

ANNEX

Witness Preparation Protocol

Defence and SPO's Proposal¹

¹ This proposed Witness Preparation Protocol is based on the Witness preparation protocol (ICC-01/04-02/06-652-AnxA), annexed to *Prosecutor v. Bosco Ntaganda*, ICC-01/04-02/06-652, Decision on witness preparation, 16 June 2015, as amended by *Prosecutor v. AL Hassan AG Abdoul Aziz AG Mohamed Ag Mahmoud*, ICC-01/12-01/18-666, Decision on witness preparation and familiarisation, 17 March 2020, with Annex: Witness preparation protocol, ICC-01/12-01/18-666-Anx.

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 practicing 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 WPSO. The calling party shall exercise particular care with regard to vulnerable witnesses, and the WPSO should be available to assist with vulnerable witnesses if necessary.
6. Witness preparation should, as far as possible, be conducted by the lawyer of the calling party who will question the witness in court. The lawyer should be accompanied by at least one other lawyer or team member of the calling party's team unless exceptional circumstances render this impossible.

III. LOCATION AND TIMING

7. Witness preparation may be conducted on the premises of the Specialist Chambers and Specialist Prosecutor's Office in The Hague or Kosovo, at the place of testimony, if elsewhere, or any other place. When determining the location, due regard to the security of the witness should be given.

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

IV. RECORD KEEPING

9. The calling party shall video record the preparation session.

10. Should the non-calling party wish to gain access to the video recording of a witness preparation session, it shall apply to the Panel, 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 Panel considers it necessary, it may review the recording itself, or order the disclosure of the recording.

11. 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.

12. After conducting a witness preparation session, the calling party shall promptly provide the non-calling party with a copy of the log.

V. REQUIRED AND PERMISSIBLE CONDUCT

13. During the preparation meeting, the questioning lawyer must:

- a. reiterate the witness's obligation to tell the truth;

- b. explain the purpose of the preparation session;
 - c. provide the witness with an opportunity to review his or her prior statements; and
 - d. provide the witness with an opportunity to confirm whether his or her prior statements are accurate and to explain any changes as necessary.
14. During the preparation meeting, the questioning lawyer may:
- a. explain, in general terms, the topics that the calling party intends to cover in direct examination;
 - b. explain, in general and neutral terms, the topics on which, in the calling party's opinion, the witness may be questioned during cross-examination;
 - c. 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;
 - d. explain to the witness that he or she may not be questioned in court about matters upon which the party previously questioned the witness;
 - e. explain the role of the various participants in the courtroom;
 - f. inform the witness about appropriate witness behaviour, including the importance of listening carefully to the questions, answering truthfully and completely all questions no matter who is posing them, of asking for clarification if the witness does not understand the question, of informing the court when the witness does not know the answer to a question, and the need to speak slowly and concisely; and
 - g. subject to the restrictions referred to in point VI ('Prohibited Conduct'), answer any questions the witness may have, including about what to expect in court.

VI. PROHIBITED CONDUCT

15. During preparation meetings, the questioning lawyer shall not:
- a. seek to influence the substance of the witness's 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's answers are right, or leading the witness in an inappropriate way);
 - b. 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; or
 - c. inform the witness of the evidence of other witnesses (including oral testimony and prior recorded statements of other witnesses).

VII. DISCLOSURE

16. 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.

17. 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.