

The Right of Persons with  
Intellectual, Psychosocial and  
Communication Disabilities to  
**Access to Justice**  
**ACCOMMODATIONS**  
in the Criminal Process

Authors: Sharon Primor and Na'ama Lerner



**B!ZCHUT**

BIZCHUT, The Israel Human Rights  
Center for People with Disabilities

# The Right of Persons with Intellectual, Psychosocial and Communication Disabilities to

## Access to Justice

### ACCOMMODATIONS

#### in the Criminal Process



The Convention on the Rights of Persons with Disabilities (CRPD)

Article 13 of the CRPD – Access to Justice:

1. States Parties shall 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, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.
2. In order to help ensure effective access to justice for persons with disabilities, States Parties shall promote appropriate training for those working in the field of justice administration, including police and prison staff.



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Individuals with intellectual disabilities, psychosocial disabilities or communication disabilities may become involved in criminal proceedings, whether as victims and witnesses or suspects and defendants.

The likelihood that persons with one of these disabilities will come into contact with the criminal system is higher than that among the general population. Firstly, as victims: the high incidence of abuse of an interpersonal, violent nature such as physical or sexual assault is directly related to the perpetrators' perception of persons with these disabilities as vulnerable<sup>1</sup>. However, crimes against this population are less likely to be reported<sup>2</sup>. Victims may often fear backlash from the perpetrator should they file a complaint, particularly in cases where the perpetrator is a family member or personal care-giver.<sup>3</sup> Some victims may experience difficulties in understanding and naming the abuse. Moreover, crimes against persons with these disabilities tend to be covered up by communities or service providers, often in an attempt to protect the victims themselves. Consequently, rates of disclosure and reporting to the police are lower compared to those in the general population<sup>4</sup>.

Secondly, for reasons linked to their disabilities, persons with intellectual disabilities, psychosocial or communication disabilities may also be overly-represented in criminal proceedings as suspects and defendants<sup>5</sup>. One explanation for this is that they are susceptible to being exploited and made accomplices by others. Another is that they may misjudge their own actions or have their intentions misunderstood by others. Additionally some intellectual or psychosocial disabilities may be characterized by impulsive, unpredictable and in some cases aggressive behavior. Lastly, their vulnerability may lead them to confess to crimes they did not commit as a result of having been manipulated by the police and prosecutors.

1 Bryen, D. N., Wickman C.H. (2011). Ending the Silence of People with Little or No Functional Speech: Testifying in Court. *Disabilities Study Quarterly*, Vol 31, No 4 (2011)

2 Martin, S. L., Ray, N., Sotres-Alvares, D., Kupper, L. L., Moracco, K. E., & Dickens, P. A. (2006). Physical and sexual assault of women with disabilities. *Violence against women*, 12, 83-837

3 Powers, L. E., & Oschwald, M. (2004). Violence and abuse against people with disabilities: experiences, barriers and prevention strategies. Portland, OR: Oregon Health and Science University Center on Self-Determination. Retrieved April 18, 2010, from <http://www.directcareclearinghouse.org/download/AbuseandViolenceBrief%203-7-04.pdf>

4 Bryen, D. N., Wickman, supra note<sup>1</sup>

5 Schetzer, L. Access to Justice and Legal Needs : A Project to Identify Legal Needs, Pathways and Barriers for Disadvantaged People in NSW. Stage 1, Public consultations from: <http://www.lawfoundation.net.au>

Moreover, once in contact with law enforcement agencies and the court system, persons with intellectual, psychosocial or communication disabilities face further obstacles. By its nature, the criminal process is intricate: its procedures and rules are severe and the emotional burden on the participants is great. These difficulties are multiplied significantly for persons with disabilities. The complexity of the rules, the presence of different parties, formal codes of behavior, professional vocabulary and a rigid code of conduct can be over-bearing and compound people's feelings of fear and helplessness. The emotional burden experienced by persons with disabilities during the different stages of the criminal process is often onerous. For victims and witnesses, these processes may elicit a difficult past experience, and for suspects or defendants may often cause greater apprehension than for a person without disabilities.

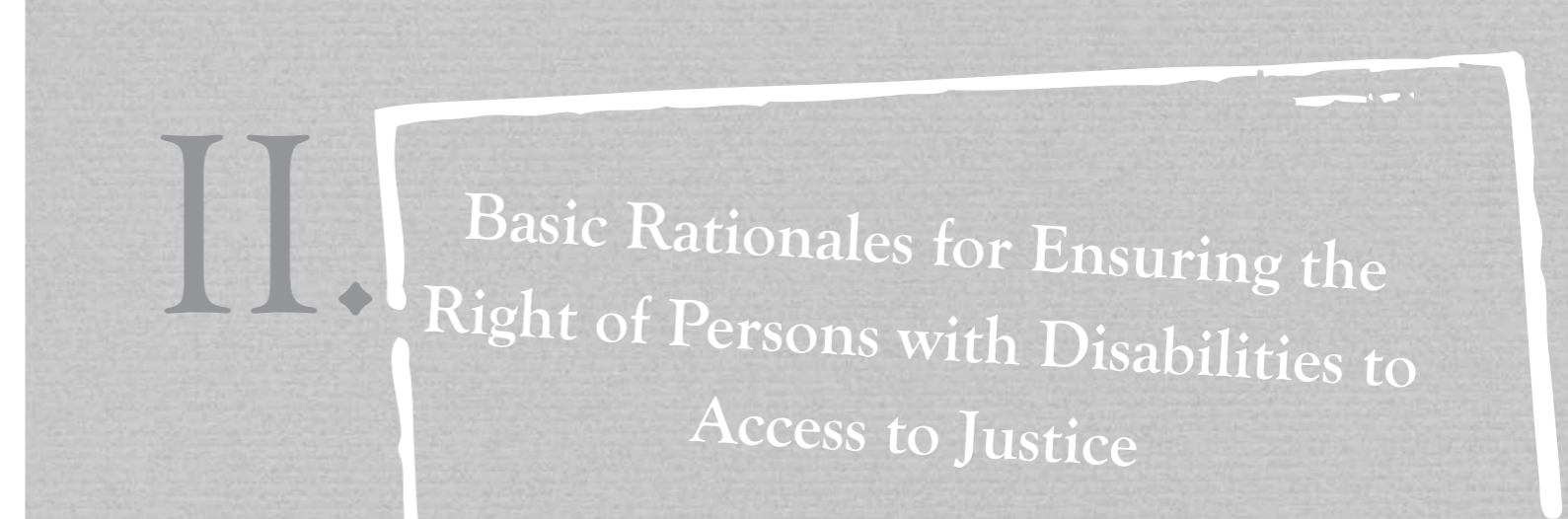
Therefore, not only are persons with intellectual, psychosocial or communication disabilities more likely to come into contact with the criminal justice system, but once within the system, their experience is especially burdensome. This experience is made worse by the attitudes and lack of awareness and understanding on the part of police investigators, prosecutors, lawyers and the courts. Persons with these disabilities can also experience difficulties in comprehending, conceptualizing, and communicating. This leads to persons with disabilities often being perceived as being unable to give proper testimony in court. Their testimony may be judged as incomprehensible or riddled with holes and therefore ruled as inadmissible. Thus cases that would otherwise result in indictment and subsequent conviction are often closed or dismissed for reasons related to the victim's disability. Other times, the disability serves as an excuse for over-looking and in fact hindering the due process rights of suspects and criminal defendants.

In summation, the inability of a criminal justice system to meet the needs of persons with disabilities substantially jeopardizes their right to equal treatment, inclusion and fairness. It also undermines society's greater interest and objectives in conducting criminal procedures.

Therefore, making criminal proceedings accessible in the widest possible sense to persons with disabilities requires utilizing professional tools, methods, know-how and approaches that can be combined to assist people with disabilities to fully realize their rights in the criminal system.

Section 13 of the Convention on the Rights of Persons with Disabilities determines that a person with a disability has the right to have his or her matters brought before a court and heard in an efficient, beneficial and meaningful manner. It also determines that a person with disabilities is entitled to a full and equal opportunity to make use of every judicial procedure and defense granted under law in the framework of criminal proceedings.

The purpose of this booklet is to address the fundamental principles for any law, policy and legal practice that seek to make the criminal process accessible to persons with disabilities. It is based on the Israeli 'Investigation and Testimony Procedural Act (Accommodations for Persons with Mental or Intellectual Disabilities 5766-2005)' initiated by Bizchut, The Israel Human Rights Center for People with Disabilities. Our past and current experience in pursuing enactment of this law and monitoring and enforcing its implementation has led us to suggest the practical legal tools and principles for application included below.



### **The right to equality**

When persons with intellectual, psychosocial or communication disabilities cannot properly explain their version of events in the police station or the court room, or when individuals cannot properly relate what they experienced and remember, they are in fact experiencing discrimination on the basis of disability. The lack of communication tools that could be used to bridge communication difficulties, the lack of know-how on the part of state officials and lawyers in understanding the scope and meaning of the disability and misconceptions regarding the credibility and abilities of a person with a disability, all compound this phenomenon. Often proper weight is not given to a person's testimony and contentions and his or her competence to testify is essentially questioned due to the disability. In this context, the right of persons with disabilities to equality requires more than not deeming them inherently incompetent to testify or stand trial. The fact that their disability hinders their chances in the process is in itself discriminatory. In order to fulfill the right to equal treatment, persons with disabilities must be provided with any accommodation or assistance that will enable them to relate their full story to the police, testify in court, face examination by counsel, be fully understood by the court and utilize every right and legal defense provided for under the general law.

### **Fairness**

The right to fair proceedings and due justice is a central principle in the criminal process. It holds that a judicial decision made without securing the party's opportunity to fully and efficiently have his or her case heard properly by the judiciary is in fact an arbitrary decision, contradictory to basic notions of justice. This is especially true because the suspect's or defendant's liberty, wealth, reputation and other legitimate interests hang in the balance. Thus, in many judicial systems special safe-guards are laid out as part of the criminal and procedure code. A person must have his or her chance or 'day in court' before sentence is passed. In addition, limitations are imposed on the police and on the court's discretion.

Due process rights apply particularly to persons with disabilities, since their position within the criminal process is even more fragile. As explained above, persons with disabilities have to cope with greater obstacles in these proceedings which consequently lessen their chance of receiving a fair trial. Therefore, the investigative and judicial systems are obliged to take steps, insofar as possible, to overcome any requirement, rule or legal assumption that might constitute an impediment to a fair decision in regard to persons with disabilities.

## Serving justice and social deterrence

The criminal process serves a wide range of social objectives. Judicial systems may emphasize certain goals over others, but common to all is obtaining justice and management of proper social behavior. These social aims are compromised when persons with disabilities are unable to effectively participate in the criminal process. If, for example, their testimonies though vital to the trial do not receive proper weight, the objective of establishing the truth and putting the blame where it is deserved is obviously compromised. Similarly, the goal of social deterrence and of directing normative behavior are not achieved if people with disabilities are convicted of crimes that they did not commit, or while individuals who committed crimes against persons with disabilities go unpunished because testimony against them was not given proper weight due to the victim's disability.



Providing accommodations for a person with disabilities in criminal proceedings is in essence removing a specific obstacle which may preclude his or her chances in the criminal process. The great challenge in making justice accessible is identifying the specific obstacles that might constitute barriers for a person with disabilities, and finding balanced solutions that will not influence the nature of the criminal process. Below, we specify the fundamental principles on which policy and legislation ensuring the right to access to justice for persons with disabilities in the context of criminal proceedings should be based.

### Ensuring full capacity to testify

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

### Accommodation not alleviation

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

### Ensuring the interests of the other parties in the proceedings

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

## Individual accessibility

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

## Accommodations at each stage of proceedings

The criminal process is by its nature complicated and tightly structured. Therefore, providing accommodations for persons with disabilities requires policy makers and legislators to examine each stage and aspect of the process in order to determine which elements may prevent the full and efficient participation of a person with a disability. This includes all stages of the process: police investigation, line-up, re-enactment of the event, confrontation with the attacker, preliminary hearings, taking an oath, being advised on ones rights, entering a plea, giving testimony in court, or cross-examination <sup>6</sup>.

## Accessibility is a professional matter

Assisting a person with a disability in the criminal process and facilitating his or her participation in the process requires professional input and knowledge from the different disciplinarians associated with the criminal field: police, lawyers and justices on the one hand and speech therapists, social workers and psychologists, on the other. Each of these disciplines, as applicable, must contribute both to the making of policy and law and act in specific and concrete cases.

## Independent accessibility, not on behalf of the defense or the prosecution

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

<sup>6</sup> It is also important to create adaptations in the framework of serving a sentence or public service. But this discussion is not within the scope of this document.

# IV.

## Application Of Principles – Recommendations For Application

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

### Special Investigators

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

Employing special investigators from relevant fields, such as social workers or psychologists, can alleviate many of the problems. Training of the special investigators should include knowledge of the criminal process and procedures as well as information about the implications of intellectual, linguistic, psychosocial, and behavioral related disabilities in regards to the legal process, and the different professional tools which may be employed in this context.

*Bella is a woman with Down Syndrome. She testified at the police station about a rape committed against her by a member of her family. At the end the testimony she was asked to describe her feelings towards the attacker. She replied "I would die for him." Had she been questioned by an untrained investigator, a sentence of this kind would have probably have blemished her entire testimony, since it supposedly contradicts her story.*

*However, in this case the special investigator, who was aware of the manner in which persons with disabilities may use idioms, suggested to Bella that she imagine the attacker sitting across from her in the interrogation room, and asked her to tell him how she felt about him. Bella looked at the chair with rage in her eyes and shouted "I hope you die." Interrogation by a trained professional allowed the investigator to formulate the question in a manner that made it possible to understand Bella's true intentions.*

## Basket of Accommodations

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

## Facilitator

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

### Simplify and Give Meaning

Persons with intellectual disabilities or persons with complex psychosocial disabilities may have limited vocabulary or difficulties in understanding complex and abstract questions or arguments as well as concepts of time, distance and relativity. Questions like: "State the dates on which you were attacked"; "What was the distance from the bed to the wall?" or "Was the defendant standing on your left side or right side?" may generate inaccurate or vague responses, which can impede the testimony. A facilitator can assist by simplifying questions and legal arguments so they can be understood by the person with a disability.

### Support

The facilitator can assist the witness emotionally during the proceedings, reduce his or her anxiety, and inspire confidence and reassurance.

Typically, the facilitator sits near the witness, calms him/her, and helps to understand what is happening during the trial. The facilitator should have suitable training and not have previous acquaintance with the person with disabilities, so to remain objective.

*Sarah is a woman with severe psychosocial disabilities who has lived in a psychiatric hospital since childhood. She had filed a complaint about sexual assault carried out by one of the hospital staff. Charges were brought against him and Sarah served as the main witness. During Cross-examination she was asked by the defense lawyer to state the time of her alleged rape. She replied "six at night". The answer was perceived as unreliable, since "six" might be in the evening or early morning but not at night. The facilitator accompanying Sarah helped the court grasp the source of the misunderstanding. She suggested that the witness be asked questions regarding her daily schedule at the hospital, and the order of the staff's shifts. The court could then understand that when Sarah said "six at night" she actually meant six o'clock during the hospital staff's night shift, which in effect is six in the morning.*

## Facilitated Communication

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

*Miriam is a young woman with intellectual disabilities who described a sexual assault committed by her school bus driver: "He gave me a lollipop" she said when asked to describe what he had done to her. The use of a communication board enabled her to clarify what she had been unable to describe with her limited vocabulary. By using pictures she described how the driver forced her to perform oral sex.*

## Adaptation in the court room settings

The unfamiliarity of the courtroom or the police station, the strikingly ceremonial atmosphere, the judges' and attorneys' robes, the special seating order in the court room and the rigid code of conduct, might all seem especially threatening to persons with intellectual or psychosocial disabilities, so much as that they are unable to testify. Flexibility regarding the technical issues at hand, provides for changes in the police and court process. For example, conducting the police investigation of a person with disabilities in his home rather than at the police station, giving testimony in the judge's chambers without the formal attire, giving testimony not on the witness stand, or video-taped testimony can all significantly remove barriers without jeopardizing substantial matters.

*Yaakov is a man with severe autism and behavioral disorders. He was the key witness in a case concerning alleged abuse by staff of the institution in which he lives. He was very fearful of meeting with strange people in a new place and in addition due to his communication disability it was very difficult for him to make eye contact and to concentrate. In a normal court room setting the chances were high that Yaakov would not be able to testify: he was detached and withdrawn. In order to enable Yaakov to testify, the judge ordered the court room cleared and only he, the attorneys and his facilitator remained. They all sat in regular attire on regular chairs placed in the middle of the room. Each person introduced himself by name and position. Yaakov sat among them. He had a bag of snacks in his hand, and from time to time took one and ate it. The atmosphere in the courtroom was informal and unthreatening. Yaakov, despite his severe disability, succeeded in describing the entire event and was even briefly cross-examined.*

## Speeding up the process

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

### Do the law and judicial and police systems in your country ensure fair proceedings for persons with disabilities?

- Does the law include provisions preventing persons with disabilities from testifying or placing limitations on his or her capacity to testify?
- Are there provisions according to which less weight is given to the testimony of a person with disabilities?
- Are investigated cases actually closed on the grounds of lack of evidence when the complainant or the key witness is a person with severe or moderate intellectual, psychosocial or communication disabilities?
- Are there cases in which criminal defendants were acquitted because the key witness was a person with a disability?
- Are persons with disabilities questioned in the normal fashion at the police station and during their testimony in court, or are special tools, methods or technologies offered? In particular:
  - Does the legal system have the speech-therapy related tools to allow a person with communication disabilities or no speech to communicate effectively with police investigators, lawyers and the judge?
  - Does the legal system have the know-how and tools to allow proper testimony and questioning of a person with severe concentration and behavioral disorders?
  - Do the police investigators have special training in the field of intellectual disabilities, psychosocial disabilities and communicative disabilities?
  - Is a person with disabilities entitled to be accompanied during the proceedings by a designated facilitator who explains what is happening and what is expected of him and alleviates fears and concerns? Is this service provided by the court without cost, or is it a person the parties are permitted to bring on their own behalf?
  - Are there technical aids (e.g., closed circuit video camera for remote testimony, behind a screen testimony, etc.) available for use to enable a person with disabilities to testify in certain circumstances?
  - Can a person with disabilities give testimony in a less formal setting than the courtroom?

In 1995, Bizchut, The Israel Human Rights Center for People with Disabilities, the leading disability rights organizations in Israel, formally recognized the need to equip the Israeli justice system with the tools necessary to ensure accessibility to people with disabilities. Bizchut thus raised this issue with the Israeli Justice Ministry. We presented the range of difficulties that people with disabilities face when interacting with the legal system and the Ministry began to advance legislation to provide the required adaptations.

In mid-2003, Bizchut became aware that despite the tremendous need in the field, the Justice Ministry process was progressing slowly. Bizchut thus initiated a response in the form of a pilot project, which was in fact a mini-scale model which would act as a forerunner to the law itself and was based on a draft law which we formulated. The project was structured around two basic strategies:

#### **Making the actual proceedings accessible**

Bizchut professionals provided assistance in police inquiries, witness statements, and court hearings to individual victims and offenders in real cases. Calls for assistance reached Bizchut from the police, state prosecutors, public defenders, judges, rape crisis centers, family members and service providers working with people with disabilities.

#### **Raising awareness and providing training**

Bizchut staff gave hands-on training workshops and lectures to the police, state prosecutors, legal aid attorneys, judges and rape crisis centers, raising awareness of the need to adapt investigative and judicial procedures and training professionals how to do so.

As a result of the pilot project, we were able to show that cases that would once have been closed without indictment due to non-credible testimony from victims with intellectual, psychosocial or communication disabilities, concluded with indictments and in some instances, the conviction of offenders.

The law was finally enacted by the Israeli Knesset (Parliament) in 2005. The law, detailed below, mandates accommodations in the justice system for persons with disabilities in police interviews and interrogations. The law covers both the police investigation stage and the court procedure and applies to victims of a severe crime, witnesses to such a crime, suspects and criminal defendants. Promulgation of accessibility regulations currently being discussed by the Israeli Knesset will allow further accommodations for people with additional disabilities including sensory and communication disabilities.

So far, hundreds of persons with disabilities have been questioned or had statements taken from them by special investigators and based on those cases that otherwise would have been closed for lack of evidence or lack of public interest, suspects have been indicted.

However, a number of issues are still absent from the law, demanding further attention and law amendment.



## Main Provisions of the Israeli Law

### Police questioning (section 3)

Prior or during police interrogation, when a police investigator has cause to assume that the witness or suspect about to be questioned is a person with an intellectual or mental disability, the police investigators must refer this person to a "special investigator," and shall cease the regular investigation.

If denied a "special investigator," a police suspect is entitled to appeal to the Magistrate Court.

If a witness or suspect is mistakenly referred to a "special investigator" and thus questioned in an accommodated manner, the testimony shall nevertheless have full legal validity - section 14.

"Special investigators" are trained psychologists, social workers, clinical experts in criminology or people with special training in the field of special education (section 6).

Only under special and urgent circumstances (i.e. disruption of the interrogation, prevention of risk to human life, enabling the arrest of additional suspects, avoiding disclosure of evidence) are the police exempt from referring the person to a "special investigator." In this case, a report detailing the special circumstances is required (section 4).

### Notifying the Guardian

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

### Appointment and Training of Special Investigators (section 6)

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

### Questioning by a special investigator (section 7)

The special investigator has the full authority of a police officer.

The special investigator must caution the witness and advise the suspect of his/her rights in a comprehensible manner as set forth under general law, before commencing the investigation (section 9).

The special investigator may be aided by a professional expert as to how to question the person.

At the end of the questioning, the special investigator must compose a statement detailing the course of the interrogation, the difficulties encountered and whether he/she received any help from a professional expert. He/she may add recommendations regarding accommodations needed for court testimony.

### Accompanying a person with an intellectual disability (section 8, 16)

A person with intellectual or mental disability is entitled to choose and have a person to accompany him/her and be present during police questioning, unless the special investigator views this as interfering with the interrogation.

A person with a mental disability is also entitled to have his professional caregiver accompany him/her during the police questioning (section 16).

### Documenting the police questioning by the special investigator (sections 10, 17)

The special investigator will document the entire interrogation via audiovisual documentation (combined recording of image and voice).

The documented testimony shall be admissible as evidence in court and are part of the investigation file (sections 13, 20).

If charges are pressed, counsels for the defendant and the state are entitled to review and copy the documentation (section 11).

### Extra-interrogation investigation tools (section 12)

In cases that police investigation requires the presence and cooperation of the person with intellectual disability in other forms of investigation other than the questioning, police must consult with the special investigator and abide by his/her instructions.

### Court procedures

#### Prior to testimony

On the basis of the special investigator's documented interrogation, the person with a disability shall testify in court. Both parties are entitled to examine him (section 20).

Prior to witness examination, the court will be presented with a statement by an expert witness regarding the witness's/criminal defendant's disability and its potential implication on testimony (section 21), as well as the special investigator's testimony (section 20).

The court may exempt the person from testifying, if, according to the expert witness's opinion, it finds that the testimony may harm the witness, or that the witness cannot testify due to his intellectual or mental disability, even if the court grants all the accommodations detailed in the law or postpones the testimony. In such case, a criminal defendant cannot be convicted solely on the basis of the statement of an exempted witness, without supporting evidence (section 20).

#### Giving testimony - accommodations for a person with an intellectual disability

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

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

Upon finding that the witness has an intellectual disability and that testifying in the regular manner may harm him/her or the testimony, and after consideration of the witness's preferences, the court may rule that the testimony should include one or more of the following accommodations (section 22):

- (1) Testimony without the presence of the criminal defendant in the court room, and only in the presence of the defense attorney
- (2) Testimony behind a partition
- (3) Testimony not on the witness stand
- (4) Judge and attorneys not in formal attire
- (5) Testimony in the judge's chambers
- (6) Testimony outside the court hall
- (7) Testimony using means of Alternative Augmentative Communication, including the assistance of people, computerized aids, communication panels, photos, symbols, letters or words
- (8) Testimony of witness while accompanied
- (9) A special advisor who advises the counselors about phrasing, simplifying questions, and addressing the person, and cautions against potential harm to the witness

## Outline of Training Given to Police Investigators by Bizchut

The following is an outline for a training work-shop given to police detectives by Bizchut, The Israel Human Rights for People with Disabilities. This framework illustrates the main themes that can be useful to different professionals within the system who interact with witnesses or defendants with intellectual, psychosocial or communication disabilities.

- Definition, general characteristics, etiology and specific characteristics of intellectual disability, psychosocial disability, communicative disability and autism and their effect on various areas of life
- Getting to know various disorders (e.g. autism, Asperger's, ADD) and a drama workshop which illustrates the daily life of a person with an intellectual disability
- Women and men with disabilities as victims of interpersonal violence, abuse and sexual assault: statistical data; offender profile; chances of repeated attacks, the increased danger associated with living in institutions
- Reasons for high incidence of sexual assault and violence against women and men with disabilities
- Existing support systems serving women and men with disabilities who have been sexually assaulted: families, welfare services, support centers
- Typical obstacles for people with intellectual, psychosocial or communication disabilities in police interrogations and court testimony
- Tools for making investigation and testimony of persons with disabilities accessible
- How to create primary contact and build basic trust; how to encourage persons to “speak out” using varied means of communication; how to response to behavioral problems and to attention deficit disorders; how to make a police interrogation and the court room friendlier; the correct way to formulate sentences
- Frequent questions and dilemmas of professionals and possible solutions

*Bizchut* - The Israel Human Rights Center for People with Disabilities is a non-profit organization committed to advancing the rights of people with physical, developmental and mental disabilities and enabling their full integration into mainstream society and participation in all areas of life. The name *Bizchut* (literally: 'by right') reflects the belief that all people are entitled to equally based rights as all of us do, and that the needs of people with disabilities must be met on the basis of entitlement, not as a function of charity or pity. Originally launched as a project of the Association for Civil Rights in Israel in 1992, Bizchut was soon established as an independent organization. Bizchut is the address for people with disabilities whose rights have been violated because of their disability, their families, professionals, organizations working in the field and decision makers.



BIZCHUT, The Israel Human Rights  
Center for People with Disabilities

P. O. Box 34510, Jerusalem 91000  
Tel: 02-652-1308, Fax: 02-652-1219

[mail@bizchut.org.il](mailto:mail@bizchut.org.il) [www.bizchut.org.il](http://www.bizchut.org.il)