

# **Annex A**

**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 relevant, accurate and structured testimony;  
and
    - (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.
2. Witness preparation should not be conducted for the purpose of seeking new evidence or continuing the calling party's investigations.
3. Any attempt to influence a witness to testify to factual events that the witness did not observe or perceive is prohibited. Coaching, training or practising are not allowed.
4. Witness preparation is to be carried out in good faith and in keeping with the applicable standards of professional conduct and ethics.

**II. Responsibility for conducting witness preparation**

5. Witness preparation is the responsibility of the calling party, who 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.
6. Witness preparation should be conducted by the lawyer of the calling party who will question the witness in court, unless exceptional circumstances render this impossible.
7. 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.

If the witness so requests, his or her legal adviser appointed pursuant to Rule 74 of the Rules of Procedure and Evidence shall be permitted to attend the preparation session.

### **III. Location**

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

### **IV. Timing**

10. The calling party shall conduct its preparation session after witness statements have been taken and disclosed to the opposing party.
11. 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.

### **V. Record Keeping**

12. The calling party shall video record the preparation session.
13. 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.
14. 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.
15. After conducting a witness preparation session, the calling party shall promptly provide the non-calling party with a copy of the log.

## VI. Required and Permissible Conduct

*During preparation sessions, the questioning lawyer must:*

16. Reiterate the witness' obligation to tell the truth.
17. Explain the purpose of the preparation session.
18. Provide the witness with an opportunity to review his or her prior statements.
19. Provide the witness with an opportunity to confirm whether his or her prior statements are accurate and to explain any changes as necessary.

*During preparation sessions, the questioning lawyer may:*

20. Review the statements together with the witness and question the witness on inconsistencies in his or her prior statements.
21. Explain, in general terms, the topics that the calling party intends to cover in examination-in-chief.
22. Explain, in general and neutral terms, that the witness may be questioned by counsel of the non-calling party on certain matters in his or her statement.
23. Explain to the witness that certain matters upon which investigators previously questioned the witness might not be raised during testimony.
24. Show the witness potential exhibits, regardless of whether or not the witness has previously seen them, and ask him or her to comment on them for the purpose of ascertaining whether the witness can usefully comment on them during testimony.
25. Explain the role of the various participants in the courtroom.
26. Inform the witness about appropriate witness behaviour, including the need to speak slowly and concisely.
27. Subject to the restrictions below, answer any questions the witness may have, including about what to expect in court.

## **VII. Prohibited Conduct**

*During preparation sessions, the questioning lawyer shall not:*

28. Seek to influence the substance of the witness' answers, 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' answers are right, or leading the witness in an inappropriate way).
29. Undertake to train the witness or practice the questions and answers expected during the witness's in-court testimony so that the witness memorises those questions and answers.
30. Inform the witness of the evidence of other witnesses (including oral testimony and prior recorded statements of other witnesses).

## **VIII. Disclosure**

31. 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 his or her examination-in-chief.
32. 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; and
  - b) any new information obtained from the witness.