

## ANNEX 1

Public

## Dual Status Witness Protocol

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| <b><u>1. Information to be provided to the Registry</u></b>                                                                | <p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p> |
| <b><u>2. Dual status witnesses participating in the ICCPP</u></b>                                                          | <p>a) The fact that an individual participates in the ICCPP shall remain confidential.</p> <p>b) The VWU shall facilitate all contact between a protected individual and the other organs of the Court, the parties and the participants.</p> <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, unless the Chamber orders otherwise.</p>                                                                                                                                                                                                                                                                                                                                                                |
| <b><u>3. Communication between the legal representatives of a dual status witness and the Prosecution</u></b>              | <p>a) When the legal representatives 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 representatives (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 representatives.</p>                                                                                                |
| <b><u>4. Communication between the Prosecution, the Defence and the legal representatives of a dual status witness</u></b> | <p>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 representatives of the dual status witness.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |

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|                                                                                                                                                                                    | 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 representatives.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| <b><u>5. Modalities of contact with individuals enjoying dual status</u></b>                                                                                                       | <p>a) When a party wishes to contact an individual with dual status, it shall provide notice as soon as possible of this to the legal representatives, 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 be revealed to the party calling the witness.</p> <p>c) The party contacted should inform the legal representatives 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 representatives, the party who has contacted the individual shall as soon as possible thereafter inform the legal representatives, and where applicable disclose any relevant material.</p>                                                                                                                                                                 |
| <b><u>6. Contacts between a witness with dual status and his or her legal representatives</u></b>                                                                                  | a) The legal representatives 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.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| <b><u>7. Providing the legal representatives 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>a) The legal representatives have the right to receive a copy of the statement, transcript or recording made during the interview with the calling party.</p> <p>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 representatives shall submit a detailed request to the calling party outlining the reasons why access should be provided.</p> <p>c) Unless reasons exist for refusing access, the parties shall provide the legal representatives of dual status victims, upon request, with a copy of these materials, under conditions of strict confidentiality.</p> <p>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 representatives of the reasons.</p> <p>e) The Chamber will then consider the matter, if an application is made by the legal representatives.</p> |
| <b><u>8. Attendance by the legal representatives at the medical examination of witnesses with dual</u></b>                                                                         | a) The legal representatives may be present during a medical examination of a victim with dual status, provided that there                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |

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| <p><b><u>status and disclosure of any report to the legal representatives</u></b></p>                                                             | <p>is consent from the individual concerned.</p> <p>b) The presence of the legal representatives must not in any way obstruct a proper medical examination.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| <p><b><u>9. Attendance of the legal representatives at interviews of a witness with dual status.</u></b></p>                                      | <p>a) The dual status individual is entitled to have the legal representatives attend the interview. This is the choice of the witness whose decision shall not be influenced.</p> <p>b) The presence of the legal representatives must not obstruct a proper interview.</p> <p>c) Where applicable, the party shall provide the legal representatives with any relevant material.</p> <p>d) Should a party consider that the presence of the legal representatives is inappropriate or impracticable, it shall, as soon as practicable, inform the legal representatives of the objection. The party seeking to interview the individual without the legal representatives should promptly raise the matter with the Chamber with a view to obtaining its authorisation. The burden is on the party seeking authorisation to establish that such an exceptional remedy is necessary in the particular circumstances.</p> |
| <p><b><u>10. 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 representatives 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 representatives, 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.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                   |