

ANNEX V

Protocol on the exceptions to disclosure in the form of redaction of information

1. Under Rules 81(2) and (4) of the Rules, the Prosecutor may redact information from evidence disclosed to the Defence. Redactions can be implemented without need for a prior authorization of the Chamber, which is seized of the matter only upon challenge by the Defence. In this case, the Prosecutor retains the burden of proof to justify the challenged redaction. For any redaction applied, the Prosecutor shall indicate the category by including in the redaction box the code corresponding to each category, unless such indication would defeat the purpose of the redaction.
2. Redaction of the identity of a witness (i.e. anonymity) at the pre-trial stage of the proceedings under Rule 81(4) of the Rules must be specifically authorised upon motivated request by the Prosecutor. This applies also to non-disclosure of an entire item of evidence by the Prosecutor with the Defence not being informed of its existence.
3. This system should be ordered, and remain applicable at all stages of proceedings, through the inclusion of the following text into a decision of the Chamber, ideally the first decision regulating disclosure following the initial appearance:

- (i) *The following procedure shall apply for exceptions to disclosure by the Prosecutor which are subject to judicial control, i.e. under Rule 81(2) and (4) of the Rules of Procedure and Evidence.*
- (ii) *The Prosecutor shall disclose evidence with redactions under Rule 81(2) and (4) of the Rules without discrete application to the Chamber, except as provided in paragraph 5. When disclosing redacted evidence, the Prosecutor shall indicate the type of redaction in the redaction box by using the following codes:*

Under Rule 81(2) of the Rules

- *Category 'A.1': Locations of witness interviews/accommodation, insofar as disclosure would unduly attract attention to the movements of the Prosecutor's staff and witnesses, thereby posing a risk to ongoing or future investigations;*

- *Category 'A.2': Identifying and contact information of the Prosecutor's, VWU or other Court staff members who travel frequently to, or are based in, the field, insofar as disclosure of this information could hinder their work in the field and thereby put at risk the ongoing or future investigations of the Prosecutor (to be further specified as 'A.2.1' for translators, 'A.2.2' for interpreters, 'A.2.3' for stenographers, 'A.2.4' for psycho-social experts, 'A.2.5' for other medical experts and 'A.2.6' for other staff members falling within this category);*
- *Category 'A.3': Identifying and contact information of translators, interpreters, stenographers and psycho-social experts assisting during interviews who are not members of the Prosecutor's staff but who travel frequently to, or are based in the field, insofar as disclosure of this information could hinder their work so that the Prosecutor could no longer rely on them, and thereby put at risk ongoing or future investigations of the Prosecutor (to be further specified as 'A.3.1' for translators, 'A.3.2' for interpreters, 'A.3.3' for stenographers, 'A.3.4' for psycho-social experts, 'A.3.5' for other medical experts and 'A.3.6' for other persons falling within this category);*
- *Category 'A.4': Identifying and contact information of investigators, insofar as disclosure of this information could hinder their work in the field thereby putting at risk the ongoing or future investigations of the Prosecutor;*
- *Category 'A.5': Identifying and contact information of intermediaries, insofar as disclosure of this information could hinder their work in the field thereby putting at risk the ongoing or future investigations of the Prosecutor;*
- *Category 'A.6': Identifying and contact information of leads and sources, insofar as disclosure of this information could result in the leads and sources being intimidated or interfered with and would thereby put at risk the ongoing or future investigations of the Prosecutor (to be further specified as 'A.6.1' for individual sources, 'A.6.2' for NGOs, 'A.6.3' for international organisations; 'A.6.4' for national governmental agencies, 'A.6.5' for academic sources, 'A.6.6' for private companies and 'A.6.7' for other sources);*
- *Category 'A.7': Means used to communicate with witnesses, insofar disclosure of this information may compromise investigation techniques or the location of witnesses and would thereby put at risk the ongoing or future investigations of the Prosecutor;*
- *Category 'A.8': Other redactions under Rule 81(2) of the Rules;*

Under rule 81(4) of the Rules

- *Category 'B.1': Recent contact information of witnesses, insofar necessary to protect the safety of the witness;*
- *Category 'B.2': Identifying and contact information of family members of witnesses, insofar necessary to protect their safety;*
- *Category 'B.3': Identifying and contact information of 'other persons at risk as a result of the activities of the Court' ('innocent third parties'), insofar necessary to protect their safety;*
- *Category 'B.4': Location of witnesses who are admitted in the International Criminal Court Protection Programme and information revealing the places used for present and future relocation of these witnesses, including before they enter the ICCPP;*
- *Category 'B.5': Other redactions under Rule 81(4) of the Rules.*

4. When so disclosing evidence with redactions, the Prosecutor shall assign unique pseudonyms to any persons whose identity is redacted. The Prosecutor need not provide the category code and/or a pseudonym when doing so would defeat the purpose of the redaction but shall make clear which codes/ pseudonyms are missing for this reason. The Prosecutor shall also file in the record of the case a report stating which categories of redactions have been applied to particular items of evidence. In this report, the Prosecutor shall also briefly indicate, to the extent possible, the basis for each redaction falling under categories 'A.8' and 'B.5'.
5. Should the Defence consider that a particular redaction is unwarranted or should be lifted as a result of changed circumstances, it shall approach the Prosecutor directly. The parties shall consult in good faith with a view to resolving the matter. If they are unable to agree, the Defence may apply to the Chamber for a ruling. In such case, the Prosecutor shall have the burden to justify the particular redaction, and shall file her submissions in the record of the case within five days, unless otherwise decided by the Chamber. Thereafter, the Chamber will rule as to whether the particular redaction is to be lifted or maintained.

6. The above procedure shall not apply to the non-disclosure of witnesses' identities prior to the commencement of trial and to the non-disclosure of entire items of evidence. In such cases, the Prosecutor shall submit to the Chamber a discrete application.
7. The Prosecutor shall monitor the continued necessity of redactions, and shall re-disclose evidence with lesser redactions as soon as reasons justifying them *cease to exist, or, if applicable, make an application under Regulation 42(3) of the Regulations of the Court.*
 - (i) *If the Prosecutor redacts evidence prior to disclosure on the basis of Rule 81(1) of the Rules of Procedure and Evidence, she shall mark this in the redaction box as category 'E'.¹*
8. The Prosecution shall apply redactions to the victim application forms and related material of Dual Status Witnesses as necessary and in consultation with their legal representatives (the 'LRV'). Such redactions shall follow the regime set out in the present protocol. The Prosecution shall ensure that redactions applied to the victim application forms are consistent with the ones applied to the witness statements disclosed to the Defence. The Prosecution shall consult the LRV before applying or lifting redactions in victim application forms and related material.²
9. The Prosecution and the LRV shall mutually resolve any disagreements resulting from the application and lifting of redactions. In case of dispute, the Prosecution and the LRV may approach the Chamber.
10. The Chamber's authorization for the non-disclosure of information granted in relation to evidence provided by an individual in his/her capacity as witness extends, where applicable, to his/her victim application form.

¹ Chambers Practice Manual, as amended on 21 October 2024, pages 22 – 25, paras. 98 – 100.

² Trial Chamber V, Decision on Protocols at Trial, ICC-01/14-01/18-677-Anx3, 08 June 2020, paras. 9 – 11.