

Public Redacted Version of
“Confidential Annex B”

Terms of Reference for [REDACTED]

1. **Objective 1:** Re-Interview Mr Dominic Ongwen for the purpose of determining whether or not Mr Ongwen could form the necessary intent to commit crimes from 1 July 2002 through 31 December 2005 with the intent required pursuant to Article 28 or Article 30 of the Rome Statute (see below).
2. **Objective 2:** Talk to the medical professionals and religious personnel that have had contact with Mr Ongwen since arriving at the International Criminal Court's Detention Centre in The Hague, Netherlands for the purpose of determining Objective 1.
3. **Objective 3:** In conjunction with [REDACTED], determine as close as possible any times within the dates in paragraph 1 that Mr Ongwen could or could not form the necessary intent mentioned in paragraph 1.
4. Ensure that all communications between you and the Defence are confidential.
5. Produce a technical/medical report (hereinafter 'Report') detailing Mr Ongwen's mental state for the time period specified in paragraph 1.
6. Provide a detailed report of the processes in which you and [REDACTED] performed to come to the conclusions outlined in the Report. This can be contained within the Report if you desire.
7. If you and [REDACTED] determine that Mr Ongwen could not form the necessary intent mentioned in paragraph 1, prepare any documents, reports, presentations or anything else required to present the information in the Report and accompanying documents to Trial Chamber IX, the Office of the Prosecutor and any experts appointed by Trial Chamber IX at the International Criminal Court.

Article 28 of the Rome Statute – Responsibility of commanders and other superiors

In addition to other grounds of criminal responsibility under this Statute for crimes within the jurisdiction of the Court:

(a) A military commander or person effectively acting as a military commander shall be criminally responsible for crimes within the jurisdiction of the Court committed by forces under his or her effective command and control, or effective authority and control as the case may be, as a result of his or her failure to exercise control properly over such forces, where:

- (i) That military commander or person either knew or, owing to the circumstances at the time, should have known that the forces were committing or about to commit such crimes; and
- (ii) That military commander or person failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.

Article 30 of the Rome Statute – Mental element

- (1) Unless otherwise provided, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court only if the material elements are committed with intent and knowledge.
- (2) For the purposes of this article, a person has intent where:
 - a. In relation to conduct, that person means to engage in the conduct;
 - b. In relation to a consequence, that person means to cause that consequence or is aware that it will occur in the ordinary course of events.
- (3) For the purposes of this article, "knowledge" means awareness that a circumstance exists or a consequence will occur in the ordinary course of events. "Know" and "knowingly" shall be construed accordingly.