

**Protocol on the vulnerability assessment and support procedure used to
facilitate the testimony of vulnerable witnesses**

I. Introduction

- 1) This protocol describes the vulnerability assessment and support procedure used to facilitate the testimony of vulnerable witnesses. The protocol is a part of the measures the Victims and Witnesses Unit (“VWU”) put in place to protect the psychological well-being, dignity and privacy of witnesses¹, in particular those who are at increased risk of psychological harm through the process of testimony.
- 2) This protocol complements the “Protocol on the practices used to prepare and familiarise witness for giving testimony at trial”² and is based on the practice established before Trial Chamber I and Trial Chamber II.
- 3) The protocol focuses on measures and interventions to assist vulnerable witnesses before, during and after testimony.
- 4) For the purpose of this document:
 - a. “Psychologist” refers to the person holding the post of Clinical Psychologist/Trauma Expert employed by the VWU, or his or her representative.
 - b. “Support Team” refers to the team within the VWU, which is headed by the Support Officer and which consists of an Associate Support

¹ In accordance with Article 68(1) of the Rome Statute.

² ICC-01/05-01/08-972-Anx.

Officer, a Senior Support Assistant and Support Assistants. All members of this team have a background in social work and have been selected because of their experience in working with vulnerable clients.

II. Identification of vulnerable witnesses

- 5) Vulnerable witnesses are those witnesses who face an increased risk:
 - a. Suffer psychological harm through the process of testifying³, and/or
 - b. Experience psychosocial or physical difficulties, which affect their ability to testify.

- 6) The vulnerability of a witness can be determined by different factors:
 - a. 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).
 - b. 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.
 - c. 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.

- 7) The parties have the obligation to identify, protect and respect the well-being and dignity of witnesses.⁴ The parties should alert the VWU as early

³ The term « testifying » for the purpose of this Protocol refers to provision of a witness statement as well as the appearance before the Court.

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

as practicable if they intend to call a vulnerable witness or if they identify the need for protective measures. The parties are invited to consult with the VWU on this matter to allow for appropriate preparations for the testimony of the witness.⁵ The party calling the witness should make use of the Witness Information Form to indicate that assistance is needed for the preparation of the witness for giving testimony at trial and to share relevant information about the vulnerable witness.

III. Assessment and support prior to the trial

Before travel to the location of testimony

- 8) A preparatory assessment is conducted under the guidance of the Psychologist and under the condition that this assessment does not compromise the security of the witness.

The goals of this interview are:

- a. To explore the vulnerability of the witness and gather detailed information about his or her state of mental health and particular needs relevant to testimony, including the need for testimony via video-link and/the need for an accompanying support person (regulations 45, 91 and 94(f) of the Regulations of the Registry).
- b. To evaluate the ability of the witness to testify at the location of the Court.
- c. To establish a relationship between the witness and the staff of the VWU.

⁵ "Protocol on the practices used to prepare and familiarise witnesses for giving testimony at trial", (ICC-01/05-01/08-972-Anx, para. 10).

- 9) Following the preparatory assessment, the VWU, in consultation with the party calling the witness, determines appropriate measures to prepare the vulnerable witness for trial.

At the location of testimony

- 10) Upon arrival at the location of testimony, the Psychologist assesses the vulnerable witness. The assessment builds upon the preparatory assessment.

The goals of the assessment are:

- a. To assess whether it is still appropriate for the witness to testify.
- b. To evaluate the current mental health status of the witness and identify special needs⁶, in particular with regard to the preparation for testimony.
- c. To identify the appropriate special measures (rule 88 of the Rules of Procedure and Evidence).

- 11) The Psychologist asks the witness for his/her oral informed consent for the assessment and informs about:

- a. The nature of the interview,
- b. The procedure to request special measures, and
- c. The fact that a summary of findings will be shared with relevant persons in the VWU and with the Chamber.

In case the Chamber decides to share the content of the assessment report with other persons, the VWU strongly recommends that the Chamber seek the consent of the witness first⁷.

⁶ If the witness has medical problems or physical disability, the process of identification of special needs will be based on medical records, if available.

- 12) At the end of the assessment, the Psychologist discusses with the witness the relevant special measures and seeks the consent of the witness to implement those measures, if granted. In case the witness disagrees with the Psychologist's recommendations, this will be reflected in the assessment report to the Chamber.
- 13) The Psychologist and the Support Officer coordinate the support provided throughout the stay at the location of testimony and the familiarisation procedure of vulnerable witnesses. If any relevant issues or concerns arise regarding the well-being of any witness during this procedure, the Support Team informs the Psychologist accordingly.
- 14) The Psychologist, in consultation with the Support Officer, instructs and monitors the Support Assistants' actions in relation to vulnerable witnesses. This monitoring is done following a clinical care model and on the basis of the assessment.
- 15) When the Psychologist is absent during trial, the Chamber is informed in a timely manner. During this time, in case specialised care⁸ is required, which cannot be provided by the Support Team, specialists who are members of the ICC support network can be consulted on short notice.
- 16) In case a witness needs psychiatric care, a referral to a psychiatrist is organised by the Support Officer and the Psychologist.

⁷ See also the "Victims and Witnesses Unit report on confidentiality of medical records and consent to disclose medical records", ICC-01/04-01/06-2166.

⁸ Specialised care includes diagnosis and specialised response to emergencies.

IV. Recommendations for Special Measures

- 17) The Psychologist sends the assessment summary to the Chamber, prior to testimony of the witness. The report includes:
- a. Information about cognitive and behavioural aspects, relevant to the process of testimony,
 - b. Observations regarding the witness' mental health and special needs, relevant to the process of testimony,
 - c. An evaluation of his or her current capacity to testify,
 - d. Other background information relevant to the process of testimony, such as educational level and capacity to read and write, and
 - e. The recommended special measures (see Annex A).

The assessment does not address the credibility of the witness.

- 18) The requested special measures are demonstrated and/or explained to the witness during the courtroom familiarisation. Depending on their needs, vulnerable witnesses receive more than one courtroom familiarisation.
- 19) Additionally, if the Chamber grants the requested special measures prior to the scheduled witness' testimony, the Support Team or the Psychologist informs the witness about these measures⁹.

V. Assistance during testimony

- 20) If the mental state of the witness so requires, the Psychologist requests permission from the Chamber to be allowed to sit in the courtroom to

⁹ The VWU notes in that perspective that it is of high importance for the psychological well-being of the witnesses to be informed as soon as practicable of the granted special measures.

monitor the vulnerable witness during his or her testimony and to intervene if the witness shows signs of severe distress and/or is unable to continue the testimony.

- 21) Any urgent observations and/or concerns that arise during testimony shall be communicated to the Chamber by the Psychologist.

VI. Post-trial support and follow-up

At the location of testimony

- 22) Immediately after the vulnerable witness has finished giving testimony, the witness receives a debriefing and the Psychologist checks the mental state of the witness.

- 23) Where appropriate, witnesses go through a “cooling down period”. This process entails that the witness will not return immediately to his/her location of residence, but will instead remain in a safe holding area.¹⁰ While the “cooling down period” is primarily a security measure, it can also be initiated to further observe the mental state of a vulnerable witness or to allow a witness to recover from the testimony, prior to returning home.

At the witness' location of residence

- 24) If necessary, the Psychologist and the Support Officer will decide on the appropriate long-term measures for support.

¹⁰ ICC-01/04-01/06-1232-conf. paras. 1-8.

Annex A: Catalogue of Special Measures (rule 88 of the Rules of Procedure and Evidence)
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Recommendations for special measures may include, but are not limited to:

1. Measures to adapt the setup of the courtroom to the needs of the witness

1.1. Avoid direct eye contact between the witness and the accused.

1.1.1. The witness sits behind a curtain.

- The accused sees the witness on the screen. The accused enters the courtroom after the witness enters and leaves before the witness leaves.
- Screens in front of the witness can be switched on or off.

1.2. Usage of a video-link (regulations 45 and 94(f) of the Regulations of the Registry).

1.2.1. In witness-friendly environment at the seat of the Court (witness room/remote room).

1.2.2. Audio-visual link from home country.

1.3. Reduce the number of people in the courtroom.

1.3.1. Reduced number of people per team, or

1.3.2. Only Judges present.

1.4. Remove official Court robes.

1.5. Judges sit on the Registry's bench.

1.6. Restriction of note-taking and usage of computers to the extent possible.

1.7. Put in place procedural protective measures in order to protect the psychological well-being, dignity and privacy of the witness (rule 87 of the Rules of Procedure and Evidence, regulation 94 of the Regulations of the Registry):

1.7.1. Closed session.

1.7.2. Voice and/or facial distortion.

1.7.3. Provide the witness with a pseudonym.

1.8. Avoid naming people in the courtroom:

- 1.8.1. Inform the witness that if he/she feels uncomfortable naming people in the courtroom, he/she may raise this with the judges.
 - 1.8.2. The witness could be shown the names of the persons he/she named in the statement on a piece of paper and be asked to confirm that these names are accurate.
 - The witness could be asked to write down the names and show them to the judges.
 - One or all of the judges could provide further reassurance to the witness of his/her protected role during the proceedings either before or after the familiarization.
- 2. In-court assistance and other in-court support (Rule 88(2) of the Rules of Procedure and Evidence)**
- 2.1. In-court assistance:
 - 2.1.1. Accompanying support person (regulation 91 of the Regulations of the Registry)/in-court assistant¹¹ sits next to the witness in the witness box.
 - 2.1.2. Psychologist monitors the witness in the courtroom.
- 3. Measures to adapt the questioning to the needs and capacities of the witness (Rule 88(5) of the Rules of Procedure and Evidence)**
- 3.1. Start testimony with a free narrative phase, followed by specific questions.
 - 3.2. Start with questions to guide the witness through the statement.
 - 3.3. Use neutral questions unrelated to the actual testimony to familiarize witnesses with the environment of the courtroom.
 - 3.4. Use short, simple questions and language which is easy to understand, avoiding legal terms, long sentences and double negations.
 - 3.5. Use developmentally appropriate questions, in particular for children.
 - 3.6. Put questions in a non-confrontational, non-pressuring form.
 - 3.7. Avoid questions that may be embarrassing for the witness.

¹¹ In-court assistant can be a Support Assistant, the Psychologist or an outside expert.

- 3.7.1. In case a witness is questioned about sexual violence:
- Formulate questions in the least embarrassing manner possible.
 - Avoid unnecessarily intrusive questions.

3.8. Ask questions of the witness through the judges.

- 3.8.1. Questions asked through someone else (i.e., the Psychologist or another expert).

3.9. Follow the pace of the witness.

3.10. Observe the witness closely. In case of signs of nervousness, distraction, withdrawal or emotional reactions, a break is offered to the witness.

4. Other measures

4.1. Provide reading assistance for text.

- 4.1.1. The witness is illiterate and should, therefore, not be asked to read or write anything in the courtroom but instead should be provided with reading assistance.
- 4.1.2. The witness has a low or moderate level of literacy and does not feel comfortable reading out loud. He/she should therefore not be asked to read or write anything in the courtroom and should be provided with reading assistance.