



 Plena
inclusión

FACILITATING ACCESS TO JUSTICE

A qualitative approach to the **barriers**
it faces, its **tasks** and its **impacts** on the
judicial process

Juan Endara Rosales



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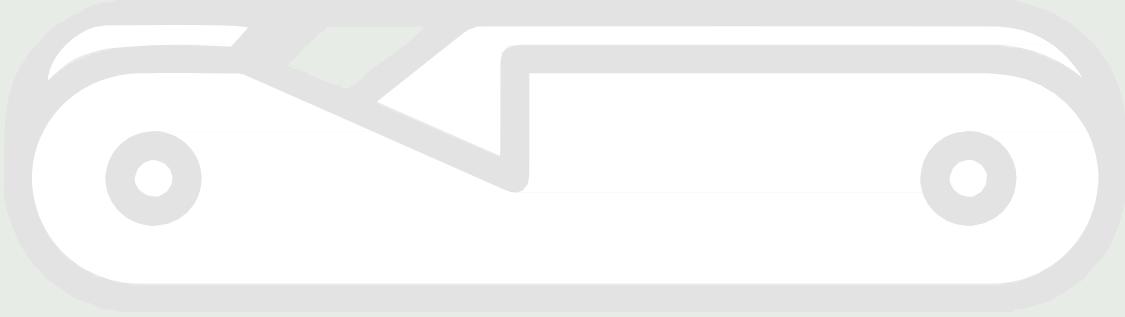
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THE WHY AND HOW OF THIS STUDY



A BRIEF LEGAL RATIONALE

The right to access to justice is commonly defined as a legal obligation assumed by those States that have subscribed the Convention on the Rights of Persons with Disabilities¹. As established in **article 13** of this legal instrument:

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 to ensure effective access to justice for persons with disabilities, States Parties shall promote appropriate training for those working in the field of administration of justice, including police and prison staff.

The right to access to justice is essential for the protection of human rights. Access to justice encompasses the right to a fair trial, access to courts under equal conditions, equality of individuals before the courts and the possibility of obtaining fair restitution for rights violations. To this end, “guaranteeing access to justice is indispensable to democratic governance and the rule of law, as well as to combat social and economic marginalization.”²

¹ UN (2006). Convention on the Rights of Persons with Disabilities. Available [here](#).

² UN (2017). Right to access to justice under article 13 of the Convention on the Rights of Persons with Disabilities. United Nations Office of the High Commissioner for Human Rights. A/HRC/37/25, p. 3. Available [here](#).

In order to access justice, certain procedural accommodations are sometimes necessary. As stated by Catalina Devandas Aguilar, the United Nations Special Rapporteur on the rights of persons with disabilities, procedural accommodations refer to all those changes and adaptations necessary and appropriate to ensure the participation of persons with disabilities on an equal basis with others.³

In the document *International Principles and Guidelines on Access to Justice* prepared by the **Special Rapporteur**, principle 3 addresses the right to appropriate procedural accommodations. One of these guidelines states that:

To avoid discrimination and guarantee the effective and equal participation of persons with disabilities in all legal proceedings, States shall provide gender and age-appropriate individualized procedural accommodations for persons with disabilities. They encompass all the necessary and appropriate modifications and adjustments needed in a particular case, including intermediaries or facilitators, procedural adjustments and modifications, adjustments to the environment and communication support, to ensure access to justice for persons with disabilities. To the fullest extent possible, accommodations should be organized before the commencement of proceedings.⁴

This guideline clearly reflects the need for the participation in the judicial process of individuals who, through their direct intervention, can assist in the realization of the right to access to justice. These persons, who are referred to as “**facilitators**” or “**intermediaries**”:

...work, as required, with justice system personnel and persons with disabilities to ensure effective communication during legal proceedings. They support persons with disabilities to understand and make informed choices, making sure that things are explained and talked about in ways that they can understand and that appropriate accommodations and support are provided.⁵

Plena Inclusión’s associative movement has been working for a long time to bring attention to the serious consequences of the fact that persons with intellectual and developmental disabilities have to go through judicial processes that fail to take into account or detect their disabilities, with the aim of guaranteeing their right to a fair trial where they can exercise their rights.

This awareness, combined with that of other operators of the legal system, led us to engage in intense “advocacy” efforts in the area of procedural accommodations, with a particular focus on the need for the development and legal recognition of the professional facilitator role, at the same time that many of our organizations provided actual support to persons with intellectual and developmental disabilities who had to participate in judicial processes, to show the benefits of this line of action in a practical manner.

³ UN (2020). International principles and guidelines on access to justice for persons with disabilities, page 9. Available [here](#).

⁴ Ibid., page 15.

⁵ Ibid., page 9.

For this reason, Plena Inclusion created an ad hoc work group to reflect on professional facilitators and define their role. This work led to the approval by Plena Inclusion España's Executive Board, on October 22 2020, of the document "The facilitator in judicial processes". In line with the definition of the Special Rapporteur, we reached the conclusion that a facilitator is not companion, therapist, interpreter or expert witness; that the facilitator's tasks are not those of legal medicine or forensic psychology professionals and, finally, that their interventions are not only aimed at victims or the direct participants in a judicial process. On the contrary, facilitators are:



...specialized and neutral professionals that, as required, evaluate, design, advise and/or provide persons with intellectual or development disabilities, whether they have an officially recognized disability or not, and professionals in the field of justice involved in a judicial process, with the appropriate and necessary support so that persons with intellectual or development disabilities can exercise their right to justice on an equal basis with others.⁶

As far as the implementation of the facilitator role in the Justice System is concerned, we have identified several key challenges:

- Achieve the legal recognition of their role, taking into account that facilitators are part of a right and their use should not be subject to personal biases or preferences.
- Ensure that there is a sufficient number of duly qualified professionals and, therefore, that they receive appropriate training.
- Develop forensic tools that allow professional facilitators to do their job.
- Encourage the Justice System to establish a system that guarantees the provision of professional facilitators where required.

We are currently at a turning point, since there is a new legal recognition of the facilitator role, which must still be developed and materialized, that must be combined with our years of experience in the practice of supporting persons with intellectual disabilities in judicial processes.

⁶ Plena inclusión (2020). La persona facilitadora en procesos judiciales, p. 7. Madrid: Plena inclusión España. Available [here](#) (in Spanish).



SOME METHODOLOGICAL NOTES

Without losing sight of the horizon we have set for ourselves, we conducted a study to compile and analyze testimonies of professionals performing facilitation tasks, as well as their beneficiaries (persons with intellectual and developmental disabilities, judges, public prosecutors, attorneys, professionals from the field of forensic science, etc.).

In this study, we made the decision not to address the ways in which initiatives have been implemented, the unique experiences of particular organizations, or specific services for the provision of facilitation. Instead, we sought to combine different perspectives and experiences to create a polyphony where those individuals closest to the issue were the ones sharing their own accounts of the barriers they face, the tasks they perform and the impact of facilitation on judicial processes.⁷

Since this is a qualitative study, the main tool used to gather information was the interview. The idea was that the persons participating in the study could not only share their experiences with the facilitator role, but also any information they deemed necessary. The interviews were open-ended and semi-structured.

While the time available to complete this study was a key factor, we made an effort to ensure that the plurality of profiles involved in judicial processes was also reflected in the diversity of **the participants in the study**. The participants were:

- 4 facilitation users:** Noelia, Sandra, Sebastián and Violeta
- 7 facilitators:** Aitor, Almudena, Bruno, Carla, Carlos, Elena and Gabriela
- 3 attorneys:** Ana, Cristina and Rodrigo
- 1 judge:** Lucía
- 1 prosecutor:** Teresa
- 1 forensic psychologist:** Carme
- 1 medical examiner:** Pedro

In all cases we used pseudonyms and omitted any information that could lead to the identification of these individuals or their workplace. We only included some references to the role they played in the judicial process for purposes of this study: in some cases, these references have to do with the profession of the interviewee, and in others with the particular situation related to the procedural accommodation.

In the following pages, every time we make reference to any of the interviewees we will specify their role, even if that makes its reading a bit repetitive, as we believe it will also provide more clarity.

It is worth noting that we did not have direct access to testimonies of persons with intellectual and developmental disabilities in prisons. Instead, we relied on the best sources available –professionals providing support as part of an inmate and former inmate programme led by several of Plena Inclusión’s partner organizations.

⁷ Since our main focus is on lived experience, for purposes of this document we prefer to use the broad term “judicial process”, and will reserve the use of the term “proceeding” to refer to legal procedures and the rules regulating them. In the case of informants, however, we will use the original expressions used by them.

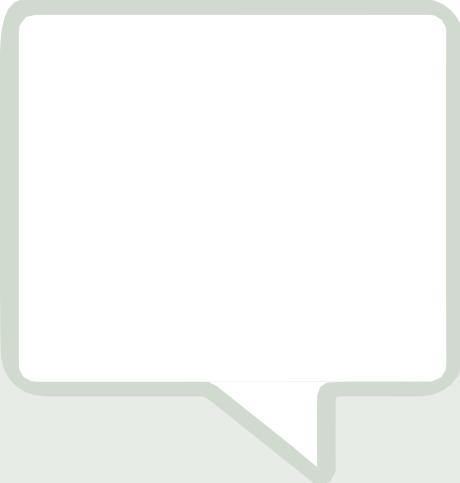
Prior to their participation in the study, the interviewees received an informed consent form that contained a brief summary of the study and an explanation of how information would be recorded, in addition to the treatment and purpose of such information. All the participants in the study went through a checklist and signed this informed consent form prior to the actual interviews. In all cases, the interviewees chose the format to record the information (audio and video or audio only). The information was transcribed, personal information was kept anonymous and the original recordings were destroyed.

The interviews were conducted via video calls, with all the advantages and disadvantages they entail: we organized the interviews in such a way that we were able to interview persons from different geographical locations and optimize the time available to conduct the study. However, that was at the expense of a hectic pace and giving up face-to-face interactions, which limited the reflective nature characteristic of qualitative research.

The study was carried out between September and December 2021. That was a brief period –maybe too brief– considering the particularities of qualitative research and, in particular, information analysis. However, the interviewees' willingness, receptivity and interest in the subject of the study, their availability to arrange the interviews, their generous collaboration and the time they took despite their personal and professional activities, were of great help to make the best use of the limited time we had and overcome the obstacles posed by the use of telematic means. We want to express our deepest gratitude to all of them.

The aim of this study is to provide information based on practical experience. We hope it helps the reader to understand the impact and usefulness of facilitation in judicial processes, reach conclusions and gain knowledge that can provide value to the process of development and implementation of the professional facilitator role.

⁸ We also developed an easy read version validated according to European guidelines. We want to thank Antonio Hinojosa, from the Plena Inclusion confederation, for doing that validation work. We also developed an easy-to-understand version of the interview script to facilitate the participation of persons with intellectual and developmental disabilities who required it.



WHAT WE HAVE BEEN TOLD



1. ABOUT BARRIERS THAT PREVENT ACCESS TO JUSTICE

1.1.

THE PARTICULARLY INTIMIDATING NATURE OF JUDICIAL SETTINGS

While several of the interviewees stated that efforts have been made in recent years to improve the operation of courts and they are beginning to see results in some cases, they still point out to a series of issues that have a highly negative impact on access to justice. There is a common perception present in all interviews: court settings are complicated and create a lot of anxiety, not only for persons with intellectual and developmental disabilities.⁹

Of course there are examples of good practices and very positive experiences. However, these are mainly exceptions, and that is precisely what fuels the widespread perception that judicial settings are intimidating and hostile.

As stated by prosecutor Teresa, “One visit to the courts is enough to realize that, in general, there is neither signage nor adaptations to improve cognitive accessibility”. This is an appreciation shared by others who attend the courts regularly.



⁹ The terms “intellectual disability” and “intellectual and developmental disability” hereinafter will be used to refer to the broader term “developmental disabilities”, which encompasses these and other disabilities that appear during childhood. In this regard, see: Verdugo Alonso, M. (2020). *Terminología y clasificación sobre discapacidades intelectuales y del desarrollo*. Available [here](#) (in Spanish).

Entering a court is, in itself, a complex and difficult challenge for anyone. To begin with, you will find a space with imposing elements, a security guard who asks you for your ID, who makes you go through a walk-through metal detector, and if you're nervous, then the detector beeps, and if it does, "Why does it beep?", "Because you have something in your bag or backpack, or your keys, a belt or your shoes". And then you get the typical, "Building B, stairs to your right, courtroom 15, office 7" Good luck finding it! There are no information desks, so people must find their own way. They are cold places where people are in a hurry, places with a lot of paperwork and where information, in general, is limited. And all of this is scary from the beginning, because it creates situations of distress for many people, Every time I have to go to court I arrive half an hour earlier.

Elena, facilitator

I'm used to visiting courts, but sometimes even I have had trouble finding one. Once you enter, the signage is an absolute mess and nobody will help you. And if you need to go to one of those large courtrooms, good luck finding it! They're not well organized. It's authentic madness. I don't even want to imagine: if a person with an intellectual disability is not accompanied by someone, at the very minimum they will get late.

Rodrigo, attorney

Once you overcome the first barriers to access a judicial setting, it is common for persons who must appear in court to feel nervous, because that environment is not part of their everyday experiences. This nervousness has to do, among other things, with what we refer to in this document as **severity**. Severity refers to harsh treatment, the lack of kindness, the rigidity of rites or ways of doing things described as typical of some legal system operators, especially those who have roles of authority during judicial processes.

This severity is also expressed, among other things, in harsh attitudes, ways of talking ("Your Honor"), the location of courtrooms themselves (raised platforms), the solemnity of forms (use of judge robes) and the lack of flexibility to provide procedural accommodations.

Attorney Ana, for example, says that "seeing everyone dressed in black" is imposing and, for that reason, she has developed the habit of telling persons with intellectual and developmental disabilities, in a humorous manner, that those persons are her clients. "Don't get scared if you see me in disguise," she tells them. In a more critical tone, facilitator Elena strongly questions their costumes and the messages they convey.

I don't see any sense in the use of robes other than creating distance. We can understand a physician wearing a white coat because they may get stained while performing a treatment, but they don't always wear one. We know it is a status issue. And their robes are exactly the same thing. It doesn't make any sense other than creating distance and authority, and there's nothing that justifies them dressing differently. And then you have the embroidered cuffs of robes that show differences in status between them... And, obviously, those signs of status mean some have a higher level than others. It doesn't matter if you're under investigation or you're a victim. At the end of the day that is, without a doubt, the message they're sending. The robe is a clear example of hierarchy. And it doesn't have any function other than showing hierarchy, nor cleanliness or anything. In fact, attorneys are not wearing their robe when they arrive, they just put it on upon entering the courtroom, and as soon as they're done they take it off, because it's not even comfortable. It's like saying, "I'll show my status as soon as I enter". All of this is absurd.

Elena, facilitator

Severity is also reflected in that cold demeanor, the lack of information, the tone of interactions and, definitely, the depersonalization of support. It is clearly a barrier that hinders access to justice due to its influence on individuals. It creates a distancing effect, is imposing and even creates fear or anguish. Again, facilitator Elena sheds more light on this issue:

Elena, facilitator

Not long ago we had a trial –it was actually not a trial, but a hearing– where a person with a disability was crying all the time, and the case was dismissed because the judge thought the person was not prepared to give testimony. She was simply terrified! She felt very uncomfortable. But far from ordering a continuance to find another way to make the person feel more comfortable –in addition to being the victim she was the person reporting the crime– the case was dismissed because the court considered she was not prepared. There was not a real intention to help her to prepare [for the trial], the person simply was unable to adapt to the system. There is no intention to adapt the system to the person. The environment of the legal system is horrible for any person who has to go through it, and it's particularly draining for persons with disabilities, because they live dramatic situations that they sometimes shouldn't experience, not to mention everything a trial involves, which is always uncomfortable.

For judge Lucía, procedural acts must have “a certain level of formality” that should not be in conflict with being close to the persons involved. However, she admits that the judges' “work uniform” (the robes) and the physical location of the person in a courtroom (the stand) can “create a certain distance for some persons.” That is why the way of addressing people is particularly important, as “it can tone down” those distancing effects.

Prosecutor Teresa has a similar opinion: "The excess of formalities and the affected speech of the different actors involved towards the person with disabilities is not convenient, it doesn't favor interaction". However, she explains that there are certain actions and procedures that, given their ritualistic nature¹⁰, cannot be avoided, but they can always be adapted to the person:

It has been suggested on many occasions, and many judges have incorporated it into their practice, that every time there is an interview with a person with disabilities, or that person gives a statement, they should take off their robe. But sometimes they cannot take their robes off because the solemnity of the act is also important. But let's imagine a victim who comes to a police station and then must appear before a judge to give a statement, and he or she finds a judge with a robe sitting behind a bench: of course that doesn't help, because that's basically a deterrent for the victim, who must relive situations that are rather difficult, produce pain and may indirectly intimidate or inhibit the person, who may see that as a hostile environment. So, where possible, it's important to get rid of that formality.

Teresa, prosecutor

The intimidating nature of judicial settings sometimes has to do with the perception of a certain level of **arbitrariness**. As explained by some of the interviewees, "Courts are fiefdoms where the judge rules" (Gabriela, facilitator), "Each court does what it wants" (Rodrigo, attorney), or "A judge is like a God" (Elena, facilitator). These perceptions of arbitrariness are important because they suggest that attitudes towards procedural accommodations may be strongly conditioned by personal preferences, and the approval of accommodations may depend on simply being lucky and finding a sensitive judge, as opposed to the existence of guarantees that ensure the right to access to justice. As stated in a critical and realistic tone by facilitator Elena, "When it comes to justice you land where you land and however you land, and you don't have a plan B".

But sometimes that arbitrariness comes together with authoritarianism, and even the perception of a certain **ill-treatment**. Some of the interviewees affirmed: "The judge yelled at me to sit down" (Rodrigo, attorney); "The way you're treated in courts is rather impersonal" (Ana, attorney); "There is a lot of disrespect towards the person regardless of his/her role in the process" (Elena, facilitator); "It was difficult to hear the judge, so I asked her to speak closer to the microphone, and she told me I was only allowed to speak if she asked me to, to shut up and that, if I didn't shut up, she would kick me out of the courtroom" (Gabriela, facilitator).

But ill-treatment is not limited to court settings; it seems to extend to other settings related to the justice system. As explained by facilitator Almudena, it is not uncommon to find that the assistance you receive at the free legal counsel counter of the College of Attorneys in your city can also be intimidating.

¹⁰ In Spanish, the word used is *rituario* (that is, "ritualistic") which, as explained in the Panhispanic Dictionary of Legal Spanish of the Royal Spanish Academy, is used to refer to "that related to procedural law and forms in proceedings". See [here](#) (in Spanish).

People get upset if you don't understand; there are places where they get really upset if they have to explain things to you. I usually stand behind the person and tell him/her, "Ask the question!". And it makes me mad, because when I'm working I don't want them to see that, but I always try to be there and make it clear [to the clerk behind the window], "No, look, you're not making yourself understood". But you often feel like telling them, "Look, you get paid to explain things, so explain things and that's it, period". But that's the situation. It's really annoying to see people having to ask the same question three times, going to them with a piece of paper they don't understand, or seeking any form of support from them.

Almudena, facilitator

Some of the interviewees attribute this intimidating nature to a **lack of awareness**, closeness and empathy. According to judge Lucía, this has a lot to do with the way people are, their convictions and even their age, because the conception of the way justice is administered is noticeably different between younger judges and those who are close to retirement age. It is among the latter that she most often finds a conception of authority as a form of status that distances them from the rest of society, even though the law requires the judicature to have a good knowledge of the realities of society to be able to solve conflicts.

Along the same lines, prosecutor Teresa adds that the problems resulting from that lack of sensitivity are not easy to solve because, in addition to the person's way of being, other personal factors play a role:

It's not that simple, it's not that easy for somebody with a technical-legal background. I would say that if they don't have it in them, that is, if the person in question is not close to their life or part of their everyday routine, it will be difficult for them to develop [that sensitivity] during these processes.

Teresa, prosecutor

However, the perception of a lack of sensitivity is not widespread. The perception that things (at least some things) are changing can be found in literally all the interviews. There is also the perception that there are persons who are strongly committed to making changes and promoting a higher level of awareness at an institutional level.

Ana, attorney

I know people with a very strong commitment at the higher levels of the system, but I find that this has not trickled down to all the prosecutors, and I regret to say it, but it is what it is... I mean, I have it really clear, and it hurts, especially because we're talking about a particularly vulnerable sector (...). That lack of sensitivity bothers me, but it exists, it exists. It's not all of them, because I believe that those who are higher up are much more aware, but that lack of awareness and sensitivity, at least as far as I have seen, still exists among prosecutors in general.

However, these attitudes of cooperation are not a collegiate decision.

Of course the gap between internal efforts promoted by institutions and what happens in everyday life is not limited to this concrete experience. Facilitator Elena, who works in a different autonomous community, has a similar view: "It is true that actions and efforts have been implemented, agreements have been signed, and there is an important relationship with the State Prosecutor General Office. But in the everyday operation of the Prosecutor's Office, those efforts haven't been successful".

For judge Lucía, the lack of sensitivity is the result of the way some legal system operators conceive judicial processes.

There are many colleagues and operators of the legal system that see proceedings as mere pieces of paper –which now have been transformed into digitalized documents– and don't understand that behind each of those proceedings there is a person with a particular problem and you need to put yourself in their shoes. I believe that this notions of the jurisdictional role, the Public Prosecutor and certain legal professionals is what prevents us from being sensitive.

Lucía, judge

That lack of sensitivity is also present in specialized courts¹¹. Facilitator Elena affirms that, while she sees a little more sensitivity in specialized courts these days and believes there are good experiences as a result of awareness raising processes, "It's not enough for this kind of courts that deal with these matters."

All these situations are reflected in the different **interactions** with the legal system operators and their tone. While the tone of our interviews in general could come across as cold, as attorney Rodrigo says, "You have all kinds of people... You have amazing professionals who are super empathetic without losing their professionalism and respect the safeguards of the process, but there are others that make you want to hold your hands on your head".

Facilitator Gabriela affirms that, in her experience, she has found that in these interactions the legal system operators simply ignore the persons with intellectual and developmental disabilities she is supporting and, instead, often try to talk to her "like the person doesn't understand". It is worth noting that this deliberate avoidance is a form of ill-treatment against a person with disabilities. In addition, the fact of ignoring the person, like it was the facilitator's business, disregards the person's status as a rights holder.

But there are contrasting experiences that are also worth noting. For example, Noelia, a facilitation user and survivor of male violence, in her description of her interactions with legal system operators and police officers affirms: "They approached me, even though they knew the facilitator was there, but they actually approached me." It goes without saying that for Noelia –and this is something we can infer extends to all persons– the fact of being recognized and treated as the main interlocutor in these interactions was something she highly valued.

¹¹ The ways of referring to the different areas of specialization of these courts vary: "Capacity of persons", "Family and disabilities", "Disabled" "Disabilities". These denominations can be found [here](#) (in Spanish).

Facilitator Gabriela says that the tone of these interactions “depends to a large extent on whether the disability is visible or not, or if upon seeing the person with disabilities support needs are detected or not”. This is an important distinction that she explains by describing the interactions with law enforcement professionals she has witnessed. She affirms that when an intellectual and developmental disability is detected and a person’s support needs are recognized, “the interaction is good, because police officers are usually very accessible, make an effort not to infantilize and, in general, are willing to provide support”. However, if the disability is not easily identifiable and the support needs are not obvious, things get more complicated:

For most persons with intellectual disabilities that end up in criminal processes that are, let's say, more complicated, these support needs are not evident, and those disabilities are often associated with (substance) abuse (...). And in the case of many persons of gypsy ethnicity with an intellectual disability, mainly due to a social stereotype, it is usually considered that they're faking things or they're trying to take advantage of the system. But it also depends on their levels of stress, because we're talking about moments of extreme tension and limited accessibility and, in many cases, their rights are not really taken into account, especially because they believe they're trying to deceive the system.

Gabriela, facilitator

We will come back to some of these aspects but, for the time being, speaking about the intimidating nature of judicial settings, it is worth mentioning that they create particular states of mind. Anguish, nervousness, apprehension and respect are some of the aspects mentioned during the interviews to describe the fear created by such settings. The reasons are varied: hostile attitudes, an uncertain outcome, not understanding what happens, an unknown environment. As explained by facilitator Carlos, “Facing a trial will cause anyone to feel extreme fear”.

Facilitator Elena explains that the reason behind this fear is that persons with intellectual and developmental disabilities “have lived rather complex situations within the legal system, and the logical consequence of this experience is that they don't want to go through the same situation again.”

Sometimes persons themselves, their family members or people close to them tell us, “He had such a bad time when the judge asked him questions that he doesn't want to go back there”, or “He had such a hard time at the police station that he doesn't want to set foot in a police station again.” And they really do, because these are very tense and complicated situations. And if we don't understand what happens well, that can create even more fear.

Elena, facilitator

Fear is closely related to some of the issues we have already addressed. For example, as explained by facilitator Gabriela, "People will usually enter a trial with a lot of fear; and if you speak when you're not supposed to, there's always somebody who will yell at you to shut up and then you won't speak again."

Fear has powerful effects. Facilitator Carlos talks about one of the impacts he has seen among persons with intellectual and developmental disabilities who are serving a prison sentence. He explains that fear prevents people from contradicting others perceived as authority figures: "How can I say no to a very serious man dressed in black? If I say no I will get more years!" That's a common reasoning behind the decision to take unfavourable plea deals or waiving certain rights. While Carlos makes it clear that these are behaviors learned in prison settings, the effect of fear is significant. But that is not the only effect –fear also hinders communication.

Some of those [inmates] we work with only answer in monosyllables, because they find it difficult to talk, but there are others who tend to talk a lot and elaborate arguments. When they have to go through legal proceedings, their communication is almost exclusively based on monosyllables, they feel kind of embarrassed and cannot express what they want.

Carlos, facilitator

Facilitator Almudena fully agrees with this appreciation and affirms that "a court will make anyone nervous." But the trial is not the only thing that creates these states of mind; interactions during other procedural acts also create fear. In this regard, she shares an experience she had while accompanying a person with intellectual and developmental disabilities to a medical-forensic evaluation:

He was super nervous because he had been in prison, and he had gone out for a competence assessment. But as soon as the man saw the medical examiner he was terrified, especially with all the questions he was asking. I explained some of the questions to him, but due to the nature of the questions and his own fear, I was not surprised he didn't understand. I believe that if medical examiners knew about disabilities, they wouldn't ask the kind of questions they ask.

Almudena, facilitator

To end this section, we have included an opinion that summarizes what we have already shown and suggests the existence of some kind of resistance to change the intimidating nature of legal settings.

Elena, facilitator

Most of the other professions are seeking to humanize their practice, and today we find it's rather common for professionals to work closer with persons, for example, in the case of physicians. But in the area of justice (...) my concern is that I find that they don't have a clear idea of the need to make those changes. There is a significant lack of humanization in this field.

1.2.

THE COMPLEXITY AND RIGIDITY OF JUDICIAL PROCESSES

By complexity and rigidity of proceedings we refer to the difficulties and challenges posed by the way things are done in the Administration of Justice system. The complexity and rigidity of proceedings are the result of several factors. Some of these factors, which were mentioned in the interviews, include the use of language difficult to understand, lack of adaptations, lack of information, haste in interactions, complicated procedures and other aspects we have already referred to, such as cold treatment or the lack of sensitivity to the support needs of persons with intellectual and developmental disabilities. These factors have to do with what would seem to be the defining characteristic of the legal-judicial field –its significant lack of cognitive accessibility.

STRANGE WORDS: legal jargon, a language difficult to understand

Let us begin with one of the most significant factors: **a language difficult to understand**. There is a widespread perception that legal language, the jargon used by the legal system operators, is not only difficult to understand, but is also one of the biggest stumbling blocks for cognitive accessibility, but not only for persons with intellectual and developmental disabilities. As explained by facilitator Almudena, “Most people don’t understand the legal language. Justice is difficult for most people, although maybe less for those who have studied law or are dedicated to the legal profession.”



The use of a language difficult to understand is a distinctive characteristic of legal (and by extension, police) processes, and it is present both in writing (in documents, citations, sentences, reports), and orally (in interactions during the trial, either in a courtroom, during procedural acts and procedures or outside of the trial during the legal advice processes and other procedures).

Language difficult to understand is reflected in the use of “strange words”. For example, Sebastián, a facilitation user, explains that at his trial there were some words he did not understand, and while it is difficult for him to remember them all, there is one word in particular that confused him and he remembers vividly: *perpetrarse* (“perpetrate”) (in Spanish, an intransitive pronominal verb).

Language difficult to understand is notoriously used in moments that are already difficult by themselves. Sandra, a facilitation user and survivor of male violence, shares her experience:

All of this is rather difficult, they talk to you in a way you don't understand and, to make things worse, they do it at a moment where you have been assaulted and you're in shock. You're overwhelmed, and then you have all the paperwork; they ask you a ton of questions.

Sandra, user

Not understanding those words can have negative and long-lasting consequences contrary to the interest and intentions of the persons who seek the help of the justice system to solve conflicts. As explained by facilitator Bruno:

I remember the case of a girl we accompanied to court in a case of gender violence, but we were not allowed to enter the premises with her. Nobody showed up at the hearing, we didn't know who was who, and they asked her questions she didn't understand. The girl became angry, began crying and was kicked out of the courtroom because she was not behaving appropriately. Also, the case was dismissed.

Bruno, facilitator

The use of language difficult to understand is also closely related to the fear created by judicial processes and settings, not only among persons with intellectual and developmental disabilities, but in general, and even among those who are there to assist them. Facilitator Carlos illustrates this point:

Carlos, facilitator

I was afraid of dealing with all of that (facilitating the process) because I was afraid the judge would use words that even I wouldn't understand. In fact, the first time I had to tell the judge, "Your honor, I cannot understand what you're saying so I can explain it to him [the person with a disability]. If you use simple language, I will understand and I will be able to explain it so he can also understand." The judge kind of stared at me, but he did it.

Judge Lucía, who is aware of this situation, points out with absolute clarity that the legal system operators "often fail to use language that is accessible to the defendant, neither in our resolutions nor in our direct interaction with citizens." She is in favor of using simple language, as she believes that comprehension is essential for judges to perform their jurisdictional duties. But she also affirms that these ideas are not always shared by others:

Lucía, judge

The way of addressing defendants to read them their rights, to explain to them what a particular procedural act consists of, cannot be the same for everyone. This has brought me a lot of criticism from legal system operators, because they don't see things the way I've always seen them. I mean, I believe that, at the end of the day, a judge is a professional dedicated to solving conflicts (...). And you must be able to do it fully aware of everything the parties to that dispute are telling you, so in order to understand them, you need to make sure they understand you.

In the experience of judge Gabriela, public prosecutors are among the legal system operators who use the most difficult language and the least accessible terms. Attorney Rodrigo partially agrees with that statement, but he adds that the use of that language difficult to understand is intrinsic to the education of judges, and it is exacerbated in the case of those who continue their professional careers at the Prosecutor's Office or the judicature:

After so many years of reading that kind of language, of talking like that, of interacting with people who only talk that way, and knowing that this is a world full of solemnity –which I believe is necessary, but is sometimes taken to the extreme– I believe it is something really difficult to get rid of.

Gabriela, facilitator

Of course, language difficult to understand is not exclusive of the legal field. There are other professional sectors that use technical terms to refer to specific things. Prosecutor Teresa refers to that point in particular, but adds that while it is true that sometimes those terms cannot be changed due to their specificity, “we can always try to make what we’re talking about a little easier or more accessible.”

Judge Lucía fully agrees with this opinion and opposes rigidity when it comes to the use of technical terms:

While [that vocabulary] is commonly used among legal system operators, it shouldn't be used with those who are laymen in law. Instead, we must make an effort to use simple words to convey the meaning of institutional actions or legal provisions because, otherwise, they won't understand. It is true that if you have a verdict you need to use legal concepts, but that shouldn't be an obstacle so that, upon explaining the reasoning that led you to conclude that a certain legal concept is applicable to a particular case, you can do it in a simple manner that is intelligible for anyone, even if they don't know anything about the law. But that's something we find difficult to do.

Lucía, judge

Facilitator Gabriela has witnessed some of those efforts to use simple language. And she says, “There are judges who make an effort to give simpler explanations after using a technical term.” Facilitator Almudena agrees that some judges make an effort to use language easier to understand. However, she differs when it comes to the explanation of technical terms.

Understanding them is kind of complicated. They're not aware of the fact that they're speaking with very technical language. I believe they do it unconsciously. Sometimes they try to simplify things, but they don't explain the difficult words they say. So, of course, you're left thinking about that strange word the judge said and stop paying attention to the rest of the things they'll say.

Sandra, user

The issue of language difficult to understand is not limited to specialized jargon. As explained by facilitator Bruno, even if judges avoid the use of technical terms, the way things are enunciated can also be an additional factor of difficulty:

Bruno, facilitator

If you use very long phrases, a person with an intellectual disability and attention difficulties, for example, will find it difficult to pay attention, to follow those long phrases. That means the person will only grasp a small part of that question and they may respond with a “yes” or a “no”, but not because they actually want to affirm or deny something, but because they have only understood a small part of the question. And they won’t be able to answer questions about what happened; they will misunderstand those questions, but their answers are still being judged.

On the other hand, while efforts by some legal system operators to try to explain themselves are commendable, these efforts should be combined with efforts to confirm if the person has understood the information shared with him/her.

On other occasions, language difficult to understand affects decision-making to such an extent that you can hardly say the person has made a choice, because he/she has not understood his/her options. As explained by facilitator Carlos:

I asked one facilitation user how came she was in jail for a crime she didn't commit. And she explained to me that her attorney had told her it would be better to settle, and that's what she did following his advice. I then asked her if she knew what that meant and she said no.

Carlos, facilitator

Despite being avoidable, unfortunately the consequences of not understanding multiply in some sort of chain reaction to the detriment of persons with intellectual and developmental disabilities. Facilitator Elena explains this situation in great detail:

I often run into persons with intellectual disabilities who are in prison for violating the terms of a deal. But the deal they were offered was, "It's really easy, choose between going to prison or paying a fine". Obviously, if somebody told me that I would choose to pay a fine. But it so happens that it isn't the attorney's role –or maybe it is, I don't know, but they never do it– to make sure the person understands what paying a fine means, the amount to pay, how soon it must be paid, and what will happen if they don't pay. In other words, you need to explain the whole process of paying a fine, because if they don't pay it because they don't have the money or for whatever reason, then that person will end up in prison. There is a procedure you need to follow to pay the fine, and nobody has explained that procedure to them. And they'll tell you, "I haven't paid it because nobody said anything to me; I don't know where to pay the fine; nobody else told me anything about a fine, maybe they forgot, so I didn't pay it." And there are many people who won't fulfill those deals, but not because they don't want to –which of course sometimes happens–, but because the deal is not clearly explained and understood. I have cases of persons who were sent to prison because they didn't pay a fine and were not aware of that when they signed. All that must be clearly explained. But that's not the way it's being done. And that's why it's really important to make sure persons clearly understand what they're signing.

Elena, facilitator

The consequences of not understanding information extend to other stages related to the judicial process. For example, facilitator Almudena says that during the police process:

Almudena, facilitator

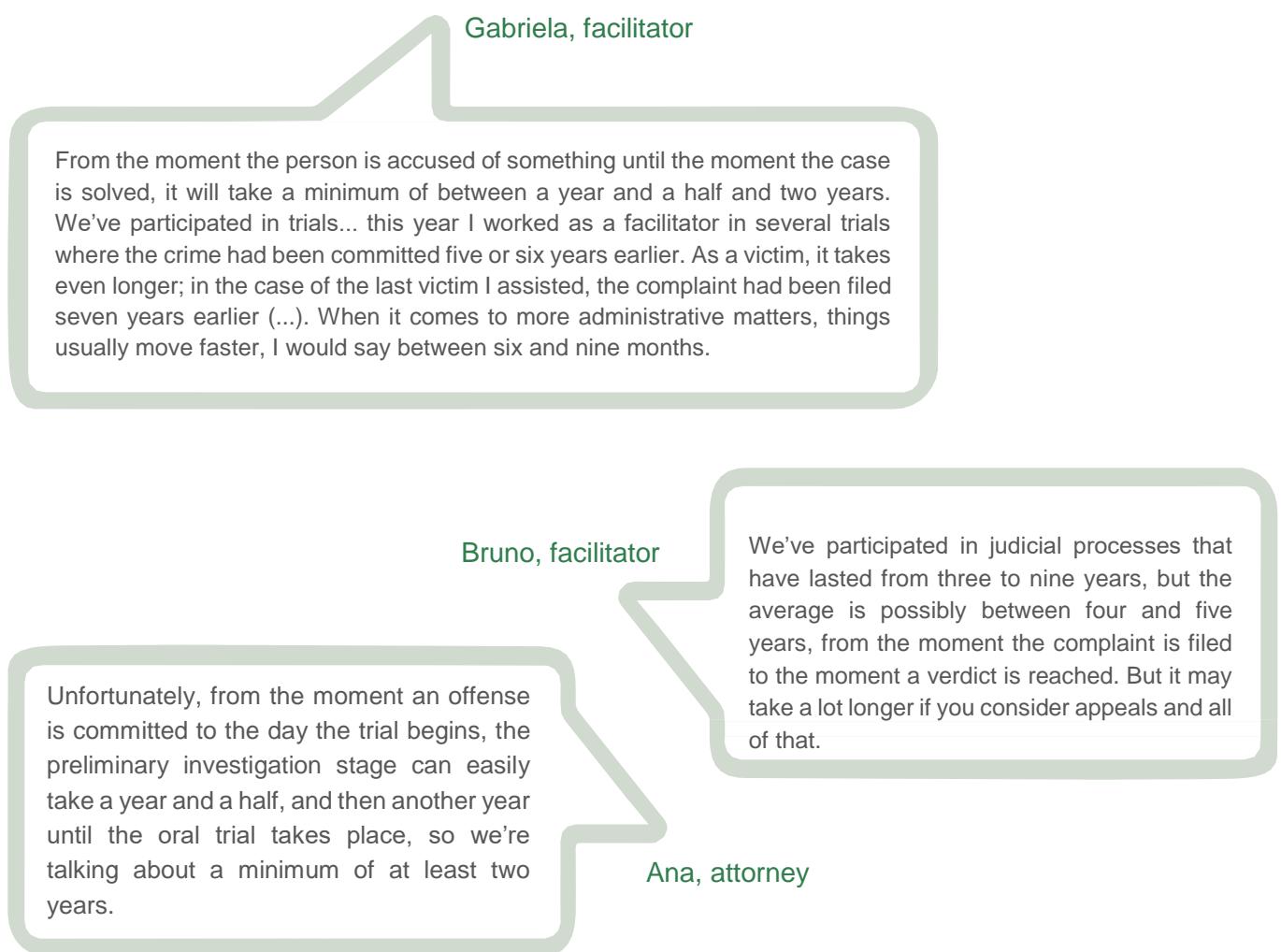
There are persons with intellectual disabilities who won't make a call upon their arrest because they don't have any money in their pocket. But the real reason is that the person has not understood he/she is entitled to a phone call free of charge. If you request access to records of reading of rights,¹² nowhere does it say that the call is free of charge, because they simply take for granted that people will understand there is not a payphone there. But you cannot take that for granted, because misunderstandings occur in many aspects of everyday life.

¹² In 2017, Spain's Civil Guard released easy read versions of a series of records and proceedings involving persons under investigation, detainees and victims, as well as a document with instructions on how to obtain free legal advice. In the case of the National Police, they have been documenting the process of information of rights for victims of different crimes. In addition, the first edition of the Guidelines for Police Interventions with Persons with Intellectual Disabilities was released in 2012. These guidelines already included an easy read charter of rights for victims in the form of an Annex. These guidelines were updated in a new edition published in 2017 available [here](#) (in Spanish).

The paradoxes of time: long waits, uncertain duration and haste, great haste...

Another factor, or group of factors, that adds complexity and rigidity to judicial and police processes has to do with time and its paradoxes. Time is a polysemic idea expressed in different aspects: in long waits, procedural deadlines, the duration of the judicial process, the little time dedicated to persons, the haste to complete certain actions, the slow functioning of bureaucratic institutions and several other aspects¹³. But we will only address the most significant ones here.

The duration of judicial processes is possibly the aspect that better illustrates the significance of time. Many elements play a role here: the object, the type, the instance, the existence of deals, the gravity of the case, the number of persons involved, the investigation stages and the court's workload, among others. The variable duration of the process is significant and, as explained by some of the interviewees, it can range from a few months to several years:



¹³ We wish to thank Esther Fernández Molina, professor of the Castilla-La Mancha University and Director of the Criminological Research Center, for sharing her impressions of the significance of this category. For additional information on the role of time and other aspects inherent in criminal judicial processes, see: Fernández Molina, E. (2020). *Hacia una justicia penal inclusiva: Una evaluación del paso por el procedimiento penal de las personas con discapacidad intelectual o con problemas de aprendizaje*. Cuadernos de política criminal, 132, 135-165. (In Spanish).

The perception that judicial processes are slow and take a long time is less variable. Prosecutor Teresa points out that "It is not a secret that Justice Administration must be much more agile than it currently is." In her opinion, while it is not possible to set deadlines, judicial processes "take too long, especially when it comes to persons with intellectual disabilities", because "the more time goes by, the more difficult it is to remember things in detail", particularly to the detriment of victims, but that also affects witnesses and persons under investigation. Along the same lines, facilitator Gabriela affirms, "Memories are ultimately lost, and that's why it's rather complicated when a long time goes by and the person must remember so that their testimony is credible."

Prosecutor Teresa believes the duration of the process does not have anything to do with the fact that one of the parties has an intellectual and developmental disability. Similarly, facilitator Bruno says he ignores if a judicial process can take longer if one of the parties is a person with disabilities. However, one of the elements that influences the duration of judicial processes is the carrying out of procedural acts, such as the submission of expert evidence. When asked about this, some of the interviewees affirmed there are different forms of evidence that should not have an impact on the duration of the judicial process, but they do.

Rodrigo, attorney

We're talking about expert evidence that due to the excessive workload not necessarily of courts, but medical forensic clinics, takes too long. Therefore, I believe, I would dare to say, that processes where one of the parties is a person with disabilities can take longer. But we believe it should be the other way around, because a person with an intellectual disability participating in a criminal process is more likely to be revictimized and, therefore, this type of processes should be considered a priority and be more agile. But it's interesting to see that it's exactly the opposite.

And we are not only talking about long waiting times, but also uncertain waiting times. This is a common characteristic of the different stages of the judicial process. In fact, it seems to be something that defines the Administration of Justice. As explained by facilitator Elena, people who for different reasons go to court do not know how long they will have to be there, standing hours on end, sometimes simply to be turned away:

Elena, facilitator

Sometimes you need to ask your boss for a morning off to attend the trial. I will usually say, "I need to attend a trial, and I don't know what time I'll be back", because it may take four hours, or it may take one hour, or the hearing may be postponed after waiting for four hours, or I may not be allowed to enter the court.

Of course the experience of uncertainty may vary depending, first and foremost, on whether the persons with intellectual and developmental disabilities is part of the judicial process or not and, second, on their role in said process. Sometimes the uncertain duration of the judicial process can create some anxiety. On other occasions, that uncertainty can make the judicial process seem unreal because, for example, it may lead people to believe that the case on trial has been forgotten or, on the contrary, it can create uneasiness due to the perception that the claim for justice has been ignored.

In contrast with the long waiting times and the uncertain duration of judicial processes, we find the haste and the hectic pace that paradoxically exist among the legal system operators and in judicial processes, which only increase their complexity, considering they create additional difficulties by exacerbating factors such as language difficult to understand. As explained by Noelia, a facilitation user, “During the trial, the judge used some words that you couldn’t understand; apparently they don’t use any easy read materials (...), so I had to ask the facilitator about certain things, but there were other things I couldn’t ask about because the judge was speaking too fast and there was no time to do it.”

We have already made reference to the intimidating nature of interactions with the legal system operators. To this we must add the little time dedicated to providing clear information and the rushed interactions that reinforce this intimidating nature and sometimes create a rather hostile environment for those who need more time.

We often find ourselves with people who have long latency times. I remember perfectly the particular case of a girl. Every time you asked her something, she had to process the question. She had to think about the answer and then she would respond, but only after a few minutes. Minutes of silence that seem like hours in a courtroom: people begin to stare at each other, the judge is impatiently drumming his fingers on the desk, the prosecutor gets nervous and starts badgering her with questions, “OK, just answer the question you were asked!”, but that only makes things worse because the person won’t understand. If you don’t give her some time to think and process the first question, and then ask four questions in a row, there is no way the person will be able to respond.

Ana, attorney

The experience of haste and the impression that little time is dedicated to certain proceedings and the persons concerned is shared by all the interviewees. “People in judicial settings are always in a hurry, they don’t know what the next process is, nobody reads the reports” (Rodrigo, attorney); “A forensic examination will take between twenty minutes and half an hour at most” (Almudena, facilitator); “The medical examiner will show up, look at medical reports available, examine the person, ask four questions and submit a report, all of it in half an hour” (Cristina, attorney).

But sometimes the problem is not the little time dedicated to certain proceedings; sometimes they don’t dedicate any time at all. As facilitator Elena points out, while the attorney’s role is the most important one for the person with intellectual and developmental disabilities participating in the judicial process, because the attorney is there to protect their rights, often times persons under investigation “will only see their attorney in their cell and won’t hear from them again until the day of the trial”, and sometimes they will only meet their attorney a few minutes before the hearing. Of course, this is far from what people need:

Persons with disabilities need more time, so meeting with them half an hour before the trial is not OK. Previous meetings are required for them to understand, to understand what the process is all about and what will happen during the trial, to know who will be there, that is, to receive information that will make things easier. But given the attorneys' usual rush, this is not common.

Elena, facilitator

On the opposite end of the excessive duration of judicial processes, we have the so-called “speedy trials”, which are not exempt from problems either. We will not delve deeper into this aspect; suffice it to say that the interviews showed this trial modality **does not allow for procedural accommodations** at all –except for those cases where the process of providing accommodations to victims was initiated during the police process–, given the haste of the process, which prevents the provision of accommodations.

Finally, the following are some opinions about the reason behind these paradoxes and other aspects that exacerbate difficulties inherent in this type of trials. For facilitator Bruno, for example, the haste and the little time dedicated to persons with intellectual and developmental disabilities are the result of the way Justice Administration operates and its permanent backlog.

Bruno, facilitator

Judges are overwhelmed, they have very little time to try cases and do their job, and the longer a case takes or, even the smallest obstacle, adds to their already significant backlog. There is a large number of courts where it is extremely difficult to talk to the judge, because they have tons of cases.

Facilitator Elena has a similar opinion, but adds other interesting nuances.

Justice administration is complex. It has always been rather slow, very archaic, with very lengthy legal processes in general. In addition, the COVID-19 pandemic has made things even more complicated. The Justice Administration system seems to be stuck in the 18th century, with those piles, those mountains of dockets. It's a very archaic structure where the wheels of justice move very slowly and everything is really complicated.

Elena, facilitator

Paradoxically, the gradual modernization of the justice administration system and digitalization efforts have not been enough to overcome some of these difficulties, which seem to have increased, and now we are even seeing the emergence of new challenges, at least for certain individuals.

Almudena, facilitator

Now you are required to scan all the paperwork and send it to them because they want to get rid of paper. They want you to e-mail everything. But you need a place to scan documents or a cellphone that can do that, and know how to do it. And not everybody has one or knows how. You're asked to send the documents of a person who doesn't have a cell phone to take a photo of those documents and doesn't know how to send an e-mail (...) Nobody seems to understand that if I don't have a way to scan images, if I don't know how to take a photo, if I don't know how to send an e-mail or don't have cellphone with Internet access, I cannot do any of that. Some people still use flip phones! And it's like they are disconnected from planet earth! How can you scan a QR code, a digital certificate, your vaccination certificate and all those things? If you have a flip phone, you cannot do any of that.

1.3.

BIASES AND STEREOTYPES

There are certain deeply rooted ideas and beliefs that shape many of the practices that involve persons with intellectual and developmental disabilities. It is rather common to come across ideas or beliefs such as the belief that persons with disabilities are anchored in a state of perpetual childhood, are generally incompetent and absolutely dependent, tend to lie or make up things, have a high sex drive or are asexual, or cannot understand things that most people without disabilities understand. In summary, we are talking about a wide variety of biases and stereotypes, that is, attributions made without a real knowledge of reality. And these biases and stereotypes set boundaries and are reproduced blindly.

Biases and stereotypes are often the only source of knowledge about persons with intellectual and developmental disabilities many people have. In an environment where decisions are made that affect the lives of individuals, the role played by biases and stereotypes is highly relevant. We will not address this issue in detail. However, we believe it is worth considering, in a little more detail, some of the biases and stereotypes reported by the interviewees.

A recurring topic has to do with certain **views on the sexuality** of persons with intellectual and developmental disabilities. As attorney Ana points out, there are preconceived notions that move between two poles, interact with other ideas and ignorance, and have clear consequences:

Ana, attorney

You'll often find that there is not a particular physical trait that allows us to identify that a person has a disability or difficulty in a particular area. In addition, there is a great lack of knowledge about how to treat them. They're often treated like children or angels that would seem to have no sex, or exactly the opposite: they are accused of being excessively sexual. Many people don't know how to treat persons with disabilities. What are the consequences of all this? Well, it only makes them more vulnerable. Their testimony in court is given less credibility and their decisions are not respected because it is assumed that they don't have the capacity to make decisions.

Facilitator Bruno has a very similar view. He shares an experience involving a case of sexual abuse that was almost dismissed precisely because the judge had strong biases about the sexuality of persons with intellectual and developmental disabilities.

This case involved a girl who stated that she had been the victim of sexual abuse at the hands of a stranger in her neighborhood. When the judge read that she had an intellectual disability, he was adamant on dismissing the case because he believed that persons with disabilities have a high sex drive and did not give any credibility to the fact that this girl had not consented, simply because she had an intellectual disability. He questioned the girl's own way of expressing her sexuality and her words.

Bruno, facilitator

Questioning persons with intellectual and developmental disabilities, that is, **giving them less credibility**, is another of the recurring issues that emerged in the interviews. Giving persons with disabilities less credibility is associated with biases such as the belief that they have a certain tendency to lie, make up stories or make up things or, at best, that they should be under some sort of permanent suspicion. As attorney Ana says, it is common to hear comments questioning what persons with intellectual and developmental disabilities say, because "it's common to think that just because they have a disability, it's very likely they don't know very well what they're saying." Or as facilitator Bruno points out, "They think they're lying just because they have a disability, that their ability to distinguish between reality and fantasy is greatly reduced, and they don't have the ability to distinguish right from wrong."

Part of these biases stems from the fact that the statements of persons with intellectual and developmental disabilities during a legal proceeding, their testimony, must be subjected to differential tests or expert evaluations to be verified, that is, tests applied simply on the basis of having a disability. As explained by attorney Rodrigo:

It's kind of wicked, but many of the interventions of forensic experts in criminal proceedings are requested simply because the person has an intellectual disability. That's also very common with minors. And they often call into question whether the person is telling the truth, if they have the ability to fantasize, if their statements are consistent with their abilities upon describing an event, or an assessment of their fitness to stand trial is often conducted from the perspective of the defendant.

Rodrigo, attorney

These differentiated practices to verify the testimony of persons with intellectual and developmental disabilities raise much-needed reflections.

When a person with disabilities affirms that someone abused him/her, their situation is different from that of other persons verbalizing similar situations, and that becomes evident in judgments made by all the people around them. In a judicial process, a lot more evidence is required for their testimonies to be believed (...). We should ask ourselves why persons with intellectual disabilities are subjected to those expert opinions other persons without disabilities are not subjected to. Is it simply because they have an intellectual disability? It doesn't make much sense.

Bruno, facilitator

As far as the person is concerned, those situations where their credibility is called into question, the sensation or feeling of not being believed, can have a deterrent effect or even result in attitudes of resignation in the quest for justice. This is explained by Noelia, a facilitation user, in the following dialogue:

Were you afraid at some point?

Juan

Yes, especially at the beginning, upon filing the complaint.

And who were you afraid of?

Juan

Uff! I was afraid the police wouldn't pay any attention to me.

Not paying any attention to you?
Why?

Juan

Noelia

You think that because you have a disability they won't pay any attention to you, because when a person with a disability shows up, if the person doesn't have any form of support, he/she won't be believed.

The deterrent effects of that discredit, in turn, create a vacuum where the opinions of persons with intellectual and developmental disabilities are ignored. As explained by facilitator Almudena, it is like there is no sense in expressing their opinions.

Almudena, facilitator

Persons with intellectual disabilities are used to others not believing what they say. It's like, "Why should I even try if my word is worth nothing?" And this applies both to situations where they are victims and situations where they are being investigated or have committed a crime. It's like their word is worth nothing. And while they may not fit the usual inmate profile, persons coming from associations or family environments are used to others disregarding their opinions, because they believe that, no matter what they say, it won't make a difference.

Going back to the judicial process, it is worth noting that the biases that lead to giving less credibility to persons with intellectual and developmental disabilities are often closely related to the litigious logic that is particularly characteristic of the criminal jurisdictional order. This logic is particularly evident in the case of statements or testimonies. Let us consider two complementary accounts:

The account of a victim with an intellectual disability is not very coherent, it provides few details and, therefore, the legal system operators will hardly consider it a true account due to the idiosyncrasy related to intellectual disabilities.

Gabriela, facilitator

If we're talking about a crime and a person has to give an account of the events, and that account is incoherent, it will be less viable in court, and the first thing the opposing attorney will do is tell you that it's full of holes and contradictions and, therefore, that it is not valid, in an effort to undermine the presumption of innocence. However, the testimonies of persons with disabilities can be contradictory; they won't make things very clear, because they don't remember well. But also because attorneys are sometimes crooked and the opposing attorney may ask tricky questions to make them contradict themselves.

Ana, attorney

For Carme, the forensic psychologist, the litigious nature of the process becomes even more evident when the victim's testimony is the only evidence available in the judicial process. According to her, if this testimony is not heard during the trial with the maximum guarantees, "there is a power game in which the defense will attempt to discredit it by any means possible. And they will claim it is useless and the person lacks the ability to give that testimony." In her opinion, this results in "highly complicated trials", but not so much because intellectual and developmental disabilities play against the victims, but because "the system, the way it exists today" allows their testimonies to be questioned more easily. But the fact that the testimony of persons with disabilities is more questioned does not mean their testimony is less valid:

Carme, forensic psychologist

The problem arises when all you have is a person's testimony and that testimony is highly unstructured. From a legal standpoint, an unstructured testimony is harmful, but from a psychological standpoint, the more unstructured it is, the more credibility it will have. But, obviously, you need to tell that to the judge.

It should be noted that the credibility of persons with intellectual and developmental disabilities is not only questioned in judicial settings and the processes that take place in them, nor exclusively by the legal system operators. As some of the interviewees have already explained, the testimonies of persons with disabilities are also subject to questioning by some care professionals for verification purposes that, despite not being ill-intended, create the impression that they are being given less credibility.

Bruno, facilitator

When a person with disabilities at an occupational facility says, "so-and-so has touched me", that statement will require confirmation by professionals that wouldn't be required if the person didn't have an intellectual disability. However, if I got to work and said, "Look, somebody overstepped his bounds with me in the elevator", any of my coworkers would say, "Are you OK? How can I help you?" But if a person with disabilities says something similar, his/her word will be questioned, not only by people in the legal field, but by other professionals, who would say, "Who were you hanging out with?" And they would ask the person to talk to a psychologist, and the person will be asked to repeat the same thing fourteen times to confirm if it really happened or it is something else. You don't know the number of times they force a person with disabilities to tell the same thing to the psychologist, the school principal, another psychologist, an educator, at a group meeting, or at a face-to-face meeting with the other person.

Another recurring issue related to biases and stereotypes is that of **infantilization**. This is clearly evident in the way persons with intellectual and developmental disabilities are treated, the way people talk to them, the failure to take into account their will and preferences, and the refusal to provide them with information they need and, instead, providing it to the “responsible adults” accompanying them. As explained by facilitator Gabriela, “People in the courtroom have a very clear stereotype of persons with intellectual disabilities; they talk to them like they’re children, they ignore them, they directly address the persons accompanying them, and they yell at them like they don’t understand or cannot hear.”

Facilitator Bruno, for example, refers to the problem of infantilization he has witnessed on several occasions in the way persons with intellectual and developmental disabilities are treated.

Bruno, facilitator

The way the court staff sometimes treat persons just because they have an intellectual disability is highly infantilizing: they hug them, they talk to them with a particular tone of voice, they address them differently, they treat everything they say differently compared to other persons (...). All the legal system operators infantilize persons with intellectual disabilities, either in the way they approach them or the way they value their testimony.

A common form of infantilization is that of ignoring persons with intellectual and developmental disabilities in matters that pertain to them. Facilitator Gabriela, for example, explains that she has witnessed forensic examinations where, despite the good will and attitude of the professionals involved, “instead of talking to the person, they talk to the family and make the person feel they have nothing to do there, that they have nothing to say”. She also points to another form of treatment associated with infantilization that is common among attorneys who do not make sure their client, that is, the person with disabilities, understands things and instead try to lead them.

Gabriela, facilitator

They don’t make an effort to help the person understand everything, because they take for granted that the person will not be able to understand. So, rather than explaining things in a simple manner, they limit themselves to telling the person what he/she must do. It’s like, “Since you cannot understand this word, just answer ‘yes’ even if you don’t understand it.”

As explained by attorney Ana, that association between childhood and intellectual and developmental disabilities, which is often present in the way persons are treated in legal settings, can also be found in certain evidentiary practices, because “many of the forensic tests they are subjected to were originally designed for minors”. However, this association is also present in some physical spaces in judicial settings. The description of a Gesell chamber made by Ana illustrates this fact:

Ana, attorney

The system was originally conceived for minors, for children to give testimony (...). The chamber consists of two independent areas separated by a one-way vision glass (...). One of those areas is set up like it is intended for children. The chairs are kind of smaller, it has some sort of play area in a corner, and it has just that, children's things. There is a round table around which the person with disabilities, the psychologist and the facilitator sit.

As far as the causality of biases and stereotypes is concerned, during the interviews there were many references that attribute them to a **lack of knowledge** about intellectual and developmental disabilities that exists among the legal system operators, as well as widespread misinformation in this regard.

In the opinion of attorney Rodrigo, "The lack of knowledge about intellectual disabilities, how they are conceived and the resulting lack of knowledge about their needs" is one of the main barriers. For him, that lack of knowledge is due to the legal system operators' lack of contact with the realities of persons with disabilities, which means "they don't know exactly what an intellectual disability is, and their work is influenced by these biases despite having a legal education that in some cases can be very good". Judge Leticia has a similar opinion:

There are many things that, no matter how much we try, are beyond our reach because we lack specialized knowledge. [As judges] we are expected to have common sense, and we have a legal background, but we don't know anything about psychology, nor do we have the information resulting from the experience of personal interactions and individualized knowledge about the person.

Lucía, judge

For prosecutor Teresa, questioning the testimony of a persons with intellectual and developmental disabilities based on their contradictions is highly representative of that lack of knowledge.

If we lack appropriate knowledge and training, we may certainly think the person is lying. That's the easiest route (...). On the other hand, if we have the training required, we will know the statements of persons with intellectual disabilities may be contradictory for many reasons, among other things because questions are not being formulated correctly or appropriately.

Teresa, prosecutor

That lack of knowledge is clearly evident, for example, in the confusion or the fact of equating intellectual and developmental disability with a mental disorder that is common among some legal system operators. In this regard, facilitator Bruno refers that, on one occasion:

Bruno, facilitator

We received an official document regarding a case where we had not intervened yet, requesting us to assess the ability of a person with intellectual disabilities to discern between facts and fantasy. So the first thing we did was call the court and tell them, "Look, what you're requesting from us has to do with a mental health issue, not an intellectual disability" (...). To some extent, we had to educate the court and tell them, "We can do this, but are you sure the person has that type of disability? Because what you want may be something different." And, in effect, what they wanted was something different; they wanted us to assess that person's testimony to determine if it could have been induced and all of that, not if the person was imagining things or not.

Moving on to another aspect, there are also occasions in which ignorance leads to misconceptions and actions, despite the intent to do good. As explained by facilitator Gabriela:

Gabriela, facilitator

Generally speaking, attorneys are very uninformed about intellectual disabilities and their implications. Most of them believe they're unfit to stand trial, which is not true. Their defense strategies usually focus on claiming that the person cannot be charged, which violates many of their rights, because the only thing they want is to convince the judge that the person has nothing to do there, which is exactly the opposite of what we want: it's not that they don't have anything to do there; it's about them understanding what happens and defending their rights (...). Attorneys are the ones least educated in this regard and, in their eagerness to help, they may leave people unprotected and create more uncomfortable situations.

The price of that "eagerness to help" is the violation of the person's right to understand. It is a clear expression of those practices that, in an effort to protect the person's "best interest", begin and end by replacing him/her.

And that lack of knowledge about intellectual and developmental disabilities is also sometimes reflected in certain situations of abuse and arbitrariness. Facilitator Bruno, for example, shares an illustrative anecdote:

As part of a legal proceeding, we submitted our report to the judge who, in front of the person with an intellectual disability, said, "No, no, no, that's not necessary, I will interview this subnormal [person]"¹⁴ I'm sure he was convinced that interviewing her was the right thing to do, but he didn't realize what he was doing: he was undermining the rights of a person with disabilities and failing to provide the support she needed, not to mention the way he referred to her.

Bruno, facilitator

On other occasions, insults like those are deliberate. Facilitator Almudena refers to the case of a woman with an intellectual and developmental disability who works as a child monitor, in which there was a clear combination of lack of knowledge, undermining of rights and persistence of biases and stereotypes. But outside of the judicial setting, this anecdote speaks to the dynamics of a society legal system operators are also a part of.

People in the street have even told her things like, "What are you doing with children if you're a subnormal?", "Retarded women cannot care for children" and expressions like that. I mean, this kind of things should no longer exist, but at the end of the day they are the result of that widespread lack of knowledge about intellectual disability, as if they were a characteristic applicable to that whole collective.

Almudena, facilitator

Biases and stereotypes and the lack of knowledge about disability are mutually reinforcing. And that lack of knowledge only reproduces stereotypes and stigmatization. Social stigma is a negative attribute that causes a person to be seen as inferior, incomplete, less human. It is not uncommon to find certain expressions in the technical language of disability that adopt certain pejorative meanings. The same applies to the persistent use of these expressions despite their stigmatizing nature, even in sectors that should abide by formal rules, such as the legal field.

One of the effects of the lack of knowledge about intellectual and developmental disabilities mentioned by the interviewees as a significant category was that of **underidentification**. According to them, it is common for disabilities to go unnoticed by legal system operators, and even by police officers, when the person does not have certain somatic characteristics (interestingly, those associated with the Down syndrome). As explained by attorney Ana:

¹⁴ The term "subnormal" was eliminated from the Spanish State legislation more than thirty-five years ago. However, its presence in the legal field seems to be pervasive.

Ana, attorney

One significant problem we have found is the lack of training. Often times, when police or courts run into a person with an intellectual disability, unless they have, for example, Down's syndrome, they often fail to realize the person has a disability.

The underidentification of disability, the “failure to realize it exists”, leads to potentially harmful situations, because that means the person’s support needs will not be recognized and, consequently, the person will be treated with negligence. As stated by attorney Rodrigo in connection with the provision of procedural accommodations:

I believe it's easier for them to realize accommodations are required when they see that the person has huge limitations and they say, “I don't know how to deal with this” (...). [On the contrary], the biggest mistakes are made when the legal system operators' perception is one of limited difficulty, in which case they'll try to do their job without taking into account that intellectual disability and, therefore, the person's needs, including the need of support from a facilitator.

Rodrigo, attorney

Of course, the legal system operators’ perception of limited or no “difficulty” in a given individual does not mean that person does not have any support needs. Underidentification can lead to critical errors, particularly in the case of persons whose appearance does not conform to widespread biases and stereotypes about development disabilities, whose social skills may mask signs of acquiescence that could go unnoticed, or whose support needs are weighed in the absence of specialized knowledge. Underidentification also leads to misrepresentations, as described by prosecutor Teresa:

One time, at a trial, the defendant had an intellectual disability that was not apparent; in other words, he didn't have the traits characteristic of a person with Down syndrome, which let us know that the person has a disability. So he didn't understand the questions and wouldn't answer, and the judge told him, “You're not going to get anywhere by playing dumb with me.” He didn't realize the defendant had an intellectual disability.

Teresa, prosecutor

But that was not an isolated case. Attorney Cristina shares an experience where underidentification and the lack of formal accreditation led to a situation of ill-treatment. The case involved an offender in a criminal proceeding:

The way he [the judge] treated him was humiliating, and he didn't let me call the forensic expert, not even during the final proceedings, despite having heard about it all throughout the trial and knowing he had a problem, that he was not faking it, that it was really authentic. The judge didn't have the faintest idea about disability. If I had been lucky to have a judge with a little more knowledge, he might have said, "Go ahead, call the forensic expert so he can assess him". It's a shame, but it's a matter of luck.

Cristina, attorney

As suggested by these accounts, these situations of ill-treatment, arbitrariness and negligence are not exceptional. Underidentification causes intellectual and developmental disabilities and the person's support needs not to be seen as real or believable, but as being faked or simulated just to obtain some benefit. Facilitator Gabriela's observation about cases of prison inmates is consistent with these ideas:

In many cases they [the legal system operators] believe the person, especially if he/she is a gypsy, is faking it. And the other party will try to make you look like you're part of a farce (...) or that you're putting up a show (...). They even think that the person obtained his/her official disability certificate by faking it.

Gabriela, facilitator

Sometimes underidentification involves a chain of events that begins before the judicial process and extends throughout it. As explained by attorney Cristina, "Prisons are full of persons with intellectual disabilities that went undetected during their detention, the investigation stage, legal proceedings or the trial, or at any other point". Sometimes this chain, which may extend to prison settings, poses major challenges for the individual, especially when it comes to the verification of their disability¹⁵. However, on other occasions it is precisely in those settings that their intellectual and developmental disabilities are detected. As pointed out by facilitator Almudena, "Inside the prison, in some respects, they're seen and treated differently, and it is there that their disability, which may have been completely disregarded during the judicial process, will be taken into account to some extent."

¹⁵ Data gathered by the study *A cada lado. Informe sobre la situación de personas con discapacidad intelectual reclusas y ex-reclusas en España* (Araoz, González, Martín and Izquierdo, 2020) confirms the problem of underidentification of disabilities. As pointed out by its authors, of the 367 participants in this study, only one half (51.4%) had a disability certificate they had obtained prior to committing the crime, and only in 3.3% of the cases they initiated the procedure to obtain it during the judicial process (pp. 51-52). In addition, despite having detected the disability, this was only taken into account at some point in 31.5% of the 743 processes reviewed by the study, usually with the aim of identifying circumstances that could change their criminal responsibility (p. 65). The report is available [here](#) (in Spanish).



WHAT WE HAVE BEEN TOLD



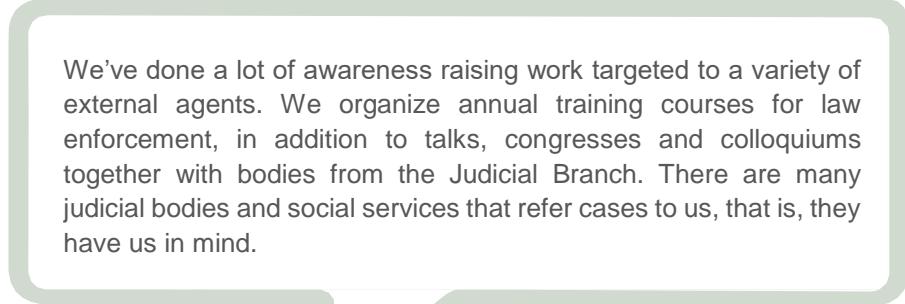
2. ABOUT FACILITATION

2.1.

AN OVERVIEW

As explained by the interviewees, while knowledge about the facilitator role among the legal system operators is limited, that knowledge comes from three sources. On one hand, it comes from the socialization of positive experiences that gradually translates into actions of support and partnerships. As pointed out by facilitator Bruno, knowledge about facilitation has been spread by word of mouth: "If I'm a judge and I have a need, and I see that you can provide me with the tools I need to do a good job, I will tell my colleagues."

Another important source of socialization of the facilitator role are awareness and dissemination actions, in addition to specific requests from organizations or bodies working in the field of intellectual and developmental disabilities, particularly those that have programs or services for the provision of facilitation in judicial processes.



We've done a lot of awareness raising work targeted to a variety of external agents. We organize annual training courses for law enforcement, in addition to talks, congresses and colloquiums together with bodies from the Judicial Branch. There are many judicial bodies and social services that refer cases to us, that is, they have us in mind.

Aitor, facilitator

This leads us to the third source: education. In general, procedural accommodations are not covered as part of the initial training of legal system operators. As explained by prosecutor Teresa, the topic is gradually being incorporated in continuous education and training programs, and many persons have learned about the facilitator role through specialized training. However, the reach of that knowledge is still incipient.

In the case of facilitation needs, the demand comes from different sources: family members of persons who need facilitators; professionals from the field of intellectual and developmental disabilities working for different care services and programs; professionals working in victim support offices and units, and operators of the legal, police or prison systems. Sometimes facilitation requests are made because a legal case where a person with a disability is involved goes public and it comes to the knowledge of a “partner”. And as explained by Noelia, a facilitation user, sometimes it is by mere chance.

I was the victim of a crime. I went to the police station to file a complaint and, by chance, I ran into a colleague from the association I belong to who is a facilitator. I didn't know such a team existed in the association, but right there they explained to me what they did. I was asked if I agreed to it and they assisted me with everything I needed.

Noelia, user

In general, a facilitator requires a judge's authorization to participate in the process. According to some of the interviewees, the problem is that obtaining that authorization is not that easy. Even if the need for a procedural accommodation is obvious, sometimes it is necessary to substantiate petitions to judges, sometimes to no avail. On other occasions the facilitator's participation will be authorized, as long as it is requested by one of the parties.

There are also occasions where it can be arranged at the request of the judge, the prosecution, forensic experts, psychosocial teams of courts or as part of police procedures. However, the latter seems to be more the exception than the rule.

Prosecutor Teresa states that she has never had an experience where facilitation was requested by the public prosecutor and it was denied. She stresses, however, the need to “substantiate, justify and express why the petition is made”, because the judicature “also needs to know what we're talking about”.

Facilitator Elena makes reference to an interesting distinction that highlights the lack of a well-established procedure for the formal organization of procedural accommodations. In her words:

Elena, facilitator

The facilitator role is something we're demanding, not requesting. It is requested only once we demand it. We have a good knowledge of cases and we're the ones telling the courts that, given the person's disability status, a facilitator is necessary so the person can go through the judicial process with the full guarantee of their rights. And it's up to the courts to say no or yes to that demand, and that's when the facilitator request is made. Requests made directly by courts without a previous demand are not common.

In the absence of a formal procedure, arranging the facilitator's participation can be an endeavor with highly unpredictable results that requires different actions and the intervention of different actors, always paying attention to the way in which requests are received so facilitation can achieve the results desired. Interestingly, facilitator Elena refers to this form of organization as "getting in through the back door".

We're talking about a process that may not be the most appropriate, where the request for a facilitator's participation in the judicial process is not made by the court, but by somebody else. Who are the ones usually requesting it? Attorneys. But in those cases either the attorney already knows us and calls us, or uses a request form we have available, or if we already know the person involved in the judicial process, we talk to their attorney and ask them to file a writ explaining what the facilitator role is and its legal recognition. And at other times we do it through the board of judicial administration counselors. We file a writ with the court to let them know there is a person with an intellectual disability that requires a facilitator. But all of this is like getting in through the back door, because we need to learn about cases first and then inform the courts. And we try to provide that support by ourselves, without any kind of help, funding, recognition or anything. But that poses a significant problem, because now there is a demand for our services but we don't have any funding. Still, we believe this is so important that, obviously, we're doing it.

Elena, facilitator

Sometimes the lack of a formal facilitation request procedure requires taking more risks and exerting more pressure so people can have access to accommodations. As explained by attorney Cristina:

In my written response I asked the court to approve the use of a facilitator and a person to accompany my client, but the court didn't even respond to my request. So I showed up in court the day of the trial thinking, "They should be allowed to get in because I say so, because the law is on my side" (...). And I told the facilitator, who is also an attorney, "Come with me. I don't know what will happen, but the law is on my side and I have the right to propose the use of a facilitator, so that's what we're going to do". And the judge, once he saw we wouldn't budge, well, he agreed to it.

Cristina, attorney

Beyond the different ways of gaining access to facilitation support, the moment in which the facilitator joins the judicial process varies significantly. Our interviews showed a certain consensus in the sense that the ideal moment is that where the need for procedural adjustments is detected from the outset and the facilitator's participation is arranged prior to the judicial process, preferably before the complaint in the case of victims, or at the time the person is read his/her rights in the case of offenders.

In practice, the moment in which the facilitator joins the process will vary depending on different factors, including the role of the person with intellectual and developmental disabilities in the judicial process, how strong their support network is, the support they have received from the entity or organization referring them or the specialized programs and services offered by entities in the sector, and even the level of knowledge about facilitation, procedural accommodations or disability of the legal system operators or police officers.

Of course, this variability means the timing of the facilitator's participation will not always be perfect. However, if the initial decision is not to have any facilitation, no matter how late that moment may be, it will still be perceived as timely. The reason for this is that, regardless of the moment in which facilitators join the process, they can always help the person to understand important matters. For example, if the facilitator joins the process at an early stage, that matter could be the decision to file a complaint or the terms of an out-of-court settlement.

Prosecutor Teresa says that, as far as she knows, "on the few occasions in which a facilitator's intervention has taken place, it hasn't been during the initial phase of the criminal process". And she adds that the need for facilitation support usually goes undetected at the police station, and it is often only detected at a later stage of the evidentiary phase or even once it has ended. However, she also points out that facilitators cannot intervene in all the stages of the judicial process, but only in those proceedings where it is deemed necessary.

In the opinion of facilitator Elena, facilitators are not joining the process at the most appropriate time: "We get there only once the process has already started, when it's too late. We believe we need more hours to do a good job." And she adds that there is a great difference between what would be ideal and what usually happens in practice, which, in her opinion, is the result of the limited implementation of the facilitator role:

The ideal situation would be for us to intervene from the very first moment, which could be, depending on the case, during the initial interactions with police, for example, when the person decides to file a complaint. In that case, a facilitator could help them to understand the process and the best thing to do at that moment. Or that could also be in the case of persons in custody. In other words, since many judicial processes begin with a police or investigation process, it would be ideal if we could start from there... The reality is that we often learn about cases once they have already started, that is, only a few days before the trial, after the forensic psychologist examined them, or sometimes without having been examined. I mean, the reality is that we get called mainly during the legal proceedings stage as opposed to the police stage, basically right before the trial. And that limits our ability to handle cases.

Elena, facilitator

Facilitator Gabriela shares a similar experience. She explains that facilitation "begins once the judicial process is already underway, that is, before the trial, once the person receives a citation."

With the victim's perspective in mind, facilitator Bruno affirms that many of the persons he has assisted as a facilitator during judicial processes appear before the court "after a complaint has already been filed, with a legal process already underway." And he adds that sometimes, when he has received a facilitation request from a court, they only do it to adapt a sentence, without any additional participation in the judicial process. In his opinion, "Sometimes they become aware of the need too late, which means facilitation doesn't start when it should, but at least we receive the request."

From a victim's perspective, Sandra, a facilitation user, explains that in her particular case, the facilitator was there "from the beginning", and both the attorney and the facilitator were present when she filed the complaint at the police station.

From the offender's perspective, on the other hand, facilitator Carlos points out that facilitation "begins from the moment we learn that a person to whom we are providing support in prison has a pending trial." Along the same lines, Sebastián, a prison inmate and facilitation user, says he received support from a facilitator from the beginning to the end of the process.

Despite the great variability in the moment in which facilitation begins, we can affirm that there is a significant difference depending on the role of the person with intellectual and developmental disabilities in the judicial process: victims may have access to a facilitator from the early stages of the process, such as filing the complaint or giving a statement at the police station, while offenders, if they have access to a facilitator, more often do so in the later stages of judicial processes to which they are a party.

With regard to the end of the facilitation work, there are different scenarios considered ideal by the interviewees: some of them believe facilitation should be limited to certain procedural acts, others believe it should be extended to the entire judicial process, and some others believe accommodations should also be available in other stages related to the execution of judicial decisions.

The variety of these criteria is interesting. According to prosecutor Teresa, since the facilitator's role is linked to the judicial process, facilitation should necessarily end once such process is over, which can occur at different procedural moments and for different reasons:

Teresa, prosecutor

Facilitation may end during the pretrial phase if it is considered that there is not enough circumstantial evidence to continue, to move forward with the investigation. (...) The case may be archived, that is, closed, in different moments. If the process comes to an end, obviously the facilitator's participation also ends. If the facilitator's participation started during the investigation/pretrial phase, and pre-constituted evidence has been made in connection with the person, what usually happen is that, if the judicial body considers that the person is not required to give that testimony again, it is common for the facilitator to have to ratify his or her report before the judicial body, and that will be the end of their participation. In other words, it depends on the moment and the procedural situation where it takes place.

Facilitator Elena, on the other hand, believes facilitators are not there to provide "emotional support" or be a continuous source of reference, so they "should only be present before or during judicial processes to prepare things, and should disappear once the process comes to an end." In her opinion, in this regard, comprehension should be the main criterion, and she refers to a series of moments where the facilitator role should end: if the judge orders a sentence during the process, facilitation should end with the accommodations necessary to that end; if the process ends with a plea deal, facilitation should end with the support necessary to understand its terms and scope; if it is the case of a victim, with the support necessary for the victim to understand what happened, the sentence or the restraining order. In summary, "providing support for comprehension, not for compliance."

For attorney Rodrigo, the main criterion should be that of support needs. In his opinion, while the person's support needs are related to the judicial process, facilitation cannot end once the process ends, but may be necessary beyond the process itself.

Since facilitators are a source of support, their work should only end once the last form of support needed by a person ends. In other words, even if the process has effectively come to an end, if the person still needs support to understand why it ended, how it ended, the final outcome, etc., the facilitator should provide that support and adapt those explanations. In my opinion, that would be the ideal situation.

Rodrigo, attorney

Facilitator Gabriela also believes facilitation should be extended until the moment a sentence is ordered and that sentence has been understood. In her experience, however, that is not always the case. In her opinion, the criterion to determine the moment the accommodation must end should be the end of the procedural act. She explains that, except for those trials where a plea bargain takes place, "the sentence will be ordered only once the trial ends, but in many cases the trial ends without the person knowing what the judge's decision will be." That has been the case of several victims with intellectual and developmental disabilities she has assisted: "I don't know what the final outcome of those proceedings was. I lost contact with the victim after the oral hearing." In her opinion, that is not the best moment to end the facilitation support because:

The person needs to understand the legal proceedings, but also the sentence. If you're a victim you need to understand what you're entitled to, why things happened that way and what a restraining order means. Also, if you're a defendant, often times, especially where alternative measures are ordered, you need a lot of support to understand them.

Gabriela, facilitator

For that reason, Gabriela believes that if the person with disabilities does not have a support network, facilitation should continue until you make sure they no longer need their support, but even where support exists, facilitation may be necessary to continue to support that network.

What seems to be clear is that, despite the variety of moments in which facilitators end or should end their participation during the judicial process, that moment is sometimes determined from the perspective of the person's support needs, and sometimes from the perspective of the needs of the judicial process. The implications of one or the other perspective are different: if the need for facilitation is based on personal support needs, that can only improve access to justice; if, on the other hand, the need for facilitation is based on the needs of the process, the facilitator's support may be limited to particular procedural acts for which he/she has been authorized, as if no support needs related to the judicial process existed beyond those acts (understanding the judicial process in the broadest possible sense).

At present, facilitation is only provided by a few entities and organizations working in the field of intellectual and developmental disabilities, either through victim support units or support programs for female inmates and former inmates implemented by Plena Inclusion at the autonomic and state level. In all the cases that have come to our attention, facilitation is a task in addition to others performed by those entities and organizations. In some exceptional cases, the cost of the facilitator's participation in judicial processes is assumed by the Administration of Justice system, but only when the court requests the procedural accommodation *ex officio*. However, this is not the way facilitation is currently provided. We also learned about an exceptional case where facilitation was not provided by an entity, but arranged at the request of an attorney and provided by a paid independent professional.

The costs of a facilitation scheme are not few: prior training for facilitators; preparing reports and everything that entails; production of materials and design of specific forms of support needed by the person with intellectual and developmental disabilities; facilitation of procedural acts authorized; ensuring cognitive accessibility beyond these acts, etc. And obtaining funding to cover these financial costs is not an easy task.

We don't have a grant or dedicated staff; instead, we rely on our own colleagues, who are altruistically helping us to support persons in these processes. We dedicate a lot of extra hours to these tasks, so many that we had to limit the amount of time we work.

Elena, facilitator

Attorney Ana points out that, as far as she knows, the professionals working for the different entities that make up Plena Inclusión perform facilitation tasks in a way she refers to as "commendable", because they do it "however they can, for the love of it and their profession, outside of their regular work schedule, and sometimes even aside from their regular job."

Beyond their commendable work, we must stress that the provision of facilitation should not be a matter left to voluntariness, considering it is a crucial element of the judicial process. All of the interviewees agree on this for different reasons.

Lucía, judge

We shouldn't expect organizations to do this work without getting paid, because that will never work. Of course, right now we're all excited because we know how important it is, and we're eager to do everything we can, but it shouldn't be that way.

Cristina, attorney

Facilitators shouldn't be doing this work, which is also very costly, at their own expense (...). I refuse the idea of having to do it for free. I believe this is a service to citizens and Justice Administration should be at the service of citizens and, therefore, they should provide and fund this form of support.



We don't get paid; we do it voluntarily. There is not a list of persons doing it, none of that (...). I believe this shouldn't be a voluntary activity, because we do that work and, as such, it should be paid, just like sign interpreters are paid (...). It shouldn't be left to people's will, because if it is something voluntary and they call me and I cannot be there, then they'll say, "What kind of service is this?", and they won't call me again.

Carlos, facilitator

In addition, the fact that facilitation is a voluntary activity means limited resources must be carefully allocated or, put another way, "undressing a saint to dress another". As explained by facilitator Almudena:

This activity is funded through the inmates or access to justice programs, which have many more activities. I mean, attending a person's trial means you may not be able to go to the prison, and this will affect other persons who need your support, because you will not show up that day, and they may need you to read or explain a document to them, and that won't be possible. There are not enough financial resources to hire the staff required to do this job many hours a day or many hours a week.

Almudena, facilitator

Several interviewees also affirmed that allocating financial resources to facilitation is particularly difficult if we are talking about the needs of persons with intellectual and developmental disabilities who are being accused or under investigation.

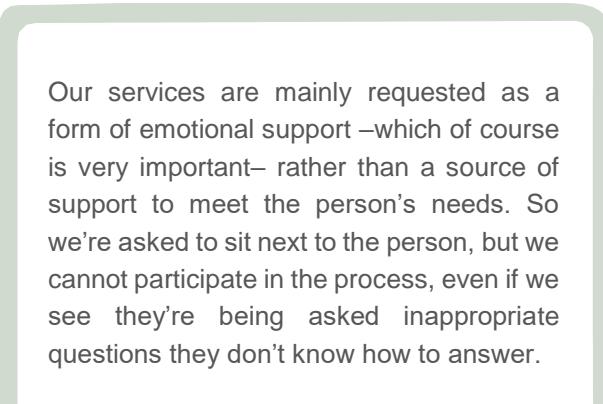
2.2.

THE OBSTACLES FACED BY FACILITATION

With the exception of those who have already had previous experiences with a facilitator, who have learned about it through specialized training or are key stakeholders in the implementation of agreements, the **lack of knowledge** about facilitation among the legal system operators is widespread. In fact, the interviewees pointed to that lack of knowledge as the main obstacle faced by facilitation.

That lack of knowledge is the reason behind misunderstandings and negative attitudes towards the tasks of facilitators and their role in the judicial process. As explained by facilitator Gabriela, “Many courts still don’t understand they’re not a person’s tutor or representative, but a source of support.”

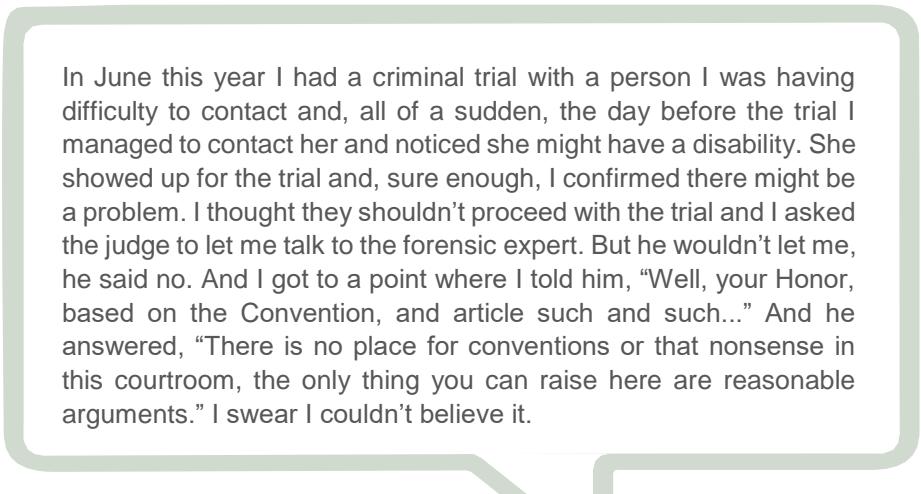
Sometimes the lack of knowledge leads others to see facilitation only as a form of emotional support and, therefore, miss other important aspects of the procedural accommodation. In the words of facilitator Bruno:



Our services are mainly requested as a form of emotional support –which of course is very important– rather than a source of support to meet the person’s needs. So we’re asked to sit next to the person, but we cannot participate in the process, even if we see they’re being asked inappropriate questions they don’t know how to answer.

Bruno, facilitator

But sometimes this lack of knowledge is even greater and is not limited to facilitation tasks or the facilitator role, but extends to the legal instruments that provide for it. Attorney Cristina shares an experience where, in addition to the lack of knowledge, it is possible to appreciate the barrier of arbitrariness we have already referred to:



In June this year I had a criminal trial with a person I was having difficulty to contact and, all of a sudden, the day before the trial I managed to contact her and noticed she might have a disability. She showed up for the trial and, sure enough, I confirmed there might be a problem. I thought they shouldn’t proceed with the trial and I asked the judge to let me talk to the forensic expert. But he wouldn’t let me, he said no. And I got to a point where I told him, “Well, your Honor, based on the Convention, and article such and such...” And he answered, “There is no place for conventions or that nonsense in this courtroom, the only thing you can raise here are reasonable arguments.” I swear I couldn’t believe it.

Cristina, attorney

For attorney Rodrigo, the lack of knowledge about the facilitator role, procedural adjustments in general and the regulatory framework for their provision is also the result of a lack of knowledge about disability and, in particular, the specificity of intellectual and developmental disabilities.

For facilitator Gabriel, that lack of knowledge is common among the legal system operators, in some sort of cycle that creates and reproduces a disregard for the support needs of persons with intellectual and developmental disabilities.

Gabriela, facilitator

Because attorneys themselves ignore that persons [with disabilities] are entitled to a facilitator, whether they are victims or defendants, they don't inform the court about it. And judges rely on attorneys' requests, and if they don't request any accommodations, then the judges won't suggest them. They just read the charges and don't care about the person's needs. This should be done by the Prosecution, but they usually don't know the person and, therefore, they won't request it either.

The opinion of facilitator Almudena reinforces this idea. In her opinion, "You cannot request what you don't know. If attorneys don't know they can request it and the court doesn't know they can provide it or don't even know it exists, you will hardly receive any requests."

But the lack of knowledge is also considered a problem that can be solved over time. Facilitator Carlos, for example, hopes the facilitation role will follow the same path as other key roles in the field of access to justice:

Currently you're only a stranger to judges, prosecutors or attorneys... you're a stranger. Every time you talk to the attorneys about the facilitator role, they will say, "What's that?" or "Where did you hear that?" And prosecutors and judges will ask the same question. I mean, many don't even know persons with intellectual disabilities have that right. It's a new role. I wish five years from now we can talk about it as something normal, something completely normalized, just as it happened with sign language interpreters. I hope it happens that way so that, in a few years, it's no longer a matter of discussion because it will be completely solved and normalized.

Carlos, facilitator

Along the same lines, facilitator Almudena points to her experience with the Convention on the Rights of Persons with Disabilities.

That's exactly what happened with the Convention several years ago; you tried to use it as a gateway to request some type of accommodations for the person, but there were judges who didn't know anything about it, even though that's part of their job. And that, the fact that there were people who didn't seem to know anything about it, drew our attention (...). Now things are a little different, because you find that people know more about the Convention and take it into account.

Almudena, facilitator

As you may have inferred by now, one of the main reasons behind the lack of knowledge about the facilitator role among the legal system operators is its **lack of recognition**. This can be expressed both in formal aspects (the need for its regulation and a policy framework) and material aspects (the need for appropriate funding)¹⁶. On a practical level, the lack of recognition of the facilitator role poses clear obstacles: from a formal standpoint, even if the need for it is evident, facilitation is not seen as something legitimate, and the absence of a regulatory framework prevents it from being implemented in practice; from a material standpoint, despite the significant amount of work it involves, it lacks appropriate funding.

One of the formal aspects commonly referred to as a stumbling block is the lack of standards and protocols to define and regulate facilitation, what it is, what it does and how it must be organized. Prosecutor Teresa, for example, affirms that it is “a professional profile that hasn't been clearly defined yet”. Similar perspectives can be found in other interviews.

Even though the facilitator profile has been designed by experts in the field, the lack of formal recognition can call into question the facilitator's work. As pointed out by facilitator Elena:

There is not a standard that establishes how it should be done. The facilitator role is being introduced based on the consensus of experts who believe it should be done a certain way, but we still lack rules or standards that explain when facilitators should intervene; we're doing it the way we think it should be. And, obviously, that means that our arguments can fall apart in a judicial process if somebody really wants to call them into question.

Elena, facilitator

¹⁶ This was formally recognized in article 7 bis of the Civil Procedure Law after a series of changes introduced by Law 8/2021 of June 2, which amended civil and procedural legislation to provide support for persons with disabilities to exercise their legal capacity. The study's information gathering process coincided with the entry into force of this legal reform and, as of the date of this publication, there was no evidence of further legal changes.

The lack of regulations and protocols for the formal recognition of the facilitator role seems to be associated with the perception that the law that legitimates facilitation is not an internal law and, therefore, its application is not mandatory or a priority. In this regard, attorney Rodrigo says:

I think this is due in part to the fact that it is not perceived as an internal law, because the text that makes reference to the provisions of the Convention is too general. For example, at the end it says that all persons with disabilities should have access to justice and States Parties must ensure and guarantee that access to justice, but it never says how. Therefore, nobody did anything until a European directive forced countries to get their act together. I think that's the problem because, at the end of the day, when we speak about conventions, pacts and supranational bilateral agreements, well, people kind of look the other way. Internal laws are usually more comprehensive and more likely to be enforced. When you have a more comprehensive law or regulation and you tell people how to do things, not only the what, but the how, they will do it better.

Rodrigo, attorney

From a material standpoint, the interviews point to relevant issues already mentioned, such as the lack of funding or the voluntary nature of procedural accommodations. The lack of material recognition is attributed to the lack of financial resources. That is a limitation commonly referred to when it comes to matters related to accessibility and the fulfillment of the rights of persons with disabilities. But that is a questionable and debatable argument. Judge Lucía expresses it clearly: "We cannot use the excuse of the lack of public resources to avoid the implementation or provision of procedural accommodations, because a lot of public resources are wasted in many other things."

The lack of recognition means facilitation tasks must often coexist with other tasks such as the provision of legal advice, rights advocacy or personal assistance, all of which results in an excessive workload for those performing these tasks on a daily basis, in addition to voluntary work. As pointed out by facilitator Elena:

Elena, facilitator

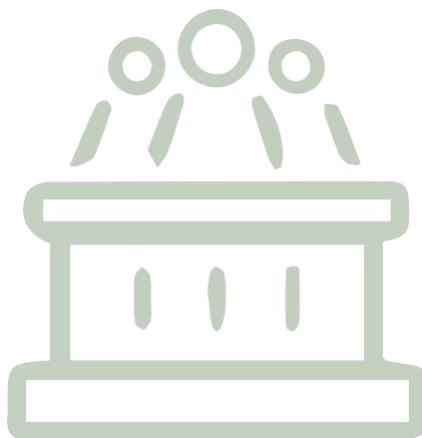
Every time a case is referred to us or we learn about a case we try, by every means possible, to talk to the attorneys involved and share the disability reports with them (...). Since there is not a clearly defined mechanism to access or find a facilitator, we perform a dual role: on one hand, we make people aware that the person has a disability and a facilitator must be requested and, on the other, we seek the facilitator. In other words, we inform about the need for facilitation, request the facilitator and remind them about it.

In this scenario, the immediate reaction of the legal system operators to the facilitator's intervention is usually one of opposition. The reasons are varied, but this **opposition** is mainly due to a lack of knowledge, lack of recognition, lack of sensitivity and several other aspects already addressed in this document.

The opposition of the legal system operators can be expressed in the form of an open rejection, lack of interest, inhibition or abandonment, for example, when, despite knowing about facilitators –and other procedural accommodations– they are not used.

An interesting reason behind that opposition is the fact that facilitation is sometimes perceived as a threat that calls into question the work –methods used, results achieved– by certain legal system operators, including police officers. As explained by facilitator Carla, when the facilitator role was introduced in her autonomous community, they organized a series of activities to spread the word about procedural accommodations; at the police station “police officers were like, ‘We don’t need an interpreter, we already know how to ask those questions, that’s why we’re police officers!’”.

Similar descriptions of that initial resistance and reluctance often faced by facilitators can be found in other interviews. For facilitator Gabriela, for example, opposition to the participation of experts is particularly strong among public prosecutors, especially when this participation is suggested or requested externally.



Nothing makes them happy, and they usually don't understand that the fact that you're providing support to the person doesn't mean you represent them, that you have a neutral role. They don't understand that (...). The prosecution usually sees the presence of a facilitator as an insult, because at the end of the day they're the duty bearers, so if you point to possible rights violations, it's like telling them they're doing a bad job.

Gabriela, facilitator

Either because they perceive facilitation as a form of questioning the role of the legal system operators or police officers, because incorporating them into the process is not so easy, or due to sheer ignorance, the truth is that facilitation is seen from the beginning as an act of interference that is difficult to accept and even leads to acts of hostility against those who point to the need for procedural adjustments.

It is impossible to point to a particular category of legal system operators that opposes the facilitator role more or less. But it is clear is that efforts to raise awareness and sensitivity can play a key role. When asked about this issue, facilitator Aitor affirms:

It's kind of a sensitive subject. You have all kinds of people; some attorneys are well aware of the support we provide to persons with disabilities, but there are other members of the judicial branch, or the court, who don't have that level of sensitivity towards persons with disabilities or the capacity to understand that they have the same rights and certain persons need this form of support, or the support of another person, to assist them in these judicial processes and explain to them what these processes or sentences mean (...). Some accept us and respect us; they even refer cases to us and fully trust our work. But others don't... they don't see our presence in the courtroom to provide assistance with good eyes.

Aitor, facilitator

Sometimes the reasons behind that opposition have to do with a lack of perception of procedural acts as something important. Facilitator Carlos, for example, talks about the case of a prison inmate that (at the time) had to go through a modification of legal capacity process where the judge refused to authorize a procedural accommodation because the act for which the facilitator's participation was requested "didn't have to do with a trial, but only a few questions the judge wanted to ask the person."

We wanted to ask the judge to authorize our participation as facilitators so the person with disabilities could understand the whole process. We explained that to the attorney from the Administration and asked her to talk to the judge, but she refused. So we asked to attend as part of the public, because the modification of legal capacity process would take place via a video call from prison, and we were allowed to be present. This procedure was directly requested by the inmate because he didn't have anyone [to support him], that is, he had a pension, but every time he is released from prison they take away his pension, he becomes homeless and his life is at risk. And, of course, he always says yes to everything. So as I was hearing everything they said I felt helpless, because I was unable to give him the support he needed to communicate a real need for help. The judge asked him if he had anybody who could support him and he immediately said, "Yes, my brother". And, luckily, the judge asked him to provide his brother's address so he could support him upon his release, because his answer was, "He's with me in the same cell". The judge then realized his real situation and decided to do something different. I believe that this is one of those situations where you understand the importance of facilitators in all the stages of the judicial process.

Carlos, facilitator

As pointed out by facilitator Gabriela, the reluctance to use facilitators is due in part to the fact that they are not perceived as necessary by certain legal system operators, who are reluctant to use them because they believe they are qualified to perform that role. “If all you have to do is give them a simple explanation, we know how to explain things clearly here” is a phrase Gabriela has heard on several occasions.

Facilitator Elena has a similar opinion. She says the opposition to the facilitator role is mainly due to the “we’ll figure it out” mentality, which refuses to make the process more complex, and the perception that the facilitator is unnecessary, rather than a negative perception of their role or the idea that it is “nonsense”.

Elena, facilitator

Like in everything else, there are attorneys and judges who say they can make themselves understood: “I’ll make myself understood, I’ll figure it out”, like it is that easy. I don’t know how they do it, because there is not a manual on how to make yourself understood, neither for facilitators nor for anybody else, but if there was one, it would be a lot easier. Obviously, if attorneys or judges tried to follow our advice –avoiding the use of technical terms, giving the person more time, explaining one idea at a time–, that would be phenomenal. I wish everybody did it. If somebody says, “I’ll make myself understood”, I truly doubt that person has really understood what we’re talking about when we use the term facilitation (...). I mean, it would be fantastic if the legal system operators could actually make themselves understood and facilitators were not necessary, because that would be good for everyone.

Along the same lines, attorney Rodrigo says,

I believe some judges think that having another external person is a hassle, because they won’t be able to perform legal proceedings the way they usually do or because they think that the person with disabilities doesn’t need any accommodations. Rather than opposing to it, it’s like a feeling of self-sufficiency that, in my opinion, is part of the lack of knowledge.

Rodrigo, attorney

Attorney Ana shares a similar perspective regarding the refusal to make the process more complex, although her perspective contrasts with the widespread perception of the facilitator role as unnecessary among certain legal system operators.

Interestingly, it is precisely among prosecutors and courts that introducing the facilitator role is more difficult. These are the sectors that should be most supportive of the facilitator's interventions, but they are the ones I find more difficult to work with. One prosecutor even told me, "Great courtroom antics!" just because I called the facilitator and submitted recordings of testimonies. And that's the feeling you always get: every time something unexpected happens in the courtroom –and here I include prosecutors– they get nervous; they don't like it, "because doing what we already know is way easier." and they say, "This is all we have and don't give us any trouble." And that's where I'm waging my main battle.

Ana, attorney

Judge Lucia agrees with these views. In her opinion:

There is a lot of reluctance, a lot, because we're lazy and insensitive. It's not everybody, but in general terms we have a very closed mindset and we're stuck with the old way of performing proceedings, of justifying proceedings. And there's also a great lack of education and information.

Lucía, judge

On other occasions, even if we manage to overcome the opposition to facilitators, their participation has been authorized and they're available, we will still face challenges (misunderstandings, negligence, unexpected situations) that prevent facilitators from doing their job. This means accommodations exist only on paper. Facilitator Gabriela, for example, shares an experience in the context of the COVID-19 pandemic where a judge authorized a person with intellectual and developmental disabilities to attend the trial without a face mask, taking into consideration her support needs. The rest of the persons had to wear a face mask and, precisely for that reason, it was difficult to understand the judge. Despite having agreed to this procedural accommodation, it was useless, because the facilitator was not allowed to sit next to the person with disabilities. "So even if I had tried to facilitate the process, it was impossible for the person with disabilities to hear, and I was unable to convey what the judge was saying; it was a serious defenselessness situation."

One particular aspect that drew our attention in these accounts is the perception that the use of facilitators is seen as an obstacle to the development of the process, because it implies moving away from the usual way of doing things; in other words, the provision of the procedural accommodations necessary for all persons to have access to justice is still seen as an additional burden, not as a result of preconceived ideas, but inertia.

The interviewees also make reference to different **suspicions** regarding the facilitator role. While these suspicions not always result in opposition, they always pose a challenge when it comes to arrangements for the participation of facilitators in the judicial process. The vast majority of these suspicions, if not all, are the result of the lack of knowledge about the facilitator role. The main suspicion may be the perception of a bias, that is, the belief that the facilitator participating in a judicial process is doing it on behalf of the person with intellectual and developmental disabilities.

An experience shared by facilitator Elena illustrates the effects of that perception of bias and how it relates to the litigious nature of certain judicial processes:

Elena, facilitator

The other day we were assisting a boy with autism who had many support needs. We filed a writ with the court asking if we could meet with him before the trial, because we needed to establish some minimum facilitation requirements. But we had our doubts, because when you meet with the person prior to the trial, the courtroom may consider you're influencing the person, because they didn't see what you did or didn't do. So we asked the court for permission to record the interview (...). But since the interview was recorded in our offices, tomorrow the opposing party could claim the interview was not neutral and it was manipulated (...). If there is another party to those proceedings, and that other party has an attorney that will defend his/her client's rights, they may question the facilitator role because, at the end of the day, attorneys will defend their clients and resort to all kinds of strategies to help them against the other party.

One particular source of suspicion is the perception that facilitators can influence persons with intellectual and developmental disabilities. And that perception of bias is precisely what facilitator Gabriela saw in a judicial process where she was assisting a person with disabilities who was a victim.

Gabriela, facilitator

The defense claimed that because I had met the person prior to the trial, it was obvious that I had influenced her statements. In fact, one of the questions the person was asked was if she was saying what she said because she wanted, or because I or her family had forced her to do it. The prosecution agreed to the question because I had not met the person right there and then. But that person needed to know what was going to happen there, her family didn't know what was going to happen there either, and she had a lot of anxiety. We had to explain to her that she could tell the truth, that she shouldn't be afraid, and all of that had to be done before, not that same day.

In the case of victims, while well-established judicial support practices already exist, having access to facilitation as a procedural accommodation seems to raise suspicions that otherwise wouldn't exist. For example, as explained by Carme, a forensic psychologist, when a facilitator participates in the process of giving testimony, the person's spontaneity and objectivity are often questioned.

An aspect worth highlighting is how the way facilitators do their job –that is, with the proximity required for the person to understand the content and overcome the barriers imposed by the judicial setting and the logic of the judicial process- is considered a lack of neutrality. For facilitator Gabriela, this is a deeply-rooted perception resulting from biases against persons with intellectual and developmental disabilities.

Elena, facilitator

Those suspicions don't exist in the case of language interpreters, because they're considered part of an alternative communication system in legal processes. In the case of facilitation, they don't understand that, but at the end of the day you need to communicate with the person, you cannot be literal. You'll tell them things like, "Look, they're asking you if you believe that...", and as soon as you start addressing things like that, they worry you may be influencing what they say, especially as a result of attorneys' biases against the person. It's like saying, "Let's see if she [the facilitator] will talk to her" or "She's talking to the defendant, and because she's helping him and she likes him, now he's saying the other person didn't do anything to him". We're mainly talking about attorneys' biases.

As can be seen, there is an apparent tension between the perception of bias and the facilitator's work. However, in the opinion of judge Lucía, the fact that the facilitator and the person with disabilities have met previously should not affect the neutrality of the procedure, but quite the contrary. "I believe procedural accommodations should be completely individualized. So who could be better than a person who knows an individual in need of support well to determine where and which accommodations between proceedings are needed?"

For attorney Rodrigo, while this perception of lack of neutrality is gradually changing, it is closely related to the history of facilitation, which in part originated from the need to provide support to persons with intellectual and developmental disabilities who had become victims of a crime. In his opinion, the persistence of the perception of bias also has to do with the fact that facilitators are not part of the Administration of Justice system.

It's a role still under construction, that is, fairly new, so I believe the main weakness it has always had is that it has not been seen, or it is difficult to see it, as a neutral role because it's not intrinsic in the court, it's not part of the court structure.

Rodrigo, attorney

In the opinion of attorney Cristina, the fact that the facilitator role is not part of the court structure, as is the case with other institutionalized roles such as that of experts in forensic medicine, means facilitators are equated with experts brought by the parties and, therefore, "they're seen as having a vested interest in one of the parties." Judge Leticia has a similar opinion:

Lucía, judge

The facilitator's impartiality is often questioned because they don't come from within the justice administration system, and the report on the individualized support required by the person is not submitted by a public servant, but an external person; from there the perceived association with the party. It's similar, for example, to a legal proceeding, where a report from a forensic medicine expert is not given the same credibility as that of an expert brought by one of the parties.

As explained by prosecutor Teresa, suspicions also arise from the perception that having a facilitator can make the judicial process longer. In her opinion, however, this kind of biases should not exist, because "This is not only about swift justice, which is important, but also justice for the person with all the guarantees."

In general, these concerns usually disappear or are reduced significantly in those cases, which have only been exceptional so far, where facilitation has been requested by the court itself or the Public Prosecutor's Office. Suspicions usually end when the legal system operators have had an opportunity to work with a facilitator, once they confirm that their own work and access to justice for persons with intellectual and developmental disabilities become easier.



2.3.

THE FACILITATION TASKS

The tasks around facilitation

Beyond the multiple reasons that lead to suspicion and opposition to the facilitator role, it is interesting to find that this is such a common occurrence that interviewees often refer to the importance of efforts to integrate facilitators into the judicial process. From there that we can affirm that there are important **facilitation tasks** that include those efforts, a variety of actions and tasks, and even certain tactics.

Facilitation tasks can include actions such as informing the court about a particular case that involves a person with intellectual and developmental disabilities, as well as their support needs; informing persons with disabilities and their families about the facilitation process; filing writs to justify the need for procedural accommodations, including the facilitator's participation, and performing different legal and judicial education tasks aimed at the legal system operators, among other things, to persuade them to request procedural accommodations.

In particular, the latter facilitation tasks, i.e., those aimed to convince and persuade the legal system operators, have drawn our attention, considering procedural accommodations are mandatory. As explained by facilitator Bruno, positive facilitation experiences have gradually reduced the need for those tasks, but he remembers that the first time he implemented a procedural accommodation, “We had to work with the courts very carefully to be able to convince them.”

A similar experience was shared by facilitator Carlos, who explains what he usually does to convince judges to authorize a procedural accommodation.

The gift of speech is really important, that is, you need to know how to explain things to them. You need to be very skillful and sometimes even lower our head to get them to understand, and tell them things such as, “You’ll see how it works during the legal proceeding” or “I know what a translator is, and that’s exactly what I do at a trial”, or “As you can see, all I’m doing is trying to explain to him what you’re telling him, but he already has a defense attorney”.

Carlos, facilitator

These persuasion efforts are usually combined with legal and judicial education regarding procedural accommodations, including facilitation itself and the applicable legal provisions. As explained by facilitator Gabriela, “This education is particularly necessary with attorneys; you also need to explain to them what the facilitator role is, the jurisprudence they can use to request one, and explain the Convention to them so they can have appropriate arguments.”

These facilitation tasks, which must continue even after having received a judge’s authorization for the facilitator to participate in the process, include things such as arranging the provision of facilitation through an entity other than that having referred the person with disabilities, or the meticulous work to eliminate suspicions based on prior knowledge you may have about the person with intellectual and developmental disabilities.

We have been told, for example, that in some cases in which the facilitator comes from the same entity that provides support to the person with intellectual and developmental disabilities, entities often implement a complex strategy that consists of assigning facilitation interventions to a team of professionals from different entities who are rotated to ensure that the facilitator who participated in the process of giving testimony is not the same one providing support at the oral hearing or in other legal proceedings:

We try to make sure that the facilitator comes from an entity other than that with which the person with disabilities has direct contact so that everything is perceived as more transparent. We even make efforts to make sure that the facilitator providing support in the courtroom is not the same person writing the report or assisting with the giving of testimony. Our team is made up of several facilitators precisely to avoid that “contamination”.

Carlos, facilitator

We want the facilitator role to be neutral, and that's why now we're providing assistance to persons we don't know. When the person is someone one of our colleagues knows, a different colleague who doesn't know that person will be assigned in order to avoid that perception that the facilitator can somehow influence him/her.

Elena, facilitator

At present courts do not have a “facilitator service” you can resort to. Only a few entities or organizations perform these tasks. This means that sometimes these assignment and rotation strategies simply cannot be implemented and facilitators may face the additional problem of having to perform a dual professional role –that is, carrying out their everyday support activities and specific facilitation tasks– to avoid creating suspicion in the courtroom. But this also means facilitators must work really hard to give the impression they do not know the person with intellectual and developmental disabilities, a fiction that is truly difficult to create and maintain. As explained by facilitator Carlos, efforts to perform this dual professional role are critical for facilitation to be successful:

We always perform support tasks. In fact, during the trial we help the person to understand how the judicial process works. But that's not the type of support we provide on a daily basis. And this is a very important task: knowing how to dissociate our everyday relationship with them from our relationship the day of the trial. And that's key, because if we're unable to dissociate that relationship, it will be really difficult to have a successful trial (...). If I cannot get the person to understand that once we enter the courtroom I will no longer be a support person, but his facilitator, the trial won't go well, because he will start asking me questions that have nothing to do with my facilitator role.

Carlos, facilitator

Many of these facilitation tasks are carried out amid suspicions created by the litigious nature of the judicial process and certain procedural needs. As explained by Carme, the forensic psychologist, "We shouldn't forget that sometimes facilitators are also summoned to appear during the trial" and, therefore, it is necessary to "avoid, to the extent possible, that contamination" the facilitator may be suspected of creating in the victim.

During a trial, you may be asked if you have had a previous intervention with the victim. Once they give testimony, your actions are not that crucial. I mean, you can provide support but only after the process, once the process has come to an end. Thus, if a facilitator preparing a disability report is summoned to appear during the trial, the facilitator assisting the victim to give a statement in a courtroom should be different, because these activities cannot be overlapped (...). During the procedural phase, the facilitator's judgment must be objective. The same applies to forensic work. In this case, the forensic psychologist should never provide treatment or therapy, or have had a previous intervention with that person. Otherwise, his/her participation will be challenged.

Carme, forensic psychologist



The facilitation tasks

Facilitation tasks in general include activities as varied as preparing reports and assessments of the person's support needs to participate in a legal proceeding; gathering information about cognitive capacities deemed relevant (identification, consent, visual-spatial location, memory); explaining the content of these reports to judicial authorities or police officers involved; designing, testing and providing the forms of support necessary; assisting in the process of giving testimony; assisting the person in all kinds of procedures and proceedings related to police and judicial processes; mediating in all interactions that are part of judicial and police processes; performing different preparation tasks to ensure the person can participate in the judicial process and the legal system operators take into account the person's support needs; and providing support for the understanding of sentences after legal proceedings; among others.

As can be seen, this is a very broad set of tasks. Given their complexity, they would require an approach we cannot cover in document, so we will limit ourselves to pointing to several key aspects highlighted by the interviewees.

While it is possible to establish an *a priori* distinction between facilitation tasks related to the person's support needs and those resulting from obstacles imposed by the judicial process, the truth is that, in the accounts of the interviewees, these tasks appear intertwined, and sometimes it is difficult to dissociate them from tasks that, strictly speaking, do not fit the definitions of facilitation, but are still necessary to facilitate access to justice.

Facilitation tasks include previous preparation tasks that are necessary to help the person with intellectual and developmental disabilities deal with the judicial process and are not performed during procedural acts. As explained by facilitator Gabriela, sometimes these tasks are time-consuming:

In the case of the last victim I supported, I was considered a person of reference for her and her family before the trial, because she had many communication support needs, so it was necessary to explain to her what was going to happen there. The day of the trial the person's level of tension is so high that he/she is unable to understand well what's going to happen. That day we were there for approximately six hours, and then, the day of the hearing, about two hours, even though that day my intervention only lasted a few minutes.

Gabriela, facilitator

Some of these preparation tasks have to do with the judicial and legal education we have already referred to, except that, in this case, the person with intellectual and developmental disabilities is the main actor. As explained by facilitator Carlos:

I explain to the persons some of the words they'll hear during the trial: "conformity", "perpetrator". And I also explain to them what they must do if they don't understand something, and how they need to say it: "Can you explain that word to me?" or "I didn't understand what the judge just said". You need to work on all those situations they may face.

Carlos, facilitator

We are talking about situations that, as already explained, may even be hostile; from there that this preparation is crucial. As pointed out by facilitator Almudena:

Almudena, facilitator

The legal system operators never introduce themselves; they just take their seats and start asking questions, and you don't know who is who. Sometimes prosecutors won't even open their mouth during the entire process. Thus, persons with disabilities leave without understanding who was there or what their role was during the process. For that reason, every time we support a person we explain to them the courtroom layout, who each individual is and, in general terms, what will happen there.

As far as facilitation tasks during procedural acts are concerned, since we're talking about individualized support, variation is the rule. As explained by facilitator Elena, in some cases her intervention may only last a few minutes, but in other cases a more active and intense intervention may be necessary:

In the case of a person with a good understanding capacity you may only need a short time at the end of the proceeding to confirm if the person understood everything or not, and end with a summary, which would virtually put an end to the proceeding. However, if the person has more support needs, it may be necessary to stop several times during the trial to make sure the person understands. Because it is true that, for practical purposes, given the way trials works, they won't stop unless the person is asked a direct question.

Elena, facilitator

As can be seen, the facilitator's intervention in the judicial process will depend, to a large extent, on the person with disabilities' support needs. However, this intervention is still conditioned by the obstacles imposed by the dynamics of the judicial process. Facilitator Elena adds that the facilitator's intervention:

is basically limited to the legal system operators' direct interactions with the person, for example, during interrogations, or when direct questions are asked to the person during the trial. The rest of the time, for example, when a witness is speaking or the prosecutor and the attorney are talking, it's more complicated to intervene, but it shouldn't be that way.

Elena, facilitator

Despite those limitations, Elena's account lets us see that the person with disabilities is not the only target of facilitation tasks; in other words, these tasks are, by definition, multidirectional. This characteristic becomes evident in the case of tasks aimed at facilitating communication and comprehension.

Carlos, facilitator

It's not common for the legal system operators to seek our help when they don't understand what a person with disabilities says. But I do remember a case in which the person was getting tongue-tied while speaking; he was having a hard time explaining himself, and both the judge and the prosecutor asked us to explain what he was saying. We understood him because we know him and we explained it to them. And we were asked to do it two or three times during that legal proceeding, but that's the only time it happened (Carlos, facilitator)

During the trial, the legal system operators were asking questions to the person with disabilities, and I had to adapt some of them because they were full of technical terms. If they didn't understand an answer, I would sometimes intervene. But if the questions were clear, I didn't intervene.

Almudena, facilitator

Cristina, attorney

The facilitator's main intervention took place during an interrogation in the presence of the judge, the prosecutor and the person with disabilities. The facilitator was there to make sure the person with disabilities understood the questions being asked and, of course, to make sure the judge understood the answers. The facilitator was also present during the trial, but she didn't have to intervene there because it went well.

As can be seen, certain facilitation tasks, specifically those related to comprehension, are not always necessary because the legal system operators will adapt their language to the circumstances. In those cases, the tasks of translating technical terms and facilitating language difficult to understand are replaced with some sort of comprehension monitoring function, where the facilitator remains attentive to interactions during the procedural act. This function is clearly illustrated by Violeta, a facilitation user and survivor of male violence against women.

Violeta, user

During the trial the judge will ask you questions you must answer, but the facilitator will be attentive in case you don't understand something and your answer is not clear, to make sure your answer is perfectly clear. Because if you answer without understanding things, the judge will write down whatever you tell him. Therefore, the facilitator will remain attentive to make sure you don't answer without understanding things.

When it comes to understanding the information, the interviewees coincide on the need of converting different documents to an easy read format. In this regard, it is worth noting that while agreements exist with different agencies and courts to promote and implement the adaptation of sentences, that is not a common or widespread practice. On the contrary, the use of easy read documents is sporadic and mainly in response to particular experiences and initiatives that, for now, are concentrated in the civil jurisdictional sphere.

In general, the accounts of the interviewees differ significantly when it comes to the use of easy read documents: facilitator Gabriela affirms that, in her experience, the legal system operators in general do not know or do not work with easy read documents. Judge Lucía, on the other hand, refers to several experiences with judges –family court judges– who have ordered their use when they have deemed it convenient. Attorney Ana refers that in her writs to the courts she usually includes a request to convert the sentence to an easy read format, although she doesn't always obtain a favourable response.

Facilitator Almudena, on the other hand, refers to good and bad experiences as part of a project to convert judicial documents to an easy read format, ranging from judges who refuse to participate because they do not want their documents in “colloquial language”, to those who actively promote the project among their peers and implement actions beyond sentencing, for example in citations and complaints, to ensure that “persons have access to easy read documents and can better understand things that have to do with their lives” throughout the entire process. Along the same lines, facilitator Bruno says:

In the past we asked the person with disabilities to bring the sentence so we could read and understand it together, and we explained what was happening both to the person and the family. And we found that sometimes they came back and said, “I want you to explain it to me again”, and we would read it again so they could understand it. And that's when we began to realize the need to adapt sentences into an easy read format so the person could understand the sentence and read it as many times as they wanted without having to depend on us.

Bruno, facilitator

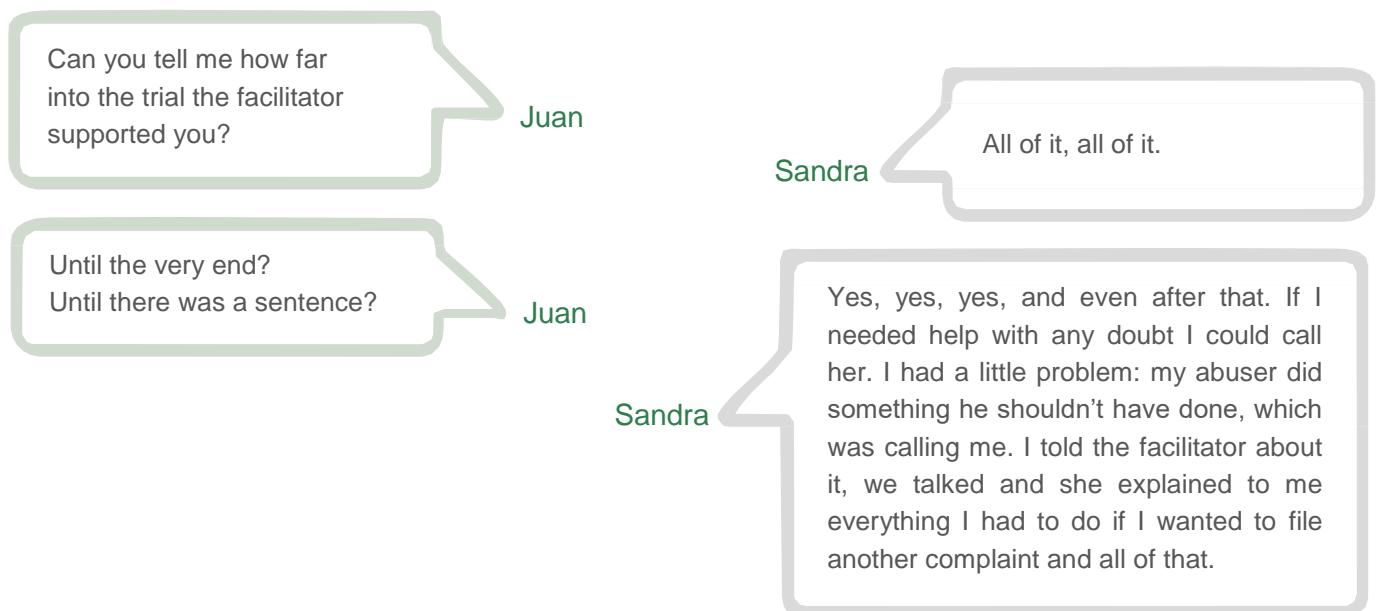
As already explained, there are easy read adaptation experiences with other important documents during the police process, such as information records on persons in custody, under investigation and victims, as well as paperwork for the request of free legal assistance. However, as pointed out by the interviewees, the fact that these materials are available does not necessarily mean they will be used. And they are not always useful for persons with disabilities.

Another important facilitation task that also has to do with understanding information takes place after the judge's decision, for example, when a sentence includes restraining orders. In that case, the facilitator's intervention takes place with police officers.

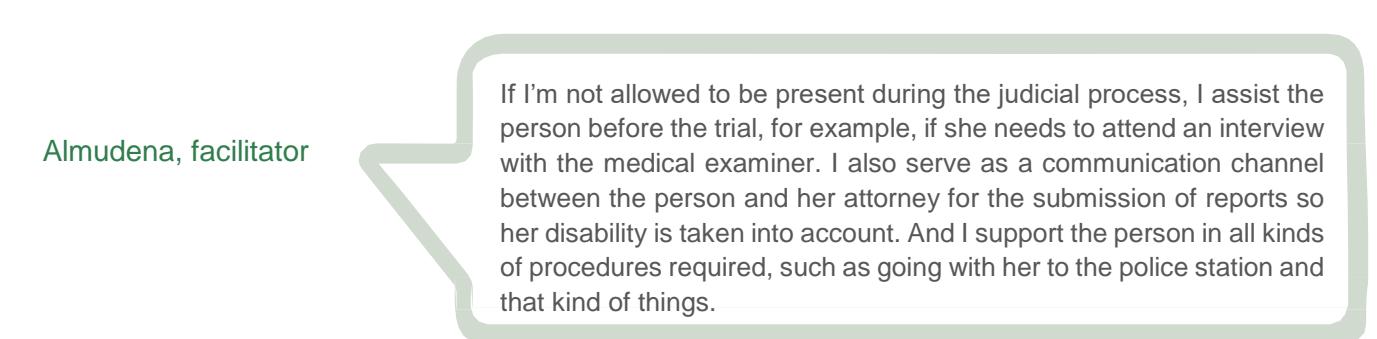
Ana, attorney

Here we have a police group specifically dedicated to the supervision and follow-up of restraining and incommunication orders with support from facilitators. Every time a new victim (usually a woman) is referred to them and a restraining order protocol is required, they need to do some sort of training with the person (...). But that information and the training involved will be a lot easier if the facilitator is present to explain the information to the person so she can understand.

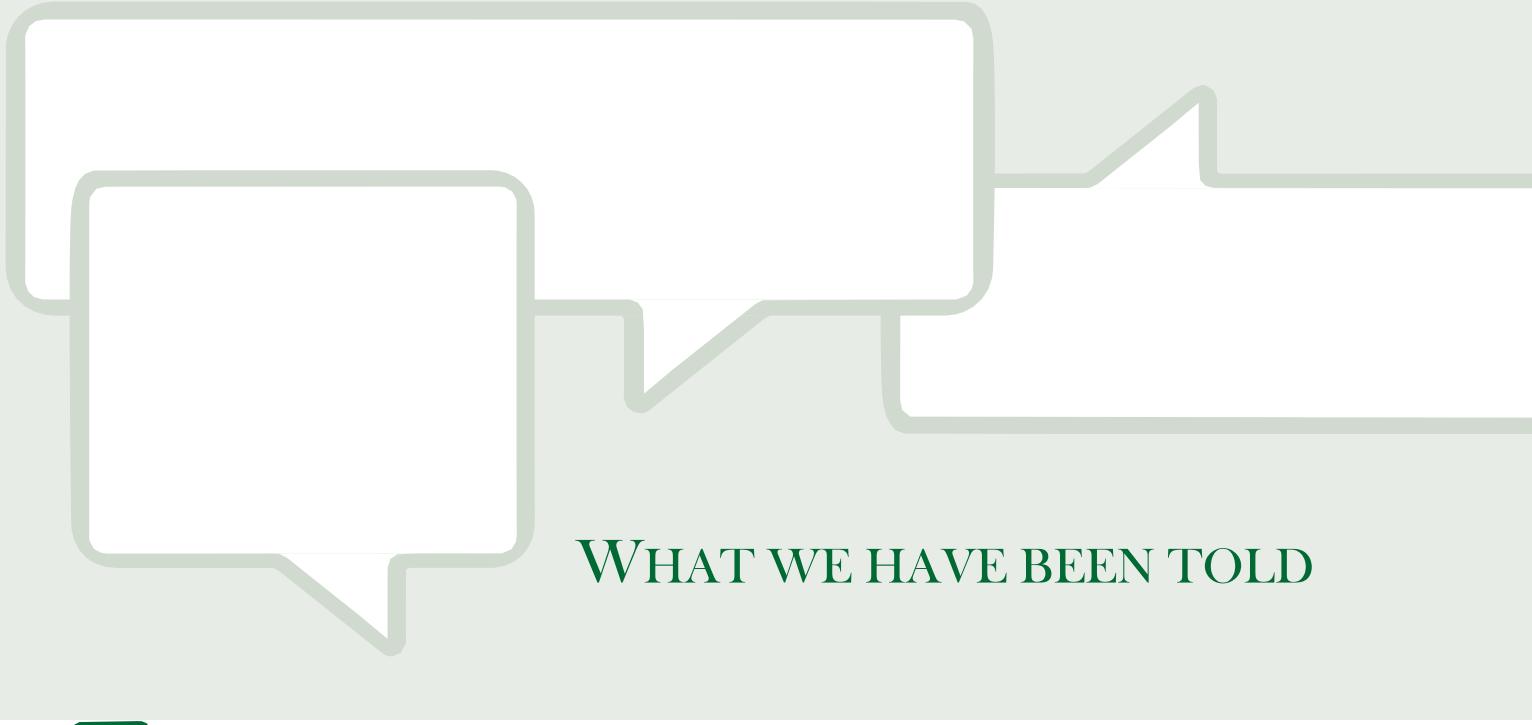
And it is just that, when it comes to judicial processes, the support needs of persons with intellectual and developmental disabilities do not end once a particular proceeding comes to an end. Sandra, a procedural accommodations user, refers to the importance of the continuity of facilitation tasks.



Sometimes facilitation tasks will take place without an authorization to participate in the judicial process. In these cases, the fact that a facilitator is not present during legal proceedings does not mean he or she will not be able to support the person. However, in some cases –particularly those that involve persons receiving support from the female inmate or former inmate support program– support tasks will only take place in those matters and spaces where material and financial resources exist to make it possible. Facilitator Almudena explains that, even if the court has not authorized procedural accommodation for the person, their support needs will persist and, therefore, support is still necessary.



Facilitator Gabriela affirms that facilitation tasks sometimes extend to the family of the person with disabilities: “If the family is also there, you end up working with the family too, because they often ignore what will happen and they’re relying on you to explain it to them.” Facilitation tasks also extend beyond the judicial process. “Sometimes you’ll continue to work with the person and her family on the next steps, when a verdict will be rendered, what she can do if she is not happy with the sentence and things like that.”



WHAT WE HAVE BEEN TOLD



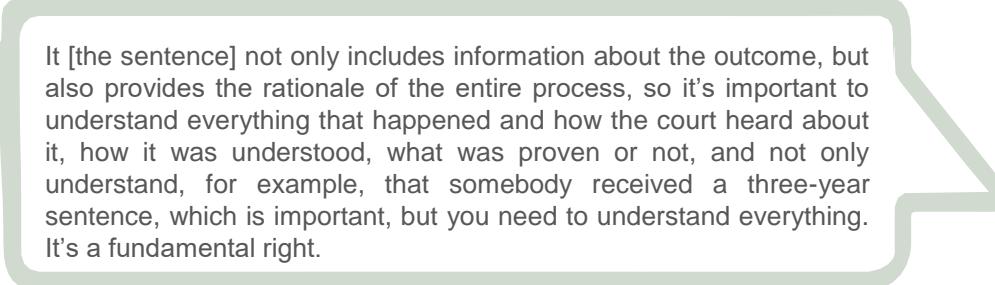
3. SOME OPINIONS OF THE INTERVIEWEES

3.1.

THE IMPACTS AND DIFFERENT USES OF FACILITATION DURING THE JUDICIAL PROCESS

By definition, one of the main aspects related to the impact and usefulness of facilitation is that of **comprehension support** provided in different forms to persons participating in the judicial process, particularly during personal interactions (for example during procedural acts, in all kinds of procedures, to receive legal advice), as well as for the transmission of information (especially that carried out through documents related to judicial or police processes).

For facilitator Bruno, a key aspect of this form of support to facilitate comprehension is that of authorized access to the content of judicial decisions, especially for the adaptation of sentences to an easy read format. As pointed out by Bruno, the fact that persons with disabilities can have the sentence in their hands, access its content and read it when they want it is crucial, because:



It [the sentence] not only includes information about the outcome, but also provides the rationale of the entire process, so it's important to understand everything that happened and how the court heard about it, how it was understood, what was proven or not, and not only understand, for example, that somebody received a three-year sentence, which is important, but you need to understand everything. It's a fundamental right.

Bruno, facilitator

Therefore, the value of facilitation lies in part in the fact that it helps persons access the content of a judicial decision, understand what it says and understand the process that led the court to that resolution.

For facilitator Almudena, this is an important impact of facilitation, considering accessibility is still a pending task in the judicial sphere, something particularly notorious if you take into account the cognitive dimension of information, legal paperwork and proceedings. For this reason, she believes that “facilitation is highly protective of human rights, because it helps persons with intellectual disabilities to understand the process and have a trial with full guarantees.” Along the same lines, facilitator Elena affirms that:

Elena, facilitator

The fact that persons with disabilities can take more time, have a person available to explain things to them and understand some of those words, and the reassurance all of that gives them, undoubtedly allows them to understand more than if they didn't have a facilitator. Even if we don't have the ability to understand everything, the rights of the person will be more protected during legal proceedings as opposed to not having a facilitator.

The importance of comprehension support as a guarantee for judicial processes is also a common reference in the accounts of the legal system operators.

Imagine the situation of a person under investigation. Let's assume the person has been read his/her rights, but has he or she really understood those rights? Maybe not. If the person has not understood his/her rights, that may lead to a mistrial. And that person may have to be convicted, but if he/she has not understood his/her rights due to the lack of accommodations, game over! The facilitator role simply makes the process they'll have to go through more accessible, taking into account their limitations and individual capacities.

Rodrigo, attorney

Teresa, prosecutor

How can persons with disabilities fully exercise their right of defense and gain access to all the resources they need to make statements and challenge those arguments that, for example, involve them directly in the commission of a crime if they don't understand things well? Or if they are being led in one or another direction despite the good intentions of their attorneys because they believe that is the best for their clients based on their profile or what they consider “their best interest”?

Comprehension support is key for a good defense. Sebastian, a procedural accommodations user, makes it perfectly clear. He explains that, in other judicial processes “I always said ‘yes’ to everything, but I didn't understand what I was being told”, until he had the support of a facilitator who helped him to understand what he was being asked during the trial, which allowed him to make himself understood and defend himself.

As we have already established, comprehension support is not only of great help for persons with intellectual and developmental disabilities, and it is not only limited to legal matters. For Sandra, a facilitation user, having access to accommodations is very important because, in addition to receiving help to understand those things, it also allows "judges to gain a better understanding of our situation, recognize our differences and understand that, while it may difficult for us to comprehend certain things, or we may understand them afterwards, we will be able to understand things if they're explained to us."

This perspective leads us to another of the impacts of facilitation: faced with the fear created by a trial and the intimidating nature of police and judicial settings, facilitation helps persons who have access to the accommodation to **develop a sense of security**. Sandra and Noelia, both facilitation users, share interesting perspectives of that feeling of security created by the facilitator role.

I believe the facilitator's work was good, because it made me feel safe. Even if it's difficult to understand what the judge says, it gives you a sense of security and confidence, the kind of peace of mind and support that would make you really nervous if you didn't have them.

Sandra, user

Noelia, user

The facilitator will make you feel more confident upon going to the police station and attending the trial. They can also help you if you need to discuss something with your attorney, because if you don't understand something and you have [the facilitator's] support, they can explain it to you (...). If you don't have that support, you will feel insecure. It's like if you have a disability, they won't be able to understand you as well as they would if you had that support.

But this feeling of security not only has to do with the fact of being able to understand things. Facilitator Gabriela shares some insights in this respect:

Gabriela, facilitator

In all the cases where I have provided support, I believe the results have been positive, if only due to the fact that the person won't be sitting alone in front of at least six persons staring at her, because she has somebody on her side. The person won't be there all by herself, even if she's a victim and she's giving testimony, and having someone by their side can help to reduce that tension (...). I believe all of this can help the person during the trial, maybe not so much from the standpoint of accessibility, but because the facilitator is the only person who can be next to her and create a more peaceful environment, rather than because the person will be able to understand or not. I believe it's of some help during the trial, because the person is usually very confused. I think it's mainly a form of support that makes people feel safe, knowing that they will enter the courtroom together with somebody to whom they can ask questions, and feel confident they can ask those questions and say if there's something they don't understand.

That feeling of security is also due to the presence of the facilitator, a person who is not in the courtroom to judge but to provide support, a person in a position of symbolic equality in an environment where differences in status are expressed in the form of rituals.

Attorney Rodrigo believes that, for the person with intellectual and developmental disabilities, the direct impact of having a facilitator is that "it will be easier for the person to go through a process that is always rather difficult to swallow." From there his conviction that it is always convenient to have a facilitator, even if he/she does not arrive in the most appropriate moment of the judicial process.

In the experience of facilitator Almudena, explaining what is going to happen and anticipating events has proven to create a feeling of security and tranquility among those individuals involved in judicial processes. "If you have a general idea of what you're there for, the persons you will find there, the aspect of the courtroom and the physical space, you will feel much more at ease in that place."

But that is not the only way it helps to create a perception of security. Sometimes the facilitator will find diligent courts that will authorize procedural accommodations and have already adapted procedural acts to meet the person's support needs. And the impact of this intersection is rather evident. As pointed out by facilitator Almudena, it is possible to go from an initial state of fear and nervousness to a fluid interaction where all apprehensions simply disappear.

This year I had to provide support for a boy who had to give testimony via a videoconference. He was under investigation and was really scared, believing he would be sent to jail. I was granted access to the courtroom and I was there with him, because we had submitted a report to the judge and she had agreed to it. Apparently the judge had already done some previous work: she had read the report, knew the challenges this boy faced and the questions she asked him were quite coherent. At the end of the day, I didn't have to facilitate anything, because, except for one question, the judge explained herself, or made an effort to explain herself. She was also very nice and facilitated the entire process.

Almudena, facilitator

That feeling of security and tranquility can also be perceived among the legal system operators involved in the judicial process.

Carlos, facilitator

Our presence also makes legal proceedings easier for the legal system operators, I mean, it's like our presence there has a secondary effect. And I believe that it is because of that that judges, even if they don't say it to me, feel more confident and satisfied because their verdicts, of course, are fairer. In other words, in my opinion, the fact we can attend trials also has a very positive effect for them.

Another key impact of facilitation is that **it significantly changes the judicial process** from the standpoint of the role played by persons with intellectual and developmental disabilities and the way the things they say are received. As affirmed by prosecutor Teresa, “Every time they agree to the participation of facilitators in a legal proceeding, things are turned around, like when you flip a sock inside out.” To illustrate this opinion, she shares an experience where we can appreciate something else in addition to these changes.

Teresa, prosecutor

I remember a legal proceeding where claims were being made in the sense that the victim's statements were contradictory. And I requested the intervention of a facilitator during the oral trial (this happened during the pretrial phase), and thanks to the facilitator's intervention, the person was able to give a more coherent testimony, so much so that it led to a four-year sentence for the defendant. And all of that happened despite a deficit coming from the pretrial phase due to the way those statements were taken.

As can be seen, one of the main impacts of a facilitator's intervention is that the testimony of a person with intellectual and developmental disabilities will become more “coherent”; in other words, contradictory statements will disappear. Prosecutor Teresa also makes reference to another impact that, despite being less evident, is extremely important to us: the fact of associating that “deficit” with the way statements are taken –instead of associating it with the person with disabilities– is consistent with the perspective of the social model of disability, which is an indicator of more profound changes in existing ideas about disability in the legal sphere. But this is the subject of another study.

Going back to changes in the judicial process, attorney Rodrigo affirms that the fact of understanding things “changes the entire process” and makes this experience less difficult for persons with intellectual and developmental disabilities:

If I was not an attorney and had never been in a courtroom before, I would have liked somebody to explain to me what was going to happen before a legal proceeding, who would be there, the aspect of the courtroom, the type of questions I would be asked, why they would ask those questions, the things that could happen, or what would happen afterwards, even if I had received those explanations shortly before entering the courtroom. I believe that in the case of a person with intellectual disabilities, who due to certain limitations could find it difficult to understand all of that, if there is a facilitator who has previously done that work –which basically consists of adapting information and explaining things so the person can understand what's going on–, it will be easier for the person go through the process.

Rodrigo, attorney

There are other changes in judicial practices already underway where it is possible to appreciate the efforts and involvement of certain legal system operators. These changes are highlighted by several of the interviewees:

The other day we attended a hearing with a prosecutor, and we told him, "He [the person with an intellectual disability] has these needs, you cannot ask him very long questions, don't use technical terms". And the prosecutor understood. He made an effort to explain himself during the trial, but they have this experience and all these rituals they cannot get rid of. The man was making an effort, but the person still wouldn't understand because he continued to use long sentences and technical terms.

Bruno, facilitator

Elena, facilitator

In some cases, although not many, we have run into some legal system operators, for example a judge, who said, "Would you mind speaking more clearly so the defendant can understand? I want to remind you that he has an intellectual disability." And that makes me feel excited, because I think this would be the ideal situation. But I also believe it will be really difficult for them to get rid of this deeply-rooted practices they have.

Another impact of these changes is that facilitation **makes proceedings more agile**. For example, in those cases where persons with intellectual and developmental disabilities are victims, facilitation will help them to overcome barriers that affect the process of giving testimony and their credibility. Forensic psychologist Carme refers to the importance of having a facilitator's support for this task.

Validating the testimony of such a vulnerable person within the judicial system –I mainly work with sexual assault crimes– is rather complicated, because it's a lot harder to obtain evidence. If the person has speech impediments, gesture limitations or any other limitation, gathering evidence becomes much more complicated. And facilitators always send me a report where, to be honest, they explain things to me and the judges really well, with all the information we need about the person. Those reports give me a pretty good idea of the type of persons I need to interview and, in particular, their limitations. And they also help me to convey information.

Carme, forensic psychologist

In this particular case, the perception of usefulness of facilitators stems from the confirmation that facilitation will shorten the deadlines and different stages of the process that would otherwise be longer, and will even reduce the workload for forensic clinics.

Carme, forensic psychologist

Using a facilitator will allow us to skip some of the stages of the process of giving testimony, because that information is already included in the report (...). Skipping these stages is important, because you have all these procedural deadlines, and every piece of evidence will contribute to extending those deadlines. Based on my experience, this is an essential task, considering it helps to shorten procedural deadlines, because the work is already done. In my opinion, shortening those deadlines is essential, because memories fade quickly.

Expressed (or “enabled” in Carme’s words) with the facilitator’s support, the person’s testimony can be taken and later admitted as evidence by those who have the power to do so, **avoiding the revictimization** associated with the need for repeated testimonies at a courtroom or police station and the presence of victims and perpetrators in those settings at the same time, in addition to the problems associated with having to describe the facts at a trial that will very likely take place years after the facts.

Along the same lines, but outside of judicial and police settings, facilitator Bruno affirms that the facilitator role is particularly useful for victims with intellectual and developmental disabilities, because “from the very first moment, the facilitator can give advice to professionals in the sector so that, in case acts of abuse are verbalized, the words of the person are protected and respected” to prevent their credibility from being questioned and their testimony from being contaminated, as well as avoiding revictimization.

Another change in the judicial process created by facilitation is that of helping others to take into account and respect the person’s will and preferences. As explained by attorney Cristina, based on her experience with facilitators and the provision of support, facilitation allows persons with intellectual and developmental disabilities and the judge to engage “in a conversation where they can really understand each other”, “know their will and preferences to determine specific forms of support” and fully overcome “the habit and the tendency to say there’s nothing to do about it”. For Cristina, this is a radical change in the way of doing things.

This way of doing things... is simply different. Until recently, for attorneys it was as if their actual client was the family or the person’s caregiver, as opposed to the person with disabilities. For attorneys that’s one of the main changes. Of course we would first talk to the person, but our eyes were not on them. Now our eyes cannot be anywhere else but the person with disabilities. And that’s why the facilitator role is essential.

Cristina, attorney

For all these reasons, she believes attorneys should have access to a facilitator to be able to better advise their clients, conduct previous interviews and prepare for trials. Cristina also thinks the facilitator role is **critical in the process of communication between persons with intellectual and developmental disabilities and the rest of the persons with whom they interact during the judicial process:**

Cristina, attorney

This is the only way to build a bridge of communication and understanding between persons with intellectual disabilities and the rest of the legal system operators. Facilitators are not only useful when they [persons with disabilities] are in a courtroom in front of a judge or a prosecutor, but also in front of public servants or attorneys at a police station, I mean, facilitators are essential so all of them can communicate with each other, make themselves understood and understand the purpose of the process they're going through. As attorneys, we should have access to a facilitator during our previous interviews, upon preparing for the trial, all the time.

Facilitator Elena fully agrees with this opinion. For her, if procedural accommodations were strictly applied, "it would be ideal if, in any communication between an attorney and his/her client with intellectual disabilities, a facilitator was present to make sure the person understood what is being explained to him/her".

Going back to the need to take into account and respect the person's will and preferences, attorney Ana believes the facilitator role will become essential in the civil jurisdictional sphere and also in other areas, such as the definition of voluntary measures and the interaction with other legal system operators. In her opinion:

If the person needs to appear before a Notary Public to explain what he/she wants, now that the option of voluntary measures is available, I believe facilitators are essential because if the person is able to clearly explain what he/she wants and how she wants it, that can be of great help for notaries; it will also help persons with disabilities to express what they want and explain their will and preferences.

Ana, attorney

Another impact of facilitation during the judicial process is that **it helps to reduce biases** against certain persons with intellectual and developmental disabilities by confirming the person's disabilities and needs when these are not considered real.

In judicial proceedings where the person with an intellectual disability is of gypsy ethnicity and also a defendant (...) if the person is accompanied by a facilitator, in my experience, the courtroom will often say, "He/she is not faking it", because there is somebody there to support and protect them (...). In these cases, the facilitator's presence will show the support need is real, and I believe this is one of the collectives benefiting the most from it, considering their support needs will be taken into account, because a facilitator will be next to the person to explain what's going on there (...) which clearly shows that if a facilitator wasn't there to explain things to them, the court would believe the person is refusing to answer or is pretending he/she doesn't understand.

Gabriela,
facilitator

Another important aspect of facilitation is that the combination of facilitation support and procedural accommodations will not only make an impact on a particular case, but **also on future judicial practices**, because it will create, among other things, the perception that the work of the legal system operators is easier, and will also give them the peace of mind of doing their work with the guarantees we have already referred to.

For this impact to occur, it is necessary to create that trust among certain legal system operators so they can approve, request and promote the facilitator role. The interviews show that the precedent set by an intervention will build that trust. Prosecutor Teresa points out, for example, that all the suspicions raised by the lack of knowledge about facilitation disappear once their impact on the judicial process become evident. In her opinion, this positive experience goes beyond the particular case and the parties involved in it; it also extends to the rest of the professionals working in that territory: "Since the experience is often a very good one, some colleagues will replicate it and share it with other colleagues. They will definitely implement the model. A lot of ground is being gained in that respect".

Medical examiner Pedro's account of the reasons the facilitator role has been incorporated in some of the tasks the court requests from the Legal Medicine Institute in the city he lives in also illustrates this impact:

Once the facilitator's ability to improve the conditions of the environment become evident and they see how easier it is to overcome the challenges of obtaining testimony from persons with intellectual disabilities, we can justify the need for a facilitator in that procedure. They are like magicians to me!

Pedro, medical examiner

As pointed out by attorney Rodrigo, that positive experience is what leads the legal system operators "to understand, in that moment, that role they didn't know about or what it could do, realize the need for a facilitator, the role played by facilitators and its benefits, and request their help if they need one again." Attorney Cristina agrees with that statement. She explains: "The judge didn't tell me whether he knew the facilitator role or not; they're supposed to know... but he loved it and was grateful the facilitator was there, that he was there to help."

In some cases where facilitation has already been used, its impact on judicial practices is also evident if we compare its situation in the early stages vs. the current situation. As explained by facilitator Bruno:

In the past it was horrible. It was literally impossible for them to adapt procedures to the needs and limitations of persons with intellectual disabilities. But I believe that now, thanks to the work we have done and the work done in all the other fields from which we receive support, where they have confirmed the benefits of using a facilitator, all of that is changing thanks to a large number of associations and the sensitivity of judges and prosecutors who have even created working groups to address this type of issues (...). Now we're called by courts and the police to help them with testimonies, and that is a significant change. But we still have a long way to go.

Bruno,
facilitator

Despite persistent barriers, the collaboration and efforts of certain legal system operators to understand others and make themselves understood are remarkable. Today there is a higher level of awareness of the importance of accommodations and the injustice those barriers represent. This brings us to another of the impacts of facilitation: **it creates more awareness and sensitivity** around those aspects that affect persons with intellectual and developmental disabilities, especially those barriers that prevent them from gaining access to justice on an equal basis with others.

Sensitivity and awareness would seem to be more developed and common in those places where facilitators have been providing support for a long time or where, due to the characteristics of the territory, the judicial branch or champions working within institutions have developed ecosystems that favor facilitation. But even in those cases, the study interviews have shown that there is usually a higher level of awareness and sensitivity around the provision of support and procedural accommodations for victims (although, as we have already explained, it is still common for them to have to confront their abusers face-to-face in judicial settings). However, in the case of persons indicted or under investigation, there is a lower level of sensitivity and awareness and, therefore, significantly less support.

Facilitator Bruno explains that he has seen a significant change in sensitivity among certain legal system operators towards the needs of persons with intellectual and developmental disabilities, which is reflected, with a significant nuance, in practices such as:

Authorizing pre-trial visits to the courtroom, admitting evidence from the victim before the trial, adapting sentences to an easy read format, increased presence and participation of facilitators while testimony is being given, and even authorizing facilitators to take statements from the person with an intellectual disability with the support needed (...). But these are things you must request, they are not being requested by the legal system operators. If you don't request them, they won't do it.

Bruno, facilitator

In the opinion of attorney Rodrigo, the fact of having access to a facilitator during the judicial process, even if his or her participation has not been arranged at the most appropriate moment, shows a change is taking place: that the legal system operators are becoming more sensitive to it. In this regard, he affirms the following:

Rodrigo, attorney

I've been in situations where I have arrived at a judicial facility where everybody knew a person with disabilities was about to arrive, and they were completely prepared for it. Without anybody telling them, they had already taken off their robes, read the facilitator's reports, including their recommendations, and asked the facilitator, "What's the best way to do this, to address the person? Can we tell you what we want to ask so you can ask the question?", and they were nice to the person without infantilizing him/her. This is not a common situation yet, but I think we're beginning to see it more and more because I believe there is now a higher level of awareness and they know more about the facilitator role.

Similarly, facilitator Carlos affirms that this higher level of awareness and sensitivity is evident in the recognition of the importance of facilitation and procedural accommodations in general among some legal system operators.

Many attorneys and judges have approached me and told me, "Hey, your role and the work you do are really important. And we have realized that we used to take for granted that the person was understanding us, but they weren't understanding us at all." Many of them realize that and feel kind of remorseful for that system failure.

Carlos, facilitator

Another aspect that has helped to increase the level of sensitivity and awareness around the support needs of persons with intellectual and developmental disabilities are the actions implemented by different entities in the sector and their partners to train the legal system operators. For judge Lucía, these actions are crucial, considering they result in significant changes in attitudes that, despite being driven by existing rules or regulations, are gradually becoming more common.

Lucía, judge

We need to be confident that, little by little, we will all become more aware of it, even if this awareness, unfortunately, is the result of legal changes. But I believe we will get there. And I truly believe organizations or bodies working with persons with disabilities are doing a fantastic job; they're doing a really important and great job.

The higher level of sensitivity and awareness leads us to another of the main impacts of the facilitator role: its impact on future judicial practices; in other words, facilitation **promotes cooperation** between institutions and individuals.

Cooperation is usually promoted by certain "allies", that is, individuals who are usually more aware of the needs of persons with disabilities, have more knowledge or experience about this issue, or are receiving specific training.¹⁷ Cooperation plays a key role in the adoption of initiatives, conventions and agreements, for example, with different public and private local, autonomous and state entities (associations, groups or colleges of professionals)¹⁸.

¹⁷ Cooperation is also more common among those legal system operators who know a person with intellectual and developmental disabilities, typically a family member. However, it is also evident that this is not the only reason behind partnerships and cooperation or the interest of the legal field in the problems faced by persons with disabilities.

¹⁸ Plena Inclusión España established an agreement with the State Secretariat for Security in 2019. That agreement can be found [here](#). In 2020 it established a second agreement with the General Council of the Judiciary. That agreement can be found [here](#). And in 2020 it established another agreement with the State Prosecutor General Office. That agreement can be found [here](#).

The need for tools and resources can be a gateway to cooperation. Sometimes this need arises the interest of certain professionals in the field of facilitation, and they will contact organizations from the sector of intellectual and developmental disabilities to request information and support.

They often call us and tell us, "Look, I saw you have a document on facilitators. I don't have the faintest idea of what this is all about or how it's done, and the court doesn't either; they told me they don't know anything about it, so I'm calling you so you can tell me what to do, how we can work together."

Gabriela,
facilitator

This cooperation sometimes results in major changes in attitudes towards facilitation and the way institutions do things. Facilitator Carla, for example, says that in her autonomous community, despite initial suspicions, after the first interventions, the attitude of law enforcement changed completely and went from mistrust and reluctance, because they felt their role was being questioned, to the perception that the facilitator had made their job easier and an attitude of open cooperation.

Facilitator Aitor shares another experience that clearly illustrates this impact:

On one occasion I was at a police station filing some paperwork and one person came in to file a complaint. Because she was there on her own, I was asked to assist her to give a statement, because they knew I was a facilitator. They could have taken her statement without asking me, but I was asked to help. Those officers made a good decision (...). Fortunately, facilitators are well accepted in our community, the police know and understand our role, and there are attorneys and other services who also know what we do and, in fact, have referred cases to us.

Aitor, facilitator

However, it is also important to point out that, despite certain partners' willingness and commitment to collaborate, they also face obstacles within their own institutions that they sometimes are unable to overcome.

In those processes where a facilitator intervenes, the legal system operators, either directly or indirectly, will gain **specific knowledge** about intellectual and developmental disabilities, the barriers faced by persons with disabilities and the support and procedural accommodations they need. As judge Lucía explains, this knowledge is considered highly valuable:

Lucía, judge

I believe facilitation is extremely useful, because it provides us with knowledge we don't have and, in this regard, makes the job of jurisdictional authorities and the different operators involved in a legal proceeding easier. If my legal background, intuition and common sense are not enough for me to realize that a defendant with an intellectual or sensory disability requires a particular form of support, having access to a specialized professional who can tell me all of that is not only great, but also practical!

For Lucía, one of the benefits of facilitation has to do with the double lack of knowledge often found among the legal system operators, including both specialized knowledge about intellectual and developmental disabilities and individualized knowledge about the persons who need procedural accommodations. In her opinion, "We need the facilitator's support, because they can provide guidance in those areas we don't know, because we don't know everything."

Forensic psychologist Carme fully agrees with this perception of the facilitator's usefulness. She affirms that while forensic knowledge is extremely specific in some particular areas, it is not that deep in others.

From a forensic standpoint, I can control the aspect of testimonies, but not something as specific as intellectual disability. I may have more experience in the area of forensic psychology but, of course, I don't cover the entire field of psychology. And yes, it is true that I need to know a little about everything, but I'm not an expert in anything. But when you're in front of a person such as a facilitator, of course you can easily tell their knowledge is very specific.

Carme, forensic psychologist

As pointed out by facilitator Bruno, "The forensic tools commonly used by forensic teams are not designed for persons with intellectual disabilities. You cannot use the same tools or use them in the same way, because otherwise, the person's rights will be undermined. From there that the specific knowledge provided by facilitation makes it possible, among other things, to adapt forensic examinations and the way they are performed "so that assessing a testimony or making an identification can be easier." Since those adaptations are closely related to the person's specific support needs, facilitation is the best choice to identify individual support needs in detail, design accommodations adapted to proceedings required and, of course, provide support.

For attorney Ana, the specific knowledge provided by facilitation "gives the legal system operators a more comprehensive view of the facts", which will make their job easier, although it can also mean their trials may take longer, something for which she has been criticized several times: "I've heard really stupid things, like 'Do they really have to sit there for hours to watch those videos?'. Yes, but I believe that's nothing compared to how useful they are."

Another impact of facilitation worth noting is that facilitation **changes the perception of justice**. As pointed out by facilitator Almudena, having access to accommodations conveys a feeling of respect for the person:

If persons with disabilities understand the process or the questions they are asked, if they know what they are responding to, they will be left with the impression they were understood. And I believe this gives them some sense of respect, the impression that somebody cared about them and helped them to understand things.

Almudena, facilitator

According to facilitator Bruno, that perception of having been heard and the feeling of validation will be a long-lasting memory that will go beyond being grateful for the support received.

Persons with disabilities value us as individuals. They live meaningful experiences with us, and all we do is provide them with the support they need to say what they have to say (...) even if that's contrary to their interest. And that may be one of the first times they have been treated differently –as individuals, not as persons with intellectual disabilities–, and they may have also felt that they, not the facilitator or the family, were the key protagonists in their own story, that they were the ones telling their story, in their own way, and got the message across.

Bruno, facilitator

The perception of justice also has to do with the fact of valuing what the person with intellectual and developmental disabilities says.

But sometimes families don't take into account that decision, which is instrumental for a person to decide whether he or she wants to file a complaint or not. And this not only applies to the legal system, but society as a whole. And the legal system is a reflection of what happens in society. From there the importance of the facilitators' work in the sense of placing the person at the center, that is, giving value to the words of persons with intellectual disabilities, including whether they want to file a complaint or not and their appropriate participation in the gathering of expert evidence.

Bruno, facilitator

This way of treating persons with disabilities, which allows them “to tell their story in their own way”, in addition to “giving value to their words”, is not only a way of making justice more accessible, but also a way of putting into practice the principle of equality, which can be questioned by prejudices and stereotypes associated with intellectual and developmental disabilities. The phrase “being treated as a person” is highly significant. Noelia, a facilitation user, points to a similar experience regarding the demand of the right to be understood for the mere fact of being a person and existing:

I believe that having a facilitator present is a good thing, because today the need is more evident but, for example, in the past, they wouldn't understand us upon filing a complaint or when we went to court. So it's good to know that they know about our existence and that, despite our disabilities, we're individuals and they should understand us like they understand everybody else.

Noelia, user

In short, facilitation allows the legal system operators to move away from depersonalization, work closer with the person and address that cold demeanor that is sometimes so common during legal proceedings. In addition to creating empathy, it makes the administration of justice system more human, sensitive and open to solving problems that not only affect persons with intellectual and developmental disabilities.

3.2.

CONCERNES AND PROPOSALS FOR THE FUTURE

In addition to their positive opinions about the impacts and usefulness of facilitation during the judicial process, the interviewees expressed some concerns and shared some proposals to address aspects they consider problematic.

Some of their opinions have to do with the material dimension and aspects such as funding; other concerns are related to the formal dimension, that is, the need to regulate the role of facilitators and their tasks; and others have to do with aspects related to organization and implementation. While their concerns are varied, all of them seem to revolve around a single aspect: the provision of facilitation.

As pointed out by attorney Cristina, funding for procedural accommodations is a major concern, considering the lack of accommodations results in a lack of support for persons with intellectual and developmental disabilities and their families, which in turn has a direct impact on and violates their right to a fair trial. In her opinion, the fact that the provision of facilitation is not a public service means facilitation support is a private matter that "concerns families or, at the most, the institution responsible for supporting the person."

For facilitator Elena, recent legal reforms will certainly help to solve some of the issues related to access to justice for persons with intellectual and developmental disabilities. However, her concern is that the lack of policies will result in the lack of allocation of financial resources, as it has happened with other legal reforms. For this reason, she believes it is urgent to ensure "the resources required are made available to further develop facilitation and go beyond isolated initiatives promoted by some professionals."

The concern over the lack of financial resources is also shared by prosecutor Teresa. In her opinion, it is important to secure the financial resources required so the administration of justice system can continue to work closely with persons with intellectual and developmental disabilities: "We still have a long way to go, but we need to do it together, and no efforts should be spared. But they also need to help us by providing the resources required to make it a reality, so if we are to ask for resources, we'll ask for resources for all."

Another major concern has to do with the definition of the facilitator role and the risk of not really understanding their role in the judicial process. For attorney Rodrigo, for example, facilitation involves “rather complex work for which a high level of specialization and a lot of experience are required, because the more experience you have, the broader the catalog of support tools available and the more limitations can be overcome.” For this reason, he believes that “a standard protocol for initiatives that are currently under implementation” is necessary so we can have better specialization and experience minimum standards.

In the opinion of facilitator Almudena, it is also important to “clearly define the facilitator profile to avoid bad experiences” and prevent those experiences from defining knowledge and expectations regarding the facilitator role among the legal system operators.

Along the same lines, facilitator Bruno expresses his concern over the risk of having so many different interpretations of facilitation and the facilitator’s tasks. For this reason, he believes it is important to compare perspectives and facilitate a dialogue between them.

I think that, since the facilitator role is a work in progress, we really need to work together to support and understand their role and define what we refer to with the term facilitator and what we should not call a facilitator. I also believe it's important to convey a message, an unequivocal and strong message in that regard. And it's true that since the facilitator role is a work in progress, each of us has his or her own understanding of what a facilitator is and, based on that understanding, what the facilitator's tasks are. We should all be humble and engage in a dialogue about it, talk about it.

Bruno, facilitator

For attorney Cristina, the concern over the definition of the facilitator role has to do with the facilitators’ future tasks and functions, for example, for the provision of support. And she raises other concerns:

Cristina, attorney

Maybe the facilitator should make a visit to the person’s home and see what his/her real life is like. But what should the facilitator do? Interpret the person’s will? Determine what is best for her? Is that what the facilitator should do? Well, I don’t know, I don’t know. All of this should be better defined.

There are also concerns over whether procedural accommodations should be mandatory and the limited training on intellectual and developmental disability of the legal system operators. In the opinion of judge Lucía, for example, while the use of procedural accommodations is mandatory and the legal system operators have no choice but using a facilitator, the fact that this obligation is not associated with training to create more sensitivity to and awareness of the barriers that prevent access to justice for persons with disabilities is worrying, because "without that knowledge, accommodations will hardly be considered necessary and the operators will hardly consider them part of the public administration's obligation to protect citizens without discrimination."

Attorney Cristina is also concerned about the mandatory provision of procedural accommodations without the training necessary for the legal system operators to solve problems such as the underidentification of intellectual and development disabilities:

If the intellectual disability is not detected during the arrest, what good does it make to have a law that says that having a facilitator is mandatory from the outset? Identifying a disability is crucial because, without that identification, of course, we won't be able to get anywhere in criminal cases. Training is essential, and maybe there's a lot of legal training being done, but I don't know to what extent the legal system operators are receiving training, I don't know, either psychological or pedagogic or however you want to call it, so they can detect a disability correctly.

Cristina, attorney

There is consensus among the interviewees around the idea that the provision of facilitation should be a public service. Almost all of them gave examples of other roles that have been incorporated in the Administration of Justice through different schemes, such as facilitator lists or pools, special shifts, permanent spaces, offices or teams and auxiliary institutes. This leads to other significant concerns, including how the facilitator role will be organized and implemented. As pointed out by facilitator Carlos, this is a complex issue that involves aspects where "we need to tread carefully":

Carlos, facilitator

How will we create a facilitators list? And if we're called on a weekend, which one of us will go and which one won't? If there's high demand, how will it work? Who would be included in that list? What requirements should you meet to be included? That's clearly the main problem with all of this.

For facilitator Elena, in order to overcome all the concerns that exist around facilitation it would be necessary to regulate the facilitator role. In her opinion, that is where the public administration plays a key role "to ensure this new profession is neutral, that facilitators have specific responsibilities and persons with intellectual disabilities have the best possible support at trial." Elena suggests a form of organization for the facilitation scheme.

Facilitator Almudena agrees with this opinion. For her, facilitation should be "the responsibility of the Justice Administration, system not only of entities or organizations." She also suggests a form of organization:

Facilitators should be part of the Justice Administration staff. And if that is not the case, then it should be organized so their participation is timely, so that we can make sure that the day the person with an intellectual disability must appear in court he/she has all the guarantees necessary (...). There should be a pool of facilitators so that every time a courtroom proceeding involves a person with intellectual disabilities, they can automatically contact that pool and somebody from that pool is present to provide that support. This would be the ideal situation and, in my opinion, the most neutral and appropriate approach to ensure persons with disabilities, regardless of where they come from or how they have arrived there, have access to a facilitator.

Almudena, facilitator

Almudena, facilitator

I think a facilitator service should be created with the participation of all stakeholders involved so it can operate appropriately. It shouldn't be left exclusively in the hands of those who have the opportunity or luck of knowing a government agency, being part of an organization or participating in programs, but also include persons who don't (...). Each court should have a facilitators' office so that persons with disabilities who have a doubt can go to them so they can explain the content of a document to them, give them a map, tell them what they need to do, the paperwork they need, and they should be able to return as many times as they need in case they have doubts. The location of that office should be well known and it should have different professionals available. Also, a campaign should be launched to inform about its existence, government agencies should know about it and it should be available both to persons with disabilities and the police so they can receive support from the moment a complaint is filed or persons with disabilities are arrested.

Judge Lucía agrees with these opinions. In her opinion, the fact that the facilitator role is part of the Administration of Justice auxiliary bodies, in the context of psychosocial teams or legal medicine institutes, would dispel any suspicion, including that of the lack of neutrality of facilitation.

Facilitator Gabriela has a similar opinion, but adds that the public provision of facilitation would also help to avoid certain biases: "Its cost should be assumed by the Administration, and it couldn't be any other way, because otherwise that would introduce a bias and a distinction between people with and without financial resources."

Noelia, a facilitation user, fully agrees with this idea, but adds a discrimination prevention element: "I don't think it would be fair to have to pay for a facilitator, because all of us have different situations, so I don't think it would be fair for some people to have access to a facilitator just because they can pay while others won't because they cannot pay."

However, while they agree on the importance of facilitation as a public service, the fact of institutionalizing and incorporating the facilitator role into the state's structure is also a source of concern. As attorney Cristina points out, almost as a warning for the future:

Cristina, attorney

In the case of an external scheme, if you find somebody is not performing in a given role, you can fire that person, but you cannot do that with a government employee. And while these situations may be exceptional, if you have the bad luck of running into that exception in a judicial proceeding, you will want to pull your hair out with anger, and all the trials that person is assigned to will be a disaster (...). If the facilitator role is part of an institutional scheme and the facilitator only meets with the person five minutes earlier, how will the facilitator know the person's way of responding? How will they know what their will is? They won't know anything! So what would be the facilitator's role? Just as an interpreter? They play a more qualitative and far more important role. We're not talking about a language interpreter.



SUMMARY AND CONCLUSIONS

One of the main categories of this study –and possibly the most significant one– is that of barriers to access, considering they are the main cause of the problems that facilitation, among other procedural accommodations, seeks to mitigate or solve. For this reason, a study about facilitating access to justice should include, above all, those barriers that prevent access to justice, including obstacles to the implementation of the facilitator role.

These barriers are closely interrelated in a kind of logic that interconnects them and shapes a complex artifact that prevents and restricts access to justice. We are talking about a **web of barriers**, a structure consisting of different settings that are particularly intimidating, a series of rigid and complex processes and a series of deeply-rooted **prejudices and stereotypes**.

This web of barriers results in a hostile experience where **the lack of access, disrepute, infantilization, revictimization and other forms of institutional ill-treatment** are recurrent. Sometimes the effect of that web of barriers is resignation; and other times it leads to waiving demands for justice. In this document we have only described some of those effects, but we are confident the reader will be able to reflect on how the threads of this web of barriers are shaped and mutually reinforced.

We have seen how sometimes, despite the tenacity and efforts of some persons, facilitation is not authorized and fully incorporated into the judicial process. Some other times, despite having that authorization, facilitation cannot achieve its full potential because that web of barriers is thick and judicial habits and practices are difficult to change. There are also occasions where facilitation manages to overcome some of those barriers and difficulties that prevent access to justice for persons with intellectual and developmental disabilities.

Having access to the different forms of support a facilitator can provide during a judicial process is highly and positively valued because, in addition to receiving comprehension support, the work of facilitators will validate persons with intellectual and development disabilities, confirm their support needs, prevent prejudices and stereotypes from questioning their words and, to some extent, change judicial practices so they can gain access to justice.”

When we speak about environments that fail to take into account the needs of persons with disabilities and attitudes that shape practices towards them, we are actually speaking about aspects that reflect **a particular way of thinking, feeling and acting towards disability**, about a culture of disability of which judicial and legal practices and ideas are a part.

The experiences shared by the interviewees, which are consistent with the Social Model of Disability perspective, clearly show that the difficulties they face are not always inherent in the person with intellectual and development disabilities -that is, driven by their support needs-, but external to the person, and are also the result of ways of feeling, thinking and acting that fail to take into account the diversity of society and are reflected, for example, in environments and processes full of obstacles, hostile interactions and the lack of accommodations.

These ways of thinking, feeling and acting that fail to take into account the diversity of society are common in the legal field and are largely the result of oppressions that the notion of capacity imposes on our culture. Since this idea (or its assumption) pushes us into a supposed “normality”, **when individuals whose capacity is questioned** enter the judicial system, they will find that the system is not prepared to let them in. Instead, the system has devised the most varied and ingenious (legal and social) mechanisms so that somebody else can do it for them. And since the perception (and bias) associated with the lack of capacity translates into the perception (and again, the bias) that persons with intellectual and developmental disabilities lack capacity, do not know and do not understand things, **they are replaced with somebody else whose capacity will not create problems**. We would like to believe that, at this stage, a critique of substitution models is no longer necessary, but the truth is that these ideas have guided legal actions and practices in our culture of disability for too long, and that is why today it is so difficult to move away from the umbrella of capacity and part with the certainties it seemed to offer.

Despite the existence of barriers that limit the work of facilitators, facilitation, either carried out by facilitators themselves or those advocating it, with a lesser or greater level of recognition, opens up spaces in that web of barriers so that persons with intellectual and development disabilities can gain access to justice. As shown by some of the experiences shared, once people see the work facilitators are capable of doing, many of these barriers disappear and are no longer reproduced. In addition, **some of the legal system operators** have become more aware of the existence of those barriers and how they can be overcome, including being **more sensitive** towards the fact that justice is not being fair with persons with disabilities. In this regard, **facilitation is helping to transform certain aspects of our disability culture**.

It is interesting to note that the initial rejection and suspicions among the legal system operators are the result of a lack of knowledge. After confirming the benefits facilitation brings to the judicial process, both in terms of comprehension and reducing workloads and procedural times, that rejection and those suspicions seem to simply disappear, revealing that the above-mentioned dense web of barriers is, despite everything, permeable. The fact that facilitation makes the work of the legal system operators easier is one of the best indicators of its impact and usefulness.

As already shown, the lack of formal and material recognition is concomitant with a series of needs that voluntariness can only fulfill to a certain extent, as long as suspicions created from the outset by the procedural accommodation can be avoided. In the midst of this precariousness, the lack of definition of the facilitation role allows for a certain flexibility. For example, facilitation tasks can be performed by professionals with accumulated experience, not only by professionals from a particular discipline. However, this situation also has its disadvantages, because the **lack of definition of the facilitator role translates into a lack of definition of the facilitator's tasks**. Facilitators end up performing a broad range of tasks, which means not all judicial processes will have procedural accommodations, although their tasks sometimes go beyond legal proceedings and the legal sphere. These issues must be carefully pondered upon implementing the facilitator role.

However, despite the positive opinions about the facilitator role and its great usefulness, it is important to note that facilitation is not the only procedural accommodation available, but is also part of a broad repertoire that can and should be put into practice to improve the effectiveness of access to justice. And while sometimes it may be the only support the person has, it is important to stress that it cannot and should not be the only procedural

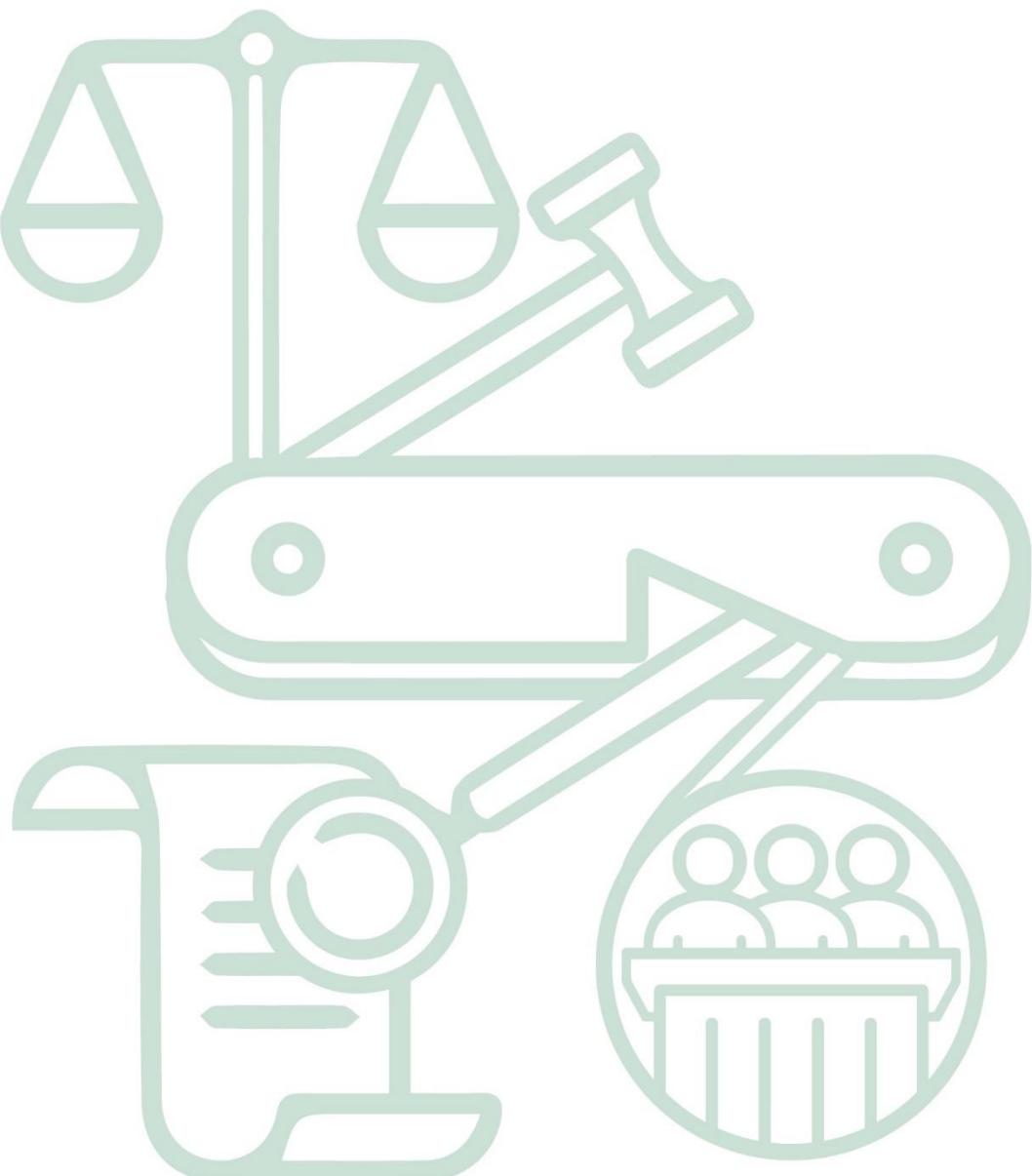
accommodation, nor should the facilitator bear all the responsibility for the implementation of accessibility measures. Facilitation can help to dismantle the web of barriers and overcome the obstacles faced by persons with intellectual and developmental disabilities during the process of access to justice. However, it must be combined with efforts to raise awareness of these obstacles among the legal system operators and encourage their active participation to eliminate them.

Facilitation is not only useful in the case of access to justice; it is necessary for the justice administration process. A trial is the end of a process that usually consists of many phases that take place in different places, with the interaction of different actors. However, the facilitator's participation and intervention would seem to be limited to making specific actions during the trial understandable and, in particular, adapting some of the court's questions. For this reason, it is necessary to emphasize that a trial involves more interactions and there are other **proceedings in addition to the trial**, as well as stages before and after the trial, hearings, interrogations, procedures, complaints and all kinds of matters related to court settings, police stations and prisons where procedural accommodations are required to avoid restricting the relationship between persons with disabilities and the justice system.

In addition to everything we have been able to appreciate so far, it is worth noting that there are many other aspects that involve additional challenges for persons with intellectual and developmental disabilities. Maybe the most important one to highlight here is that not all of these challenges are related to entities and associations responsible for supporting them, including the support provided by facilitators. We mention this because we believe that **the responsibility for removing barriers that hinder the provision of support should not be delegated and become a private matter**, making it a responsibility that falls solely on the shoulders of families, relies on the voluntary efforts of entities, is delayed until more favorable circumstances exist, or is subject to a budget that will always be insufficient. On the contrary, we believe accessibility and the defense of rights are public responsibilities that all of us should be committed to and should motivate us to take action and transform the society and culture we live in.

We believe that, in the future, the use of facilitation and procedural adjustments in general will allow the legal system operators to build more competencies, not only with respect to their interactions with people with intellectual and developmental disabilities and the support they may need, but **will also increase their awareness** of the support needs of any person or group that may also have difficulty understanding things, regardless of the reason, during judicial processes.

Finally, we must say that there are many other issues that, due to different limitations, we were unable to cover in this study but must be further researched. One of these issues is the differentiated provision of support and procedural accommodations available in practice to persons with intellectual and developmental disabilities depending on their role in the judicial process and, more importantly, taking into account the aspect of gender. In this regard, we also believe it is still necessary to gain more knowledge about the provision of support for the implementation of sentences, especially in prison settings. Another issue that should also be addressed once sufficient experience has been gained is that of support and accommodations made available or not during procedures for the provision of facilitation support. We should also **delve deeper into specific issues that affect access to justice, such as the particularities of each territory, the gaps and new barriers created by modernization and the digitalization of Justice Administration**. Generating more empirical knowledge on these issues, taking into account the role played by facilitation, will allow us to gain a better perspective not only of the impact and usefulness of facilitation, but also of the changes and continuity of the web of barriers that restrict access to justice not only for persons with intellectual and developmental disabilities.



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