

2018 IAJ Third Study Commission Questionnaire Responses

	<p>1. Describe how the courts in your country deal with special witnesses including children, witnesses who need protection from potential retribution for giving evidence, victims of abuse, and/or witnesses with mental or emotional issues.</p>	<p>2. Describe how the courts and judges protect the interests of the accused or other parties when dealing with such special witnesses</p>	<p>3. Clarify whether the court has any obligation to hear from such special witnesses if they have already given a statement during the investigation</p>
<p>Armenia</p>	<p>Examination of under-age witnesses may be conducted in the absence of the defendant from the court if necessary. For witnesses who need protection, the court may separate individuals from the courtroom, hold closed-door court sessions, or keep the identity of the witness confidential. The physical appearance of the witness may also be changed or the witness may be protected by a screen or by audio-visual technology. In rare cases, the court may release the defendant from participating in trial. The recording of interrogation may be prohibited. Individuals with prohibiting physical or mental impairments can not be summoned and interrogated as a witness.</p>	<p>The court trying a criminal case shall uphold the principles of objectivity and impartiality and shall create necessary conditions for both parties to comprehensively and fully examine all the circumstances of the case.</p>	<p>If the rights of the defendant have been guaranteed, the court has no such obligation. In any case, the jurisdiction to evaluate the need for calling witnesses is reserved to the court.</p>
<p>Australia</p>	<p>Jurisdictions may allow children to provide sworn or unsworn evidence. A child may provide evidence by a recording made by an investigating individual, or may give evidence by closed-circuit television in a remote location. The child may have a support person while testifying. Statutory provisions establish a witness protection program to provide new identities or provide relocation assistance. Victim-witnesses may give evidence remotely, by recording, or courts may use screens to minimise contact. Victims may have a support person. The accused may not personally examine the victim.</p>	<p>Australian courts have an overriding obligation to provide a fair trial for an accused person. The judge may issue certain warnings to the jury, such as to not draw adverse inferences towards the accused because the evidence is presented in a certain way.</p>	<p>Unless specifically provided for, every witness is competent to give evidence. Subject to the prior limitations discussed, witnesses can be compelled to give evidence if they have already made a statement during the investigation.</p>

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Austria	<p>Witnesses are protected under the Criminal Procedure Amendment Act 2016. Special rights of certain witnesses include: right to be heard by a person of the same sex in preliminary hearings; ability to refuse to answer certain questions if answers are not absolutely necessary to the case; the right to be interviewed separately from the other parties in preliminary proceedings and in the main trial; right to be notified if the defendant is released or escaped; right to be informed of all special rights. A witness who fears serious/imminent danger may make an anonymous statement, including changing physical appearance.</p>	<p>The special rights of witnesses affect the rights of the accused only in a subordinate role. In the case of the separated interview, the accused has the possibility of attending the hearing via video to get a personal impression of the victim. It is the prevailing opinion that a conviction should not only be based on an anonymous statement.</p>	<p>If a witness has testified in a separate interview in preliminary proceedings, the witness obtains the right not to testify at trial. Because such an interview is carried out by a judge and all the parties have the right to attend, the rights of the accused are not diminished. The recorded interview from the preliminary proceeding is played at the main trial.</p>
Brazil	<p>As of April 2018, new parameters were established to protect children (under 12) and adolescents (12-18) who are victims/witnesses. Special testimony guidelines include: protection from sight/contact with the accused, testimony taken in a special place, testimony to not be repeated unless justified, presence of a professional who can intervene, secrecy, etc. While no law exists for adult victims, the number of hearings should be reduced as much as possible. Victims have the right not to testify in the presence of the accused. A witness protection program protects witnesses in organized crime cases and includes testimony by videoconference or removal of the defendant.</p>	<p>For adult witnesses needing special protection, the prosecutor and defense attorney can ask questions to the witness even if the accused is not present in the room.</p>	<p>For children and adolescents, special testimony will not be repeated unless justified and victim/legal representative consents. In cases involving adult victim witnesses, if the victim has been heard by the police, his or her appearance before the magistrate shall be required in the course of the proceedings. Adult witnesses in gang/organized violence cases must testify both in the police stage and in the judicial phase.</p>
Bulgaria	<p>Children are interrogated in the presence of a psychologist and potentially parent/guardian. People between 14 and 18 may be interrogated in presence of psychologist if necessary. Children/minors may be interrogated out of the presence of the accused via videoconference. A witness subject to potential retribution may be protected through personal physical protection or by keeping his/her identity secret. A witness can keep a secret identity during interrogation through audiovisual means or by testifying in a separate location. Expert witnesses may be appointed by the court to identify the existence of a witness's specific protection needs.</p>	<p>The use of video or phone conference in interrogations allows all parties to participate in questioning. If a witness with a secret identity is interrogated in a separate courtroom without the presence of the accused or defense counsel, the transcripts of the interrogation are submitted to the accused and the accused is entitled to ask questions in writing which the court is obliged to ask to the witness. A conviction may not be based only on testimony of a witness with a secret identity or on testimony of a witness interrogated solely in pre-trial proceedings without the presence of the accused/counsel.</p>	<p>For children or victims, interviews should be kept to a minimum and only carried out where strictly necessary. Depositions of witnesses may be read during the trial if the accused/counsel agrees or were present at the interrogation. The depositions may also be read without the accused's consent, but this may not form the only basis for a conviction.</p>

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Canada	<p>There are six main accommodations for vulnerable witnesses: exclusion of the public, presence of support persons, testimony from outside the courtroom, accused not to (personally) cross-examine, publication bans and non-disclosure of identity (mandatory for victims of child pornography), and catch-all provisions (to make any other order to protect the security of the witness).</p>	<p>Courts balance the accommodations of special witnesses with the interests of the accused on a case-by-case basis. The right to a fair trial generally includes the right to cross-examine witnesses and to see the witnesses' faces. The Supreme Court of Canada has confirmed that the practice of allowing young complainants to testify in a way that prevents them from seeing the accused does not contravene the accused's rights. The accused is still able to observe the complainant during their testimony and the right to cross-examine the complainant (through counsel) remains intact.</p>	<p>Because of the rule against hearsay, the court is generally obliged to hear from witnesses even if they have already given a statement during the investigation. Video statements of children and witnesses with disabilities may be introduced under specific conditions. The judge may edit or refuse to admit the statement where it contains inadmissible evidence or its probative value is outweighed by its prejudicial effect.</p>
Chile	<p>In Chile there are security and privacy measures and witness protection. For boys and girls, the interview is done by professionals specialized in children, also in the presence of an adult responsible for the child. When children are affected by an investigation, the child is in a separate place from the hearing rooms that allows the child not to be violated by giving testimony. The questions are not made directly to the child by lawyers, but instead through the court. Regarding witnesses of drug trafficking or terrorism crimes, security measures such as identity change and concealment, and giving testimony from another location to protect identity are used.</p>	<p>The defendant or the defendant's attorney and other parties are allowed to have access to witness statements, the identity may be reserved but their testimony may not. In addition, the statements of these special witnesses, either at the investigation stage or at the oral trial stage. In the oral trial stage, it is always possible to question or cross-examine these witnesses who are not allowed to declare in writing, for example.</p>	<p>Yes, if the parties want the testimony of the special witness may be valued and to serve to sustain an accusation or defense the parties may submit it to the Trial. This depends on the defense strategy of the Public Ministry or the defense.</p>
Denmark	<p>Children do not normally give testimony in civil or criminal cases. If a child does give testimony, the child's guardian or given lawyer must give consent and the court must consider the circumstances of the testimony. Children under 15, or adults with mental or emotional issues, only give recorded testimony, which is filmed at special houses and questions are asked by trained police officers. The testimony of endangered witnesses is regulated by rules affording witnesses variations of anonymity. Victims of abuse have the right to testify behind closed doors or without the accused present.</p>	<p>When testimony is given by a child, the prosecutor, defense attorney, and child's legal counsel must be present and all have the right to ask questions through the police officer. Multiple interviews may be necessary. If testimony is given by a special witness in court, the accused may listen from a separate room. During a break after questioning, the defense attorney may discuss with the accused if more questions need to be asked.</p>	<p>Only testimony given before the court may be considered at trial. In rare situations, such as death of the witness, a statement given to a police officer may be read in court. The court must consider the value of this statement, but this statement can never be the only evidence in the case.</p>

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England & Wales	<p>"Vulnerable witnesses" are afforded "special measures" by statute to assist them in giving evidence. Special measures are tailored to each witness and each case. Examples include screens blocking witnesses from the accused, use of video recording of evidence, excluding people from the courtroom, communication aids, intermediaries, etc. Judges may employ additional, non-statutory strategies where needed. Examples include taking breaks in the evidence and ensuring appropriate questions are asked to the witnesses.</p>	<p>The interests of the accused are balanced with the interests of the witness. The accused may not always be permitted to see the witness, however his/her lawyers will see the witness, as will the jury. If any cross examination is limited, the potential effect of that will be explained by the Judge to the jury, so they can consider it when they consider the overall effect of the evidence.</p>	<p>The witness' recorded statement taken during an investigation is evidence in chief. If the prosecution relies on the recorded statement, the defence have the right to ask the witness to attend for cross-examination. In those circumstances, the judge will deploy the special measures previously mentioned. In certain circumstances set by statute, the Court has the discretion to dispense with the attendance of the witness. This is a high standard.</p>
Estonia	<p>Estonian legislature provides certain measures for special witnesses such as: Hearing a witness via a tele-hearing or using a partition to hide the witness, not cross-examining minors under 14 years of age, involvement of a child protection official/psychologist, court examination of a witness rather than examination by the parties, declaring a witness anonymous, and certain protections for victim-witnesses under the Witness Protection Act.</p>	<p>The accused may pose questions to the witness through counsel. Taking into consideration the mental or physical condition and the age of a witness, the court may suspend the questioning by the parties and examine the witness on its own initiative or on the basis of the written questions prepared by the parties to the court proceeding. Further, a decision shall not be based solely or predominantly on the testimony of a person declared anonymous or on evidence provided by a witness that the accused or counsel was unable to question.</p>	<p>The court has an obligation to hear from witnesses who have already given a statement in the investigation. There are some exceptions such as: if the testimony was given immediately after the criminal offense and the witnesses' memory of the offense was better at the time of the original testimony; and video recorded testimony of minors when counsel had the opportunity to question the witness in pretrial proceedings in specific circumstances.</p>
Finland	<p>Children under 15 years of age shall not be heard in criminal court proceedings unless the testimony is essential. Some special witnesses may be heard in a court without the presence of certain people or by video conference. Usually, children under 15 are heard in pre-trial investigations by video and are represented by guardians. Witnesses who need protection may be examined behind a screen or by telephone/video and may remain anonymous.</p>	<p>All parties always have the right and opportunity to ask questions from all witnesses. If the child is heard at the court the judge usually questions the child and the parties have the opportunity to ask questions through the court or, if the court deems this appropriate, directly from the child. If the child is heard only in pre-trial investigations, the other parties shall also have the opportunity to ask questions from the child, but not directly. Orders of anonymous testimony are subject to appeal.</p>	<p>If a child under 15 years of age has already given a statement during the pre-trial investigations, the court has no obligation to hear the child in the court. In certain situations described by the law, some victims of abuse may be heard by a statement recorded in pre-trial investigations. Otherwise, the court has to hear from witnesses even if they have already given a statement during the pre-trial investigation.</p>

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Georgia	<p>Witnesses may request special measures of protection in criminal proceedings if proceedings will endanger them or their relatives or if they depend on the accused. Protection includes keeping omitting identifying information of the witness (name, address, etc.), changing identity, personal protection, changing residence, or relocating. Children are subject to the Juvenile Justice Code. Procedural actions with children must be performed by persons specialised in juvenile justice. A minor may testify with altered voice/image, remotely, behind a screen, with partial or full closure of a hearing, with temporary removal of accused from courtroom, etc.</p>	<p>If a minor testifies in a court hearing by video recording, there must be participation of the defendant's lawyer. If the accused is temporarily removed from the courtroom during testimony of a minor witness, participation of the lawyer of the defendant in the court hearing is compulsory.</p>	<p>No response.</p>
Germany	<p>Any witness may retain legal counsel, may testify without the presence of the defendant and/or public, or be questioned through live audiovisual technology in a separate location. For minor victims and witnesses, special juvenile courts exist where judges and prosecutors are specially trained. Only presiding judges can question minors, which may occur in a recorded hearing. Endangered witnesses may be included in the witness protection act and keep personal information confidential. Victims of abuse are entitled to legal support, a support person, and do not have to confront the accused. Those with mental/emotional issues have state paid legal counsel and support.</p>	<p>If the accused is excluded during witness testimony, the judge must inform him of the contents of the proceeding. The accused may pose questions and the witness may be called in (and accused excluded) to answer those questions. Previously recorded examinations may only be introduced if the defendant and counsel had the opportunity to participate. Additional questioning in trial may be possible. Confrontation with a witness cannot be avoided if it is the only way to ensure a fair trial.</p>	<p>The general rule is that all evidence has to be reproduced at trial but some exceptions exist. A written statement of a witness can be introduced at trial without a hearing if the defendant and counsel agree. If there is a previously recorded statement made before a judge in a case with serious offenses or with a minor witness, the recording may be presented in place of live testimony if the defendant and defense counsel were able to participate in the examination.</p>
Greece	<p>Children under 18 who are victims of sexual abuse are interviewed at the pre-trial stage by a child psychologist/psychiatrist who determines capacity/mental state. Then, the child is interviewed in a specially designed area by the psychologist/psychiatrist and the statement is put in writing. Certain victims of human trafficking and exploitation are interviewed in a similar manner. Witnesses who need protection from retribution may be protected by specially trained police, may change appearance/traits, change identities, or remain anonymous. Anonymous testimony is recorded but alone can not lead to a conviction.</p>	<p>The accused may challenge the written testimony of a minor and/or the content of the child psychiatrist's report. The accused may also request the video recording of the child to examine the way the child was interviewed. The defendant may ask the court for a further examination of the witness and request certain questions be asked. An anonymous witness' testimony may not lead to a conviction by itself.</p>	<p>In cases of common and sexual assault of a minor and in human trafficking and exploitation cases, victims are only heard in the pre-trial stage. The victim may be interviewed again, also privately by a psychiatrist, by questions prepared by the court on request of the defendant. Witnesses in cases of terrorism, organized crime, and corruption, may be summoned to the court to testify on the same details given in the pre-trial stage.</p>

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Hungary	<p>A new criminal procedural law took effect in July 2018 regulating special witnesses. Children under 15 should only be interrogated in exceptional cases and in the presence of a parent/legal representative. Children can also be interrogated in a recorded hearing in a separate room. A witness protection law provides extensive protection to endangered witnesses. Victims of abuse may testify over a recorded hearing and an expert/psychologist takes part. For mentally handicapped witnesses, an expert and confidant should take part if an interrogation is possible.</p>	<p>For child witnesses, the prosecutor and suspected person (defense counsel) must be able to ask questions and questions must be accepted by the investigating authority or judge.</p>	<p>In principle everybody is obliged to give evidence in investigations and court hearings.</p>
Israel	<p>Children under 14 yrs. who are required to testify in court regarding a sex/violence offense must be interrogated by a youth investigator and interview recorded. If testifying in court would cause psychological damage, the investigator may present child's testimony and estimate the child's reliability. A minor victim will be heard in court within 90 days from indictment date. Spectators and accused may be excluded from the courtroom. Witness protection provided in organized crime cases. May give testimony privately, and relocate. Cross-exam of abuse victims and disabled persons restricted by judge and may be given veiled, in modified setting or away from accused.</p>	<p>Balancing the interests of the defendant and those of the special witnesses and ensuring a fair trial for all is accomplished, among other, through (1) The use of prerecorded testimony of child witness intended to raise the credibility of child's testimony by enabling judge to assess his or her quality as witness; (2) Enabling both defense and prosecution, as well as the judge to request that investigator re-examine the child and specify additional questions; (3) Educating and training judges and lawyers on due process; (4) Requiring additional corroborating evidence to ensure that the defendant will not be found guilty based on a single testimony of a special witness.</p>	<p>The basic rule is that a cross examination is one of the essential tools that a defendant has. A basic right that belongs to a defendant in the adversarial legal system. As described above, there are special unusual legal based circumstances in which the judge will rely upon the testimony of the special youth investigator (instead of the child under 14 years old testimony) or on an opinion of an expert regarding a witness with special mental/emotional disabilities that cannot testify.</p>
Japan	<p>The Code of Criminal Procedure does not classify these types of witnesses, but courts may use various measures to protect witnesses, such as: having an attendant accompany a witness during testimony, blocking sight between the spectators, accused, and witnesses, audio-visual testimony, and not disclosing the identity of witnesses.</p>	<p>Whether the measures previously described are taken is decided after hearing the opinions of the public prosecutor and the accused and his/her counsel and in consideration of whether implementing measures is likely to create substantial disadvantages regarding the defense of the accused. The public prosecutor and accused may file objections.</p>	<p>There is no obligation to hear a statement of a witness at the court as described in the questionnaire.</p>

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Latvia	<p>Minor children and individuals with mental or health impairments are represented by a representative. All the rights of the victim belong completely to the representative except the right by the minor to provide testimony and express his or her own views. Interrogation of a minor may be recorded and cannot exceed 6 hours in a 24-hour period. A psychologist may be present. Pseudonyms or audiovisual measures can be provided to protect the identity of a witness. The anonymous witness has the right to not answer questions if the answers would reveal his or her identity.</p>	No response.	<p>The court has no obligation to hear from special witnesses if they have given a statement during the investigation. In certain circumstances, the court may ask additional questions to the witness, but only in conformity with the special conditions of interrogations.</p>
Liberia	<p>Witnesses are presumed competent unless proven by examination before the court to be incompetent. Children under 12 yrs of age must be examined and determined to understand the duty of a witness to tell the truth before being put under oath. There is a Criminal Court "E" which protects children victimized by sexual offences and protects the identity and location of victims. Parents are permitted to corroborate or clarify testimony of child sex crime victims. Witnesses with mental illness are provided medical attention when their testimony is material to the case. Liberia is seeking to implement a witness protection program.</p>	<p>The accused has a right to confront witnesses and to have compulsory process for obtaining witnesses in his favor. An accused may refuse to incriminate himself, but has no privilege to refuse examination to determine his identity, including the giving of blood and urine specimens. The prosecuting attorney must file a witness list.</p>	No response.
Liechtenstein	<p>Examination of a child witness, victim or not, must take place in the presence of a confidant of the child's choosing. A contradictory hearing can be held outside of court where accused and prosecutor observe the witness and investigative judge or police from another room by video transmission. Direct confrontation is not permitted. The procedure is used if the age, or the mental or physical state of the witness requires it. When a young child, examination may be by a psychologist or social worker. Where witness at risk of severe danger, can refuse to answer specific questions. Mentally incapacitate witnesses not obliged to give testimony.</p>	<p>Witnesses are obliged to give evidence in criminal proceedings and accused has a right to see the witness testify, even if by video transmission.</p>	<p>Witnesses are obliged to give evidence in court hearings even if evidence was given during investigation. In an investigation, generally only the witness and investigative judge or police are present.</p>

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Luxembourg	<p>Statements under oath cannot be excluded from court proceedings. If a victim requests financial compensation from accused, the victim will then be a party and cannot be heard as a witness. A child under the age of 15 yrs cannot be heard as a witness under oath, meaning such child can be heard in court but only for information without taking the oath to be truthful. For child under 15 yrs, judge will usually rely upon child's statement to police, rather than being heard in court. An audio-visual statement can be shown in court. No special protections for witnesses who are victims of abuse, at risk, etc. Proceedings can be closed by judge if needed.</p>	<p>The accused and civil parties have the right to attend every witness hearing without restriction.</p>	<p>Judge has no obligation to hear again the witnesses in court that have already given statements to police or investigating judge. Generally, the "main" witnesses are heard in court under oath. Written statements given to an investigating judge or the police can be read in court, or audio-visual or sound recordings of the statements can be played.</p>
Morocco	<p>Court can separate witnesses and accused. The court examines the accused under oath, and hears the witnesses separately after interrogation of the accused. The court determines the identity of the witness and any relationship to the accused or the dispute, and determines whether the witness is incapacitated. Accommodations are made for persons with disabilities in order to assist them in testifying. Victims and witnesses in danger are entitled to special protective measures such as privately testifying, having identity concealed, make contact with police available, provide supervision and bodily protection and possibly relocation.</p>	<p>Witnesses are sworn. A witness' lack of capacity or exemption from oath does not nullify testimony unless there is an objection.</p>	<p>Even if testimony has been given in the investigation, the court is obliged to hear witnesses under oath and have their identity and any relationship to the accused or the dispute established, and a determination whether they have the capacity to testify.</p>
Netherlands	<p>In the Dutch system in general, witnesses are not heard in court but evidence is based on written declarations of the witnesses before a police officer or investigation judge. In serious cases the statements must be recorded. Special procedures exist for witnesses who are threatened but are seldom used. Children of any age can be a witness. Vulnerable witnesses can be heard unless the health or well-being of the witness would be jeopardized, but this rarely occurs. A judge can use different approaches when hearing a vulnerable witness, like removing the accused or public. Investigation judges can use even more approaches, like conducting the hearing at a separate location.</p>	<p>The Defendant or his lawyer may attend the witness hearing and/or is given the opportunity to present questions. When the witness is heard in the absence of the accused, the judge will afterwards inform him about what has been declared and the accused may make remarks. The defendant may ask to hear the witness again. Much depends on the weight of the declaration. Is its content sole and decisive for the substantiation of the accusation?</p>	<p>If the witness testifies differently before a judge than before the police, the witness must be heard again. The judge can deny a witness if compensative measures are possible, like hearing other witnesses about the same issue, or ordering an expert report about the reliability and quality of the testimony, or give the opportunity to listen to the audio version of the testimony, or order a version of the testimony ad verbatim.</p>

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Paraguay	<p>The laws protect special witnesses. The Center for Victim Support (CAV) provides support for victims in court - primary orientation and support in local process, psychological support, and evaluations. The CAV has special interview rooms where special witnesses can be interviewed by a specialist, not in front of a jury. In the majority of trials in Paraguay, the witness faces away from the parties, is seen by the judge but not by the accused. The WBB witness protection program requires that a fiscal agent determine whether a witness in danger is at ordinary risk or at high risk, and there are appropriate security measures available.</p>	<p>The court has the duty to search for the material truth. The court is not just a referee in the process. The usual hierarchy of proof is testimonial, material, expert, judicial inspection, and documents.</p>	<p>Where an interview is conducted under protections in CAV, there is no need for special witnesses to testify later.</p>
Poland	<p>The main rule in this respect is to save every vulnerable witness or victim from repetitive hearings and personal contact with the wrongdoer which could cause re-victimization. Children, victims of sexual abuse, and victims of domestic violence are heard only once in a preliminary proceeding. A psychologist must be present and it takes place in a specially arranged room. This session is recorded and played during court hearings. Witnesses endangered by potential retribution may testify by videoconference in a location unknown to the parties. The witness' voice or appearance may be changed.</p>	<p>The interests of the defendant are protected by a regulation that the hearings of special witnesses taken during pretrial proceedings are conducted by a judge with the participation of the defendant's lawyer and psychologist.</p>	<p>Judges may rehear witnesses during court proceedings on the condition that the testimony is relevant to the resolution of the case.</p>
Portugal	<p>Children under 14 may testify without taking an oath so they may not be criminally charged for lying to the Court. A few days before the trial, children are escorted by a family member or caretaker to visit the courtroom and meet the judges and lawyers. People with mental health issues are heard in the presence of a psychologist/psychiatrist/family member. Witness Protection laws allow witnesses to keep their identities secret and allow them to testify through a video conference system with a distorted voice from an unknown location. Vulnerable witnesses can testify at trial in the absence of the accused.</p>	<p>The accused is at all time presumed innocent. If an undisclosed witness testifies in a secret location by video conference, a second judge must be present in the undisclosed location to ensure the testimony is from the protected witness. When children testify in police investigations, the defense attorney, prosecutor, and judge of inquiry are present to oversee the statement collection. When vulnerable witnesses testify without the presence of the accused, when the accused returns a summary of the testimony is given to the accused.</p>	<p>There is no duty to listen to the testimony in person of children or vulnerable witnesses if they made statements during the investigation. If the judge determines that the testimony given in the investigation is deficient, the judge can decide whether to hear the witness again.</p>

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Republic of China (Taiwan)	<p>Witnesses under 16 years old or with mental disabilities are not required to sign affidavits to tell the truth, which are otherwise required, and will be accompanied by a specialist (social worker, psychiatrist, etc.). The Domestic Violence Act stipulates special procedures for witnesses, such as interrogation outside of the court. The victim may request the presence of a family member, social worker, psychiatrist, etc. who may also state their opinion. The Witness Protection Act protects witnesses in criminal or gangster cases by anonymity and/or changing voice/appearance.</p>	<p>Witnesses shall be ordered to make an affidavit to tell the truth unless under the age of sixteen or unable, due to mental disability, to understand the oath. If a witness or expert witness fails to sign an affidavit, his testimony or expert opinion will not be admitted into evidence. Testimony is in court subject to confrontation and examination.</p>	<p>For the purpose of diminishing victim's traumas, minimize the restatement of witness is required under regulations regarding sexual abuse victim's restatement..</p>
Serbia	<p>An "especially vulnerable witness" may be examined by the presiding authority, may be in another location by electronic transmission, not confronted by defendant. "Protected witness" identity kept confidential and special protections for physical safety such as monitoring defendant with ankle bracelet. Due to family culture, often abuse not reported, so there are safe houses and shelters for care. If child questioned in preliminary proceeding, parent must be present and psychologist determine child's capacity, and exam in neutral atmosphere. Defendant may be excluded if presence would affect child.</p>	<p>Significant others and family members may decline to testify against accused under confidentiality privilege. Protection of family unit is strong in Serbia, and victims of domestic violence may refuse to testify, not wanting to disrupt family unit. Witness testimony must be given under oath. Defendants who give false testimony cannot be punished for it, unlike in other criminal systems.</p>	<p>If the prosecutor, defence counsel, and defendant agree, a child witness' statement presented during investigation can be read as evidence later during the criminal proceeding. The same is true for adult sexual assault victims who, if possible, should only have to testify once.</p>
Spain	<p>To protect the privacy of the victim or for security, the court can have trial sessions closed. The court may keep the identity of the victim and victim's family confidential and any identifying data sealed. The court may constrain question to those relevant to the criminal offense only. The court can order video conference proceedings to prevent harm to victims or for security of witnesses. In the case of death or disappearance of a victim, criminal action may be brought by spouse or family. For witnesses at risk, security precautions such as guards and transportation may be provided during criminal process and relocation afterwards, if needed.</p>	<p>The prosecutor, persons injured by crime, the accused, the private accuser, and civil parties may not be excluded. The accused must be permitted to view and hear evidence against him, even if by video conference or if the identity of witnesses is obscured.</p>	<p>When it is determined that there is a well-founded and explicit risk to the mental integrity of minors to appear at trial, a statement taken during the investigative phase, with attention to the rights of the defendant, can be used to avoid revictimizing the child by requiring testimony at trial.</p>

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<p>South Africa</p>	<p>Proceedings may be closed when there is a likelihood of harm to person testifying, where accused is charged with a sexual offence, extortion, or intimidation. The court may seal the record and close proceedings. Court may use closed circuit TV, generally for child complainants under 14 yrs. Insanity nullifies testimony. Determination must be made whether drugs or other intoxication renders person deprived of proper reason. Sign language and non-verbal communication can be used for the disabled or children. The court may control the length or the line of examination to protect the witness.</p>	<p>Generally, criminal proceedings take place in the presence of the accused and in open court. If the witness testifies by closed circuit television, the accused and prosecutor have the right to question the witness and observe the reaction.</p>	<p>All witnesses are presumed competent and can be compelled to testify unless otherwise precluded by law.</p>
<p>Sweden</p>	<p>In general, victims of crime are considered parties in the criminal case as vast majority of victims claim compensation from the person accused of crime and therefore are not heard as witnesses in the court proceeding. The court may deny children under 15 from being witnesses or may use recorded video testimony from a pre-trial investigation. The court may exempt individuals from the courtroom, including the accused, for witnesses who need protection. In this case, the accused would follow the witness hearing from a separate room.</p>	<p>The Court does take into account the accused's right to a fair trial, which is stated in article 6 in the European Convention on Human Rights, when dealing with the aforementioned matters. Furthermore, the Court asks all parties to declare their statements before the decisions regarding the special witnesses.</p>	<p>One of the fundamental principles in the Swedish procedural law is to hear parties and witnesses in front of the Court (the principle of oral proceedings). Statements given during the investigation may only be used as evidence when certain circumstances occur, e.g. if the person in question cannot de facto be heard or if hearing the person would cause significant costs and inconveniences. However, the exceptions are applied restrictively.</p>
<p>Switzerland</p>	<p>Victims of sexual offenses have the right to be questioned by a person of the same sex and a confrontation hearing is only ordered when essential. For child victims, a confrontation hearing will not be ordered unless essential and/or the child requests one. The child cannot be interviewed more than twice, examination hearings should be conducted in the presence of a specialist, and special observations of questioner/specialist are recorded in a report. For persons with mental disorders, examination hearings are limited to essential matters and conducted by a specialist. Undercover investigators may withhold identity. Witness protection is used very rarely.</p>	<p>Victims and children should not be confronted by the accused unless it is essential to guarantee the accused's right to be heard. The court balances the interests of the victim and accused in each case. Indirect confrontation may be used through audio-visual transmission to avoid direct confrontation without violating the accused's rights.</p>	<p>Generally, a statement given by a witness during an investigation is valid provided the accused's procedural rights were respected (right to participate in hearing and ask questions). If the statement given in the investigation is necessary to evaluate the evidence, such as when the statement of the witness is the only evidence, the court shall hear the witness again.</p>

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<p>United States</p>	<p>Victims of sexual abuse/violence are afforded protections by law. Witnesses may be permitted to testify by closed circuit TV, be identified anonymously if at risk, courtroom may be closed during proceedings if in the best interest of the child. Trial may be expedited to reduce child's exposure. Attendants stay close to child victims, social services are provided, similar assistance provided to victims of human trafficking, and witnesses at physical risk may receive relocation assistance. Victims have a recognized role in court proceedings, may attend, receive restitution, and notice of defendant's release. Sex offender registry maintained.</p>	<p>The constitutional right to jury trial, confrontation of one's accusers, and the presumption of innocence are paramount and take precedence over mechanisms of protection for victims. Examination of children is sometimes by CCTV, after a determination that a child is unable to testify in open court. It must be determined that the child will suffer emotional trauma, not simply fear of the process. Even witnesses with mental infirmities are required to testify, if it can be accomplished with assistance.</p>	<p>A victim is required to testify in order for the defendant to have his constitutional right of confrontation upheld. While rare, a videotaped deposition of the witness who has been subject to cross-examination by the defense, may be used in place of live testimony when it is determined by the parties and judge that it is in the best interest of the witness.</p>
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