

# **ANNEX 3**

**Public**

### **Protocol governing the redaction of evidence at trial**

1. The disclosing party may disclose evidence with redactions of information in standard categories under Rule 81(2) and (4) of the Rules without discrete application to the Chamber, except as provided for in paragraph 8 below. When disclosing redacted evidence, the disclosing party shall indicate the type of redaction in the redaction box by using the codes as set forth below.
2. Under Rule 81(2) of the Rules, the Prosecution may withhold information falling under any of the following categories:
  - Category ‘A.1’: Locations of witness interviews/accommodation, insofar as disclosure would unduly attract attention to the movements of the Prosecution’s staff and witnesses, thereby posing a risk to ongoing or future investigations;
  - Category ‘A.2’: Identifying and contact information of the Prosecution’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 Prosecution (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 Prosecution’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 Prosecution could no longer rely on them, and thereby put at risk ongoing or future investigations of the Prosecution (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 Prosecution;

- 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 Prosecution;
  - 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 Prosecution (to be further specified as ‘A.6.1’ for individual sources, ‘A.6.2’ for Non-Governmental Organisations, ‘A.6.3’ for international organisations; ‘A.6.4’ for national governmental agencies, ‘A.6.5’ for academic sources, ‘A.6.6’ for private-sector companies and ‘A.6.7’ for other sources);
  - Category ‘A.7’: Means used to communicate with witnesses, insofar as 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 Prosecution;
  - Category ‘A.8’: Other redactions under Rule 81(2) of the Rules.
3. Under Rule 81(4) of the Rules, the disclosing party may withhold information falling under any of the following categories:
- Category ‘B.1’: Recent contact information of witnesses, insofar as necessary to protect the safety of the witness;
  - Category ‘B.2’: Identifying and contact information of family members of witnesses, insofar as 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 as necessary to protect their safety;
  - Category ‘B.4’: Location of witnesses who are admitted in the International Criminal Court Protection Programme (‘ICCPP’) 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. If the disclosing party redacts evidence prior to disclosure on the basis of Rule 81(1) of the Rules, it shall mark this in the redaction box as category 'E'.
  5. When disclosing evidence with redactions, the disclosing parties shall assign unique pseudonyms to any persons whose identity is redacted. The disclosing parties 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.
  6. Should the receiving party consider that a particular redaction is unwarranted or should be lifted as a result of changed circumstances, it shall approach the disclosing party directly. The disputing parties shall consult in good faith with a view to resolving the matter. If the parties are unable to agree, the receiving party may apply to the Chamber for a ruling. In such case, the onus shall be on the disclosing party to justify the particular redaction, and it shall file submissions in the record of the case within three days from notification of the application made by the receiving party, unless otherwise decided by the Chamber. Thereafter, the Chamber will rule as to whether the disputed redaction is to be lifted or maintained.
  7. The disclosing party shall monitor the continued necessity for redactions and shall re-disclose evidence with lesser redactions as soon as the reasons justifying them cease to exist, or if applicable, make an application under regulation 42(3) of the Regulations of the Court.
  8. The above procedure shall not apply to redactions falling outside of the abovementioned categories or to the non-disclosure of entire items of evidence. In such cases, the disclosing party shall submit a discrete application to the Chamber sufficiently in advance so as to allow for the timely decision by the Chamber and the subsequent disclosure of evidence within the time limits set by the Chamber. Such application shall also be notified, with appropriate redactions, to the receiving party.
  9. 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.

10. 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.
11. The Chamber's authorisation 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.