

**Unified Protocol on the practices used to prepare and familiarise
witnesses for giving testimony before the Court**

1. The Victims and Witnesses Unit (the 'VWU') will facilitate the testimony of witnesses in the best possible circumstances. For this purpose, the VWU shall follow the Protocol on the practices used to prepare and familiarise witnesses for giving testimony before the Court (the 'Protocol') 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 involved.
3. Unless ordered otherwise by the Chamber, the VWU will apply the Protocol to all witnesses called to testify before the Court. However, the Protocol may 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.
4. To ensure consistency in the practice of familiarisation of all victims and witnesses appearing before the Court to testify¹, it would be recommended that all Chambers endorse this Protocol. Should any further substantive changes to this protocol be deemed necessary, the VWU will communicate this accordingly.

1. Preparation Phase

5. The preparation phase commences when the calling party introduces the witness to the VWU prior to the scheduled travel of the witness to the location of testimony.
6. This phase takes place in the field, whereby the calling party 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 travel of the witness for the purpose of giving testimony.
7. 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's 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.²
8. 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 a 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 calling party of the above. At this point in time, the witness is again in the care of the calling party.
9. 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

² ICC-01/05-01/08-1016, para. 11.

the Court, undergoes the “cooling down” period where necessary and returns safely to his/her residence. Henceforth, the calling party bears the responsibility to take care of the witness as outlined below.

10. 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 calling party 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’).
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, any special needs of the witness will be provided for, including, for example, 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 a party intends to call a witness to testify at trial, the WIF must be submitted 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 calling party is invited to consult with the VWU regarding any 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 shall be submitted to the VWU not less than 35 days before the witness is scheduled to arrive at the location of testimony.³
14. Notwithstanding the prerogative of the calling party 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 appearances 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 the well-being of a witness due to the unpredictable waiting times and the constant pressure of having to be prepared to give testimony.
15. For this reason, the VWU strongly recommends having only one stand-by witness 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

³ ICC-01/05-01/08-1016, para.13.

accommodation or engage in other social activities while they wait to give their testimony.

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 appearances of witnesses before the Court.

1.2 Early needs and vulnerability assessment

18. The parties are under an obligation to identify, protect and respect the well-being and dignity of witnesses.⁴ Parties should, therefore, alert the VWU as early as practicable if they intend to call a vulnerable witness⁵ or if they identify the need for procedural protective and/or special measures. The same applies if the calling party 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 witness. The calling party should make use of the WIF to indicate that assistance is needed to prepare the witness to give testimony and to share relevant information about the vulnerable witness.

19. Based on the information provided by the calling party or where the VWU identifies the vulnerability of a witness, appropriate actions to support and/or

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

⁵ 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.

protect witnesses will be assessed on a case-by-case basis. Following the preparatory assessment, the VWU, in consultation with the calling party, determines appropriate measures to prepare the vulnerable witness for trial.

20. 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.⁶
21. If applicable at this stage, the calling party should inform the VWU about protective or special measures requested from the Chamber pursuant to Rules 87 and 88 of the Rules of Procedure and Evidence (the 'Rules').⁷

1.3 Travel to the location of testimony

22. Upon receipt of the WIF from the calling party, 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 individual witness when providing the necessary logistical and operational arrangements.
23. Wherever possible and appropriate,⁸ the VWU will arrange for witnesses to travel jointly to the seat of the Court, in consultation with the calling party where necessary. This practice is beneficial for the well-being of the witnesses. 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's stress level

⁶ ICC-01/04-01/06-1140, para. 36.

⁷ 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.

⁸ 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.

unnecessarily. Furthermore, it allows the VWU to manage the logistical challenges imposed by escorting witnesses to the Court.⁹

24. All witnesses travelling together shall be reminded with appropriate regularity that they must not discuss their impending evidence with each other or anyone else.¹⁰ All witnesses shall also be 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

25. Considering that once the process of witness familiarisation has commenced, any further meeting between the calling party and witnesses may only take place within the limited ‘courtesy meeting’ discussed below,¹¹ it is essential that the commencement of the familiarisation process can be clearly delineated.

26. The starting point of the familiarisation process is when the witness arrives in the Netherlands, or at the location of testimony where different from the seat of the Court, prior to giving evidence.¹²

27. The VWU shall inform the calling party when the witness is scheduled to arrive and communicate immediately if any major delays or disruptions occur.

⁹ 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.

¹⁰ 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)”.

¹¹ ICC-01/04-01/06-1049, para. 56.

¹² 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.

28. Once the familiarisation process has commenced, the calling party and the witness will meet on the premises of the Court or at the location of testimony, for a courtesy meeting¹³ and courtroom familiarisation.¹⁴ The parties are however excluded when the witness reads his/her statement(s).¹⁵
29. The VWU will not facilitate any further contact between the witness and the calling party until the witness has finished testifying .¹⁶ Should urgent matters arise that may have an impact on the witness's testimony, the VWU will draw the matter to the attention of the calling party or to the attention of the Chamber, as appropriate.
30. This limitation on contact does not apply to expert witnesses and discussions between the parties and their experts may take place at any stage prior to calling the witness.¹⁷
31. All meetings with witnesses, excluding expert witnesses, and the calling party will be conducted within the premises of the VWU or at any other location determined to be appropriate by the VWU.¹⁸

2.1.2 Separation of witnesses at the accommodation

32. Wherever possible and appropriate, the VWU will arrange for witnesses to be accommodated jointly at the location of testimony, in consultation with the calling party where necessary. 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.

¹³ ICC-01/04-01/06-1049, para. 53(f).

¹⁴ ICC-01/04-01/06-1351, para. 39.

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

¹⁶ ICC-01/04-01/06-1049, para. 56.

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

¹⁸ ICC-01/05-01/08-1016, para.16.

Furthermore, it allows the VWU to more efficiently handle logistical challenges imposed by providing 24/7 support services.

33. 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 exposure¹⁹.

34. 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.²⁰

35. Expert witnesses may also be jointly accommodated and will be reminded not to discuss the evidence they have given or will give.²¹

2.1.3 Support Services

36. 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

¹⁹ 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).

²⁰ ICC-01/05-01/08-1016, para.17.

²¹ ICC-01/04-01/06-T-172-ENG, page 96, lines 20 to 25.

briefing and orientation of the accommodation and its facilities, explaining to 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.

37. 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.
38. 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

39. Upon arrival at the location of testimony, and subject to the witness's consent, a vulnerable witness will be further assessed by the VWU Psychologist, which builds upon the preliminary vulnerability assessment as indicated in paragraph 1.2.
40. 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 processes are then coordinated and, where applicable, adapted accordingly. This assessment is done following a clinical care model and on the basis of the assessment.
41. 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 shall be informed in a timely manner.
42. 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. 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 a timely manner. The VWU will provide the same information, with any necessary redactions, to the parties and participants.²²

43. The witness should be informed as soon as possible prior to testimony, about any protective or special measures granted by the Chamber.

2.2.1 Reading assistance

44. 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 calling party, 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.
45. Where there is an indication that the witness has a limited literacy level, the capacity of the witness is explored further. The VWU will recommend full reading assistance (for the oath and for reading names and texts) if it assesses that the literacy level of the witness is too limited and/or if the witness clearly indicates that he/she does not feel comfortable reading aloud. 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.
46. When the VWU assesses the need for reading assistance, it will inform the Chamber and the calling party 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.

²² ICC-01/05-01/08-1016, para.18.

2.3 (In-Court) protective and special measures pursuant to Rules 87 and 88 of the Rules

47. The VWU informs each witness of the availability of in-court protective and special measures when it meets the witness in the field to prepare for travel to the location of testimony.²³
48. In order to determine the necessity for in-court protective and special measures as early as possible, the VWU invites the calling party to indicate to the VWU any particular matter relating to the security, safety and vulnerability of witnesses.²⁴ To the extent possible, this information should be submitted to the VWU in the WIF.
49. Any request for in-court protective and special measures will promptly be brought to the attention of the Chamber by the calling party.²⁵ Upon consultation with the VWU, the calling party will, if applicable, file a motion to request protective measures to be granted by the Trial Chamber. In case of disagreement between the VWU and the calling party as regards protective measures, the VWU may draw this matter to the attention of the Chamber pursuant to Regulation 41 of the Regulations of the Court.

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

50. It is the responsibility of the calling party to identify witnesses who may potentially incriminate themselves and to notify the VWU accordingly. Additionally, the calling party must inform such witnesses of their right to obtain legal advice. For witnesses who participate in the Court's protection programme (the 'ICCPP'), the calling party shall provide this information with the application for protection referral. For witnesses who do not participate in the ICCPP, the calling party shall provide this information by submitting it to

²³ ICC-01/04-01/06-1140, para. 38 and ICC-01/04-01/06-1049, para. 53(e).

²⁴ ICC-01/04-01/06-1140, para. 36.

²⁵ ICC-01/04-01/06-1140, para. 38.

the VWU in the WIF. If the potential for self-incrimination is discovered after an initial WIF is submitted, the calling party must provide an updated WIF to the VWU. It is also the responsibility of the calling party to communicate this information to the relevant section of the Registry. Once the Registry has been informed, it is the responsibility of the Registry to ensure that the witness is provided with independent legal advice from a qualified lawyer, preferably someone who can speak directly to the witness in a language he/she understands.²⁶

51. The CSS ensures that a suitable legal adviser 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 legal adviser 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.
52. The legal adviser's fees, travel costs and daily subsistence allowance are covered by the Registry. The calling party will furnish the VWU with the relevant materials, such as witness statements and transcripts of interviews, so that these can be provided to the relevant legal adviser. At all times, due respect for confidentiality must be maintained and the legal adviser is responsible for the safe keeping of the relevant material.
53. VWU staff will inform the witness that a meeting or a consultation by phone with the legal adviser 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.²⁷

²⁶ ICC-01/04-01/07-1665, para 53.

²⁷ ICC-01/05-01/08-1016, para.20.

54. The VWU facilitates contact between the legal adviser and the witness in the course of the familiarisation process and, at the latest, on the day before the witness's testimony. The VWU is required to ensure that during the familiarisation process, the legal adviser is given sufficient time to discuss any matter with the witness. The consultation, either by phone or in person, takes place within the premises of the VWU.
55. It is the responsibility of the legal adviser 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 assurances under Rule 74 of the Rules, it will be the responsibility of the legal adviser to immediately inform the Chamber and the Office of the Prosecutor the reasons for such request.

2.5 Courtroom familiarisation

56. As a general rule, the VWU will conduct the courtroom familiarisation prior to the reading of the statement(s) and/or transcript(s) if interview(s) by the witness.

2.5.1 Showing the VWU facilities

57. 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 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.
58. All of the waiting rooms are equipped with an alarm system that enables the witness to contact a Support Assistant at any time.
59. In cases where a witness will require in-court assistance the in-court assistant will be present during the courtroom familiarisation, if possible.
60. 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 shall immediately inform the calling party, the Chamber, the legal coordinator of the Registry, and Court Management Section's Associate Legal Officer/Courtroom Officer.

2.5.2 The courtesy meeting

61. Witnesses are provided with an opportunity to acquaint themselves with the people who may examine them in court.²⁸ The parties shall provide the VWU with the names of persons who will 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.
62. Based on the information provided by the parties, and subject to the witness's consent, the VWU will notify all people who have been listed to examine the witness in Court, on when the courtesy meeting is scheduled to take place.
63. Separate courtesy meetings for each party will take place on the premises of the VWU, immediately before the courtroom familiarisation. The staff of the VWU shall attend the meeting.
64. Courtesy meetings shall not touch upon the evidence to be given by the witness.

2.5.2 Showing the courtroom and explaining the proceedings

65. 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.²⁹ The VWU notes that during this procedure, the

²⁸ ICC-01/04-01/06-1049, para. 53(f).

²⁹ 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-

parties are not allowed to discuss the evidence and, as a result, they are only allowed to watch the courtroom familiarisation passively to ensure that no interference occurs.³⁰

66. The witness will be introduced to the courtroom.³¹ 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.

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

68. The Support Assistant will explain the proceedings before the Court, in particular the role of a witness and the process of examination.³² This includes, where applicable, demonstrating to the witness the recommended and/or granted special and protective measures.

69. The staff of the VWU shall remind witnesses that they are under a strict obligation to tell the truth when testifying.³³

70. The Support Assistant will explain to the witness who he/she will see in the courtroom and who might directly address the witness.³⁴ The Support Assistant will also point out where the respective person will sit.

71. The in-court familiarisation is repeated if it is assessed to be necessary for the benefit of the witness.

2. 5. 3 Questionnaire

72. After the in-court familiarisation, but prior to testimony, the VWU will conduct the first part of the 'witness feedback programme'.³⁵

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.

³⁰ ICC-01/04-01/06-1351, para. 39.

³¹ ICC-01/04-01/06-1049, para. 53(g).

³² ICC-01/04-01/06-1049, para. 53(a) and (b).

³³ ICC-01/04-01/06-1049, para. 53(c).

³⁴ ICC-01/04-01/06-1049, para. 53(d).

³⁵ 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.

2.6 Reading and provision of statement

2.6.1 Provision of the statement

73. Once the witness arrives at the location of testimony, the calling party shall make all previous statement(s) and/or transcript(s) available to the VWU.³⁶ The calling party shall also provide the VWU with any document or information generated or provided by the witness when giving any of his/her previous statements.
74. Prior to handing over the aforesaid material to the VWU, the calling party shall inform the other parties, of the documentation to be handed over in order to resolve any potential disputes.³⁷ In addition, the VWU will keep a record of all material provided to the 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.³⁸
75. The VWU shall provide any further detailed information to the calling party prior to the handover of the aforesaid material to the VWU.
76. The calling party shall deliver the statement(s) and/or transcript(s) in the language in which the witness originally gave the statement or which the witness can easily understand.³⁹ Should the witness be illiterate, the statement will be read to the witness by a member of the Registry, or the Registry will provide the audio recording of the statement in a language the witness easily understands.

³⁶ ICC-01/04-01/07-842-Conf-Anx, para. 47.

³⁷ “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.

³⁸ ICC-01/05-01/08-1016, para.22.

³⁹ 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. [...]”.

77. Since the length of the statement(s) and/or transcript might have an impact on the logistical travel arrangements, the calling party shall accurately indicate the length of the statement and estimated time required to read the statement when the services of the VWU are requested (*i.e.* 35 days prior to the scheduled arrival at the location of the Court).

2.6.2 Reading of the statement

78. The VWU shall provide the witness with the statement(s) and/or transcript(s) to enable the witness to refresh his/her memory.⁴⁰

79. 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 the aforesaid material.

80. 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.⁴¹ 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 witness⁴², shall a Support Assistant 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.

⁴⁰ ICC-01/04-01/06-1049, para. 55.

⁴¹ 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.”

⁴² 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.”

81. The VWU will keep the statement on its premises until the witness has finished testifying. The VWU will record 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 statement or to ensure that the witness comprehends all of the provided material.
82. The VWU will not be in a position to answer any legal or factual questions that might arise in relation to the statement. The VWU will remind the witness that any such questions should be ventilated in Court.⁴³
83. The VWU is under no duty to monitor or record anything that is said by the witness during this process, unless something exceptional occurs.⁴⁴ Should something exceptional occur during the statement reading process and come to the attention of VWU staff, the VWU will report this to the calling party and the Chamber.⁴⁵
84. The witness will be reminded that none of the material the witness has re-read can be brought into the courtroom or location of testimony.⁴⁶
85. As noted above, where the witness has trouble reading the documents intended to refresh his/her memory, the VWU shall assist the witness.⁴⁷
86. Expert witnesses are informed that they may take their reports with them into the courtroom, subject to approval by the Chamber.⁴⁸
87. Expert witnesses have the right to take their report(s) to their place of accommodation, subject to approval by the Chamber.⁴⁹

⁴³ ICC-01/04-01/06-1351, paras. 7 and 38.

⁴⁴ *Ibid.*

⁴⁵ 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.

⁴⁶ ICC-01/05-01/08-1016, para.24.

⁴⁷ ICC-01/05-01/08-1016, para.25.

⁴⁸ Correspondence of 10 July 2009 between the VWU and the Legal Advisor of the Chambers, Trial Division.

⁴⁹ Correspondence of 15 June 2009 between the VWU and the Legal Advisor of the Chambers, Trial Division.

2.7 Day of testimony

88. On the day of testimony, the VWU will arrange for the appearance of the witness in Court or at the location of testimony.
89. If the mental state of the witness so requires, the witness can be monitored throughout the trial by the VWU Psychologist, and any urgent concerns that arise shall be communicated to the Chamber.
90. Before the testimony, in accordance with Rule 66(3) of the Rules, the VWU shall inform the witness of Article 66(3) of the Rome Statute and the offence defined in Article 70, paragraph 1 (a) of the Rome Statute.⁵⁰
91. 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.⁵¹
92. Support services will be available before, during and after testimony.

2.8 Providing witnesses with copies of statements after testimony

93. 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 accordingly.⁵²

3. After testimony

3.1 Immediately after testimony

94. Once the witness's evidence in court is completed, and subject to the witness's consent, the calling party and the witness may meet, unless the Chamber directs otherwise. The VWU shall facilitate such a meeting.
95. If a witness is in the ICCPP, the VWU will, sufficiently in advance of the end of the witness's evidence, give details to the calling party of any future protective measures. The VWU will ensure that adequate time is allowed to

⁵⁰ ICC-01/05-01/08-1016, para.26.

⁵¹ ICC-01/05-01/08-1016, para.27.

⁵² ICC-01/05-01/08-1016, para.28.

enable suggested deficiencies in the VWU's proposal to be raised with, and resolved by, the Chamber.⁵³

96. The VWU will conduct a de-briefing and will arrange for the travel arrangements back to the witness's location of residence. The VWU will also use this opportunity to assess the immediate impact of the testimony with the post-testimony questionnaire.⁵⁴

3. 2 Cooling down period

97. 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's return.

98. 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.

99. 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's return will only be recommended if and when it is assessed to be sufficiently safe. The period of time spent at the holding area can be extended accordingly, subject to the witness's 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's absence from his/her residence.

⁵³ ICC-01/04-01/06-1351, para. 42.

⁵⁴ See Chapter 4 for more details.

100. Should concerns about the security situation at the location of residence persist, the VWU will communicate this to the calling party and will provide its advice on suitable protective measures for the witness. If necessary, and in consultation with the calling party, the VWU will conduct an assessment procedure for participation in the ICCPP.
101. Should concerns about witness's psycho-social condition or necessity for follow-up support measures arise, the VWU will communicate with the calling party.
102. Should concerns about the security of a witness arise after the witness has returned to the location of residence, the VWU will invite the calling party 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 calling party, the VWU will conduct an assessment procedure for participation in the ICCPP.
103. 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.⁵⁵

4. Witness feedback program

104. Witnesses may be invited by the VWU to complete detailed questionnaires before their testimony, shortly after testimony and six to twelve months after their return to their original location of residence.

⁵⁵ See ICC-01/05-01/08-1016, para.29.