

PUBLIC
ANNEX II

Dual Status Witness Protocol

<u>1. Information to be provided to the Registry</u>	a) The Victims and Witnesses Unit ('VWU') should be aware of the dual status of a protected individual in order to reduce risks and to facilitate a proper risk assessment. b) The parties and participants should communicate to the VWU and to the VPRS the fact of the dual status of an individual as soon as they become aware of it. c) If the existence of dual status is known at the time of a referral to the VWU for inclusion in the International Criminal Court protection Program ('ICCPP') this should be communicated to the VWU. d) During the assessment interviews, the VWU will ask witnesses whether they have applied for participation and/or reparation. When the VWU assesses a victim it will ask whether the victim is also a witness.
<u>2. Transmission of application forms of dual status witnesses¹</u>	a) As soon as it is informed of the witnesses' dual status, the VPRS will transmit to the Prosecution the unredacted versions of their victim application forms together with any supporting documents ("Victim Application(s)"); and b) the Prosecution will apply redactions as necessary in line with the Protocol on Redactions and in consultation with the common legal representatives of victims ('CLRVS'), to then disclose them to the Defence. A copy of the redacted version of the victim application(s) as disclosed to the Defence will be shared with the VPRS.
<u>3. Dual status witnesses participating in the ICCPP</u>	a) The fact that an individual participates in the ICCPP shall remain confidential. b) The VWU shall facilitate all contact between a protected individual and the other organs of the Court, the parties and the participants, as well as the VPRS whenever necessary and appropriate.² c) The VWU does not have an obligation to disclose to a party or the participants the details of contact with a protected individual, unless the Chamber orders otherwise.

¹ Section 2 was added to the Protocol.

² "As well as the VPRS whenever necessary and appropriate" was added to Section 3 b).

<u>4. Communication between the legal representative of a dual status witness and the Prosecution</u>	a) When the legal representative of victims believes that their client has dual status, they should provide the Prosecution with the name of the individual, his or her date of birth and other identifying information, to the extent possible. b) Thereafter, the Prosecution should check whether or not the individual has dual status, and if so, communicate this in writing to the legal representative (including when the witness is under the ICCPP). c) The Prosecution should also verify whether it intends to make an application for protective or special measures under Rules 87 and 88 of the Rules and communicate this to the legal representative.
<u>5. Communication between the Prosecution, the Defence and the legal representative of a dual status witness</u>	a) As soon as the Prosecution becomes aware that one of the witnesses it will call to testify is also a victim, it will inform the Defence and the legal representative of the dual status witness. b) As soon as the Defence becomes aware that one of the witnesses it will call to testify is also a victim, it shall inform the Prosecution and the legal representative.

<u>6. Modalities of contact with individuals enjoying dual status</u>	a) When a party or the VPRS³ wishes to contact an individual with dual status, it shall provide notice as soon as possible of this to the legal representative, when it is aware the person has legal representation. b) If a person with dual status participating in ICCPP requests to contact the parties or participants, the VWU will facilitate the contact which will be revealed to the party calling the witness. c) The party contacted should inform the legal representative of the dual status witness concerned. d) When in situations of urgency, in order to preserve or collect evidence, the Prosecution or the Defence does not contact the legal representative, the party who has contacted the individual shall as soon as possible thereafter inform the legal representative, and where applicable disclose any relevant material.
<u>7. Contacts between a witness with dual status and his or her legal representative</u>	a) The legal representative may contact his or her client if they are a victim with dual status, including if they are in the ICCPP. If the dual status individual is in the ICCPP, contacts shall be facilitated by the VWU.
<u>8. Providing the legal representative with a copy of the signed statements and other materials, such as notes and documents, relating to a witness with dual status</u>	a) The legal representative has the right to receive a copy of the statement, transcript or recording made during the interview with the calling party. b) If access is sought to materials (which not only relate to specific participating victims with dual status but were also produced with their involvement and assistance) the legal representative shall submit a detailed request to the calling party outlining the reasons why access should be provided. c) Unless reasons exist for refusing access, the parties shall provide the legal representative of dual status victims, upon request, with a copy of these materials, under conditions of strict confidentiality. d) If a party considers that it should not provide particular materials or will only submit them in redacted or summary form, it shall inform the Chamber and the legal representative of the reasons. e) The Chamber will then consider the matter, if an application is made by the legal representative.

³ "Or the VPRS" was added to Section 6 a).

<u>9. Attendance by the legal representative at the medical examination of witnesses with dual status and disclosure of any report to the legal representative</u>	a) The legal representative may be present during a medical examination of a victim with dual status, provided that there is consent from the individual concerned. b) The presence of the legal representative must not in any way obstruct a proper medical examination.
<u>10. Attendance of the legal representative at interviews of a witness with dual status</u>	a) The dual status individual is entitled to have the legal representative attend the interview. This is the choice of the witness whose decision shall not be influenced. b) The presence of the legal representative must not obstruct a proper interview. c) Where applicable, the party shall provide the legal representative with any relevant material.
<u>11. Providing information to the legal representative about the family or legal guardian of a child witness with dual status</u>	a) The parties should share this information with the legal representative of victims with dual status provided there is consent from the individual concerned. b) When the witness is in the ICCPP, the VWU is the competent entity to provide this information to the legal representative, provided there is consent from the individual concerned and the security of the individual or the operation of the protection program is not put at risk.