

## Public

### ANNEX 1

#### **Unified Protocol on the practices used to prepare and familiarise witnesses for giving testimony at trial in the case of the *Prosecutor v. Charles Blé Goudé*.**

1. The Victims and Witnesses Unit (the “VWU”) will facilitate the testimony of witnesses in the best possible circumstances. For this purpose, the VWU intends to follow the protocol on the practices used to prepare and familiarise witnesses to give testimony before the Court as outlined below.
2. This protocol reflects the jurisprudence on familiarisation and its related procedures and also takes into account the practices and experiences concerning witnesses appearing before the Court. The protocol aims to outline the procedures that serve the best interests of witnesses and provide for sustainable working solutions for all entities involved.
3. Unless ordered otherwise, the VWU will apply the protocol to all witnesses and victims called to testify before the Court in the case of the *Prosecutor v. Charles Blé Goudé*. However, the protocol could be adjusted according to the needs of witnesses who might not require such detailed attention and explanation. Adjustments will also be warranted if detained witnesses are called to testify.

#### **1. Preparation Phase**

4. The preparation phase commences when the entity calling introduces the witness to the VWU prior to the scheduled travel of the witness to the location of testimony.

5. This phase takes place in the field, whereby the entity calling the witness facilitates an introductory meeting between the VWU and the witness, informing the witness that the VWU will henceforth be responsible for the necessary arrangements to facilitate the witness' travel for the purpose of giving testimony.
6. During this period, the witness is in the care of the VWU in terms of the witness' safety, welfare, logistics and allowances, as specified by the Regulations of the Registry. This entails covering all costs related to the witness' travel, full board and accommodation, incidental and attendance allowances. In some extraordinary cases, the Registrar may provide for an allowance for lost earnings. Should this be the case, the Registrar will inform the relevant party of the granting of an allowance for loss of earnings.<sup>1</sup>
7. The preparation period may be divided into two stages. During the first stage, the witness may be required to travel within the country of residence to arrange for his/her passport, which will be facilitated by the VWU. This process may be lengthy in some areas where the Court operates and may require the witness to travel well in advance of his/her travel to the location of testimony. Upon conclusion of this first stage, the VWU arranges for the safe return of the witness to his/her residence and informs the entity calling the witness of the above. At this point in time, the witness is again in the care of the calling entity.
8. During the second stage, the witness will be required to travel to the location of testimony. The witness is in the care of the VWU from the moment he or she leaves his/her residence, and while he or she provides testimony before the Court, undergoes the "cooling down" period where necessary and returns safely to his/her residence. Henceforth, the entity calling the witness bears the responsibility to take care of the witness as outlined below.

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<sup>1</sup> ICC-01/05-01/08-1016, para.11.

9. The VWU will arrange for the witnesses to be present at the location of testimony. Careful planning is required to ensure sufficient time for all the necessary logistical and operational arrangements and to allow proceedings to run smoothly. The VWU relies on the entity calling the witness to communicate the necessary information in a timely manner with the “Request for Provision of VWU Services for Victims/Witnesses Appearing before the Court and their Accompanying Persons” (the “Witness Information Form”/“WIF”).
10. The VWU will only be able to arrange the witness’ availability for testimony as long as the individual consents to appear as a witness. Should problems occur in that respect, the VWU will contact the entity calling the witness without delay.
11. Support services will commence in the field. The witnesses will be shown the film “Being a witness at the ICC”. Additionally, the brochures “Travel to The Hague” and “Being a Witness at the International Criminal Court in The Hague” will be made available to the witnesses. The travel arrangements will be explained. A basic medical check-up will be conducted to ensure that the witness is fit to travel. If, based on the VWU’s assessment, a witness requires an accompanying person to travel, in accordance with Regulation 91 of the Regulations of the Registry, such arrangements will be made. Furthermore, the witness special needs will be provided for, including, for example, providing appropriate clothing. When witnesses are to travel with small children, appropriate arrangements will be made to accommodate their specific needs.

### **1.1 Scheduling of witnesses**

12. When an entity intends to call a witness to testify at trial, it is required to submit the WIF to the VWU. In this request form, the parties are asked, *inter alia*, to identify the potential vulnerability of a witness and any need for

protective measures in relation to his/her testimony and logistical arrangements. The entity calling the witness is invited to consult with the VWU about specific requirements that a witness may have.

13. In order to facilitate the logistical arrangements and to ensure the timely appearance of a witness, the WIF needs to<sup>2</sup> be submitted to the VWU not less than 35 days before the witness is scheduled to arrive at the location of testimony.
14. Notwithstanding the prerogative of the entity calling the witness to determine both the order and the scheduling of witnesses, the VWU strongly recommends avoiding unnecessary waiting times or last minute changes to the schedule of witness appearance for the benefit of the witness well-being. The VWU emphasizes the fact that the practice of standby witnesses is not only extremely resource-intensive but can also significantly impact on a witness' well-being due to the unpredictable waiting times and the constant pressure of being prepared to give testimony.
15. For this reason, the VWU strongly recommends to have one stand-by witness only ready to testify by the time the preceding witness is scheduled to finish giving testimony.
16. In addition, the VWU strongly recommends avoiding a system whereby witnesses are required to be on standby at the location of testimony during the testimony of the preceding witness. Instead, the VWU recommends that those witnesses who have already undergone the familiarisation process and who are fully prepared for their testimony be permitted to stay in their accommodation or engage in other social activities while they wait to give their testimony.

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<sup>2</sup> ICC-01/05-01/08-1016, para.13.

17. For protection reasons, it will be important to limit the time spent away from the witness' location of residence to the extent possible. Moreover, traveling and awaiting scheduled testimony can be a very stressful experience for a witness. Keeping the psychological and physical well-being of witnesses in mind and demonstrating respect for their efforts to testify before the Court, the VWU stresses the need for detailed planning and careful scheduling of the witnesses' appearances before the Court.
18. Subject to approval by the Chamber, it is possible for victims to testify. In this case, the application to do so is made by the Legal Representative of the victim. Should the application be granted, the Legal Representative of the victim must contact the VWU in order to make all necessary arrangements and discuss any possible security concerns.<sup>3</sup>

## **1.2 Early needs and vulnerability assessment**

19. The parties are under an obligation to identify, protect and respect the well-being and dignity of witnesses.<sup>4</sup> Parties should, therefore, alert the VWU as early as practicable if they intend to call a vulnerable witness<sup>5</sup> or if they identify the need for procedural protective and/or special measures. The same applies if the entity calling the witness envisages the need for a witness to be accompanied by a Support Assistant, pursuant to Regulation 91 of the Regulations of the Registry. The parties are invited to consult with the VWU on this matter to allow for appropriate preparations for the testimony of the

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<sup>3</sup> ICC-01/04-01/07-1665-Corr, para. 29.

<sup>4</sup> ICC-01/04-01/06-1140, para. 36. *See* also article 68(1) of the Rome Statute.

<sup>5</sup> For the purposes of this protocol witnesses are considered to be vulnerable if they face an increased risk to suffer psychological harm through the process of testifying, and/or to experience psychosocial or physical difficulties which affect their ability to testify. The vulnerability of a witness can be determined by different factors: factors related to the person: age (children or elderly), personality, disability (including cognitive impairments), mental illness or psychosocial problems (such as trauma-related problems and/or lack of social support); factors related to the nature of the crime: in particular victims of sexual or gender-based violence, children that are victims of violence, and victims of torture or other crimes involving excessive violence; factors related to particular circumstances, such as significantly increased stress or anxiety due to relocation/resettlement or fear of retaliation, adaptation difficulties related to cultural differences or other factors.

witness. The entity calling the witness should make use of the WIF to indicate that assistance is needed for the preparation of the witness for giving testimony and to share relevant information about the vulnerable witness.

20. Based on the information provided by the entity calling the witness or where the VWU identifies the vulnerability of a witness, appropriate actions to support and/or protect witnesses will be assessed on a case-by-case basis. Following the preparatory assessment, the VWU, in consultation with the entity calling the witness, determines appropriate measures to prepare the vulnerable witness for trial.
21. The VWU will also raise with the Trial Chamber, at an early stage, any specific concerns regarding the integrity and well-being of a witness, especially in relation to those who may be traumatised or vulnerable.<sup>6</sup>
22. If applicable at this stage, the entity calling the witness should inform the VWU about protective measures granted by the Chamber pursuant to rules 87 and 88 of the Rules of Procedure and Evidence.<sup>7</sup>

### **1.3 Travel to the location of testimony**

23. Upon receipt of the WIF from the entity calling the witness, the VWU will make travel arrangements for the witness. These arrangements will include, but are not limited to, making local and international travel arrangements, organising passports, visas, and accommodation, and providing travel escorts when necessary. The VWU will take into consideration the particular needs of the respective witness when providing for the different logistical and operational arrangements.
24. Wherever possible<sup>8</sup>, the VWU will arrange for witnesses to travel jointly to the seat of the Court. This practice is beneficial for the well-being of the witnesses.

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<sup>6</sup> ICC-01/04-01/06-1140, para. 36.

<sup>7</sup> This is of particular importance as the VWU support staff will explain the practical implications of such measures to the witnesses in the course of the court room familiarisation.

Travelling to a location entirely different from the usual surroundings, in addition to any potential anxiety related to the forthcoming testimony, can lead to a significant increase of stress. Being isolated, and only being in contact with staff members of the Court, can increase a witness' stress level unnecessarily. Furthermore, it allows the VWU to manage the logistical challenges imposed by escorting witnesses to the Court.<sup>9</sup>

25. All witnesses travelling together will be reminded with appropriate regularity that they must not discuss their impending evidence with each other or anyone else.<sup>10</sup> All witnesses are also reminded of their role in preserving their evidence and in avoiding any unnecessary exposure.

## **2. Familiarisation**

### **2.1 At the location of testimony**

#### **2.1.1 Commencement of the familiarisation process**

26. Considering that once the process of witness familiarisation has commenced, any further meeting between the entity calling the witness and witnesses outside of Court is prohibited<sup>11</sup>, it is essential that the commencement of the familiarisation process can be clearly delineated.

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<sup>8</sup> As a general rule, this will not apply to witness who participate in the Court's protection programme and who do not live together, unless the Protection Officer takes a decision to the contrary.

<sup>9</sup> Taking into account the upcoming simultaneous trials, the VWU will have to reduce to the extent possible the number of witnesses travelling and accommodated separately. Therefore, the VWU recommends that witnesses travel and be accommodated jointly. If the party requests the VWU to implement separate travel and accommodation, the VWU will carefully examine if "finance, logistics, available accommodation and protective measures along with the well-being of the witness may collectively or individually tend towards a conclusion in favor of keeping them together as regards travel or accommodation, or both", the Unit will inform the calling party accordingly and, in case of dispute, will seek the Chamber's authorization for the proposed procedure. *See* "Decision regarding the Protocol on the practices to be used to prepare witnesses", ICC-01/04-01/06-1351, para.31.

<sup>10</sup> ICC-01/04-01/06-1351, para.32: "The critical requirement is that if witnesses are housed or travel together, regardless of the extent to which their accounts overlap, they should be warned with appropriate regularity that they must not discuss their impending evidence with each other (or anyone else)".

<sup>11</sup> ICC-01/04-01/06-1049, para. 56.

27. The starting point of the familiarisation process is when the witness arrives in the Netherlands<sup>12</sup>, or at the location of testimony where different from the seat of the Court, prior to giving evidence.
28. The VWU informs the entity calling the witness when the witness is scheduled to arrive and if any major delays or disruptions occur.
29. Consequently, once the familiarisation process has commenced, the entity calling the witness and the witness will meet on the premises of the Court only for the purposes of acquainting themselves<sup>13</sup> (“courtesy meeting”) and attending the courtroom familiarisation<sup>14</sup>. In particular, the VWU notes that any representative of the parties and participants are excluded from the process when the witness rereads his/her statements.<sup>15</sup>
30. The VWU will not facilitate any further contact between the witness and the entity calling the witness until the witness has finished testimony.<sup>16</sup> Should urgent matters arise that may have an impact on the witness’ testimony, the VWU will draw the matter to the attention of the entity calling the witness or to the attention of the Chamber, as appropriate.
31. The VWU notes that this limitation of contact does not apply to expert witnesses and that discussion between the parties and their experts may take place at any stage prior to calling the witness.<sup>17</sup>
32. In addition, the VWU notes that the limitation of contact does not apply to the legal representatives of witnesses.<sup>18</sup> The VWU notes that legal representatives

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<sup>12</sup> In cases where testimony will be given by video-link in accordance with Regulation 45 of the Regulations of the Registry, the familiarisation process starts at the moment the witness arrives at the location of the video-link.

<sup>13</sup> ICC-01/04-01/06-1049, para. 53(f).

<sup>14</sup> ICC-01/04-01/06-1351, para. 39.

<sup>15</sup> ICC-01-04-01-06-T-104-ENG, page 27, lines 9 to 10.

<sup>16</sup> ICC-01/04-01/06-1049, para. 56.

<sup>17</sup> ICC-01-04-01-06-T-104-ENG, page 29, lines 10 to 11.

should refrain from holding substantive discussions with witnesses about the topics that are to be dealt with in Court during their evidence or the exhibits which may be produced.<sup>19</sup> Instead, discussion with a witness about his/her testimony should only occur after the close of the evidence in the case.<sup>20</sup>

33. During witnesses' stay at the location of testimony, legal representatives of witnesses with dual status or counsel of witnesses are entitled to speak to their clients.<sup>21</sup> As the locations where witnesses are accommodated must remain confidential, contact with witnesses during their stay at the location of testimony will only be established through and facilitated by the VWU only.
34. All meetings with witnesses, excluding expert witnesses, and the entity calling the witness or legal representatives will be conducted within the premises of the VWU.<sup>22</sup>

### **2.1.2 Separation of witnesses at the accommodation**

35. Wherever possible, the VWU will arrange for witnesses to be accommodated jointly at the location of testimony. This practice benefits the well-being of the witnesses. Sharing the same accommodation will allow witnesses to stay together with individuals from the same cultural background and thus allow them to communicate in their own language about the more general experiences of travelling abroad. This interaction can foster moral support and prevent feelings of isolation and boredom. In addition, this joint accommodation also allows for joint social activities programme. Furthermore, it allows the VWU to more efficiently handle logistical challenges imposed by providing 24/7 support services.

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<sup>18</sup> *Ibid*, page 25, lines 18 to 21: "While the legal representatives of dual-status witnesses are of course entitled to speak with their clients, they must not infringe the Chamber's decision on "Witness Proofing" (see decision of the 30th of 21 November, 2007, document 1049 [ICC-01/04-01/06-1049])".

<sup>19</sup> *Ibid*, page 25, line 21 to line 24.

<sup>20</sup> *Ibid*, page 26, line 7 to line 8.

<sup>21</sup> ICC-01/04-01/06-1379, para. 61; see also ICC-01-04-01-06-T-104-ENG, page 25, lines 18 to 19.

<sup>22</sup> ICC-01/05-01/08-1016, para.16.

36. The VWU will, once again, remind witnesses with appropriate regularity that they must not discuss their impending evidence with each other or anyone else and will remind witnesses of their role in preserving their evidence and in avoiding any unnecessary exposure<sup>23</sup>.
37. In cases in which the accounts of witnesses overlap or there is a risk of evidence being tainted by contact during and after testimony, the VWU, in consultation with the party calling the witness shall, to the extent possible, take the following measures: (i) once a witness commences giving evidence, he or she should be separated from other witnesses; (ii), the VWU shall arrange supervised social contact between the witness who has testified and the remaining witnesses at least for a few hours each day; (iii) the VWU shall warn the witnesses that they should not discuss their evidence with each other; (iv) the VWU shall, as far as possible, jointly accommodate the witnesses who have finished giving evidence; and, (v) in the event that the witnesses breach these conditions imposed by the Chamber, the matter shall be brought to the Chamber's attention for review.<sup>24</sup>
38. Expert witnesses may also be jointly accommodated and will be reminded not to discuss the evidence they have given or will give.<sup>25</sup>

### **2.1.3 Support Services**

39. The VWU arranges for accommodation for the witness at the location of testimony. Furthermore, the VWU provides local transport between the accommodation and the Court or the site of video link testimony, where applicable. The witnesses are received by a Support Assistant of the VWU at the site of the accommodation. The Support Assistant provides a welcome briefing and orientation of the accommodation and its facilities, explaining to

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<sup>23</sup> The principles applicable to separate travel shall also apply to the determination of the need for separate accommodations (*see* Chapter 1.3. above in particular footnote 7).

<sup>24</sup> ICC-01/05-01/08-1016, para.17.

<sup>25</sup> ICC-01/04-01/06-T-172-ENG, page 96, lines 20 to 25.

the witness, *inter alia*, the support services available, their day-to-day schedule to the extent known, and the allowances the witnesses receive and the expenses covered by the Court.

40. The VWU will have support services available 24 hours a day, seven days a week to witnesses during their stay at the location of testimony. During this time the VWU attends to the psycho-social and physical well-being and the practical needs of witnesses including any special needs vulnerable witnesses may have.
41. Those support services will include, but are not limited to, a welcome briefing, courtroom familiarisation, de-briefing after testimony and conducting an activity programme. The support staff will also attend to practical and medical needs of the witnesses.

## **2.2 Assessment of vulnerable witnesses for special measures**

42. Upon arrival at the location of testimony, and subject to the witness' consent, the vulnerable witness is given a further assessment by the VWU Psychologist, which builds upon the preliminary vulnerability assessment as indicated in paragraph 1.2.
43. At the end of the assessment, the Psychologist discusses the relevant special measures with the witness and seeks his/her consent. The support and familiarisation process are then coordinated and, where applicable, adapted accordingly. This assessment is done following a clinical care model and on the basis of the assessment.
44. External specialists in clinical psychology are available to be consulted on short notice during the trial, should the Psychologist be absent. In such a case, the Chamber is informed in a timely manner.

45. The assessment summary is sent to the Chamber prior to testimony of the witness. It sets out the recommended special measures, as well as a summary of the evaluation that is relevant for testimony. The recommended measures (without the summary) are also sent to the Court Management Section (the “CMS”) so that the measures, if granted, can be implemented in timely manner. The VWU will provide the same information to the parties and participants.<sup>26</sup>

46. The VWU’s assessment does not address the credibility of the witness.

47. The witness is informed about the measures granted by the Chamber prior to testimony. The granted special measures are demonstrated to the witness during the (repeated) courtroom familiarisation.

### **2.2.1 Reading assistance**

48. The VWU will also assess the need for a witness to be provided with reading assistance during his/her testimony. The assessment is based on the information about the literacy level provided by the party calling the witness, information about the level of education provided by the witness, and observations by the VWU Support Team of the capacity to read and write during the familiarisation process (statement reading, courtroom familiarisation). For vulnerable witnesses, literacy level may be determined from the information provided and the observations made during the vulnerability assessment.

49. In case there is an indication that the witness has a limited literacy level, the capacity of the witness is explored further. It is often difficult to predict how witnesses with a limited literacy level will perform in the courtroom as they might be able to read during the familiarisation but may nevertheless feel uncomfortable doing so in public, in particular during their potentially

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<sup>26</sup> ICC-01/05-01/08-1016, para.18.

stressful testimony in the courtroom. Therefore, the VWU does not address the question of whether a witness can or cannot read. Instead, the VWU asks for full reading assistance (for the oath and for reading names and texts) if the Unit assesses that the literacy level is too limited and/or if the witness clearly indicates that he/she does not feel comfortable reading out loud. Following this procedure avoids ambiguity and potentially embarrassing situations in the courtroom for the witness. In the exceptional case where it is assessed that a witness only needs assistance for a very particular task, the VWU will specify this in the assessment.

50. When the VWU assesses the need for reading assistance, it will inform the Chamber and the entity calling the witness as soon as possible. It will also inform the Court Management Section's Associate Legal Officer/Courtroom Officer to ensure that proper arrangements are in place in the courtroom.

### **2.3 (In-Court) protective and Special measures as per rule 87 and rule 88 of the Rules of Procedure and Evidence**

51. The VWU informs each witness of the availability of in-court protective and special measures<sup>27</sup> when it meets the witness in the field to prepare the travel to the location of testimony.

52. In order to determine the necessity for in-court protective and special measures as early as possible, the VWU invites the entity calling the witness to indicate to the VWU any particular matter relating to the security, safety and vulnerability of witnesses.<sup>28</sup> To the extent possible, this information should be submitted to the VWU in the WIF.

53. Any request for in-court protective and special measures will promptly be brought to the attention of the Chamber by the calling party.<sup>29</sup> Upon

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<sup>27</sup> ICC-01/04-01/06-1140, para. 38 and ICC-01/04-01/06-1049, para. 53(e).

<sup>28</sup> ICC-01/04-01/06-1140, para. 36.

<sup>29</sup> ICC-01/04-01/06-1140, para. 38.

consultation with the VWU, the entity calling the witness will, if applicable, file a motion to request protective measures to be granted by the Trial Chamber. Should the entity calling the witness and the VWU not agree on the request for protective measures, the VWU will draw this matter to the attention of the Chamber pursuant to Regulation 41 of the Regulations of the Court, irrespective of the motion filed or not filed by the entity calling the witness.

#### **2.4 Witnesses falling under the scope of Rule 74 of the Rules of Procedure and Evidence**

54. Where witnesses have dual status and have consequently been assigned legal representation, it lies within the responsibility of the legal representative to ensure that the witness is fully aware and informed about the consequences of potential self-incrimination and the content of Rule 74 of the Rules of Procedure and Evidence. Where victims are otherwise testifying<sup>30</sup> in proceedings before the Court, it also lies within the responsibility of the legal representative to ensure that the victim is fully aware and informed about this issue.

55. For all other witnesses, it is the responsibility of the entity calling the witness to identify witnesses who may potentially incriminate themselves and to notify the VWU accordingly. Additionally, the entity calling the witness must inform such witnesses of their right to obtain legal advice. For witnesses who participate in the Court's protection programme ("ICCP"), the entity

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<sup>30</sup> "The Unified Protocol shall only apply to victims appearing before the Court for the purpose of giving oral testimony", ICC-01/05-01/08-1016, para.8.

referring the witness provides this information with the application for protection referral. For witnesses who do not participate in the ICCPP, the entity calling the witness provides this information by submitting it to the VWU in the WIF. If the potential for self-incrimination is discovered after an initial WIF is submitted, the entity calling the witness must provide an updated WIF to the VWU. It is also the responsibility of the entity calling the witness to communicate this information to the relevant section of the Registry, currently being the Counsel Support Section (“CSS”). Once the Registry has been made aware that the witness may make self-incriminating statements during his / her testimony, it is the responsibility of the Registry to ensure that the witness is provided with independent legal advice from a qualified lawyer. It is preferable if the lawyer can speak directly to the witness in a language he/she understands.<sup>31</sup>

56. Therefore, as soon as the dates of the witnesses’ presence at the location of testimony are known, the VWU notifies the CSS, which appoints a duty counsel - based on specific requirements expressed, if any - to furnish “legal advice” to the witness(es) so concerned in accordance with Rule 74.10 of the Rules of Procedure and Evidence. The CSS ensures that a suitable duty counsel from the Court’s List of Counsel eligible to practice in the proceedings before the Court is available to provide notification on the provisions of rule 74 of the Rules of Procedure and Evidence to all witnesses with the potential for self-incrimination in need of legal advice. The duty counsel need not be at any time physically present in The Hague or during the proceedings but, rather, can provide advice and assistance remotely. In order to maintain and respect the neutrality of the Registry staff, such advice can only be given by external counsel.

57. The duty counsel’s fees, travel costs and daily subsistence allowance are covered by the Registry.

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<sup>31</sup> ICC-01/04-01/07-1665, para 53.

58. The duty counsel appointed by the Registry requires access to the relevant material to be in the position to advise the witness on the issue of self-incrimination. The CSS makes the necessary arrangements to ensure that the duty counsel reviews all relevant materials in connection with the case. The entity calling the witness will furnish the duty counsel with the relevant materials, such as witness statements and transcripts of interviews. At all times, due respect for confidentiality must be maintained.
59. The duty counsel is responsible for the safe keeping of the relevant material.
60. VWU staff informs the witness that a meeting or a consultation by phone with the duty counsel will take place. If the witness does not want to consult with the latter, this decision is brought to the attention of the Chamber and of the party calling the witness<sup>32</sup>.
61. The VWU facilitates the contact between the duty counsel and the witness in the course of the familiarisation process and, at the latest, on the day before the witness' testimony. The VWU is required to ensure that during the familiarisation process, the lawyer is given sufficient time along with the witness to give advice, so a minimum of an hour is set aside for this purpose. The consultation, either by phone or in person, takes place within the premises of the VWU, but the VWU will not participate in it.
62. It is the responsibility of the duty counsel to explain to the witness his/her mandate and to advise the witness that the meeting is restricted to issues relating to self-incrimination and that no other aspects of the testimony must be discussed. Should the witness require assurance under rule 74(3)(c) of the Rules of Procedure and Evidence, it will be the responsibility of the duty counsel to immediately inform the Chamber and Prosecution of this request, with reasons.

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<sup>32</sup> ICC-01/05-01/08-1016, para.20.

## **2.5 Courtroom familiarisation**

63. As a general rule, the VWU will conduct the courtroom familiarisation prior to the reading of the statement.

### **2.5.1 Showing the VWU facilities**

64. The witness waiting rooms and other relevant VWU facilities are shown to the witness. As there might be a number of witnesses who are required to be separated at the VWU premises, witnesses are strictly required to stay inside the witness waiting rooms at all times. The Support Assistants explain, however, how to call for assistance and what to do if they need to leave the room.

65. All of the witness waiting rooms are equipped with an alarm system that enables the witness to contact a Support Assistant at any time.

66. In cases where a witness will require in-court assistance the in-court assistant will be present during the courtroom familiarisation, if possible.

67. The VWU staff confirms the language of the testimony with the witness. In case the information provided by the witness differs from the information in the WIF, the VWU brings this discrepancy to the attention of the entity calling the witness, the Chamber, the legal coordinator of the Registry, and Court Management Section's Associate Legal Officer/Courtroom Officer.

### **2.5.2 Meeting with the persons who will examine the witness ("courtesy meeting")**

68. The witnesses are provided with an opportunity to acquaint themselves with the people who may examine them in court ("courtesy meeting").<sup>33</sup> The entity calling the witness, the non-calling party and the legal representatives, where applicable, must provide the VWU with the names of the persons who will

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<sup>33</sup> ICC-01/04-01/06-1049, para. 53(f).

examine the witness in Court. The VWU will require this information prior to the arrival of the witness to the location of testimony, thereby allowing the VWU to facilitate contacts in a timely manner.

69. Legal representatives assigned to a specific case will be reminded by the VWU before the trial of the possibility for such courtesy meetings between the witnesses and the persons who will examine them in court. The legal representatives, who have submitted to the Chamber a request to question the witness, must inform the VWU in a timely manner to allow the VWU to facilitate the meeting.
70. Based on this information provided by the parties and participants, and subject to the witness' consent, the VWU will notify all the people who have been listed to examine the witness in Court, including the legal representative of a witness, where applicable, on when the courtesy meeting is scheduled to take place.
71. Separate courtesy meetings for each entity will take place on the premises of the VWU, immediately before the courtroom familiarisation. The staff of the VWU shall attend the meeting.
72. In relation to the time allocated to the courtesy meetings, each party is allocated 10 minutes. If there is one legal representative team, it is allocated 10 minutes. If there are two legal representative teams, they attend the courtesy meeting at the same time for a maximum of 15 minutes. If there are more than two teams, then a maximum of 20 minutes is allocated to all. The VWU recommends joint courtesy meetings for the legal representatives because they are less burdensome for the witnesses.

### **2.5.2 Showing the courtroom and explaining the proceedings**

73. The Support Assistant will guide the witness to the courtroom. All individuals who have participated in the separate courtesy meetings may attend the

courtroom familiarisation.<sup>34</sup> The VWU notes that during this procedure, the various representatives are not allowed to speak about the evidence and, as a result, they are only allowed to watch the courtroom familiarisation passively to ensure that no interference occurs.<sup>35</sup> VWU staff will remind the attending representatives of the parties and participants accordingly.

74. The witness will be introduced to the courtroom.<sup>36</sup> Where the Chamber has authorised the witness to testify from a remote witness room, either in headquarters or in the field, the witness will also be introduced to this room.

75. The technical devices will be explained to the witness. Where possible, the witness will practice using the equipment.

76. The Support Assistant will explain the proceedings before the Court, in particular the role of a witness and the process of examination.<sup>37</sup> This includes, where applicable, demonstrating to the witness the recommended and/or granted special and protective measures.

77. The staff of the VWU reminds the witnesses that they are under a strict obligation to tell the truth when testifying.<sup>38</sup>

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<sup>34</sup> ICC-01/04-01/06-1351, para. 39 reads: "Although representatives of the parties or participants may be present during the familiarisation process, including when the written records are read, they will be unable to speak with the witness about the evidence, and as a result they will only be permitted to watch the procedure." In this respect, the Trial Chamber held: "This had been intended to cover the representative of both parties along with the representative of dual-status witnesses. However, in view of the submissions of the Defence that they may well not be able to attend and bearing in mind the possibility that vulnerable witnesses may feel intimidated if they are being watched and scrutinized whilst looking at the record of their evidence by a number of persons, the Chamber now varies this particular aspect of its earlier decision. The representatives of the Prosecution, the Defence and dual-status victims will be excluded from this process unless the Chamber is persuaded that exceptional reasons set out in an application justify a departure from this approach.", ICC-01-04-01-06-T-104-ENG, page 27, line 2 to 12 (emphases added). From this follows that only the aspect of presence during the statement reading process is varied.

<sup>35</sup> ICC-01/04-01/06-1351, para. 39.

<sup>36</sup> ICC-01/04-01/06-1049, para. 53(g).

<sup>37</sup> ICC-01/04-01/06-1049, para. 53(a) and (b).

<sup>38</sup> ICC-01/04-01/06-1049, para. 53(c).

78. The Support Assistant will explain to the witness who he/she will see in the courtroom and who might directly address the witness.<sup>39</sup> The Support Assistant will also point out where the respective person will sit.

79. The in-court familiarisation is repeated if it is assessed to be necessary for the benefit of the witness because the witness is vulnerable and/or has shown difficulties in understanding the proceedings. This repetition also presents the opportunity to provide or repeat the demonstration of the granted special and protective measures.

### **2.5.3 Questionnaire**

80. After the in-court familiarisation, but prior to testimony, the VWU will conduct the first part of the “witness feedback programme”.<sup>40</sup>

## **2.6 Reading and provision of statement**

### **2.6.1 Provision of the statement**

81. Once the witness arrived at the location of testimony, the entity calling the witness makes all previous statements available to the VWU.<sup>41</sup> The calling party will also provide VWU with any document or information generated or provided by the witness when giving any of his/her previous statements.

82. The VWU should provide the following documents to the witness to refresh his/her memory: (i) a copy of all the statements<sup>42</sup> the witness has previously given. The term statement includes any signed statement and recorded interview (audio, video or both) and, (ii) any document or information generated or provided by the witness when giving any of his/her previous statements.

<sup>39</sup> ICC-01/04-01/06-1049, para. 53(d).

<sup>40</sup> In order to capture both immediate as well as more long-term feedback of witnesses with regard to their court appearance and the services provided to them, the VWU implemented a “witness feedback programme”, *see* for more details paragraphs 128 to 130.

<sup>41</sup> ICC-01/04-01/07-842-Conf-Anx, para. 47.

<sup>42</sup> *see* ICC-01/05-01/08-1016, para.21.

83. Prior to handing over witness statements to the VWU, the party calling the witness informs the other party and legal representatives of witnesses with dual status, where applicable, of the documentation to be handed over in order to resolve any potential disputes.<sup>43</sup> In addition, the VWU will keep a proper record of all material provided to a witness prior to his/her testimony; such a record will be sent to the parties and participants by email, in advance of the hearing in which the witness will testify.<sup>44</sup>
84. The VWU has established a detailed protocol outlining the exact steps to be followed by the entity calling the witness regarding the provision and retention of the statement. The VWU will provide this protocol to the calling party prior to their handover of the witness statements to the VWU.
85. The party delivers the statement in the language in which the witness originally gave the statement or which the witness can easily understand.<sup>45</sup> Should the witness be illiterate, the statement will be read to the witness by a member of the Court's Interpretation and Translation Section ("STIC") or STIC will provide the audio recording of the statement in the language the witness easily understands.
86. Depending on the length of the statement, reading it might require considerable time and might thus have an impact on the logistical travel arrangements. It is, therefore, of utmost importance that the entity calling the witness accurately indicates the length of the statement and estimates the time required to read the statement when the services of the VWU are requested,

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<sup>43</sup> "Any document referred to in the statement or electronic recording which are to be shown to the witness by the party calling him or her should also be shown to the witness during this process. The party calling the witness should inform the other party and the legal representative of -- and the legal representatives of dual-status witnesses, if relevant, in advance of the documents to be provided to the VWU for the purposes of memory refreshing. Any dispute is to be resolved by the Chamber before the material is given to the witness", ICC-01/04-01/06-T-104-ENG, page 25, lines 10 to 17.

<sup>44</sup> ICC-01/05-01/08-1016, para.22.

<sup>45</sup> ICC-01/04-01/06-1351, para.36, in particular: "[...] Since the prosecution is responsible for taking statements from the witnesses, it should bear responsibility for providing copies of them, where relevant, in both languages. [...]".

*i.e.* 35 days prior to the scheduled arrival at the location of the Court. The VWU has developed guidelines to assist with estimating the time required for a witness to read their statement and will provide such guidelines to the party calling the witness.

## **2.6.2 Reading of the statement**

87. The VWU provides the witness with the statement as provided by the entity calling the witness to enable the witness to refresh his/her memory.<sup>46</sup>

88. The witness will read the statement on the premises of the VWU. The VWU staff will be available to provide support services before, during and after the witness has read his/her statement.

89. The Support Assistants will monitor the psychological and physical well-being of the witness closely to see if the witness requires a break or any other assistance and to provide support in the event that the witness is distressed.<sup>47</sup> In addition, Support Assistants will be available through the alarm system, with which all waiting rooms have been equipped. Only if it is assessed to be necessary to ensure the psychological and physical well-being of the witness<sup>48</sup>, a Support Assistant will also be present in the room throughout the reading process. This practice provides the necessary flexibility to adjust the familiarisation process to the individual needs of a witness, respects the need for privacy and avoids any system whereby witnesses feel unnecessarily controlled or under observation by VWU staff. At the same time, it is ensured that support services are readily available when needed.

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<sup>46</sup> ICC-01/04-01/06-1049, para. 55.

<sup>47</sup> ICC-01/04-01/06-T-104-ENG, page 28, lines 8 to 11: "The Chamber agrees with the Prosecution that the VWU support assistant should be present at the very least during a significant portion of the familiarisation process for every witness and otherwise should be nearby and readily available to assist when not in the room."

<sup>48</sup> ICC-01/04-01/06-T-104-ENG, page 28, lines 12 to 16: "As regards any minors, former child soldiers or other who are vulnerable or who may become upset during the process, there should be an assistant present throughout. In the view of the Chamber, the VWU should err on the side of caution in providing support assistance and if in doubt someone should be present throughout."

90. The VWU will keep the statement on its premises until the witness has finished testimony. The VWU will keep record of the dates when the statements were provided to the Unit, made available to the witness and, if applicable, returned to the party. The VWU will not be in a position to ascertain the content of the provided statement or to ensure that the witness comprehends all of the provided material.
91. The VWU will not be in a position to answer any legal or factual questions that might arise in relation to the statement. The Unit staff will remind the witness that any such questions should be ventilated in Court.<sup>49</sup>
92. The VWU is under no duty to monitor or record anything that is said by the witness during this process, unless something exceptional occurs.<sup>50</sup> Should something exceptional occur during the statement reading process and come to the attention of VWU staff, the VWU will report this to the entity calling the witness and the Chamber.<sup>51</sup> The VWU will also report this to the legal representative of the respective witness, if applicable.
93. The witness will be reminded that none of the material the witness has re-read can be brought into the Court.<sup>52</sup> If it becomes necessary for reference to be made to one or more of the statements or related material, then, subject to the Chamber's decision, copies can be made available during the witness' testimony.<sup>53</sup> The Chamber may allow witnesses to refer to documents in order to refresh their memory only insofar as: a) the documents in question contain the personal recollections of the witness and b) copies of the document have been made available to the opposing party, who may rely on the parts referred to by the witness during cross-examination.<sup>54</sup> For the purpose of refreshing the

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<sup>49</sup> ICC-01/04-01/06-1351, paras. 7 and 38.

<sup>50</sup> *Ibid.*

<sup>51</sup> ICC-01/04-01/06-1351, para. 40. *See also* ICC-01-04-01-06-T-104-ENG, page 27, line 19 to page 28, line 7.

<sup>52</sup> ICC-01/05-01/08-1016, para.24.

<sup>53</sup> ICC-01/05-01/08-1016, para.24.

<sup>54</sup> ICC-01/04-01/07-1665, para 109.

witness' memory, it is immaterial whether the documents are admissible as evidence or not.<sup>55</sup> If a Chamber allows a witness to consult any documents in Court, such documents will be made available by the relevant Court staff members in the courtroom.

94. In the case where the witness has trouble with reading the documents intended to refresh his/her memory, the VWU shall assist the witness.<sup>56</sup>

95. Expert witnesses are informed that they may take their reports with them into the courtroom, subject to approval by the Chamber.<sup>57</sup>

96. Expert witnesses have the right to take their report(s) to their place of accommodation, subject to approval by the Trial Chamber.<sup>58</sup>

## **2.7 Day of testimony**

97. On the day of testimony, the VWU will arrange for the appearance of the witness in Court.

98. If the mental state of the witness so requires, the witness can be monitored throughout the trial by the Psychologist, and any urgent concerns that arise will be communicated to the Chamber.

99. Before the examination of a witness commences, the Presiding Judge invites the witness to make the solemn declaration to tell the truth, in accordance with rule 66 of the Rules of Procedure and Evidence. Before the testimony, in accordance with Rule 66(3) of the Rules of Procedure and Evidence, the VWU

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<sup>55</sup> ICC-01/04-01/07-1665, para 110.

<sup>56</sup> ICC-01/05-01/08-1016, para.25.

<sup>57</sup> Correspondence of 10 July 2009 between the VWU and the Legal Advisor of the Chambers, Trial Division.

<sup>58</sup> Correspondence of 15 June 2009 between the VWU and the Legal Advisor of the Chambers, Trial Division.

shall inform the witness of the offence defined in article 70, paragraph 1 (a) of the Statute.<sup>59</sup>

100. The VWU shall inform the witness that he or she will remain under oath until the end of proceedings and it will therefore not be necessary for the witness to repeat the solemn declaration after each adjournment.<sup>60</sup>

101. Support services will be available before, during and after testimony.

## **2.8 Providing witnesses with copies of statements after testimony**

102. In case a witness requests to retain a copy of his/her statement or any related material, the VWU shall inform the Chamber which will decide on a case-by-case basis.<sup>61</sup>

## **3. After testimony**

### **3.1 Immediately after testimony**

103. Once the witness' evidence in court is completed, the prohibition on discussions between the party introducing the evidence and the witness is lifted, unless the Chamber directs otherwise. If a witness is in the ICCPP, the VWU will, sufficiently in advance of the end of the witness' evidence, give details to the party who called him or her of any future protective measures. The VWU will ensure that adequate time is allowed to enable suggested deficiencies in the VWU's proposal to be raised with, and resolved by, the Chamber.<sup>62</sup>

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<sup>59</sup> ICC-01/05-01/08-1016, para.26.

<sup>60</sup> ICC-01/05-01/08-1016, para.27.

<sup>61</sup> ICC-01/05-01/08-1016, para.28.

<sup>62</sup> ICC-01/04-01/06-1351, para. 42.

104. After the witness has concluded giving testimony, the VWU strongly encourages and will facilitate, subject to the witness' consent, a "thank you" meeting between the witness and the entity calling the witness. This practice is a valuable and direct tool to recognise and express appreciation for the witness' cooperation with the Court in giving testimony.

105. The VWU will conduct a de-briefing and will arrange for the travel arrangements back to the witness' location of residence. The VWU will also use this opportunity to assess the immediate impact of the testimony with the post-testimony questionnaire.<sup>63</sup>

### **3. 2 Cooling down period**

106. After the witness has concluded giving testimony, while at the location of the testimony, the witness receives a de-briefing and will go through a security questionnaire with VWU staff. A witness is also given an opportunity to contact his/her family, relatives and other trusted sources to find out any potential reactions to the testimony given by the witness that might have to be taken into consideration when planning the witness' return.

107. In the field, the VWU field staff conducts a risk assessment to determine whether the witness can return to his/her location of residence. The VWU also assesses whether further follow-up support measures are required.

108. Where appropriate, a witness may go through a cooling down period. The cooling down period may entail that witnesses remain in a safe holding area instead of returning immediately to their location of residence. While the VWU recognises the need to return a witness to the location of residence as soon as possible, ideally within ten calendar days of testimony, the witness' return will only be recommended if and when it is assessed to be sufficiently

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<sup>63</sup> See Chapter 4 for more details.

safe. The period of time spent at the holding area can be extended accordingly, subject to the witness' consent. Throughout the "cooling down period", VWU staff maintain regular contact with the witness to provide psycho-social support when necessary and address any issues that may arise from the witness' absence from his/her residence.

109. Should concerns about the security situation at the location of residence persist, the VWU will communicate this to the entity that called the witness and will provide its advice on suitable protective measures for the witness. If necessary, and in consultation with the entity that called the witness, the VWU will conduct an assessment procedure for participation in the ICCPP.
110. Should concerns about witness' psycho-social condition or necessity for follow-up support measures arise, the VWU will communicate it to the entity that called the witness.
111. Should concerns about the security of a witness arise after the witness has returned to the location of residence, the VWU invites the entity that called the witness to bring those concerns to the Unit's attention. The VWU will advise on the appropriate protection measures. If necessary, and in consultation with the entity that called the witness, the VWU will conduct an assessment procedure for participation in the ICCPP.
112. Security concerns of sufficient gravity arising after testimony will be brought to the attention of the Trial Chamber and the party calling the witness. In this context, the VWU will also convey to the Chamber and the party calling the witness any influence that the situation could have on witnesses who have not yet testified and on any procedural protective measures the Trial Chamber may consider granting to them.<sup>64</sup>

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<sup>64</sup> See ICC-01/05-01/08-1016, para.29.

#### 4. Witness feedback program

113. The VWU, with the assistance of the Berkeley-Tulane Initiative for Vulnerable Populations, has developed a comprehensive witness feedback program that aims to capture the experiences of ICC witnesses in a detailed, yet streamlined, manner.

114. Witnesses will be invited to complete detailed questionnaires before their testimony, shortly after testimony and six to twelve months after their return to their original location of residence. The questionnaire protocol follows a standardized and scientific approach to monitoring and evaluating the witnesses' experiences.

115. The witness feedback program is designed to provide information to the VWU that would allow the Unit to improve its provision of services to witnesses and to share outcomes and information with other relevant areas of the Court. The Unit intends to use this information for, *inter alia*, monitoring the familiarisation and preparation of witnesses for trial and it will suggest changes to the Unit's practices and protocols, when appropriate.