAL MODEL

and exchange between the parties so that support measures put in place continue to be effective and adequately resourced.

It may be necessary for the intermediary to be present during interviews with police or the provision of testimony in court to verify that the accommodations are operating effectively. Where the intermediary determines that the accommodations are either not working or are not being adequately implemented, it should be within the competence of the intermediary to alert the relevant justice actor(s) to this and make proposals for adjustments to address these deficiencies. The presence of an intermediary and any interventions they may make should be facilitated and viewed as a means by which to vindicate the rights of the child victim with disabilities, rather than as any sort of barrier to the operation of justice.

### Promising practices

In Spain, New Zealand and Northern Ireland, communication needs are re-assessed shortly before each stage in which the child is required to participate. This reflects the fact that legal proceedings can span several years and a child's cognitive abilities can change during that time. Recommendations are shared in advance with the judge or interviewer, and the intermediary is present to support all parties in communicating with the child. In all three jurisdictions, no standardised assessment tools or protocols are imposed, and intermediaries are free to use the methods they wish based on their experience and training. Throughout this process, intermediaries must remain attentive to the child's health and wellbeing to avoid assessment fatigue.

## 2. Operational Rules

### When and Where involved

Intermediaries should be included in the justice process at the earliest stage possible of child's interaction with it where it has been identified that a child has communication needs.<sup>169</sup> This means that ideally the intermediary should be in contact with the child and be involved in the assessment of their required accommodations/communication support needs before any initial interview with

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<sup>169</sup> The Advocate's Gateway. 2019. Intermediaries: Step by Step: Toolkit 16. 2 September 2019. London: The Advocate's Gateway, p. 11, section 4.1

## INTERMEDIARY – OPERATIONAL MODEL

police or other form of forensic examination by legal actors.<sup>170</sup> This is particularly critical in order to minimise the occurrence of multiple interviews with the child/young person which might increase the risk of secondary victimisation.<sup>171</sup>

The intermediary should have the rights to support the child in any circumstances in which the latter engages with the justice system. The following are some non-exhaustive examples of how an intermediary may be involved in different aspects of the criminal proceedings:

### Police interviews and investigative phases

An intermediary should be present during any recorded interview and/or formal statement-taking where a child's communication needs have been identified.

### Memory-refreshing and court preparation

Intermediaries may support children/young people to review their previous statements or recordings of interviews so as to refresh their memory before they provide testimony in court. The intermediary may also help them to familiarise themselves with the courtroom and any relevant court procedures.<sup>172</sup>

### Live link and technology practice

If the child/young person will give evidence remotely, an intermediary may conduct practice sessions with them to familiarise them with the technology and reduce their anxiety.

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<sup>170</sup> National Disability Authority (2020). NDA Independent Advice Paper on the use of intermediaries in the Irish justice system. Dublin: National Disability Authority. Available at: <https://www.nda.ie/nda-files/NDA-Independent-Advice-Paper-on-the-use-of-intermediaries-in-the-Irish-justice-system.pdf>, p. 5

<sup>171</sup> Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime OJ L315/57 arts 20–24; Committee of Ministers of the Council of Europe, 'Guidelines of the Committee of Ministers of the Council of Europe on child friendly justice' (adopted 17 November 2010) CM/Del/Dec(2010)1098/10.2

<sup>172</sup> Committee of Ministers of the Council of Europe, 'Guidelines of the Committee of Ministers of the Council of Europe on child friendly justice' (adopted 17 November 2010) CM/Del/Dec(2010)1098/10.2; UNODC, Handbook for Professionals and Policymakers on Justice in Matters Involving Child Victims and Witnesses of Crime (United Nations 2009) [https://www.unodc.org/res/e4j/data/\\_university\\_uni\\_/handbook\\_for\\_professionals\\_and\\_policymakers\\_on\\_justice\\_in\\_matters\\_involving\\_child\\_victims\\_and\\_witnesses\\_of\\_crime\\_html/hb\\_justice\\_in\\_matters\\_professionals.pdf](https://www.unodc.org/res/e4j/data/_university_uni_/handbook_for_professionals_and_policymakers_on_justice_in_matters_involving_child_victims_and_witnesses_of_crime_html/hb_justice_in_matters_professionals.pdf), p. 70

## INTERMEDIARY – OPERATIONAL MODEL

### Questioning and examination

Intermediaries may facilitate questioning during examination and cross-examination. This might include reformulating questions in accessible language without changing the substance of the questioning.

The intermediary should be prepared to explain and, where necessary, defend before the court the communication methods they have used and/or the adaptations they have recommended.

### Communication outside hearings

Intermediaries may facilitate the taking of instructions from the child/young persons by their lawyers, as well as when the prosecution and defence are preparing questions. They may also support communication with other professionals who need to communicate with the child/young person during the justice process.<sup>173</sup>

There should also be continuity of intermediary where possible, in order for the child/young person and the intermediary to build up a relationship of trust and familiarity regarding the child's communication style so as to continually assess the effectiveness of the accommodations and supports put in place. Where a change in intermediary is unavoidable, there should be a clear handover process involving the child and other supporters which they may be availing of, with the goal of achieving as smooth a transition as possible and avoid additional stress or trauma for the child/young person. Further, the replacement intermediary should conduct their own assessment of the child/young person so that they can gain direct insight into their needs. The new intermediary may then adopt the first intermediary's report in its entirety, adopt it with an addendum, or write a new report.<sup>174</sup>

### Independence

A core requirement for intermediaries is the existence and maintenance of independence, particularly from police and the prosecution, consistent with their duty being to the court. The

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<sup>173</sup> The Advocate's Gateway, *Intermediaries: Step by Step*, Toolkit 16 (2 September 2019) p. 7

<sup>174</sup> *Ibid.*, p. 15, section 4.2

## INTERMEDIARY – OPERATIONAL MODEL

independence of intermediaries means that they can make impartial recommendations regarding the communication support needs of the child victim and the facilitation of same, without reference to the views or preferences of the police or prosecution and without being perceived as advocating for a particular outcome in the proceedings. Indeed, intermediaries must ensure that they neither actually do, nor are perceived as doing, advocacy on behalf of the child/young person or any other party to the proceedings. Even an appearance of bias or alignment with one of the parties undermines the integrity of the intermediary role and, in some circumstances, may give rise to grounds for appeal or retrial.

It is to be acknowledged that the concept of formal independence – meaning that the intermediary's primary duty lies to the court rather than to any party (including the child they are supporting) – can be viewed as a barrier to the effective conduct of their role as a support for the child, particularly in terms of building a relationship of trust with them. Fundamentally, the intermediary's approach should be to follow the child's instructions to the extent that those relate to the supporting their effective and accurate communication, while not acting as an advocate for the child's legal position.

### Communication protocols

As good practice, protocols should be established for intermediaries which address issues such as:

- How the intermediary communicates their recommendations to the relevant parties.
- The approach to take if a justice actor disagrees with a recommendation(s).
- The right of the intermediary to be present with the child/young person during interviews/testimony and the form that presence takes (e.g. sitting next to the child/young person, behind them, in a separate room with video link).
- The right of the intermediary to access information about the proceedings and the scope of that right, including confidentiality protocols.

### 3. Professional Requirements

#### Qualifications

The core competency required of intermediaries is the assessment and facilitation of communication. As such, appropriate qualifications/experience for this role include:

- Speech and language therapy.
- Social work.
- Education (with a focus on disability).
- Psychology with specialisation in communication assessment.
- Specialist training at the intersection of communication and disability.
- Training in forensic interviewing and assessment.

#### Promising practices

In Spain and Northern Ireland, qualification requirements are flexible and allow professionals with various background to become intermediaries, provided they undertake training and pass an examination. This results in a longer training programme (136-375 hours) covering a wide range of topics, including legal procedure, communication assessment, and other practical intermediary skills.

In New Zealand, candidates are required to hold a diploma in Speech and Language Therapy along with ten years of practice experience. Because candidates enter with established professional expertise, the initial training programme can be shorter than those in Spain and Northern Ireland.

All intermediaries should have a deep understanding of child development, including developmental milestones in communication and cognition, the evolving capacities of children at different ages, and age-appropriate communication strategies.<sup>175</sup>

The intermediary should also have a clear understanding of the justice system, including criminal procedure and the role of various actors in those procedures; the provision of testimony and cross-

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<sup>175</sup> Justice Intermediary Starter Kit, Module 6, 'Professional Requirements – Qualifications' subsection

## INTERMEDIARY – OPERATIONAL MODEL

examination; the provision of accessible information about justice concepts and procedures to children/young people with disabilities<sup>176</sup>; child protection and safeguarding requirements.

They should also have knowledge of the potential communication support needs of certain impairments (although these should not be predetermined by the intermediary before assessing the child/young person); knowledge and experience with assistive technology such as AAC devices and speech-to-text technology<sup>177</sup>; an understanding of how disability and trauma can interact; the potential effects of victimisation and trauma on a child's mode and/or ability to communicate<sup>178</sup>.

The intermediary should understand how disability intersects with age, gender, ethnicity, migration status, language, socioeconomic status, and other characteristics to influence communication needs and participation barriers.<sup>179</sup>

Intermediaries should not accept a case that they know to be outside of their skill set or expertise as doing so risks compromising the quality of the assessment and consequent support provided to the child/young person.<sup>180</sup>

### Training

Above all, intermediaries should be able to conduct a rights- and evidence-based assessment of the communication support needs of a child/young person with a disability. This should be based on specialised accredited training which covers topics such as child development and communication development; the effects of trauma on communication; conducting assessments of communication needs in children with disabilities; assistive technology and AAC devices; criminal procedure and the broader principles and procedures of the national justice system; how to make implementable recommendations regarding communication support needs; how to

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<sup>176</sup> Justice Intermediary Starter Kit, Module 6, 'Professional Requirements – Qualifications' subsection

<sup>177</sup> Justice Intermediary Starter Kit, Module 6, 'Professional Requirements – Qualifications' subsection

<sup>178</sup> Ibid.; see also Module 6, 'Purpose of Assessment' section, discussing assessment of communication needs within justice context

<sup>179</sup> See Section 1.6 of this Model on Intersectionality; JISK Module 7, discussion of visual aids and managing novel situations for diverse groups

<sup>180</sup> Ibid., p. 12, section 4.2

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monitor interviews and testimony and when to intervene; ethics and confidentiality as an intermediary.<sup>181</sup>

Across existing intermediary models, training programs tend to address the legal and procedural context of justice systems, the psychological impacts of trauma and victimisation, techniques for avoiding suggestibility or contamination of evidence, and the development of actionable recommendations for supporting participation.<sup>182</sup>

**As part of the ENSURE project, model training and curricula for intermediaries will be developed.**

It is important that this training is not viewed as a ‘one off’ event but is instead reviewed at regular intervals by way of compulsory continuing education for accredited intermediaries. This is to ensure that intermediaries remain abreast of new research on the interaction between communication, disability, and trauma; changes in the applicable laws and procedures, as well as the integration of best practices from other jurisdictions.<sup>183</sup>

### Promising practice

In New Zealand, the training programme for intermediaries includes a module on professional wellbeing and mental health. This reflects a recognition that intermediary work is emotionally demanding given that practitioners are often required to be present and provide communication support during distressing testimony about abuse and trauma and must maintain their neutrality under pressure.

## 4. Codes of Conduct & Ethical Standards

Part of the accreditation process for intermediaries should be a commitment to adhere to codes of conduct which include ethical standards (**See sample in Appendix**).

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<sup>181</sup> Tasmania Law Reform Institute, Final Report 23: An Intermediary/Communication Assistant Scheme for Tasmania? (January 2018), Part 5, [5.2.7], pp. 98-102

<sup>182</sup> Access to Justice Knowledge Hub for Fair Participation, "Report on Intermediaries for Justice Around the Globe" (November 2020), pp. 18, 27, 31, 43-46

<sup>183</sup> Tasmania Law Reform Institute, Final Report 23: An Intermediary/Communication Assistant Scheme for Tasmania? (January 2018), Part 5, [5.2.7], p. 102 & Recommendation 9, pp. 104–108

## INTERMEDIARY – OPERATIONAL MODEL

Overall, professional standards documents from jurisdictions with existing intermediary schemes require that practitioners remain disinterested in case outcomes and refrain from commentary on the veracity or reliability of information provided by the person they support.<sup>184</sup> They also often contain the principle that individuals must provide meaningful consent to any accommodations and that practitioners are obligated to ensure informed understanding of both the benefits and risks of accepting such support.<sup>185</sup> There are also frequently obligations to prevent evidence contamination by way of careful management of information exchange and proper documentation of all interventions;<sup>186</sup> a commitment to declining cases that fall outside personal expertise or where conflicts of interest exist (i.e. has no prior or current professional, personal, or financial relationship with any party to the proceedings);<sup>187</sup> and confidentiality protections regarding case and personal information.<sup>188</sup>

### 5. Quality Assurance & Accountability

In order to ensure the effective and rights-based operation of intermediary systems, quality assurance and accountability measure should form an integral part of the oversight process.

#### Case documentation

Intermediaries should keep accurate case notes and continue to record their involvement in the legal proceedings. These notes should be as contemporaneous as possible in the interests of accuracy. Such notes are particularly critical for situations where there is a need for the intermediary to be replaced.

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<sup>184</sup> Access to Justice Knowledge Hub for Fair Participation, "Report on Intermediaries for Justice Around the Globe" (November 2020), 8-9, 97

<sup>185</sup> Access to Justice Knowledge Hub for Fair Participation, "Report on Intermediaries for Justice Around the Globe" (November 2020), 8

<sup>186</sup> Access to Justice Knowledge Hub for Fair Participation, "Report on Intermediaries for Justice Around the Globe" (November 2020), 8-9

<sup>187</sup> Access to Justice Knowledge Hub for Fair Participation, "Report on Intermediaries for Justice Around the Globe" (November 2020), 97

<sup>188</sup> Access to Justice Knowledge Hub for Fair Participation, "Report on Intermediaries for Justice Around the Globe" (November 2020), 97

## INTERMEDIARY – OPERATIONAL MODEL

### Performance indicators

Performance indicators should analyse aspects of the intermediary scheme such as: communication assessment completion rates prior to initial interview<sup>189</sup>; the percentage of recommended accommodations implemented by police, lawyers, and/or courts<sup>190</sup>; the percentage of children/young people who report understanding questions and being able to adequately and accurately communicate during the criminal justice process (this should be determined by an independent assessor using age-appropriate feedback methods)<sup>191</sup>; the percentage of cases in which the same intermediary was present across all stages of the child/young person's involvement with the justice system (or, where there were changes, percentage in which a formal handover procedure was implemented)<sup>192</sup>; the perceptions of justice actors (police, prosecutors, judges) on the impact and efficacy of intermediary recommendations, particularly on evidence quality and the overall conduct of the proceedings<sup>193</sup>.

### Supervision and quality review

A process of regular peer review for all intermediaries should be put in place, as well as periodic case audits in order to assess the quality of the communication assessment and support provided by the intermediary.

#### Promising practices

In New Zealand, more experienced intermediaries are responsible for supervising the work of less experienced colleagues (reviewing reports before they are sent to judges, providing telephone support), to both ensure the quality of services and improve their capacities.

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<sup>189</sup> Justice Intermediary Starter Kit, Module 6, 'Recording Assessment Information' section, emphasising early assessment; Module 7, 'When and Where Involved' subsection, stating intermediaries should be involved from outset

<sup>190</sup> Ibid., Module 7, 'Interventions by JI' section, discussing the intermediary's role in monitoring implementation

<sup>191</sup> Ibid., Module 6, 'Purpose of Assessment' section; Module 7, 'Accommodations and the Justice System' section

<sup>192</sup> Justice Intermediary Starter Kit, Module 6, 'When and Where Involved' subsection, which states: "There should also be continuity of intermediary where possible, in order for the child/young person and the intermediary to build up a relationship of trust

<sup>193</sup> Justice Intermediary Starter Kit, Module 6, 'Quality Assurance & Accountability' section

## INTERMEDIARY – OPERATIONAL MODEL

### Complaints

Children/young people, their families, and justice actors should have a right of complaint regarding the intermediary's performance of their role which should be subject to independent review. Predefined disciplinary procedures in the event of a finding of inadequate or negligent performance by the intermediary and/or a requirement to engage in additional learning or improvement should be followed.

### Promising practice

The British scheme for intermediaries has established an autonomous monitoring body to supervise the implementation of the Registered Intermediary scheme within the UK<sup>194</sup>. The Governance and Standards Board has been established to facilitate policy development and legal reform, whilst also ensuring the quality of services and maintaining accountability. The Board comprises a wide range of representatives from various justice sectors, including the Ministry of Justice, the Crown Prosecution Office, the National Crime Agency, the National Police Chiefs' Council, the Royal College of Speech and Language Therapists, the Courts Service, the Law Society, the Intermediary and the Witness Service. The Board is responsible for addressing complaints regarding intermediaries.

### Continuing education

Minimum annual Continuing Professional Development (CPD) requirements for practicing intermediaries should be established by States. This may include access to training, funding for conference/workshop attendance, and the creation and resourcing of reflective practice groups for intermediaries.

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<sup>194</sup> British Ministry of Justice, The Witness Intermediary Scheme Annual Report 2023 (May 2024), p.10.

07

SUPPORT PERSON —  
OPERATIONAL MODEL

## SUPPORT PERSON – OPERATIONAL MODEL

### 1. Mandate & Functions

#### Mandate

The Principles and Guidelines on Access to Justice for Persons with Disabilities recognise the right of persons with disabilities to be accompanied by family members, friends or others to provide emotional and practical support in legal proceedings, without replacing, however, the role of an intermediary or facilitator”.<sup>195</sup>

The support person provides emotional and psychosocial support to a child victim throughout the legal proceedings. Their aim is to minimise the risks of trauma caused by a legal proceeding.<sup>196</sup> They do not provide legal advice or take on an advocacy role. In order to place the victim at the centre, the means of intervention of a support person must be defined prior to the trial stage, together with the child, and shared with the legal team and the judge.

Access to a support person must not depend on a formal request by the child or their family.<sup>197</sup> Justice actors who come into contact with a child victim with a disability at any stage of the justice process have a responsibility to facilitate a referral to appropriate support, rather than waiting for one to be requested by the child or their representatives.

For guidance on how the support person role interacts with a special representative and/or intermediary, the coordination framework, and the process for role allocation, see Section 8 of this Model.

#### Functions

The support person performs the following functions throughout the proceedings:

Establishing a safe and trusting environment: Legal proceedings are often lengthy and emotionally demanding , requiring the child to recall traumatic experiences. The support person works to

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<sup>195</sup> United Nations Office of the High Commissioner for Human Rights, International Principles and Guidelines on Access to Justice for Persons with Disabilities (Geneva, August 2020), para. 32(d)

<sup>196</sup> On the experiences of victims of crime, see Shapland, J., & Hall, M. (2007). What Do We Know About the Effects of Crime on Victims? *International Review of Victimology*, 14(2), 175-217

<sup>197</sup> Directive 2012/29/EU, Article 8(1)

## SUPPORT PERSON – OPERATIONAL MODEL

ensure that the child feels safe and supported at each stage. Where the person appointed is a professional support person rather than a person from the child's own life, sufficient time must be allowed prior to proceedings for a relationship of trust to develop.

Safeguarding the child's wellbeing during testimony: Hearings can cause distress in child victims (including those with disabilities), provoking trauma responses that may impact on their ability to participate effectively. The support person should monitor the child's emotional and physical state during all phases of evidence-giving and, where necessary, alert the court and/or other justice professionals regarding the need for a break or other accommodation.

Maintaining the integrity of proceedings: The support person should not discuss the substance of the case with the child or act in any other way which would risk the fairness of the proceedings or the respective roles of the other actors in the proceedings. They should avoid any action which could influence the child's account or their engagement with justice actors.

Information and referral: They act as a bridge to victim specific resources, informing the child (and/or their legal guardian) about their rights and facilitating contact with relevant professional services, such as victim support associations or disability-related support services.

Advocating for child-friendly procedures: The support person may advocate for the implementation of procedural accommodations, such as the use of video links, specialised interview rooms, or the removal of formal attire by legal professionals. This is distinct from legal advocacy as the support person raises concerns about the child's wellbeing and the conditions of their participation but does not make legal submissions.

Continuity of support: The support person's involvement should ideally cover the entirety of the child's involvement with the judicial process - from the initial contact and police interviews through to the conclusion of the proceedings and any post-trial support needs the child may have.

## SUPPORT PERSON – OPERATIONAL MODEL

### 2. Operational Rules

#### Where and when involved

The support person may be requested by the child, their family or legal guardian, their lawyer, social services, or the judge. Where the circumstances set out in Section 8.2 indicate that a child requires emotional support, the appointment of a support person should be considered by the court without waiting for a formal request.

Appointment should take place at the earliest possible stage of proceedings. A support person who is introduced to a child only immediately before a hearing will not have had adequate opportunity to build the relationship of trust on which the effectiveness of the role depends.

Where the child already has a trusted adult in their life who meets the eligibility criteria set out in Section 7.3, that person should be considered for the role in the first instance, consistent with the principle that the child's own preferences and existing relationships should be respected.

#### Preparation and familiarisation

Before the child victim with a disability gives evidence, the support person should meet with the child to explain their role and verify that the child understands what to expect during the proceedings. The support person may request to visit the court with the child in order to familiarise the child with the environment. This would also be the stage at which the support person should identify any access or sensory needs which have not yet been addressed. While the support person is not responsible for requesting procedural adjustments, they may make logistical or environmental suggestions to reduce the risk of distress and trauma for the child.

#### Scope of involvement

The support person may be present during police interviews, investigative stages, pre-trial hearings, and trial proceedings, as well as during any post-trial stage in which the child has ongoing involvement with the justice process. Their presence should be agreed in advance with the relevant justice actors.

### 3. Professional Requirements

A support person may be a parent, a family member, or a trusted adult from the school or community. Alternatively, where no such person is available or appropriate, a professional from a victim support organisation may be appointed.

Regardless of whether the support person is known to the child or is a professional supporter, the following eligibility criteria must be met:

- No criminal record for offences relevant to the welfare of children.
- No conflict of interest in relation to the case or the parties to it.
- Where the person is already known to the child, an existing relationship of trust.

In all cases, the child's own view on who they would wish to have as their support person should be sought and given significant weight.

All support persons, whether a person previously known to the child or an appointed professional should, at a minimum, have basic training in trauma-informed support and an understanding of the justice process and the child's procedural rights.

For support persons who are not professionals, they should receive accessible preparation before supporting a child with a disability in justice proceedings. This should include: the stages of the proceedings they will be involved in and what to expect; the scope and limits of their role; what they must not discuss with the child in order to preserve the integrity of the testimony; how to recognise signs of distress in the child and how to respond; and how and to whom to escalate concerns. The provision of these briefings should be the joint responsibility of the judge, the appointing authority (where relevant), and any victim support services involved in the case. The development of standardised resources on these topics would contribute to efficiency and consistency in the provision of information to support persons.

Professional support persons should hold qualifications in social work, psychology, victim support, or a related field, and must have experience of working with children and, where possible, with children with disabilities.

### 4. Codes of Conduct & Ethical Standards

The following ethical principles should govern the conduct of support persons:

**Do no harm:** The safety and wellbeing of the child must be the guiding principle of actions taken by the support person, ensuring that no further harm caused to the child, considering the trauma he or she has experienced, his or her family circumstances and social environment. The support person also ensures that the child is treated with respect and dignity by the justice professionals involved.

**Best interest of the child:** In order to respect the best interests of the child, it is important for the support person to involve the child in decisions relating to their wellbeing and support to the greatest extent possible. This involves adopting a child-centred approach and supporting them as best as possible in this role, using a trauma- and disability-informed approach. The child's views and preferences should be respected consistent with their age and evolving capacities.

**Neutrality:** The support person is there to support the child emotionally and must not discuss the substance of the case with the child or advise them on the legal proceedings. They should take no action which could be construed as coaching or influencing the child's evidence. In practical terms, the support person must refrain from sharing any opinions or thoughts about the case. Interactions with the child should be focused on their emotional state and support needs.

**Dignity and respect:** The support person must always treat the child with respect and dignity. They should ensure that their communication with the child is accessible and age-appropriate.

**Informed consent** Before any sensitive information about the child is disclosed to third parties, the support person must ensure that the child (and, where appropriate, their legal guardian) has given informed consent, and that the child understands the actual and potential implications of that disclosure.

**Confidentiality:** The support person is bound by an obligation of confidentiality in respect of the information shared by or about the child. This obligation remains in effect even after the conclusion

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of the proceedings. Disclosure without consent is permissible only where required by law or where there is an immediate risk to the safety of the child or another person.

**Transparency:** The support person should be honest with the child about their role and its limits.

### 5. Quality Assurance & Accountability

#### Supervision and quality review

Given the sensitivity of the support person role, professional support persons must receive ongoing multidisciplinary supervision from specialists in social work, victim support, and disability. This supervision should assess the quality of emotional support provided. It should also identify any concerns arising from the support person's conduct or the conditions of the child's participation and provide a forum for reflective practice.

Support persons who are not professional appointees (e.g. family members) should have access to guidance and debriefing from appropriate professionals.

#### Performance indicators

The quality of support provided should be assessed against indicators including: the timeliness of appointment relative to first contact; the child's own assessment of the support they received; the extent to which the support person's involvement contributed to the child's ability to participate effectively; and any concerns raised by justice actors about the conduct of the support person during proceedings.

#### Complaints

Children, their families, and justice actors must have access to an accessible complaint mechanism in relation to the conduct of the support person. Such complaints should be subject to independent review.

Where misconduct is established (e.g. failure to maintain neutrality, breach of confidentiality, or conduct that caused harm to the child) accountability measures must follow. These may include

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removal from the role and, where a professional appointee is involved, referral to the relevant regulatory body.

08

COORDINATION AND  
INTEGRATION OF ROLES

## COORDINATION & INTEGRATION OF ROLES

The ENSURE national research reveals the failure of inter-agency coordination across all three countries. This has the potential to undermine the effectiveness of any individual support role for children with disabilities.

In Austria, cooperation between the judiciary, social services, specialist agencies, and NGOs is "infrequent and depends on individual contacts, without institutional coordination or established exchange structures," and "knowledge is passed on informally and on a personal basis, which means that it is lost when staff change."<sup>198</sup> In Serbia, "there is no single authority assuming responsibility for [children with disabilities'] protection" across the sectors involved — justice, police, social welfare, health, and education — and "cases involving child victims with disabilities usually fall into cracks between different systems, leaving the area under-regulated and largely unmonitored."<sup>199</sup> In Romania, "inter-institutional collaboration is limited" and psychologists and interpreters reported "insufficient coordination between legal, psychological, and social professionals, which can compromise effective communication with the child."<sup>200</sup>

This lack of coordination and cooperation has the potential to severely restrict and inhibit the right of children with disabilities who have been victims of crime to access to justice. In Serbia, professionals "across all sectors do not prepare child victims and witnesses for judicial proceedings as a routine practice," and many "lack awareness of what services exist locally, indicating a systemic gap in cross-sectoral cooperation."<sup>201</sup> In Romania, children's testimonies confirmed the direct impact of coordination failures: those who had family support navigated proceedings with some orientation, while those without felt "isolated, without trust, and insufficient guidance, particularly at the beginning of proceedings."<sup>202</sup>

The ENSURE project national reports identify the following elements as prerequisites for effective integrated support:

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<sup>198</sup> AT Report, Section III.6 (Training and Further Education and Cooperation)

<sup>199</sup> RS Report, Section 4.5

<sup>200</sup> RO Report, Section: "Interdisciplinary Collaboration in Working with Children with Disabilities."

<sup>201</sup> RS Report, Sections 5.3 and 5.10

<sup>202</sup> RO Report, Section: "Interdisciplinary Collaboration."

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### **Clarity regarding lead responsibility**

Serbia's report calls for Standard Operating Procedures (SOPs) to "clarify roles across police, prosecutions, courts and CSWs [and] standardize practice across sectors."<sup>203</sup> Romania's report recommends designating the DGASPC as lead coordinating authority for children with disabilities in justice proceedings, with mandatory notification protocols to prosecution and courts.<sup>204</sup> Austria's report highlights that its federal structure "complicates the coordination and uniform application of measures" and identifies this as a key structural obstacle.<sup>205</sup>

### **Continuity of personnel**

The Serbia report emphasised that: "multiple professionals, even when well-intentioned, can inadvertently cause secondary victimisation."<sup>206</sup> The recommendation across all three countries is that the same lawyer, the same communication expert or intermediary, and the same support person accompany the child through all stages of proceedings.

### **Mandatory training that is co-designed with persons with disabilities**

All three national reports identify training as the common enabling condition for all other reforms.

The Austrian report's findings confirm that no stakeholder could name any training on easy-to-read language, assisted communication, or conversational techniques with children with disabilities.<sup>207</sup> Serbia's report recommends training that is "both sectoral and multi-sectoral for all actors in the process" and emphasises that "OPDs, including children and young adults with lived experience, should participate in co-designing modules, co-delivering training segments and co-evaluating impact."<sup>208</sup> Romania's report calls for "mandatory training on disability rights, child-sensitive justice,

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<sup>203</sup> RS Report, Section 4.5

<sup>204</sup> RO Report, Recommendations, Section 6

<sup>205</sup> AT Report, Section II.3.6, citing the NAP II Disability monitoring findings: "Austria's federal structure [is] a key obstacle to the coherent and effective implementation of disability policies."

<sup>206</sup> RS Report, Section 6

<sup>207</sup> AT Report, Section III.6

<sup>208</sup> RS Report, Section 5.10

## COORDINATION & INTEGRATION OF ROLES

and adapted communication for judges, prosecutors, lawyers, social workers, psychologists, and interpreters," including modules on gender and intersectionality.<sup>209</sup>

### **National registers of accredited specialists**

Romania's report identifies the absence of a publicly accessible national registry of accredited intermediaries and interpreters as a core structural deficiency and recommends establishing one with "sustainable funding for intermediary and interpretation services, including coverage of rural areas."<sup>210</sup> Serbia's report makes the same recommendation and adds a recommendation for rosters of "AAC specialists and professionals trained in supporting children with autism, intellectual disabilities and psychosocial disabilities."<sup>211</sup>

### **Accessible communication**

Both the Serbia and Romania reports call for accessible language, multi-modal communication, and periodic comprehension checks as standard courtroom practice. Serbia's report states: "Aligning practice with international standards requires normalising accessible language, multi-modal communication and periodic comprehension checks as standard courtroom practice, not exceptional measures, so that every child can be present and participate on an equal basis with others."<sup>212</sup> Austria's report notes that comprehension is currently "usually inferred from non-verbal reactions: 'if someone nods or says yes, I assume it's ok,' leaving uncertainty as to whether information is understood."<sup>213</sup>

## 1. Coordination Framework

The three support roles contained in this Model are not mutually exclusive and will frequently be used by a child in parallel. The decision frameworks contained in Section 8.2 and Appendix B should be read with this principle in mind. In addition, coordination of and between the three roles

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<sup>209</sup> RO Report, Recommendations, Section 4

<sup>210</sup> RO Report, Recommendations, Section 3

<sup>211</sup> RS Report, Section 5.2

<sup>212</sup> RS Report, Section 5.8

<sup>213</sup> AT Report, Section II.2.3, citing District Court Judge (E3)

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set out in this model to support access to justice for child victims with disabilities – Special Representative, Intermediary, and Support Person – requires a clear delineation of boundaries and intersections, as well as parameters for information sharing and conflict resolution.<sup>214</sup>

### Responsibility for Coordination

Effective coordination requires that one of the professionals takes responsibility for managing the coordination process. Responsibility for driving coordination should, in the first instance, rest with the Special Representative, where one has been appointed. This is based on the fact that they have an overarching mandate to safeguard the child's rights and best interests across all stages of the proceedings.

Where no Special Representative has been appointed, lead coordination responsibility should be assigned to the most senior justice professional with ongoing involvement in the case (likely the judge or the prosecutor). Alternatively, where a Barnahus or equivalent multidisciplinary centre is involved with the child, this role may most appropriately be designated to the case coordinator within that structure.

The assignment of coordination responsibility should be documented and communicated to all parties at the outset of the proceedings.

### Regular opportunities for coordination

Where more than one of these roles is supporting a child victim with a disability, there should be regular coordination between them and other justice actors, as well as the wider network of professionals who may be supporting the child/young person with a disability (e.g. child protection and social workers, staff in educational settings, psychiatrists, psychologists, asylum and migration authorities). This is particularly important in advance of major events in the justice process, such as police interviews and court appearances. This coordination should aim to limit duplicate

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<sup>214</sup> Examples of effective multi-agency models can be found in Lupo, Giampiero, Giada Pacifico, Andrada Antofie, Aleksandra Ivankovic, Antonio De Martin, David Banes, Sabine Lobnig, Aysegul Oz, and Bruno Monteiro. "Model Multidisciplinary Cooperation Systems.", Consiglio Nazionale delle Ricerche (CNR), Victim Support Europe (VSE), SL Consulting, and Validity Foundation, 30 June 2025, Part 1, Section 2.9, pp. 43-46

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information gathering and facilitate the sharing of information on what has previously worked well in terms of support the child's communication needs and preferences, as well as any other accommodations, while also following data protection protocols and disclosing only information necessary to ensure efficient and effective coordination.<sup>215</sup> Such exchanges are also opportunities to discuss concerns or conflicts between the roles. Crucially, such regular contact increases the likelihood of continuity of support for the child/young person where personnel changes occur or where the balance of involvement between the different roles shifts based on the stage the legal proceedings are at. Depending on the child's age and the nature/sensitivity, they may also be present at some parts of these meetings so that their voice is heard and considered in decision-making.

Adaptations of digital coordination tools have the potential support the effectiveness of multi-agency support for child victims with disabilities. The DIANA digital information system, which was developed as part of the [LINK Project](#), offers a model for how a centralised platform can provide secure data management, controlled information-sharing protocols tailored to the confidentiality obligations of each professional role, real-time communication channels between practitioners, and accessibility features that enable child victims to understand and participate in the process.<sup>216</sup> Such systems can operate either as standalone applications or integrated with existing case management systems and can provide automated risk assessments based on individual case data while facilitating communication through accessible formats and expert guidance features, thereby reducing the need for repeated interviews and facilitating continuity of support across all stages of proceedings.<sup>217</sup> Rather than replacing the coordinating mechanisms outlined above, a digital platform could complement regular team meetings and information-sharing protocols by creating an auditable record of communications, centralising key assessment and accommodation data,

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<sup>215</sup> International Commission of Jurists, Model Benchbook on the Rights of Persons with Disabilities in Criminal Proceedings, drafted by Karolína Babická, Cristina Giacomini, Tim Fish and Ian Seiderman, ENABLE Project (coordinated by the Validity Foundation), August 2024, Section VIII.1: Coordination Framework

<sup>216</sup> Lupo, Giampiero et al. "Model Multidisciplinary Cooperation Systems." Work Package 3 - Accessible Information Systems: D3.3, Consiglio Nazionale delle Ricerche, Victim Support Europe, SL Consulting, and Validity Foundation, 30 June 2025, Part 2, Section 7.2, p. 131

<sup>217</sup> Ibid., Part 2, Section 7.2.2-7.2.6, pp. 138-154

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and providing all authorised professionals with real-time access to the most recent needs of the child victim.

It should be noted that a Special Representative's participation in multi-agency coordination processes such as Barnahus team meetings and inter-agency case conferences does not create any obligation to adopt or defer to the positions of those other agencies. The Special Representative should maintain their independence, particularly in the exercise of their legal judgment and authority and has the right to disagree with and object to any agency decision that they conclude is not in the child's best interests.<sup>218</sup>

### Promising practice

In Northern Ireland, child protection workers and intermediaries participate in joint training sessions to facilitate coordination and review their joint protocols. These professionals have regularly the opportunity to work together as when a child is known from child welfare and enters the justice system, the child protection system is notified. The latter are then responsible for attending the investigation process and take part during questioning. In the event of legal proceedings, the case is taken over by social workers from the witness or victim support service who will support the child at the court. As part of efforts to promote cooperation between intermediaries and child protection professionals, practical training sessions are organised annually.

### Information sharing

Protocols for information sharing should be established and set out with whom, when, and under what conditions particular information should be shared. In such processes, the need for information sharing should be balanced with confidentiality considerations, with a priority of data minimisation.

Such protocols should acknowledge different confidentiality obligations: lawyers (Special Representatives) operate under attorney-client privilege; Intermediaries are officers of the court and document observations; Support Persons follow data protection law and the child's wishes;

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<sup>218</sup> Johansson et al. (2017), Chapters 10–12

## COORDINATION & INTEGRATION OF ROLES

health professionals maintain medical confidentiality; and child protection services may have mandatory reporting obligations.

The primary determining principle of data sharing should be the child's best interests. For example, an Intermediary might share observations about the child's re-traumatisation with the Special Representative and Support Person so the team can minimise unnecessary interviews. A Support Person might share patterns about the child's anxiety before court dates with the Special Representative to allow scheduling adjustments. The Special Representative might discuss family-related stress with the Intermediary (without disclosing specific family details). All information sharing should be documented, and the child should be informed about what is being shared, with whom, and why, unless there are compelling safeguarding/wellbeing reasons not to.<sup>219</sup>

### Conflict resolution

Where there are conflicting perspectives on what is in the child's best interests, a clear procedure should be implementable which should involve an initial discussion between the roles/supports and then an escalation for resolution by the court and/or a supervisor if necessary. The child's views on this issue should be considered and inform the approach taken to the resolution of the conflict.

## 2. Decision Framework: Determining Role Allocation

In deciding on the appointment on one or more of these roles, the following decision framework should guide the process:

### Assessment questions:

- Does the child have adequate legal representation?
- Is there a parent/guardian able to provide legal representation?
- Does the child have access to legal advice?

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<sup>219</sup> International Commission of Jurists, Model Benchbook on the Rights of Persons with Disabilities in Criminal Proceedings, drafted by Karolína Babická, Cristina Giacomini, Tim Fish and Ian Seiderman, ENABLE Project (coordinated by the Validity Foundation), August 2024, Section VIII.1: Coordination Framework

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- Is the child's legal position so complex that independent legal representation is needed?

Assessment: If no or unclear, consideration should be given to the appointment of a Special Representative.

### **Does the child have communication/accessibility needs?**

- Does the child require support around communication, understanding, or processing?
- Are there communication barriers that could affect participation?

Assessment: If yes or unclear, strong case for the appointment of an Intermediary for assessment; if needs identified, intermediary support should be continued.

### **Does the child need emotional/psychosocial support?**

- Is the child traumatised or emotionally vulnerable?
- Does the child have family support available and appropriate?
- Is the child at risk of secondary victimisation without dedicated support?

Assessment: If yes or unclear, consider the identification of a Support Person - in consultation with the child where possible.

### **Regular review of role allocation:**

- Initial assessment determines roles.
- Roles should be reviewed at transition points (end of investigation, pre-trial, post-verdict).
- Roles may change as the case progresses.
- If initial assessment was incomplete, additional roles can be added.

The decision framework (in Appendix B) illustrates assessment questions and role allocation decisions. These should be adapted to national legal and institutional contexts.

### 3. Child Protection Safeguards

The legal proceedings themselves may present a risk(s) for child victims with disabilities and attention must be paid by each of these roles (and in coordination where more than one role has been appointed to support the child) to their safety and protection.

All professionals acting in the support roles set out in this Model should conduct and contribute to a child protection risk assessment (e.g. intimidation by accused/family, retaliation, and/or secondary victimisation by justice process itself) from their earliest stages of their involvement in the case. This should be an ongoing process of assessment based on child safeguarding policies and standards adapted to their professional contexts which continues throughout the legal proceedings.<sup>220</sup>

Based on risk assessment(s), protective action should be taken to safeguard the child. This may include the use of screens to visually block the victim from the accused or other parties and/or a decision being made to hold closed proceedings rather than ones that are open to the public. Similar to the risk assessment itself, the protective measures should be regularly reviewed for their necessity and effectiveness. Consideration should also be given to whether new measures are required at particular stages of the proceedings.

Attention should be given to the need to coordinate between child protection and criminal justice systems in order to ensure relevant and authorised information sharing and coherent action (see Section 8.1 above).

Cognisance should also be taken of the need for targeted safeguards for certain groups who may be at increased risk. For example, girls, young women and gender diverse people with disabilities may be particularly at risk of secondary victimisation with the consequent need for targeted, gender-specific safeguards. There may also be an increased risk of discrimination against for children/young people from minority ethnic or linguistic communities, and they in turn may have an

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<sup>220</sup> See, for example, internationally recognised Keeping Children Safe standards (<https://www.keepingchildrensafe.global>), which are required by the European Commission for organisations working with children, as a minimum benchmark for the development of such policies.

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increased probability of being distrustful of authorities. Again, specific safeguards and trust-building approaches may need to be implemented.

09

IMPLEMENTATION

## IMPLEMENTATION

### 1. Guidance for Assessment of National Contexts

Implementation of this model requires an initial assessment of a country's national context. This should include:

#### Existing legal framework

An assessment should be made of existing legislation (including criminal procedure and child protection laws) which may provide for intermediaries, support persons or special representatives, as well as the current gaps in support or barriers to their realisation. These may include:

- Existing general provisions on non-discrimination and accessibility in criminal procedure legislation
- Provisions relating to procedural accommodations for so-called 'vulnerable' witnesses or victims of crime
- Statutes addressing the rights of persons with disabilities in proceedings
- Provisions relating to the appointment of expert witnesses or specialists to assist the court
- Statutory provisions on victim support and protection
- National implementations of international obligations regarding access to justice for persons with disabilities (particularly children)

Where such support does exist, policymakers should seek to identify what changes to legislative frameworks are required to implement all of the aspects of this Model. Further, the mandatory training and standards which are required of those eligible to take up those roles should be assessed in light of those set out in this Model.

Implementation planning should also include the development of a monitoring and evaluation framework which is designed to measure progress in implementation of the rights-based supports contained in this Model and also identify gaps/failures as they arise. Section 9.4 contains detailed guidance on such a framework.

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### Resourcing and Financing

An audit should be made of the budget and staff that are available to implement the Model. Where staffing is insufficient, a determination of what timeline would be necessary to achieve this should be made, as well as the infrastructure which would be required to support their work (e.g. offices, technology, vehicles, administrative support).<sup>221</sup>

### Justice system structure and stakeholders

The implementation of this model will require ‘buy-in’ from a number of key stakeholders such as judges, prosecutors, defence lawyers, court personnel, police, social services, and civil society. An assessment of what points of resistance and sources of support should be attempted, in order to address immediate barriers to implementation. This may mean providing assurances to existing legal actors of their continued relevance and necessity in justice process which involve child victims with disabilities. This assessment should also identify the nature of the engagement which is required by these respective actors, as well as any additional training needs they may have so as to adequately understand and engage with these forms of support.

## 2. Phased Implementation

It is to be acknowledged that different jurisdictions will be at different stages of readiness for the implementation of this Model. In terms of implementation of these supports, a phased approach should be taken, with the following pattern being suggested:

### **Phase 1: Planning and stakeholder engagement**

This phase should involve the establishment of a steering group to lead on initial planning for the rollout of these roles. The groups should include in its membership persons with disabilities who have experience of the criminal justice system, judges, prosecutors, defence lawyers, police, child

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<sup>221</sup> While cost will vary based on jurisdiction and existing infrastructure, recruitment and training costs for 11 intermediaries in the pilot intermediary scheme in Northern Ireland in 2012 came to £36,889.68 (approx. € 42,736): National Disability Authority (2020). NDA Independent Advice Paper on the use of intermediaries in the Irish justice system. Dublin: National Disability Authority. Available at: <https://www.nda.ie/nda-files/NDA-Independent-Advice-Paper-on-the-use-of-intermediaries-in-the-Irish-justice-system.pdf>, p. 22

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protection professionals, civil society organisations – particularly those working on child rights, disability rights, criminal justice reform, as well as academics with relevant expertise. That steering group should then perform a needs assessment which should include a series of consultations with stakeholders, identifying necessary legislative changes which are required to put these supports in place, as well as a needs assessment of the priorities and resource implications for implementation. Based on this, an implementation plan should be developed with clear timelines and accountability, as well as the composition and recruitment of an implementation team. The implementation plan should also identify potential pilot site(s).

It may be that near-term outcomes for those States without any comparable pre-existing supports to those contained in this Model will be Phase 1 only, particularly where legislative and/or structural reform is not immediately achievable – although this should still remain a core goal.

### **Phase 2: Pilot implementation**

Once the pilot site(s) has been selected, a pilot cohort of each of the three cohorts should be recruited and trained. A key part of this pilot phase should be the development of protocols for the use of these supports and their interaction with other forms of support, as well as case management systems (see Section 8.1 above). Participants in the pilot should receive close support and monitoring, including data collection on key indicators such as continuity of support and feedback from the child/young person. During this pilot phase, awareness of the existence, purpose, and potential of these roles should be raised amongst legal actors and the broader community.<sup>222</sup>

Evidence from previous intermediary pilots indicates that government oversight and standardised qualification requirements support consistency and professional recognition.<sup>223</sup> Crucially, jurisdictions that focused on training individuals with existing familiarity with case management and

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<sup>222</sup> See National Disability Authority (2020). NDA Independent Advice Paper on the use of intermediaries in the Irish justice system. Dublin: National Disability Authority. Available at: <https://www.nda.ie/nda-files/NDA-Independent-Advice-Paper-on-the-use-of-intermediaries-in-the-Irish-justice-system.pdf> , p. 24

<sup>223</sup> Access to Justice Knowledge Hub for Fair Participation, "Report on Intermediaries for Justice Around the Globe" (November 2020), 13, 18-19

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administrative procedures reported faster implementation and practitioner competency development compared to those that recruited externally.<sup>224</sup>

Where pilot implementation is not immediately achievable (e.g. due to political or budgetary barriers), States should nevertheless commence activities that can lay the groundwork for future implementation. This might include: raising awareness of the three roles amongst justice professionals and the broader public; engaging with domestic monitoring bodies responsible for the CRC and CRPD; and building political commitment from state authorities.

### **Phase 3: Evaluation and refinement**

Upon the completion of the pilot phase, an evaluation should be made of its operation using participatory methodologies which include children/young people and their families where appropriate. This evaluation should include a cost analysis of the long-term sustainability of the support framework in its pilot form and/or the need for adjustments. The development of this more refined model based on the learning achieved during the pilot should also be accompanied by quality standards and accreditation requirements for the three forms of support.

### **Phase 4: Broader implementation**

The rollout of the refined model should then take place across other court districts/regions, supported by the establishment of permanent accreditation, registration, quality assurance, and oversight structures, as well as ring-fenced funding. The training of larger cohorts of each of the three roles should take place in parallel, ideally using a train-the-trainers model which draws on pilot participants' expertise and experience. The schemes should be subject to regular monitoring and evaluation by key stakeholders, including children/young people who are currently using one or more of the supports.

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<sup>224</sup> Access to Justice Knowledge Hub for Fair Participation, "Report on Intermediaries for Justice Around the Globe" (November 2020), p. 51-52

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### 3. Resource Planning

In order to ensure that the systems of support can operate adequately and effectively, consideration should be given to staffing requirements and budget necessary. Existing approaches to the funding of intermediary schemes range from statutory funding mechanisms embedded directly within justice budgets (with a consequent legally enforceable entitlement to the service) to indirect funding through grants to civil society organisations - or a combination thereof.<sup>225</sup>

In many jurisdictions, child protection and child social services will have a role in supporting the implementation of this Model. The Barnahus model (as set out above) offers an example of how justice and welfare services can be integrated within a single framework.

Further, in federal, devolved, or otherwise decentralised systems, the distribution of competences between national and sub-national levels may impact upon implementation. Whilst criminal justice is typically a national or federal competence, child protection, social assistance, and related support services may fall within the responsibility of regional or local authorities. Implementation strategies and resource planning should map these governance structures and ensure that both national and sub-national actors are identified and assigned clear responsibilities (including budgetary responsibilities) from the outset.

In terms of staffing, based on the pilot scheme as well as previous caseloads and population, an estimate should be made of the number of professionals required annually. This should then form the basis of a recruitment and training strategy, with consideration given to how existing professionals and/or those providing support within the legal system might be recruited and retrained if necessary.

The budget provision should include salaries and benefits for those recruited in both the direct support roles, as well as the accreditation/management/monitoring bodies; the training they may require (both initial and continuing professional development); the infrastructure which may be

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<sup>225</sup> Access to Justice Knowledge Hub for Fair Participation, "Report on Intermediaries for Justice Around the Globe" (November 2020), p. 13

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required to initiate and maintain the supports (e.g. offices, equipment, technology, case management systems, any other overheads).<sup>226</sup> An assessment should also be made of the sustainability of the funding – is ring-fenced or subject to temporary funding, and via which funding mechanism – the justice ministry, victim support funding, funding from civil society, or a combination of some of these. Where the funding environment is challenging, the option of training existing professionals should be prioritised, as should the potential for combining roles in one individual. Economies of scale such as centralised training and shared infrastructure should also be considered where necessary.

### 4. Monitoring and Evaluation

As mentioned above, the operation and effectiveness of these supports should be regularly evaluated using a participatory methodology in order to ensure that a consistently rights-based and trauma-informed approach is being taken to supporting children and young people with disabilities who have been victims of crime. In terms of the key performance indicators, the following should be included:

- *Coverage* – What number and percentage of children/young people with disabilities who are victims of crime are receiving support through the available roles (special representatives, intermediaries, support persons)?
- *Access* – What regions offer one or more of these supporting roles and where are there geographic gaps? What is the average time from referral to first appointment and what are the reasons for refusals where they occur? Does access vary based on socioeconomic status, ethnicity, or other minority identity?
- *Quality* – What are the children/young people’s levels of satisfaction with the support being provided (and coordination between roles, where relevant)? What are those of their family/guardians? What do case audits objectively reveal in terms of support outcomes and the rights-based nature of the supports provided? What do they reveal

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<sup>226</sup> Tasmania Law Reform Institute, Final Report 23: An Intermediary/Communication Assistant Scheme for Tasmania? (January 2018), Part 5, [5.3], pp. 111–118

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about adherence to confidentiality and data protection obligations? What are the views of the legal actors who interact with these supports – do they find them understandable and do they perceive them as enhancing the quality of the evidence obtained?

- *Effectiveness* – At what rate are accommodations that have been recommended based on individual assessments being implemented by the court and other legal actors? How do the children/young people and other legal actors assess the child/young person's real and effective participation in the proceedings? Do procedural and substantive outcomes (e.g. conviction rates, sentencing approaches) differ when disaggregated by disability status?
- *Efficiency* – How long does it take, on average, for an assessment to be made after referral and/or for appropriate support to be appointed after assessment? What are the factors which can lead to delays or barriers in this process e.g. lack of personnel, resource constraints)? Does the appointment process comply with the relevant laws and regulations?

The collection of information for these indicators should come from a number of sources, such as any case management system for legal proceedings, satisfaction surveys, feedback from legal actors on their understanding of and views on the support role(s), outcome tracking including child wellbeing and retraumatisation. In order to support accurate data collection, data relating to criminal justice processes should be disaggregated based on disability.

A core component of this monitoring and evaluation process should be the central role of children and young people with disabilities in the process. Age-appropriate methods should be used to facilitate their provision of feedback on the support they have received, and their suggestions for improvement should form part of the recommendations made.

Finally, the incorporation of methods of external evaluation allows for an objective analysis of the operation of the scheme and potential greater likelihood of detection of issues which an internal

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evaluation may have missed. Such an evaluation also increases the credibility of the monitoring and evaluation process before policymakers and potential funders.

### 5. Data Governance and Systems

Article 31 of the CRPD requires States Parties to “collect appropriate information, including statistical and research data, to enable them to formulate and implement policies to give effect to the present Convention”. The information should be disaggregated to support the assessment of implementation of States obligations under the CRPD and in order “to identify and address the barriers faced by persons with disabilities in exercising their rights”.<sup>227</sup> Further, the EU Victims’ Rights Directive states that Member States should communicate relevant statistical data “related to the application of national procedures on victims of crime”, including “service-based administrative data” such as “how victims are using services provided by government agencies and public and private support organisations”, which includes the number of victims that “request, receive or do not receive support...”.<sup>228</sup>

As such, justice systems should establish or modify case management systems to capture relevant data. All data collection should comply with GDPR and include informed consent from child/guardian. Individual identifiers should be separated from case information to facilitate anonymisation.

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<sup>227</sup> Article 31(2) CRPD

<sup>228</sup> Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA [2012] OJ L 315/57, Preamble, Para. 64

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# APPENDICES

## 1. Appendix A: Code of Conduct Templates

### Introduction

The below template Codes of Conduct are intended to set out minimum professional standards and ethical principles for Special Representatives, Intermediaries, and Support Persons working with child victims with disabilities in criminal justice proceedings.

**These templates should be adapted and expanded to reflect national contexts.**

### A.1 Code of Conduct for Special Representatives

#### 1. Professional Competence

- Maintain current knowledge of child rights law, disability law, and criminal procedure.
- Understand the psychological impact of victimisation on children with disabilities.
- Engage in continuing professional development relevant to representation of child clients with disabilities.
- Obtain competence in trauma-informed legal representation

#### 2. Duties & Scope of Role

- Always act in the best interests and on the instructions of the child victim
- Provide clear information about legal rights and options in accessible language
- Verify informed consent for decisions affecting the child's legal position

#### 3. Accessibility & Communication

- Communicate in languages and formats that are accessible to the child
- Accommodate the child's communication needs and preferences
- Respect the child's pace and provide information in understandable formats
- Explain the role clearly to the child and to others in the child's environment

#### 4. Independence & Neutrality

- Avoid and disclose conflicts of interest

## A.2 Code of Conduct for Intermediaries

- When communicating the child's views to the court, convey those views accurately and completely, irrespective of whether they are consistent with the Special Representative's own assessment of the child's best interests
- Distinguish the child's expressed views from the Special Representative's own assessment when making submissions to the court

### 5. Confidentiality and Data Protection

- Maintain confidentiality during the mandate and after its conclusion
- Share information relating to the child only with authorised professionals and only to the extent necessary for the performance of the role
- Base all information sharing on documented consent from the child or their guardian and with an explanation of how information will be used

### 6. Coordination & Professional Relationships

- Work collaboratively with Intermediaries and Support Persons, where relevant
- Maintain appropriate information sharing with other justice professionals
- Participate in case conferences and multidisciplinary meetings

## A.2 Code of Conduct for Intermediaries

### 1. Professional Competence

- Possess specialist training in communication support for children with disabilities
- Understand child development, disability types, and communication needs
- Maintain up-to-date knowledge of criminal procedure
- Engage in continuous professional development

### 2. Duties & Scope of Role

- Facilitate accurate communication without distortion
- Adapt communication methods to suit the child's needs
- Conduct objective assessments of communication needs and document them clearly
- Review and update assessments regularly as the case progresses

## A.2 Code of Conduct for Intermediaries

- Monitor the effectiveness of accommodations throughout proceedings and propose adjustments where needed
- Maintain continuity of support throughout the proceedings to the greatest extent possible

### 3. Accessibility & Communication

- Inform the child about their role and obtain consent
- Adapt communication methods and materials to suit the child's needs and preferences
- Recognise signs of distress and escalate concerns appropriately (e.g. to support person)

### 4. Independence and Neutrality

- Remain neutral and impartial in all communications
- Maintain duty to the court rather than to any party to the proceedings, including the child
- Refrain from commentary on the veracity or reliability of information provided by the child

### 5. Confidentiality and Data Protection

- Maintain confidentiality regarding information about the child
- Comply with relevant data protection and privacy regulations and operate on data minimisation principles
- Securely store all assessment documents and case materials
- Limit disclosure to those who need the information for the purposes of supporting the child's communication

### 6. Coordination & Professional Relationships

- Share recommendations with all parties in advance of proceedings
- Participate in case conferences and multidisciplinary meetings

## A.3 Code of Conduct for Support Persons

### 1. Professional Competence

- Have training in trauma-informed care and child psychology
- Understand the specific support needs of the child
- Where a professional appointee, hold qualifications in social work, psychology, victim support, or a related field and engage in continuing professional development relevant to the role

### 2. Duties & Scope of Role

- Provide psychosocial and emotional support to the child throughout proceedings
- Monitor the child's emotional state and coping strategies and alert the court or other professionals where a break or other accommodation is needed
- Support the child's participation and wellbeing without crossing into legal advocacy
- Be transparent with the child about the role and its limits

### 3. Accessibility and Communication

- Ensure communication with the child is accessible and age-appropriate
- Obtain informed consent before any sensitive information about the child is shared with third parties
- Support the child's decision-making capacities consistent with their age and evolving capacities

### 4. Independence and Neutrality

- Refrain from discussing the substance of the case with the child
- Take no action that could be construed as coaching or influencing the child's evidence
- Maintain interactions focused on the child's emotional state and support needs rather than the legal proceedings

## A.3 Code of Conduct for Support Persons

### 5. Confidentiality & Data Protection

- Maintain confidentiality in respect of information shared by or about the child, including after the conclusion of proceedings
- Disclose information without consent only where required by law or where there is an immediate risk to the safety of the child or another person
- Comply with relevant data protection regulations and maintain securely stored records

### 6. Coordination and Professional Relationships

- Coordinate with other professionals supporting the child, including the Special Representative and Intermediary where appointed
- Avoid providing support beyond professional competence
- Document support provided and share information appropriately with other professionals within confidentiality limits

B.1 Initial Needs Assessment & Support Determination

2. Appendix B: Decision-Making Supports

Introduction

The following are intended to assist in determining when and how to engage Special Representatives, Intermediaries, and Support Persons, as well as support the decision-making of Intermediaries and Support persons.

**B.1 Initial Needs Assessment & Support Determination**

Stage	Key Actions	Assessment Criteria	Next Steps
<b>Initial Contact</b>	Identify child victim and disability status Determine immediate support needs	Age and maturity Support needs	Formal assessment
<b>Formal Assessment</b>	Assess communication methods and support needs Evaluate psychosocial needs	Communication barriers Emotional/psychological state	Role determination
<b>Role Determination</b>	Assign Special Representative Assign Intermediary Assign Support Person	Need for independent legal representation → Special Representative Communication barriers → Intermediary Distress → Support Person	Assign qualified professionals

**B.2 Intermediary Assessment Decision Tree**

Is the child experiencing communication barriers?

1. YES → Proceed to communication assessment
2. NO → Intermediary likely not required

### B.3 Support Person Assessment Decision Tree

Can the child communicate effectively without facilitation?

3. YES → Intermediary not required at this stage
4. NO → Identify specific communication support needs

What type of communication support is needed?

5. Sign language → Assign qualified interpreter
6. AAC device/method → Assign AAC-trained intermediary
7. Speech/language barriers → Assign language specialist
8. Cognitive/developmental → Assign developmentally trained intermediary

### B.3 Support Person Assessment Decision Tree

Is the child experiencing emotional distress?

9. YES → Assess level and nature of distress
10. NO → Reassess as case progresses

Can the child manage with existing family/community support?

11. YES → Monitor; consider support if distress increases
12. NO → Determine type of professional support needed

What specific emotional support is required?

13. Crisis intervention → Assign mental health professional
14. Ongoing emotional support → Assign psychosocial specialist