

# **Annex A**

# **Public**

## Witness Preparation Protocol

### I. General principles

1. The purpose of witness preparation is:
  - (a) To assist the witness who will be giving evidence during the proceedings:
    - (i) to help ensure that the witness gives truthful, relevant, accurate and focused testimony;
    - (ii) to help ensure the well-being of the witness.
  - (b) For the calling party to assess and clarify the witness's evidence in order to facilitate the focused, efficient and effective questioning of the witness during the proceedings.
  - (c) To assist the Trial Chamber:
    - (i) to ensure that the trial is fair and expeditious and is conducted with full respect for the rights of the accused and due regard for the protection of victims and witnesses;
    - (ii) to ensure that the evidence is submitted in a manner that best facilitates the establishment of the truth.

### II. The scope of witness preparation

Witness preparation must be carried out in good faith and consistent with the applicable standards of professional conduct and ethics. During preparation sessions, the questioning lawyer may:

1. Provide the witness with an opportunity to review his or her prior statements.
2. Provide the witness with an opportunity to confirm whether his or her prior statements are accurate, to explain any inaccuracies or inconsistencies, and to make changes as necessary.
3. Identify the general topics that the calling party intends to cover during its questioning of the witness in Court and the topics on which, in the calling

party's opinion, the witness may be questioned by the other party and participants.

4. Show the witness exhibits that the calling party plans to use in court when questioning the witness to enable the witness to familiarise him or herself with the document, and ask the witness to comment on them to determine the utility of using the exhibits in court
5. Subject to the restrictions below, answer any questions the witness may have, including about what to expect in court.

### **III. Prohibited conduct**

During preparation sessions, the questioning lawyer shall not:

6. Seek to influence the substance of the witness's testimony, either directly or indirectly (including, for instance, by informing the witness of the type of evidence that would assist the calling party's case, by suggesting whether or not the witness's answers are right, or leading the witness in an inappropriate way).
7. Seek to elicit new evidence or continue the calling party's investigations.
8. Undertake to coach or train the witness or to practice the questions and answers expected during the witness's in-court testimony so that the witness memorises those questions and answers.
9. Inform the witness of the identity of the source of evidence obtained from other witnesses.

### **IV. Safeguards**

#### Record Keeping

10. The calling party shall video record the preparation session.

11. Should the non-calling party wish to gain access to the video recording of a witness preparation session, it shall apply to the Chamber, orally or in writing, setting out: (i) the reason why access to the video-recording is necessary; and (ii) the information in its possession, evidentiary or other, demonstrating that access to the video is warranted. If the Chamber considers it necessary, it may review the recording itself, or order the disclosure of the recording.
12. The calling party shall keep a log of each preparation session which shall list the location and duration of the session, and the attendees at the session.
13. After conducting a witness preparation session, the calling party shall promptly provide the non-calling party with a copy of the log.

#### Disclosure

14. Where the calling party obtains information during a preparation session that is subject to disclosure, it shall disclose that information to the non-calling party as soon as practicable, and in any event before the witness begins to give evidence.
15. The calling party shall provide the non-calling party with a list of all materials that have been shown to the witness, and, if applicable, all of the information that is subject to the calling party's disclosure obligations, including:
  - a) any clarifications, changes or corrections made by the witness to his or her previous statements and the reasons advanced by the witness, if any, to justify the change or correction;
  - b) any other relevant information that the witness may have provided without being solicited.

#### **V. Responsibility for conducting witness preparation**

16. Witness preparation is an ancillary to witness familiarisation and the two processes are conducted in parallel. The calling party shall determine practical arrangements in co-ordination with the VWU. The calling party shall

exercise particular care with regard to vulnerable witnesses, and the VWU should be available to assist with vulnerable witnesses if necessary.

17. Witness preparation should be conducted by the lawyer of the calling party who will question the witness in court.
18. When conducting the witness preparation, the lawyer should be accompanied by at least one other lawyer of the calling party's team unless exceptional circumstances render this impossible.

## **VI. Location**

19. Witness preparation may be conducted at the seat of the Court or at the place of testimony, if elsewhere, or any other place.
20. In determining where to conduct witness preparation, the calling party shall give due regard to the security of the witness.

## **VII. Timing**

21. The calling party shall conduct its preparation session after witness statements have been taken and disclosed to the opposing party.
22. Subject to witness availability and travel logistics, the calling party shall endeavour to complete its preparation sessions as early as possible and in any event at least 24 hours before the witness's testimony is due to commence.