



## **Intermediaries in Chile: Facilitating the right of child victims and witnesses to participate and be heard in criminal trials**

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### **Abstract**

The intermediary system is a special measure designed to support the participation of vulnerable witnesses in the judicial system. In Chile, this model was initially incorporated in six regions with the application of Law 21.057 in October 2019. The measure establishes that a specially trained professional from the criminal justice system must facilitate communication during a trial between the court and child victims or witnesses of sexual or other serious crimes through the use of a linked room. This study analyzes the perceptions of intermediaries and other members of the justice system relative to the first year of implementation of the intermediary system based on information obtained through the use of focus groups and a survey. The results show an overall positive assessment of the experiences with and functioning of 'judicial intermediation' and portray some of the best practices and facilitating conditions for the correct operation of the scheme as well as the difficulties and challenges for other Chilean regions and countries.

**Key Words:** Intermediary system, child victims, sexual crimes, child friendly justice.

## Introduction

In October 2019, the first stage of Law 21.057 on the “Videorecorded Interview” was applied in Chile with the aim of preventing the secondary victimization experienced by child and adolescent victims of sexual and other serious crimes during the judicial process. The new policy implied the adaptation of institutional and interinstitutional regulations, conditions, and infrastructure, as well as the training of hundreds of officials from institutions within the criminal justice system. The core measures of the law which were implemented were the introduction of the videorecorded investigative interview in the investigation stage and the incorporation of the intermediary system or ‘intermediation’ of in-court testimonies.

In general, the intermediary system is designed to support and facilitate communication and understanding of vulnerable witnesses in the justice system (Cashmore and Shackel, 2018; United Kingdom Ministry of Justice, 2020). Although special measures aimed at making criminal trials more child friendly have been in effect at the international level for decades, this specific measure is relatively recent and has only been adopted by a small group of countries (Myers, 1996; Council of Europe, 2010). England, Wales, Northern Ireland, some Australian states, New Zealand, Taiwan, and South Africa, among others, have implemented different schemes which vary in certain aspects, such as the mandatory use of intermediaries, their functions and attributions, their eligibility, and their profession. In Chile, the model establishes that all child and adolescent victims and witnesses participating in criminal trials must give their testimony in a special room with an accredited intermediary, namely a specially trained judge, police officer, or professional from a victim’s service.

International research about the functioning and effectiveness of the intermediary system is limited. Some of the aforementioned countries have published studies that describe the operation of their models. Although much of this literature reports difficulties and challenges in the implementation of the system, the main conclusion is that intermediaries are valuable in order to facilitate the best interests of children as well as their right to be heard in judicial proceedings (e.g., Cahmore and Shackel, 2018; Cooper and Mattison, 2017; Department of Justice Northern Ireland, 2016; Fambasayi and Koraan, 2018; Henderson, 2015). This study provides results along the same line. The aim of this work is to describe the experiences with the intermediary system in Chile during the first stage of the implementation of Law 21.057 from the perspective of members of the criminal justice system from six regions one year after its implementation.

The article starts with a brief overview of intermediary systems in the world, the available evidence from Chile related to in-court testimony by child victims and witnesses prior to the implementation of Law 21.057, and a description of the intermediary system that Law 21.057 incorporated. After a review of the methodology, the results of the interviews, focus groups, and surveys are presented, emphasizing the assessments and experiences of professionals within the system as well as the facilitators and challenges in the implementation of the scheme. The article concludes with a discussion of the findings in light of international research and some recommendations for the implementation of the intermediary model.

### *1. Intermediaries and communication assistance in the world*

Testifying in court hearings has historically been one of the most adverse experiences for children and adolescents who participate in criminal proceedings (Ellison and Munro, 2018; Plotnikoff and Woolfson, 2009). Even for adults, judicial processes might be a considerably distressing experience. Typically, attorneys and judges ask incomprehensible, intimidating, or victimizing questions in disregard of the vulnerable condition of victims or witnesses (e.g., Davis et al., 2010; Andrews and Lamb, 2016). This has long caused children and adolescents anxiety, shame, or fear (Fundación Amparo y Justicia, 2021). In addition, child witnesses or young people with special communication needs have to face even harder challenges due to the failure of the justice systems to make appropriate adjustments to address their special needs and to facilitate their right to access justice (Hughes et al., 2020; Lamb et al., 2018; Wyman et al., 2018).

In this context, several countries have adopted special measures to make their justice systems more child friendly. These measures both protect and guaranty the exercise of children's rights while seeking to obtain clear, consistent, and accurate testimony. Some of these include adaptations to the way in which children give their testimony, such as the use of special rooms, screens, breaks, video links, special prohibitions of judges, the use of support persons, and the use of intermediaries and/or communication assistants to facilitate communication between vulnerable witnesses/accused persons and the court or investigative interviewers (Fundación Amparo y Justicia, 2021). It should be stressed that the role of the intermediary or communication assistant surpasses the adaptation of questions and answers, as their aid might help to increase the quality of evidence obtained while also preventing any detrimental effects on the witness, the outcome of the process, and the fairness of the system (Cooper and Mattison, 2017).

Two of the countries that have the most information about their intermediary model are England and Wales, which enacted the measure in the YJCEA 1999 Act but first put it into practice in 2004. Section 29 of the Act establishes that evidence from vulnerable witnesses might be given through an intermediary whose role is to assist police and the court to communicate with the witnesses to obtain the best quality evidence (Cooper and Mattison, 2017; Plotnikoff and Woolfson, 2007). These professionals (speech and language therapists, psychologists, and social workers, among others) are trained to assess communication needs and the abilities of the witnesses in order to provide recommendations for investigative interviews and trials by means of a written report, and if the matter proceeds to trial, during the "ground rules hearing." During the police interview or the trial, the intermediary sits beside the witness to facilitate communication (i.e., simplification of language, use of visual aids, changes to the infrastructure, and other aids), as well as to monitor and assist with the emotional state of the witness (Cooper and Mattison, 2017). The professional oversees the adequacy of questions and intervenes in the case of a communication breakdown in a manner previously agreed upon with the interviewer or the court. The "ground rules hearing" is a meeting prior to the start of a trial in which the intermediary, the parties, and the judge discuss the recommendations and needs presented in the report and agree on how the intermediary will intervene in the cross-examination, if necessary (Cooper and Mattison, 2017).

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3 The system in Northern Ireland was inspired by the England and Wales model. Northern  
4 Ireland incorporated this special measure in their Criminal Evidence Order 1999 and  
5 launched a pilot scheme in 2013 (Department of Justice, 2016). Its legislation, guidance-  
6 manuals, and trainings are very similar to the English model, although there are differences  
7 in how the systems function in practice. One major difference is that Northern Ireland also  
8 considers assistance for vulnerable accused people.  
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11 Assessments of both systems have received widespread positive feedback (Cooper and  
12 Mattison, 2017; Henderson, 2015; JUSTICE, 2019; Plotnikoff and Woolfson, 2015; The Inns  
13 of Court College of Advocacy, 2019). The intermediary role has been mentioned as a “very  
14 valuable tool” by criminal justice professionals (Henderson, 2015), it has an increasingly  
15 high reputation (The Inns of Court College of Advocacy, 2019), and appears to be a “catalyst  
16 for a positive court culture shift” (Cooper and Mattison, 2017). Witnesses with vulnerabilities  
17 have been able to give evidence which would have been inconceivable half a generation ago  
18 (JUSTICE, 2019), and even caregivers have reported that intermediaries not only helped  
19 witnesses to communicate but also to deal with stress (Plotnikoff and Woolfson, 2007).  
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23 The studies have also reported a series of challenges in the implementation of the measures.  
24 In England and Wales, for instance, studies have reported a lack of guidance on how to  
25 identify the need for an intermediary, which has resulted in insufficient referrals of eligible  
26 witnesses, a lack of a standard protocol for the assessment of witnesses, insufficient  
27 availability of intermediaries, and a lack of empirical research into the intermediary role (e.g.,  
28 assessment and recommendations) and the coherence, completeness, and accuracy of the  
29 evidence that they facilitate (Cooper and Mattison, 2017; Henderson, 2015; JUSTICE, 2019;  
30 The Inns of Court College of Advocacy, 2019; Victims’ Commissioner for England and  
31 Wales, 2018). In addition, Henderson and Lamb (2018) found that although children were  
32 asked fewer suggestive and complex questions in trials because of increased awareness and  
33 education, they still received undesirable interventions from parties, whereas judges did not  
34 intervene enough in certain cases. Since Northern Ireland had the opportunity to learn from  
35 the experiences of England and Wales, it has reported fewer obstacles and more strengths as  
36 compared to the English system, including, for instance, that its system is mandatory for  
37 accused vulnerable people and that intermediaries feel very positive about the role’s  
38 organization, training opportunities, and the support received from the Department of Justice  
39 (Taggart, 2021). Intermediaries also hold a support group, whereas English intermediaries  
40 have not felt sufficient institutional or care from peers.  
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45 In the case of Australia, New South Wales (NSW) enacted provisions in its Criminal  
46 Procedure Amendment Act 2015 for the implementation of children’s champions  
47 (intermediaries), the use of pre-recorded cross-examination, and the appointment of specialist  
48 District Court judges trained in child sexual assault matters. In 2016, NSW implemented a  
49 three-year pilot which was based on the scheme of England and Wales (Cooper and Mattison,  
50 2016). Subsequently, other states in Australia implemented similar pilots or programs,  
51 including Victoria in 2018, the Australian Capital Territory in 2020, South Australia in 2020,  
52 Queensland in 2021, and Tasmania in 2021 (Department of Justice Australia, 2021). They  
53 all mainly aim to aid child complainants or witnesses to sexual offenses and, in some  
54 jurisdictions, to homicide-related matters. Nonetheless, they vary in eligibility requirements,  
55 including age and impairment condition.  
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4 One of the assessments of the first year of the NSW pilot found unanimous support from  
5 stakeholders for its objectives and concluded that the intermediary role was considerably  
6 important in supporting the provision of evidence by child complainants and witnesses (NSW  
7 Department of Justice, 2016). The assessment did not identify any substantive barriers to its  
8 implementation, but participants did manifest some minor concerns related to the extra time  
9 needed for prosecutors and defense lawyers to prepare for pre-recorded evidence, the need  
10 for good technological equipment to record the evidence, the need to recruit more diverse  
11 intermediaries (e.g., Aboriginal professionals or interpreters), and the need for a standard  
12 framework for the training and qualification of the professionals (Cashmore and Shackel,  
13 2018; NSW Department of Justice, 2016).  
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17 With regard to New Zealand, although the Evidence Amendment Act 1989 included special  
18 measures for vulnerable witnesses, such as a forensic interview, cross-examination with a  
19 link or screen, and the use of intermediaries, intermediaries have not been utilized in spite of  
20 the efforts made to legitimate them (Davis et al, 2011; New Zealand Law Commission 1999).  
21 Nevertheless, the Evidence Act 2006 incorporated new measures in order to permit child  
22 witnesses to give evidence in court in alternative ways, to allow them to count on a support  
23 person, and to permit “communication assistance” for all complainants, witnesses, and  
24 defendants of all ages who have communication needs, including insufficient proficiency in  
25 the English language or a communication disability. The provision has been working since  
26 2012 and has given birth to a whole new and progressively growing profession in the New  
27 Zealand system (Howard, 2020a). The initiative was not a top-down government initiative  
28 as in the UK but rather a bottom-up one fostered by professionals with specific knowledge  
29 and experience (Howard, 2020a). In practice, if these professionals are required, they make  
30 recommendations to the court (language, questions, environment, etc.) and are present to  
31 alert the judge if the witness or defendant is having difficulty understanding what is being  
32 said. They may also explain or put questions directly to the witness and assist the witness  
33 pre-trial. Results from interviews with stakeholders have shown that there is overwhelming  
34 support for this new position which plays a valuable role in the New Zealand justice system,  
35 puts young persons at the center of justice, and also brings new knowledge not held by other  
36 professionals (Howard, 2020a). Some of the challenges that this role has faced include: there  
37 is no central training and accreditation program or policy guidance manual from the Ministry  
38 of Justice; there have been issues regarding the criteria or threshold to call for this assistance;  
39 other professionals from the justice system should also be trained to assist children and young  
40 people who need it; and thought has to be given to how the role will work with Māori and  
41 Pacific peoples (Howard, 2020b).  
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47 In South Africa, the Criminal Law Amendment Act of 1991, which went into effect in 1993,  
48 provided for the appointment of intermediaries for children in cases of sexual abuse. As in  
49 New Zealand, the model is also centered on the trial stage: the judge or judicial officer may  
50 call for the intermediary for reasons of youthfulness or emotional vulnerability. This  
51 professional must assist the child so he or she understands the procedure and is able to give  
52 testimony (Bekink, 2016). Questions from the prosecutors or defense lawyers must be  
53 addressed through the intermediary, and only the judge may ask questions directly of the  
54 child. The child gives their testimony via the intermediary, usually in a separate room which  
55 is linked to the court. The intermediary also prepares the child for the court appearance, sits  
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3 with them in the camera room, buffers language of intimidation, and informs the court when  
4 the witness is tired or has lost concentration (Bekink, 2016).  
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6 Although this service has been available since 1993, a study in 2009 detected that it had not  
7 been properly coordinated and that professionals had not been properly equipped or trained;  
8 thus, court officials tended not to use the service (Jonker and Swanzen, 2009). In April 2003,  
9 Bethany House, a charity trust which implements projects critical to children and youth in  
10 South Africa, entered into a public-private partnership with the South African Department  
11 of Justice and Social Development and conducted a pilot regarding intermediary services. A  
12 group of intermediaries was trained and an awareness and educational campaign was  
13 launched so that court officials would start to use the service. The introduction and  
14 strengthening of the system significantly contributed toward the recognition of children's  
15 rights and toward the reception of the best evidence from child witnesses in criminal  
16 proceedings (Bekink, 2016; Fambasayu and Koraan, 2018). Nevertheless, there have been a  
17 series of challenges related to legal and operational aspects of the system, including long  
18 delays or examination sessions; defective equipment; lack of training and of a single  
19 accredited qualification; lack of sensibilization and support of courts and advocates; the  
20 limited attributes of intermediaries and discretionary thresholds for their eligibility; the lack  
21 of a standard procedure to assess children pre-trial and to conduct a "ground rules hearing";  
22 financial and logistical problems; and the need to deal with several languages and cultures  
23 within the country (Bekink, 2016; Coughlan and Jarman, 2002; Jonker and Swanzen, 2009).  
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28 One of the Asian countries that has incorporated an intermediary system is Taiwan. It  
29 established in article 15-1 of the Sexual Assault Crime Prevention Act 2015 that "whenever  
30 considered as necessary by a judicial policeman, judicial police officer, prosecuting officer,  
31 prosecutor or judge at the investigation or trial level, if the victims of sexual assault incidents  
32 are children or have mental disabilities, they may be interrogated (examined) with the  
33 assistance of relevant professionals at their side." Moreover, if the judicial police officer, the  
34 agent, or the defense attorney have attended relevant professional training, the provision of  
35 an intermediary is not applicable. This system seems to be working well in general. Apart  
36 from minor difficulties, such as the lack of sufficient time to assess victims or to build  
37 *rapport*, a major drawback has been the questioning by some professionals in the justice  
38 system of the intermediary role and the legal validity of interventions (Y.S., Teoh, personal  
39 communication, October 18, 2021).  
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43 Finally, in Chile, Law 21.057 incorporated an intermediary system for trials with child  
44 victims or witnesses of sexual and other serious crimes. It is similar to the English system in  
45 certain substantial aspects related to the facilitation of children's testimony. It differs in that  
46 it is the same professionals in the criminal justice system, such as judges, police officers, and  
47 professionals from the Victims and Witnesses Unit of the Prosecutor's Office and the  
48 Ministry of Interior and Public Security, who facilitate the communication between the court  
49 and the children. This measure is described in detail in section 3, after the following section,  
50 which presents some evidence about how the judicial system functioned before the enactment  
51 of this law.  
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## 2. *In-court testimony of children and adolescents in Chile prior to 2019*

Prior to the application of Law 21.057, children and adolescents had to testify in the courtroom in front of the judges, parties, and even the accused. The use of the special rooms implemented in 2014 by the Judiciary Branch was optional for the trial, and there was no unique way in which children and adolescents had to be questioned. There were also no universal requirements for specialized training in child and adolescent issues, apart from some institutional instructions (e.g., Oficio 914-2015 from the Prosecutor's Office), nor were there other special mandatory measures for the protection of child victims.

According to Chilean judges, there were judicial procedures and practices that used to disrupt the dignity and integrity of children and adolescents, subjecting them to feelings of shame, insecurity, affliction, or other unpleasant experiences, such as the feeling of not being heard and understood (Universidad San Sebastián, Fundación Amparo y Justicia and Poder Judicial, 2019). In fact, a 2009 study found that adolescent victims of sexual crimes who had participated in trials in the Metropolitan, Valparaíso, and Biobío regions reported that what they said in the trial was not taken into account and that they felt their testimony was not believed (MIDE-UC, 2009).

Orellana et al. (2015) reported similar findings in the region of Valparaíso. They investigated the experiences of five child victims of sexual abuse who orally testified in trials. The interviews revealed that children perceived the process as aversive and unprotecting and that it caused them anxiety for several reasons, including that the judges and lawyers were intimidating, that they felt their testimonies were questioned, that the treatment they received was depersonalized, that the offender's presence at the hearing made them nervous and insecure, and that they lacked support from a trusted person during the process. They also felt that obtaining testimony was more important for the professionals than their wellbeing. The researchers concluded that the trial experience in some way revived the dynamics of abuse in the victims, repressing their right to be able to testify in a facilitative and protective environment.

Given this scenario, the Plenary Court of the Supreme Court in Chile in 2014 established the use of special rooms for the testimony of child victims or witnesses of crime (Corte Suprema de Chile, 2014). Although this provision significantly contributed to the improvement of the conditions under which children and adolescents participated in trials, the measure was optional for the courts. Thus, Law 21.057, approved in January 2018 and implemented in 2019, was aimed to amend those practices and conditions by standardizing the way in which child victims and witnesses of sexual and violent crimes testified. To this end, intermediation has been one of the main measures incorporated into the criminal justice system since the Criminal Procedure Reform of 2000 and the Videorecorded Investigative Interview.

## 3. *The intermediary system in Chile*

Chile incorporated the figure of the intermediary as a compulsory measure for in-court testimony of child victims or witnesses during the trial. The intermediary's role is to provide specialized assistance to the court and to facilitate communication with the child while monitoring at all times his or her mental and physical condition. According to the law,



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3 intermeditation can only be exercised by specially trained and accredited personnel from the  
4 judicial branch (judges or officials), the two police forces (Carabineros de Chile and Policía  
5 de Investigaciones de Chile), the Ministry of Interior and Public Security, or from the Victims  
6 and Witnesses' Assistance Unit of the Public Prosecutor's Office who have not participated  
7 in any investigation of the case or reparation assistance to the testifying child. They are  
8 appointed by the supervisory judge during the trial preparation hearing with the attorneys for  
9 the case.  
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12 The statement of the victim must be taken in a room separate from the court which is specially  
13 equipped for children, protects their privacy and security, and has an intercom system and  
14 audiovisual reproduction linked to the courtroom. In the special room, only the child and the  
15 intermediary may be present, except for cases in which an interpreter, translator, or  
16 accompanying animal is required<sup>1</sup>. The court, the parties, the accused must remain in the  
17 hearing room from where they can simultaneously observe and listen to what is happening  
18 in the linked room via CCTV. Parties may ask their questions (i.e., cross-examination)  
19 through the supervisory judge, who transmits them to the intermediary through the intercom  
20 system. The magistrate must oversee, control, and supervise the activity, ensuring that the  
21 questions are carried out impartially and in a language that is suitable for the victim or  
22 witness, thereby safeguarding their integrity (the judge also ruled on any argument between  
23 the attorneys).  
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27 The intermediary, located in the special room, listens to the questions through an earpiece  
28 and transmits them to the child according to communication and linguistic guidelines based  
29 on the child's age, maturity, and mental condition as well as the procedural standards for  
30 adversarial proceedings. The intermediary may modify the question to be developmentally  
31 appropriate for the child. In addition, during the statement, they must continuously verify the  
32 physical and emotional condition of the child, informing the court of any situation that could  
33 affect him/her. Whenever the intermediary notes that a question is unsuitable on the grounds  
34 of secondary victimization, breach of the witness's personal dignity, or other principles of  
35 Law 21.057, they must inform the judge by using one of three "grounds of concerns" (*causal*  
36 *de representación*) listed below. The judge, in turn, must open a debate with the participants  
37 in relation to what has been said, and the court will make the decision as to whether it is  
38 appropriate to reject the question or, in the case of the third ground, to take a break.  
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- First ground: when a question is considered to be coercive or of such complexity as to become unclear or misleading, exceeding the child's capacity for understanding, in view of their characteristics and developmental level.
  - Second ground: when a question may lead to suffering or severe impact on the dignity of the victim.
  - Third ground: when the child is in a physical or emotional state that renders it impossible to continue with the statement.

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<sup>1</sup> If the victim needs an interpreter or translator and this has been authorized by the court, they will enter the special room with the intermediary, who will put questions to the professional in accordance with the child's age, maturity, and mental state for formulation in the appropriate language and for the interpreter then to state out loud what the child has answered.

Furthermore, the activity must take place without interruption during a single day (including pauses if necessary for the wellbeing and rest of the child), must be video-recorded, and must be executed in the four phases described in Table 1.

**Table 1.** Phases of the intermediation according to protocol I) of Law 21.057, article 31.

Phase	Description
<b>Prior phase</b>	The intermediary is called to the courtroom in the presence of the defense and prosecution to address necessary aspects for conducting the procedure. He/she is informed about the background of the child, gives his or her recommendations on how to carry out the trial, and coordinates as to how they will communicate with the court and parties should exceptional situations be raised (similar to “ground rules hearing”).
<b>Initial phase</b>	In the special room, the intermediary presents him or herself and the procedure using developmentally adapted language (i.e., the purpose, the professionals in the courtroom, the physical characteristics of the room, and their rights), lays out the ground rules for communication, establishes <i>rapport</i> with the victim (a bond of trust), inquiries into the child’s communication style and skills (by asking innocuous questions), and corroborates their voluntariness to continue to the next phase. If applicable, the intermediary must explain the “legal code warnings” or contents of articles 302 (right not to testify if the defendant is a direct relative) and 305 (principle of no self-incrimination if involved in a criminal act) of the Chilean Criminal Procedural Code. Also, adolescents must be informed about their right to testify directly before a judge without the involvement of an intermediary (article 14 of Law 21.057).
<b>Development phase</b>	The intermediary transmits the questions from the parties (transmitted through the presiding judge), adapting them to the developmental skills of the victim or witness. The professional must avoid any complex structures and warn the court if any question violates the child's dignity and integrity or if it could be incomprehensible based on the child's particular characteristics and warns of the “grounds of concern” if required. If any objection or incident is raised by the prosecution or defense, the presiding judge must give the intermediary time to explain to the child that they are having a discussion in the courtroom and checking what further questions they need to ask; thus, the victim stays silent. Following this, the judge reopens the corresponding discussion. While the objection or incident is being handled, the intermediary may work to maintain the child’s attention and quietness. Lastly, the physical and emotional needs of the child must be constantly monitored, and assistance must be provided if required.
<b>Closure phase</b>	The statement is finalized. The intermediary introduces a neutral topic to re-establish the emotional state of the child and makes sure he/she is in an appropriate condition to leave. Additionally, the child is thanked and doubts are clarified.

Lastly, children may provide early testimony at Guarantor Courts, thus allowing cross-examination. Article 16 of the Law 21.057 establishes that this testimony may be requested by the prosecutor, the victim, the complainant, and the curator ad litem from the moment the

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3 investigation is formalized and must be resolved in a hearing in the presence of all  
4 participants that is specifically summoned for this purpose. If the supervisory judge accepts  
5 the request after a consideration of the personal circumstances and best interests of the victim  
6 or witness, he or she must designate a certified intermediary, and the hearing must comply  
7 with the same requirements as ordinary testimony (i.e., with intermediation). After giving  
8 this early testimony, the child cannot be subjected to another interview or statement unless  
9 they request it freely and spontaneously or new information that could substantially affect  
10 the result of the trial is found.  
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### 13 Method

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16 In order to explore the operation of the first year of the intermediary system in Chile from  
17 the perspective of professionals in the criminal justice system, this study compiled  
18 information from four data sources collected in the framework of the implementation and  
19 evaluation of Law 21.057. These sources included two of the instruments that were used by  
20 the Ministry of Justice to fulfill its duty to annually evaluate and monitor the implementation  
21 of this law, as well as findings from two instruments used by Anonymized to support the  
22 training of investigative interviewers and intermediaries.  
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25 The evaluation process of the Ministry of Justice includes data from administrative records  
26 as well as perception data from professionals of the criminal justice system. For the purpose  
27 of this study, only the latter was included, consisting of the perception of officials from the  
28 six regions of the first stage of implementation of Law 21.057 (i.e., Arica and Parinacota,  
29 Tarapacá, Antofagasta, Maule, Aysén, and Magallanes). The two instruments were:  
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- 32 • Twelve focus groups conducted by videoconference in October 2020 (49% women). The  
33 distribution of the subjects was 42 interviewers and intermediaries and 23 regional  
34 coordinators for the implementation of the law, including 18 from the Prosecutor's  
35 Office, 19 from Carabineros de Chile, 16 from Policía de Investigaciones (the two police  
36 forces), 10 from the Judicial Branch, and two from the Ministry of Interior.  
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- 39 • A survey of 120 investigative interviewers and intermediaries conducted online between  
40 August and September 2020. Ninety-one of the subjects were intermediaries (53.8%  
41 women) which corresponds to 89.2% of the 102 accredited intermediaries as of that date.  
42 The distribution included 18 judges, 16 professionals from the Victims and Witnesses'  
43 Assistance Unit (URAVIT) of the Public Prosecutor's Office, 25 from the Carabineros  
44 de Chile, 28 from the Investigative Police and four from the Ministry of Interior. Of  
45 these, 29 had participated in trials and were, therefore, considered eligible for questions  
46 about their intermediation experiences with trials.  
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49 Anonymized. This organization carried out two evaluation processes aimed to assess the  
50 experiences of intermediaries from the six regions in the first stage of implementation of the  
51 law:  
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- 54 • A focus group with four intermediaries along with an interview with one intermediary  
55 conducted by videoconference in December 2020 in order to assess their competences  
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3 and experiences in their role. The sessions included three judges, one psychologist from  
4 the Victim's Unit, and one officer from Carabineros de Chile.  
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- 6 • A focus group with three trainers from the Judicial Branch conducted by  
7 videoconference in August 2021. These professionals were in charge of the training,  
8 evaluation, and supervision of judicial intermediaries (i.e., judges). The instrument was  
9 used to evaluate their perceptions of the challenges experienced by the intermediaries  
10 that they supervise in the first year of implementation of the first stage of Law 21.057.  
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13 All qualitative data was analyzed by open coding (Strauss and Corbin, 2002) using the  
14 software Atlas ti. The next section displays the categories which emerged from the  
15 discourses, accompanied by quotes which identify the institution and or region of the  
16 participants and descriptive statistics or figures from the survey data. To ensure the  
17 anonymity of participants, the names of interviewees are not displayed.  
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20 It must be noted that an important number of criminal trials with child victims and witnesses  
21 had to be suspended during the first year of implementation of the law due to the quarantines  
22 and sanitary restrictions imposed during the COVID-19 pandemic. Hence, from the start of  
23 the application of the policy in the six regions until October 2020, only 85 intermediations  
24 were registered and 102 professionals were accredited as intermediaries, of which only 31%  
25 conducted the proceeding (Ministerio de Justicia de Chile, 2021). In comparison, in  
26 November 2021, intermediations increased (272 carried out), although these results mainly  
27 refer to the rather limited intermediary experiences from the first year of the pandemic.  
28 Nonetheless, it displays the strengths and challenges of the implementation of this model as  
29 well as the initial difficulties experienced by intermediaries, therefore contributing evidence  
30 to improve the functioning of the system and the development of similar public policies in  
31 other countries.  
32  
33  
34  
35

## 36 Results

37  
38  
39 Three main categories and eight subcategories emerged from the discourses gathered from  
40 the four sources of information (see Figure 1). Each section is further described and is  
41 supported by quotes from the interviewees and the results of the survey.  
42  
43

44 **Figure 1.** Categories of analysis of focus groups and interviews.

45 [insert Figure 1.]  
46  
47

### 48 *1. Assessment of the intermediary system from the perspective of professionals*

49  
50 This category describes participant opinions about the global functioning of the system,  
51 including positive feedback and perceptions about general shortcomings in its operation.  
52  
53

#### 54 *1.1. Positive feedback*

1  
2  
3 According to the focus groups and interviews, there is high satisfaction in general with the  
4 coordination and dynamics of the intermediary system as well as with the performance of  
5 intermediaries. Participants stated that Law 21.057 has made an important contribution as it  
6 has allowed for improvement in the treatment of child victims and witnesses. Accordingly,  
7 results from the survey showed that 86.7% of intermediaries agreed or strongly agreed that  
8 the law has helped to prevent secondary victimization in the criminal justice system (Figure  
9 2).

10  
11  
12 The system is, in general, at least here, I don't have the experience in other regions,  
13 working quite well. It is clearly a contribution. It clearly makes a difference to how  
14 these situations were dealt with before. I think that the parties are also handling it  
15 adequately. (Judicial intermediary, Antofagasta).

16  
17  
18  
19 **Figure 2.** Survey results (n= 91).

20  
21 [insert Figure 2.]

22  
23  
24 Some specific elements that were valued as positive by participants in terms of the  
25 functioning of the intermediary system were:

- 26  
27
- 28 • A general fluidity in pre-trial, trial, and post-trial coordination and a fluent  
29 progression of trials (transmission of questions and “grounds of concern”) and  
30 adherence to the phases of the technique.
  - 31 • Reduced waiting times for victims or witnesses both before and during the trial.
  - 32 • Adequate functioning of technological equipment and special courtrooms (as seen in  
33 Figure 3).
- 34

35  
36 **Figure 3.** Survey results (n= 29).

37  
38 [insert Figure 3.]

- 39  
40
- 41 • Increased training and awareness of judges, prosecutors, and public defenders with  
42 respect to interactions with children and adolescents.
  - 43 • Reduction of inadequate interventions by judges and parties, including decreased  
44 victimizing interventions and objections.
  - 45 • Reduction in the anticipatory anxiety of intermediaries caused by inexperience.
  - 46 • Adequate monitoring of physical and emotional condition of victims, as well as  
47 proper management of complications or decompensations.
  - 48 • Improvement of the conditions under which children and adolescents leave the trial  
49 and increased satisfaction with the process and the treatment.
- 50  
51

52 They (the victims) are very happy with the process, they express that it was not what  
53 they imagined, that the atmosphere was very pleasant... the truth is that they leave  
54 with peace of mind about the experience. Obviously, it is not pleasant what they are  
55 experiencing, but they leave with peace of mind. (Regional coordinator, Tarapacá).

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4 Additionally, intermediaries reported that they generally felt comfortable conducting the  
5 intermediations. In fact, 79.3% of the surveyed intermediaries agreed or strongly agreed that  
6 the knowledge and competencies they have acquired have been sufficient for an adequate  
7 performance of their role (see Figure 4).  
8

9  
10 **Figure 4.** Survey results (n=29).

11  
12 [insert Figure 4.]  
13

14 Trainers added that judicial intermediaries seem to be well prepared to adequately conduct  
15 intermediations given their professional background as judges and that they tended to adhere  
16 to the protocol. In fact, with regard to particularly complex cases or trials, they highlighted  
17 that intermediaries have often intuitively managed to facilitate the intermeditation in a  
18 remarkable way, generally taking care of the condition of the children and adolescents.  
19

20  
21 We have seen, at least from the ongoing training program from where we are able to  
22 see the real practices, that in general the intermediaries are well prepared in terms of  
23 protocol, adherence to protocol. They are doing each of the tasks in the order that we  
24 explain to them that it should be, so they are opening up in some way to the work with  
25 children. (Trainer from Judicial Branch)  
26  
27

### 28 *1.2. System's shortcomings*

29

30  
31 According to the interviewees, the law has reduced the length of trials and the statements of  
32 children and adolescents; however, these usually take longer than the attention or  
33 concentration span of children. Participants indicated that the statements usually lasted from  
34 60 to 90 minutes, while some exceptional cases were reported in which trials or statements  
35 were extended for many hours, with the child having to wait either inside the special room  
36 or in a waiting room because of prolonged witness statements, extensive questioning by  
37 interveners, excessive objections by the defense, and/or reluctance to talk about the facts.  
38

39  
40 Also, the number of hours, because in one intermeditation we started at about nine in  
41 the morning, we stopped at one, then we started at about two. The child had lunch,  
42 until I don't know... about two hours more, they even said that the first intermeditation  
43 was the longest intermeditation that a child had ever had. And why was that? Because  
44 the child didn't want... she avoided the answers, so she would talk, she would go, but  
45 at the same time it was like she was revoking. But that's basically what it is, the  
46 amount of time that goes by during the intermeditation that in the end the child gets  
47 tired. (Intermediary from Carabineros de Chile, Maule)  
48  
49

50 Trainers reported that the difficulties they observed in terms of the performance of  
51 intermediaries were related to the articulation between them and the court and not so much  
52 due to interactions with victims. They added that the way in which trials are conducted may  
53 vary from court to court or from case to case, with hearings that have been fluent and brief,  
54 especially those in which trained judges in the courtroom facilitated the execution of the  
55 intermeditation, and others in which the interventions of the parties have been excessively  
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2  
3 long, complex, or inadequate, extending the statement of victims or witnesses, including  
4 those with special needs.  
5

6  
7 There are problems that have to do with the intermediation. For example, what we  
8 have detected in some cases has to do with questions from the parties, who sometimes  
9 take a long time to ask questions, they ask very long questions, or there is an important  
10 debate in the hearing's room and this, beyond the legal aspect, has an impact on the  
11 special room because it means that the intermediary must wait with the child. So, I  
12 think it has to do with the adjustment of the system, of what happens in the courtroom  
13 and what the intermediary has to do while waiting so that the courtroom goes a little  
14 faster. (Trainer from Judicial Branch)  
15

16  
17 A relevant aspect mentioned by trainers and intermediaries is the lack of sufficient  
18 background information about the condition, characteristics, communicative skills, or special  
19 needs of victims which is supplied to intermediaries before the trial. This prevents these  
20 professionals from preparing themselves to have better communication with the victim or  
21 witness and also prevents them from transmitting special recommendations to the court  
22 during the *prior phase* of the statement.  
23

24  
25 The intermediary wants to know more and more about the child, and they are pushing  
26 more and more, especially those in the judiciary, even if the child brought a toy, if the  
27 child brought a change of clothes, if... where is the adult who can comfort them if  
28 needed, if the child knows why they are there, if they ate breakfast, if they are sleepy,  
29 if they took their medication, these are all things that we are pushing them more and  
30 more to ask. But for now, according to what we have seen, which is the result of the  
31 first phase (of implementation of the Law), this has still have not worked well. In the  
32 second phase, we will see how they have done with it, next year. But it is a process,  
33 it is a very slow process, so obviously they get in... not only are they surprised, but  
34 worst of all, when they had the opportunity with the court to agree with a type of  
35 approach, which is what the prior phase is for, they did not have the opportunity to  
36 consider factors that were very relevant. (Trainer from Judicial Branch)  
37  
38

## 39 40 2. *Good practices and conditions that facilitate the system*

41  
42 This category includes some of the conditions and practices which the interviewees have  
43 facilitated or believe may facilitate the implementation and development of the intermediary  
44 system.  
45

### 46 47 2.1. *General conditions*

48  
49 One of the general conditions that has supported the functioning of the intermediary system  
50 is the training of judges, prosecutors, and certain public defenders on children's affairs and  
51 rights, sexual crimes, and/or Law 21.057. This has promoted the fluidity of trials by reducing  
52 potentially inadequate interventions by these professional.  
53

54  
55 What makes it much easier from the prior phase when one sits in front of the judges  
56 is that they are trained, that they understand the intermediation, that they know the  
57  
58  
59

1  
2  
3 rules, that the parties are trained, and that they know the intermediation process, it  
4 helps a lot. Because before us, there magistrates may always filter the questions, there  
5 is a filter, a possibility of reformulation even before it reaches us. It is easier for us to  
6 work with the prosecutors because the prosecutors understand, many prosecutors are  
7 also accredited interviewers, so they have more training than defense lawyers or  
8 private lawyers in the formulation of open questions, in not asking multiple  
9 questions... (Intermediary from Victim's Unit, Maule)

10  
11  
12 Another condition that has facilitated the development of intermediations is the social and  
13 communicative skills of the intermediaries that have not necessarily been part of the formal  
14 training, including emotional self-management, transmitting calmness and patience to the  
15 victims, being empathetic, clear, and welcoming. These competencies help victims and  
16 witnesses tell their stories and feel a sense of comfort during the statement.

17  
18  
19 Trainers added that judicial intermediaries have managed to strengthen the intermediation  
20 protocol by adjusting or adding elements which each case required. Participants mentioned  
21 that it is necessary to adhere to the protocol with certain flexibility, adapting it to the  
22 individual characteristics and needs of each child or adolescent.

23  
24  
25 Basically, not only are there no problems of adherence with them, but there is also a  
26 very rich theme of how they are making the protocol grow. Systematically, those who  
27 have made intermediation grow are the intermediary judges because they are the ones  
28 who feel the most solid ground to go a little further, to add things, to develop things  
29 in more depth, they take risks because obviously they have a situation of parity with  
30 the court (...). So, how the protocol has grown in terms of the prior phase since 2018  
31 when we created the protocol, it has been due to what we as instructors have learned  
32 from what the judges themselves have done. (Trainer from Judicial Branch)

## 33 34 35 *2.2. Pre-trial arrangements*

36  
37  
38 **Before the trial.** Participants reported that the efforts made by professionals from the  
39 Victim's Unit as well as the adaptation of institutional procedures have helped to improve  
40 conditions for victims, including no longer waiting alone while caregivers or other witnesses  
41 testify or being given food. They mentioned that these professionals usually coordinated the  
42 necessary aspects to make the attendance of children as non-victimizing as possible and  
43 added that the preparation and provision of information to the children about the procedure  
44 has been fundamental for the smooth functioning of intermediations.

45  
46  
47 The issue of the methodological preparation before the oral trial is very influential,  
48 when it is explained to the child, 'you are going to go, you are going to work....'  
49 Really, when voluntariness is raised with the child there, before they enter the  
50 courtroom. So, many times, if there has been a good preparation, not in terms of what  
51 they are going to tell but in terms of explaining, that the child is informed, in general,  
52 when they participate, they have these questions already resolved, it is much easier,  
53 the child knows what they are going to do, they have said they want to participate,  
54 they understand. (Intermediary from Victim's Unit, Maule).

1  
2  
3 It was also mentioned that it is important for children to become familiar with the special  
4 and/or hearing room and the professionals, so that they feel comfortable when providing their  
5 statements. This, in turn, also helps intermediaries to reduce their own initial anxiety.  
6

7  
8 **Previous phase.** Some intermediaries mentioned that the time allocated to agree on ways to  
9 communicate with the court and to indicate the appropriate way of approaching the victim  
10 has increased, which has worked to prevent incidents. Participants added that some of the  
11 basic information that must be communicated to the court includes the special needs of the  
12 victims or witnesses, an estimated concentration span (to avoid lengthening the statement),  
13 their physical and emotional condition, and how the “legal code warnings” will be verbalized  
14 (in order to avoid objections on the part of the parties).  
15

16  
17 I always emphasize their ability to concentrate. The idea is to quickly progress  
18 through the statement taking advantage of the child's concentration span. When they  
19 (parties) object, they should also make it precisely and shortly, and that should always  
20 give me a space to make the rule of silence to the child... One should remind them  
21 that they are going to be debating inside, but... it's always a lot of work to make sure  
22 it's precise and short. (Judicial intermediary, Magallanes).  
23

### 24 25 2.3. *During child testimony*

26  
27 **Initial phase.** Framing the proceeding and ground rules are highlighted as fundamental  
28 elements in every child's statement. Participants mentioned that this should be done in a clear,  
29 calm, and friendly manner. Some intermediaries also indicated that it is important to adapt  
30 the form and timing of the *rapport* and ground rule phases to the characteristics, needs, or  
31 skills of each child or adolescent and that, if necessary, these have to be reinforced throughout  
32 the whole process so that the victims or witnesses feel confident and comfortable, especially  
33 since some victims do not necessarily understand the rules in the first instance.  
34  
35

36  
37 For me, this phase is very important because it is the one that generally creates the  
38 necessary environment for the child or adolescent to be able to deliver the story that  
39 he or she has come to give to the court, it is extremely important that the child feels  
40 comfortable (...) If it is not generated in this initial phase or if it is done half-heartedly,  
41 the development phase often gets a little bogged down. So, it is important to enter  
42 with clarity but also with a welcoming attitude. (Judicial intermediary, Antofagasta).  
43

44  
45 **Development phase.** According to the perceptions of interviewees, some of the practices  
46 that have facilitated the development of this stage and the work of intermediaries are:  
47

- 48 • Parties who adhere to the suggestions made by intermediaries in the *prior phase* (for  
49 example, simple and short questions). If not, intermediaries suggested to insist that  
50 questions which might be too complex, long, or victimizing be reformulated.
- 51 • Courtroom judges who “filter” or request that the parties adapt interventions before  
52 they pass them to the intermediary as well as quick resolutions of objections or  
53 arguments between the parties.  
54  
55  
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- Intermediaries who closely coordinate or have a relationship with the presiding judges before and/or during the trial.
- Constant monitoring of the child's physical or emotional needs and assisting them by offering breaks, water, or tissues, shortening questions or reformulating sensitive topics, using agreed forms of communication about the proceeding (e.g., gestures when an objection has been raised), among others.
- Clarification of concepts that are not well understood and incorporating them into the conversation vocabulary or expressions used by the victim or witness, especially when they come from another country.

It happened to me on one occasion when the defender asked a question that was offensive to the child, but the prosecutor objected to it. So, there are also previous instances, the objection of one of the parties... The magistrate can also reformulate or contribute there, and then the intermediary. So, if the prosecutor is involved in the issue, if the magistrates themselves are familiar with the issue, the intermediary's role is made much easier because the questions are filtered. (Intermediary from Victim's Unit, Maule).

### *3. Difficulties and challenges for the implementation of the system.*

This final category refers to some of the perceived difficulties and challenges associated with the intermediary system in general and with regard to its previous coordination and execution of the proceeding.

#### *3.1. General conditions*

**Impact of the pandemic.** The restrictions of the pandemic included the suspension of a series of trials in the framework of Law 21.057 (given that it is mandatory to use a special room), which prevented some intermediaries from practicing the technique during the first year of the law's implementation. In addition, some children or adolescents did not want to wear a mask, and when they did use it, it was occasionally more difficult to understand their accounts and monitor their non-verbal language.

**Experience and performance of intermediaries.** Some intermediaries mentioned that it has been difficult to find a balance between their regular workload and their functions as intermediaries, despite the fact that this role should be exclusive. In one region, it was stated that this situation has left the Victim's Unit Office without professionals to attend trials with child victims. The professionals also reported that these trials provoked in them a series of upsetting emotions, such as distress or sorrow during or after the trial, frustration about situations over which they did not have control (e.g., reluctance to talk or recantation), anxiety because they felt that they did not have sufficient knowledge or competences to interact with victims or cases in which they needed special skills (e.g., disability), and collapse due to instigating interventions from defenders.

It is true that one hears barbarities. I truly believe that no normal human being feels good after listening to a child or adolescent telling such tremendous issues. It really

creates a trauma because listening to it so much affects you. You don't feel good, I think the common experience when you finish doing interviews or intermediation is that you get a headache. In other words, there is also an emotional thing that happens there, which I think we institutions have not taken much responsibility for. (Intermediary from the Victim's Unit, Maule).

According to the survey (Figure 5), there is a considerable percentage of intermediaries who do not feel motivated and valued. Only 36.1% of the participants agreed or strongly agreed that they feel valued by their institutions in their role (graph 1), while only half of the respondents agreed or strongly agreed that they feel motivated in their role (graph 2). Nonetheless, as might be observed in Table 2, intermediaries from the police forces (Carabineros de Chile and Policía de Investigaciones) seem to feel less valued than intermediaries from the judicial branch or Victim's Services in the Prosecutor's Office.

**Figure 5.** Survey results (n= 72)

[insert Figure 5.]

**Table 2.** Survey question "I feel valued by my institution in my role as intermediary" by institution.

	<b>Judicial Branch (n=14)</b>	<b>Prosecutor's Office (n=9)</b>	<b>Ministry of Interior (n=4)</b>	<b>Carabineros de Chile (n=20)</b>	<b>Policía de Investiga- ciones (n=25)</b>
Disagree and strongly disagree	7.1%	0.0%	0.0%	30.0%	44.0%
Neither agree nor disagree	21.4%	44.4%	50.0%	45.0%	40.0%
Agree and strongly agree	71.4%	55.6%	50.0%	25.0%	16.0%
<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

Although the survey did not delve into the reasons for these feelings, participants from the focus groups indicated that the defense tends to reject or object to the appointment of professionals from the police forces as intermediaries by questioning their capacity to safeguard impartiality. In addition, these officers tend to have a less effective relationship with judges in comparison to judicial intermediaries. One drawback of this situation is that it leaves them with fewer opportunities to practice the technique and concentrates all intermediary work in judges.

Finally, with regard to judicial intermediaries, trainers suggested that for some judges it is difficult to assume this role and to disengage from their functions as magistrates, such as directing or making trial decisions. They added that this difficulty is also associated with the concern of losing impartiality and, consequently, has occasionally reduced their availability or capacity to monitor the emotional state of children and assist them when necessary.

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2  
3  
4 In the case of the presiding judge who assumes the intermediary role, he is directing  
5 the hearing all the time. The next day, intermediation, and then, he has to leave his  
6 presiding judge role in the courtroom and go to the special courtroom as an  
7 intermediary. However, he is then going to leave the courtroom and go back to the  
8 court, so that balance is very difficult. (Trainer, National level)  
9

10  
11 **Special communication requirements.** At the time of the survey, only a few intermediaries  
12 had conducted statements with preschool victims (5 of 29), children with a behavioral,  
13 language, or learning problem (5 of 29), or reluctant victims (3 of 29). Most of these  
14 professionals reported that the intermediation in these cases was moderately or very complex.  
15 In addition, some participants from the focus groups indicated that they perceived some trials  
16 as more difficult to conduct, for example, when children have a special need or particular  
17 condition, whereas trainers revealed that although judicial intermediaries have had  
18 remarkable management of specially difficult trials, it is sometimes complex for them to  
19 listen to the interventions from the courtroom and at the same time constantly monitor and  
20 assist victims that present special requirements.  
21  
22

23  
24 It was a case that demanded quite a lot from the intermediary, so the demands that  
25 normally involve being with the child at that moment, accompanying him, monitoring  
26 him, transmitting the questions, also implied being attentive to the special room, to  
27 the hearing's room, with the transfer of questions, where there were several conflicts.  
28 So, this situation of having to be aware of what happens in the hearing's room in  
29 addition to a child who has more demands, from the emotional and behavioral point  
30 of view, could have been a more complex case. (Trainer from Judicial Branch)  
31  
32

33 There were some particularities which appeared to be especially difficult for intermediaries  
34 to deal with and for which they needed to deepen their knowledge and competencies.  
35 According to the participants, these included:  
36

- 37 • Intermediaries perceived that for some young child victims as well as victims with an  
38 intellectual disability, it was more difficult to give specific details or refer to  
39 temporality. Trainers added that these cases might provoke uncertainty or anxiety in  
40 the intermediaries and that they needed to strengthen their knowledge and  
41 competencies regarding how to conduct trials with children with intellectual  
42 disabilities and developmental disorders, such as autism spectrum disorder and  
43 attention deficit hyperactivity disorder.
- 44 • Participants mentioned certain characteristics that they perceived as more complex  
45 with respect to interaction and communication with the victims or witnesses and with  
46 adherence to the protocol, including when the children presented limited speech  
47 development, motor restlessness or hyperactivity, impulsivity, verbiage, or extreme  
48 shyness.
- 49 • Intermediaries mentioned that it is especially complex for them when the emotional  
50 condition of the children is affected (e.g., tiredness, nervousness, crying, reluctance  
51 to talk, boredom, fear, emotional decompensation), given that it might be more  
52 difficult to interact with them, to monitor their emotional and physical condition, to  
53 listen to or understand the interventions from the courtroom, or to understand the  
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victim's account. Trainers added that some intermediaries have experienced anxiety when conducting certain trials with children or adolescents who had some kind of psychological or psychiatric disorder or problem (e.g., depression, panic attacks, suicidal ideation).

Finally, although trainers mentioned that intermediaries have not experienced any inconvenience in working with victims and witnesses who come from indigenous, immigrant, or LGBTQ+ communities, they highlighted the importance of deepening the competencies and cultural and linguistic awareness of intermediaries to interact with these children and adolescents.

### 3.2. *Pre-testimony arrangements*

Certain participants of the focus groups reported that they perceived a lack of time to organize their work and prepare for the trial. Additionally, in all of the qualitative evaluations, participants revealed that intermediaries usually do not count on sufficient background information to prepare themselves for the trial and to communicate special needs or personalized recommendations to the court. This finding might also be complemented by the results of the survey (Figure 6), in which it can be observed that 25% of intermediaries reported that they do not always receive enough data about the victims.

**Figure 6.** Survey results (n= 28).

[insert Figure 6.]

Intermediaries added that the time in which to prepare during the prior phase as well as the time for *rapport* in the initial phase is insufficient to “get an idea of the child.”

It is too little time for me, after receiving the background of a child and his or her characteristics, to personally focus on how to approach him or her. So, maybe we could make an improvement. At the moment of the communication, the prior phase, there should always be a break so that the intermediary can focus, particularly, on the characteristics of the child and be able to approach him/her in a better way. (Intermediary, Aysén)

### 3.3. *During child testimony*

Participants claimed that in some courts or trials, the parties do not collaborate and take into account the best interests and special characteristics of children and adolescents, which hinders, obstructs, and slows down the dynamics of the trial. They added that the most difficult situation are inadequate interventions by defense lawyers, especially private ones, given that they are not usually trained to interact with child victims. Some of the interventions they reported as inadequate are:

- Excessively long and complex questions, objections, or arguments.
- Technical judiciary language.

- Multiple, imprecise, or repeated questions.
- Insisting on inquiring into details that the victims are not able to provide (either by competencies or emotional limitations), such as temporality of events.
- Requiring the child to speak louder, faster, or clearer.
- Repeatedly objecting to the questions (wording or content) of intermediaries and questioning their role.
- When parties insist that “legal warnings” be given or repeated verbatim.

Afterwards, there is no shortage of interveners who want to say something and the judges don't stop them. And the other side also wants to say something, and they are going to contradict, and that's already very long... But there are defenders who also use this formula to generate some kind of wear and tear, I think. To make too many unnecessary incidents of things that have already been debated, that have already been said in order to – in the long run – undermine the quality of the story. (Judicial intermediary, Antofagasta).

## DISCUSSION

In New Zealand, Howard and colleagues (2020a, 2020b, 2020c) answered the call of Cooper and Mattison (2017) for “more research into the role of the intermediary in jurisdictions outside England and Wales.” In the same line, the current study presents evidence about the first experiences with the intermediary system in Chile from the perspective of intermediaries, their trainers, and regional coordinators of Law 21.057. This Act incorporated the intermediary figure along with other child-friendly measures into the criminal justice system in order to prevent secondary victimization of child victims and witnesses of sexual and other serious crimes. Given its novelty and the lack of a standardized international intermediary scheme, empirical research on the performance of intermediaries and the outcomes of their functions has been limited internationally. Still, most of the countries that have incorporated such a model have reported optimistic results about the perception of the role and its contribution both to the justice system and to the rights of vulnerable victims, witnesses, and even of accused persons to participate and be heard in judicial proceedings (Antolak-Saper and MacPherson, 2019; Bekink, 2016; Cahmore and Shackel, 2018; Cooper and Mattison, 2017; Department of Justice Northern Ireland, 2016; Fambasayi and Koraan, 2018; Henderson, 2015).

This study provides evidence that illustrates the operation of an intermediary system for in-court testimony by children and adolescents in six Chilean regions. The system differs from the English or Australian models in that the same professionals from the justice system are specially trained and accredited by their institutions to facilitate communication between the court and the child. Still, these findings reveal that this model has also been perceived as “a very valuable tool” for increasing child victims’ access to justice (Henderson, 2015), improving their treatment, and preventing their secondary victimization.

Despite the fact that these findings constitute a picture of the first year of operation of the system, which included a rather limited number of intermediations given the COVID-19

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2  
3 pandemic, the results show a positive overview of the experiences and performance of  
4 intermediaries and of the functioning and coordination of the system, including arrangements  
5 before and during the trial, technical equipment, and infrastructure. This has, in turn, resulted  
6 in reduced delays and waiting times and in more fluent operation of trials, which has been  
7 mainly facilitated by the training received by intermediaries, judges, prosecutors, and certain  
8 public defense lawyers as well as by the efforts of professionals to assist with the particular  
9 needs of young victims. The findings also show that the performance of intermediaries,  
10 including their adherence to protocol, their interactions with victims, and their monitoring  
11 and assistance of children, is perceived to be remarkable.  
12  
13

14  
15 There is currently no standard international assessment method of the quality of the  
16 performance of these professionals and the interventions of the court. In England and Wales,  
17 Henderson and Lamb (2019) measured the types of questions used in a trial after the  
18 incorporation of the intermediary scheme and found a decrease in suggestive and directive  
19 questions. Although this assessment cannot be performed in Chile given the confidentiality  
20 of videorecorded testimony, anecdotal evidence suggests that lawyers have more awareness  
21 of how to address child victims and that there has been a reduction in inadequate  
22 interventions, especially when judges are trained and can aid intermediaries by “pre-filtering”  
23 the questions posed by the parties.  
24  
25

26  
27 In spite of this apparent progress, results show that some professionals, especially private  
28 defense lawyers, who carry out interventions that are potentially victimizing, too complex,  
29 or too long for the developmental capacities of children still remain. This results in the  
30 extension of trials, which highlights the need to monitor the length of testimony and to ensure  
31 that the concentration skills and the emotional condition of the victims are rigorously  
32 considered before and during the whole proceeding.  
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35 In the United Kingdom, it was similarly observed that judges had difficulty intervening in  
36 certain cases to “soften” the questions (Henderson and Lamb, 2019) and that intermediaries  
37 had trouble intervening enough during questioning and cross-examination (Henderson,  
38 2015). In addition, in South Africa, one important limitation of the system has been the  
39 limited ability of intermediaries to adapt questions or to warn about their risks. It has been  
40 reported that if a magistrate insists on a question, the intermediary has to verbalize it anyway  
41 (Bekink, 2016). This evidence reasserts the importance of extending and deepening the  
42 training and awareness of all the officials and professionals of the judicial system about the  
43 functioning of the intermediary scheme, the potential victimizing impact of inadequate  
44 interventions, and the aims and principles of Law 21.047 (i.e., preventing secondary  
45 victimization, the best interests of children, voluntariness, and progressive autonomy).  
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49 Results also show that despite the low number of cases, intermediaries have, in general,  
50 properly interacted with victims that have special communicative, emotional, or cultural  
51 needs, such as preschoolers, victims with autistic spectrum disorder, and immigrants.  
52 Nonetheless, the results accounted for certain difficulties perceived by the professionals, such  
53 as that they feel they need advanced competences and knowledge to approach these cases  
54 and need to be more aware of their own needs during testimony. Intermediaries from  
55 England, Northern Ireland, Australia, or New Zealand typically count on specialized  
56 professional backgrounds, such as speech and language therapy, psychology, and social work  
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3 (Cooper and Mattison, 2017; Howard, 2020c; Taggart, 2021). The system then tries to match  
4 the special needs of the victims with a professional that has the proper competences to address  
5 them. Nevertheless, in Chile, intermediaries do not necessarily have a professional  
6 background in child development or other related fields, therefore this work highlights the  
7 importance of developing advanced training activities and providing resources with respect  
8 to special communicative, behavioral, or cultural considerations in order to best interact with  
9 preschool victims, children with an intellectual or other disability or difficulty, or children  
10 from a particular group.  
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13 Australia, New Zealand, and South Africa have similarly reported the need for higher  
14 diversity in intermediaries, such as Aboriginals, and for protocols to interact with victims  
15 who speak different languages (Bekink, 2016; Cashmore and Shackel, 2018; Jonker and  
16 Swanzen, 2009; NSW Department of Justice, 2016). This study has detected a need to deepen  
17 the training of intermediaries in how to best interact with immigrant victims, LGTBQ  
18 victims, or victims from indigenous communities, and, even more importantly, there is a need  
19 for the system to provide information that permits intermediaries to best prepare for these  
20 cases.  
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24 Another benefit of the intermediary system is that the first part of the proceeding, the *prior*  
25 *phase*, is designed to communicate the special needs of each child to the court in order to  
26 personalize questions to their individual needs and communicative skills. Participants  
27 remarked on the importance of this stage as well as the relevance of judges and parties  
28 adhering to these recommendations in order to facilitate the proceeding by the “pre-filtering”  
29 of interventions. However, results show that intermediaries have to juggle the scarce time  
30 they have with the background information they count on to correctly prepare themselves  
31 and the court for the trial and to adequately interact with the victims or witnesses. Thus, a  
32 comprehensive and standard assessment of children and a preliminary proceeding to agree  
33 on the forms of communication (such as the “ground rules hearing”), although not simple to  
34 implement in Chile and other countries such as England and Wales (Cooper and Mattison,  
35 2017, JUSTICE, 2019) become key aspects for a child-friendly trial which is adapted to the  
36 capacities of each victim. This has to go hand in hand with proper adaptation of trial  
37 conditions, including a reduction in waiting times, an assessment of the need for interpreters  
38 or disability aids, the assignment of intermediaries according to gender needs, and proper  
39 preparation of the victims, including providing them and their caregivers with sufficient and  
40 adapted information about the procedure or permitting them pre-trial visits to become  
41 familiar with the court, the special room, and the professionals.  
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46 Finally, in order to facilitate the work of intermediaries, it is important that they feel  
47 supported by their institutions in terms of workload distribution, training, and infrastructure.  
48 Although the infrastructure and technical equipment conditions as well as the initial training  
49 have been reported as remarkably satisfactory, a persistent inconvenience with the  
50 implementation of the intermediary system and of the Law 21.057 has been the high  
51 workload that this measure has entailed for the professionals, the high emotional load that  
52 these functions imply for their mental health, and the lack of support for a high proportion of  
53 intermediaries, mainly from the police forces. One of the advantages of the Irish system over  
54 the English one, according to Taggart et al. (2021), is the broad consensus of Irish  
55 intermediaries about the support they receive from the Department of Justice as well as their  
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3 peers and about the resources they receive and share; in comparison, there is widespread  
4 dissatisfaction among English intermediaries with respect to the lack of emotional or training  
5 support they receive from their Ministry of Justice and their peers. Similarly, one of the  
6 important shortcomings of the South African system is that although intermediaries were  
7 incorporated by law as a judicial measure, the measure did not account for a single accredited  
8 qualification and an official regulatory body to address training, supervision, and monitoring  
9 (Bekink, 2016). This prevented the correct implementation of the system, given that  
10 intermediaries did not feel enough support or motivation to work in this role (Jonker and  
11 Swanzen, 2009). Hence, in order to enhance the performance of intermediaries and to avoid  
12 emotional and work burdens or desertion, it is essential to allocate resources for their  
13 professional development and mental health care, by accompanying and supervising them in  
14 their practice, by offering them wellbeing care and support groups, and by strengthening their  
15 basic and advanced competences with ongoing training and other learning resources. It is  
16 also fundamental to ensure that in each locality and institution there are sufficient personnel  
17 available to cover intermediary and regular functions as well as enough working time for  
18 training and to prepare for the proceedings with each victim.  
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23 One of the main limitations of these findings is that they provide an overview of the  
24 implementation of the system from the “supply side” of justice, namely from professionals  
25 from the institutions of the criminal justice system, which in spite of being a relevant  
26 resource, omits the flip side of the coin, namely the perspectives and experiences of the  
27 children or adolescents and their caregivers. This evaluation is also focused on subjective or  
28 perception data centered on the first year of the implementation of the policy, which was also  
29 influenced by the interruption caused by the coronavirus pandemic that suspended several  
30 trials. Thus, it is important to consider this study as an exploratory evaluation of the measure  
31 in its first stage, which might even become more robust in the following stages. The challenge  
32 for the following years is to evaluate the system in a comprehensive manner which includes  
33 perceptions from both the institutional and the demand side of justice and considers the  
34 proper methodological and ethical considerations to evaluate child victims as well as fact-  
35 based or objective data sources, including institutional statistics. For example, it is necessary  
36 to work on methods to evaluate the quality of the intermediary system by assessing the  
37 performance of intermediaries and the changes in the practices of judges and parties, the  
38 quality of the evidence obtained, and, finally, the influence of the system in the judicial  
39 outcomes of these cases.  
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### 43 Conclusion

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45 This study contributes intermediaries and other professionals and stakeholders in the justice  
46 system at a national and international level evidence of a positive experience with the  
47 implementation of a very valuable child-friendly measure that has, so far and from the  
48 perspective of these professionals, improved the way the criminal justice system includes,  
49 conceives, and interacts with children and adolescents: the intermediary system of in-court  
50 testimony of child victims or witnesses of sexual and other serious crimes. It also contributes  
51 findings related to some of the positive practices and conditions observed in the regions in  
52 which the Act has been operating as well as the possible obstacles and challenges that other  
53 Chilean regions and other jurisdictions might face in the implementation of such a complex  
54 public policy. Finally, we hope this experience might be replicated within the family justice  
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3 system in order to include all the other children who have been victims of other types of  
4 abuse and neglect.  
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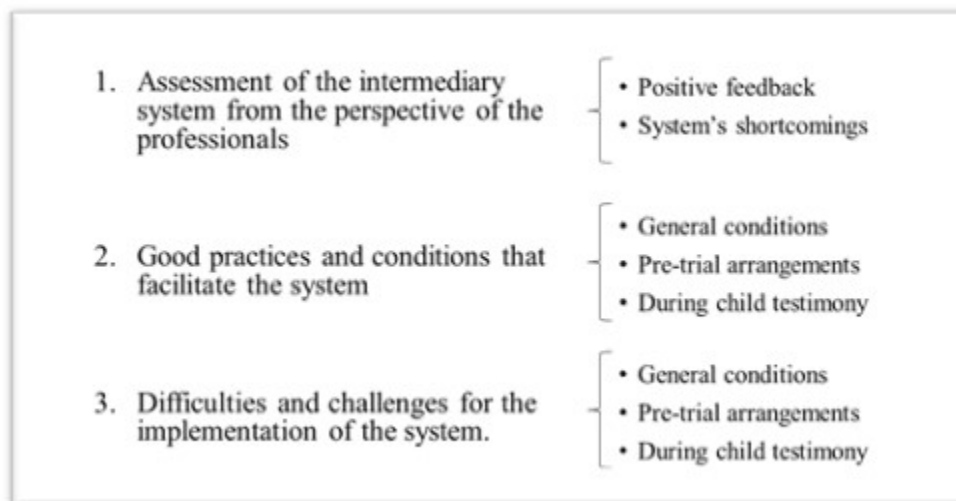


Figure 1. Categories of analysis of focus groups and interviews.

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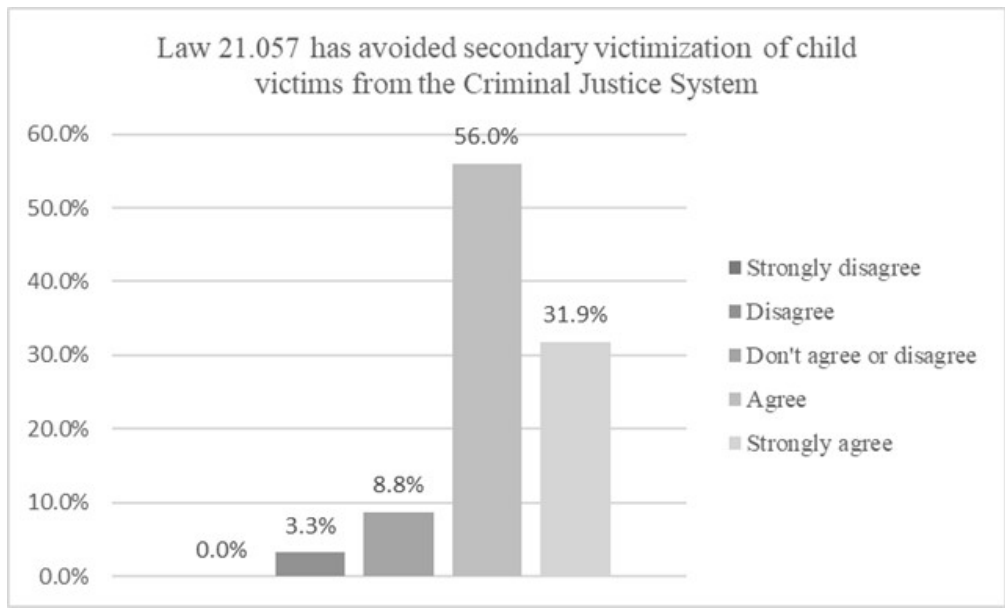
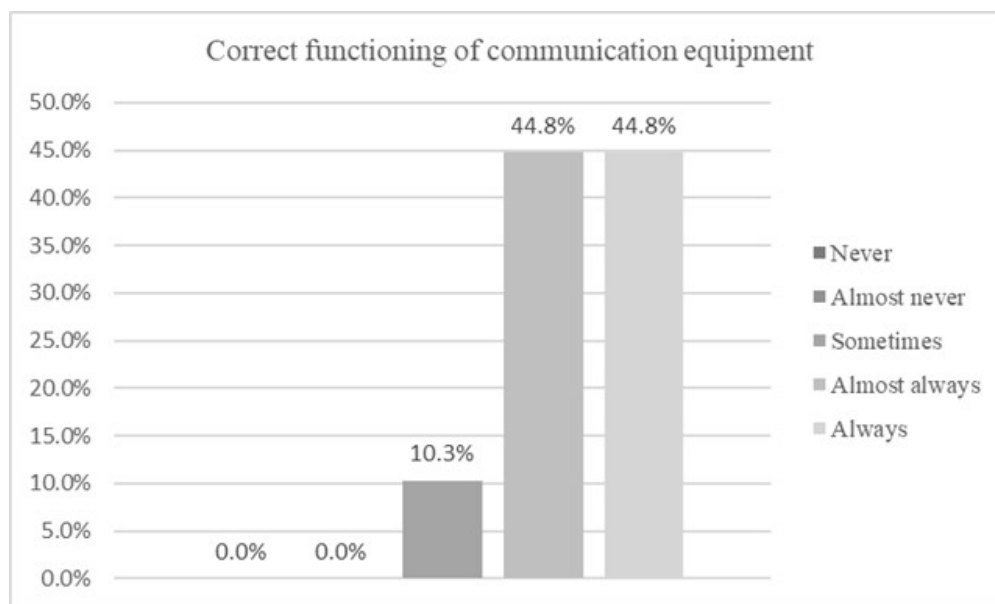


Figure 2. Survey results (n= 91).

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26 Figure 3. Survey results (n= 29).

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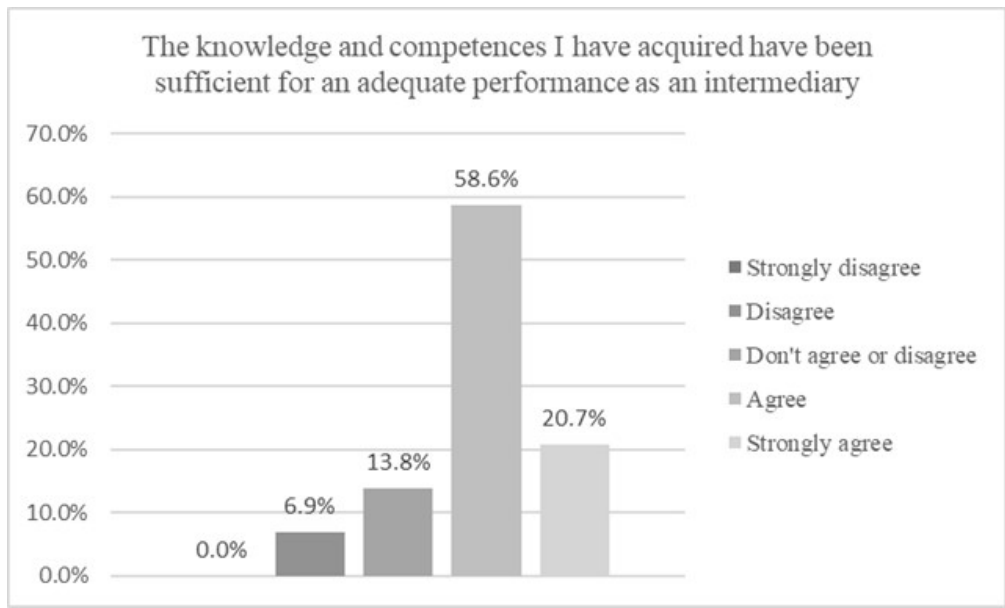


Figure 4. Survey results (n=29).

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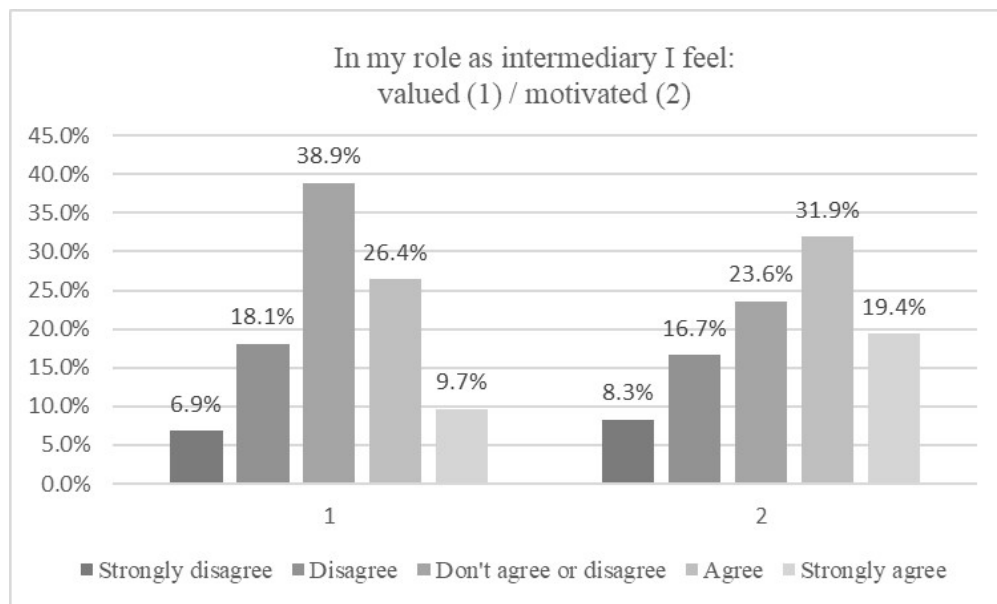


Figure 5. Survey results (n= 72)

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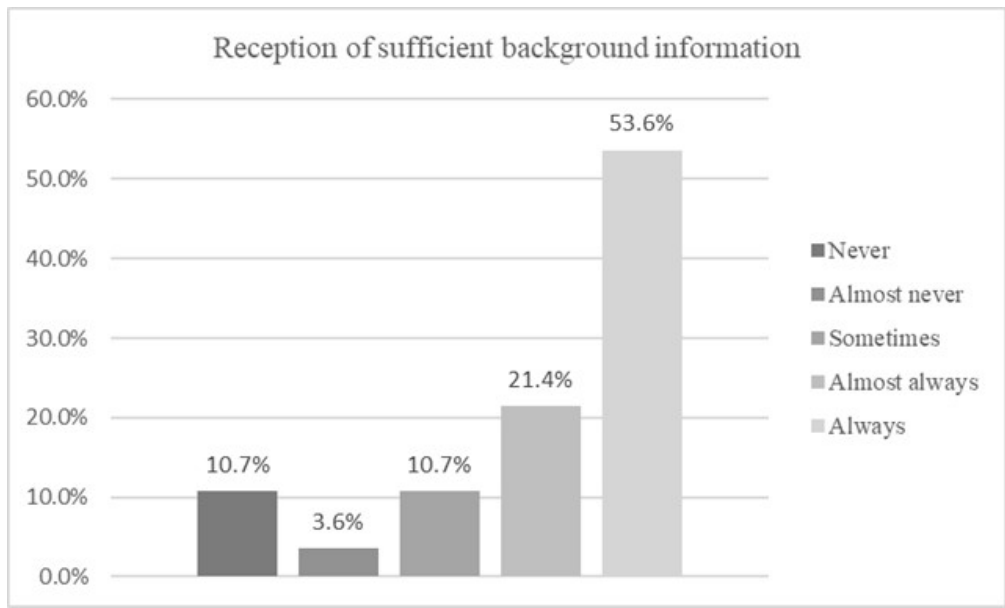


Figure 6. Survey results (n= 28).

108x65mm (150 x 150 DPI)