

## **ANNEX 4**

## Proposed mechanisms for exchange of information on individuals enjoying dual status

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| <p><b><u>1. Information to be provided to the Registry</u></b></p>       | <ul style="list-style-type: none"> <li>a) The VWU should be aware of the dual status of a protected individual in order to reduce possible risks and to facilitate a proper risk assessment.</li> <li>b) The parties and participants should communicate to the VWU the fact of the dual status of an individual as soon as they become aware of it.</li> <li>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 (the ICCPP) this should be communicated to the VWU.</li> <li>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.</li> <li>e) The VPRS should be notified by the parties as to whether an applicant has dual status in order for it to take this into consideration, particularly when making recommendations on redactions to the Chamber.</li> </ul> |
| <p><b><u>2. Communication between the VPRS and the VWU</u></b></p>       | <ul style="list-style-type: none"> <li>a) Whenever a victim or applicant is without legal representation, and the VPRS needs to contact the person, VWU shall indicate to the VPRS whether a victim applicant is in the protection programme in order to facilitate contact between the VPRS and the applicant.</li> <li>b) Whenever the VWU is informed about the dual status of an individual, it should require the calling party to provide the information to the VPRS and to confirm to VWU in writing that such information took place.</li> <li>c) The VWU shall take into account a victim's request that his or her identity is not revealed to the parties, and instruct the VPRS not to reveal to any participant or party that the person is in the ICCPP and has dual status.</li> </ul>                                                                                                                                                                                                                                |
| <p><b><u>3. Dual status witnesses participating in the ICCPP</u></b></p> | <ul style="list-style-type: none"> <li>a) The fact that an individual participates in the ICCPP shall remain confidential.</li> <li>b) The VWU shall facilitate all contact between a protected individual and the other organs of the Court, the parties and the participants.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |

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|                                                                                                                     | <p>c) The VWU does not have an obligation to disclose to a party or the participants the details of contact with a protected individual.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| <p><b><u>4. Communication between the legal representative of a dual status witness and the Prosecution</u></b></p> | <p>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.</p> <p>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).</p> <p>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.</p>                                                                                                                                                              |
| <p><b><u>5. Communication between the legal representative of a victim and the Defence</u></b></p>                  | <p>a) The legal representative shall inform the Defence that he represents a victim who has dual status when the identity of this victim has been disclosed to the Defence.</p> <p>b) The Defence shall thereafter inform the legal representative if the name provided is a potential witness for the Defence.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| <p><b><u>6. Modalities of contact with individuals enjoying dual status</u></b></p>                                 | <p>a) When a party wishes to contact an individual with dual status, it shall provide notice of this to the legal representative, when it is aware the person has legal representation</p> <p>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 not be revealed to other parties and participants.</p> <p>c) The party contacted should inform the legal representative of the dual status witness concerned.</p> <p>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.</p> |

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| <p><b><u>7. Contact between a witness with dual status and his or her legal representative</u></b></p>                                                                                   | <p>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 contact shall be facilitated by the VWU</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| <p><b><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></b></p> | <p>a) 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.</p> <p>b) 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.</p> <p>c) 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.</p> <p>d) The Chamber will then consider the matter, if an application is made by the legal representative.</p> |
| <p><b><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></b></p>         | <p>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.</p> <p>b) The presence of the legal representative must not in any way obstruct a proper medical examination.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| <p><b><u>10. Attendance of the legal representative at interviews of a witness with dual status</u></b></p>                                                                              | <p>a) The legal representative may be present during an interview of an individual with dual status, provided there is consent from the individual concerned.</p> <p>b) The legal representative has the right to receive a copy of the statement, transcript or recording made during the interview.</p> <p>c) The presence of the legal representative must not obstruct a proper interview.</p> <p>d) If the party considers that the presence of the legal representative is inappropriate or impracticable, it shall, as soon as practicable, inform the legal</p>                                                                                                                                                                                                                                                                                                  |

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|                                                                                                                                                   | <p>representative of the interview. Unless a delay cannot be justified because of urgency, the party willing to interview the individual without the legal representative should raise the matter with the Chamber and (when relevant) ensure that sufficient time is afforded to enable this to happen prior to the interview.</p> <p>e) Where applicable, the party shall provide the legal representative with any relevant material.</p>                            |
| <p><b><u>11. Providing information to the legal representative about the family or legal guardian of a child witness with dual status</u></b></p> | <p>a) The parties should share this information with the legal representative of victims with dual status, provided there is consent from the individual concerned.</p> <p>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 programme is not put at risk.</p> |