



**Original: English**

**No. ICC-02/04-01/05  
Date: 1 December 2022**

**PRE-TRIAL CHAMBER II**

**Before:** Judge Rosario Salvatore Aitala, Presiding Judge  
Judge Antoine Kesia-Mbe Mindua  
Judge Tomoko Akane

**SITUATION IN UGANDA**

**IN THE CASE OF *THE PROSECUTOR v. JOSEPH KONY AND VINCENT OTTI***

**Public**

Decision on the Prosecution's 'Renewed Request to Terminate Proceedings against Vincent  
Otti on Account of His Death'

**Decision to be notified, in accordance with regulation 31 of the *Regulations of the Court*,  
to:**

**The Office of the Prosecutor**

Karim A. A. Khan  
Mame Mandiaye Niang  
Colin Black

**Counsel for the Defence**

**Legal Representatives of Victims**

**Legal Representatives of Applicants**

**Unrepresented Victims**

**Unrepresented Applicants for  
Participation/Reparations**

**The Office of Public Counsel for Victims**

**The Office of Public Counsel for the Defence**

**States Representatives**

*Amicus Curiae*

**REGISTRY**

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**Registrar**

Peter Lewis

**Counsel Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Other**

**PRE-TRIAL CHAMBER II** of the International Criminal Court hereby issues this Decision on the Prosecution’s ‘Renewed Request to Terminate Proceedings against Vincent Otti on Account of His Death’<sup>1</sup> (the ‘28 March 2022 Request’ or ‘Request’).

1. On 8 July 2005, the Chamber, in its previous composition, issued a warrant of arrest for Vincent Otti (‘Mr Otti’).<sup>2</sup> After submitting preliminary information suggesting that Mr Otti was dead,<sup>3</sup> on 7 October 2008 the Prosecution filed the ‘Prosecutor’s Request that the Warrant of Arrest for Vincent OTTI Be Withdrawn and Rendered without Effect because of His Death’ (the ‘7 October 2008 Request’).<sup>4</sup>

2. On 28 March 2022, the Prosecution filed the Request, thereby submitting that there is persuasive evidence that Mr Otti was killed on or around 2 October 2007 in the Democratic Republic of the Congo and seeking that the Chamber therefore terminate the proceedings against Mr Otti.

3. On 23 May 2022, the Prosecution submitted the ‘Communication of further information received from the Government of Uganda about the death of Vincent Otti’ (the ‘23 May 2022 Communication’).<sup>5</sup>

4. The Chamber, noting articles 19(1), 25(1) and 58(4) of the Rome Statute (the ‘Statute’), recalls that it shall satisfy itself that it has jurisdiction in any case brought before it, and that it shall have jurisdiction only over natural persons. The purpose of criminal proceedings being to determine individual criminal responsibility, the Court cannot exercise jurisdiction over a deceased person. The death of a suspect or accused therefore requires that proceedings against that person be terminated, further to which all relevant documents, including any warrants of arrest, are rendered without effect.

5. To demonstrate that Mr Otti has deceased, the Prosecution relies on (i) the evidence cited in support of both the 7 October 2008 and 28 March 2022 Requests, which primarily consists of witnesses’ statements and transcripts of interview, as well as media reports; and (ii) the statements of individuals interviewed by the Ugandan authorities and annexed to the

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<sup>1</sup> ICC-02/04-01/05-443-US-Exp.

<sup>2</sup> ICC-02/04-01/05-4-US-Exp (public redacted version notified on the same day; ICC-02/04-01/05-54).

<sup>3</sup> Submission of Information Regarding Vincent Otti, 8 November 2007, ICC-02/04-01/05-258; Prosecution’s Submission in Advance of Hearing Scheduled for 11 December 2007, 10 December 2007, ICC-02/04-01/05-264; Transcript of hearing, 11 December 2007, ICC-02/04-01/05-T-7-Conf-Eng, p. 19 line 21 to p. 21 line 2.

<sup>4</sup> ICC-02/04-01/05-315-US-Exp with under seal *ex parte* annexes A-H.

<sup>5</sup> ICC-02/04-01/05-444-US-Exp with under seal *ex parte* annexes A-E.

23 May 2022 Communication. The Prosecution also states that, since October 2007, it has not encountered any information that would suggest that Mr Otti is still alive.

6. The Chamber notes that the witnesses introduced by the Prosecution provide consistent information about the events that would have led to Mr Otti's alleged death, as well as the significant amount of time during which no information indicating that Mr Otti would still be alive could be uncovered. Nevertheless, as submitted by the Prosecution, the body of Mr Otti has not been recovered and no official death certificate has been issued. In addition, none of the witnesses introduced by the Prosecution is a direct eyewitness to Mr Otti's alleged killing. Based on the available evidence, the Chamber therefore considers the death of Mr Otti not to be established, which does not render it appropriate to terminate the proceedings against him.

7. The Chamber remains available to consider and adjudicate a new request based on additional evidence suitable to demonstrate Mr Otti's death.

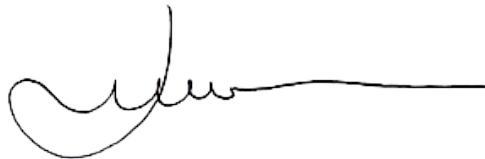
**FOR THESE REASONS, THE CHAMBER HEREBY**

**REJECTS** the Prosecution's 28 March 2022 Request;

**ORDERS** the Registrar to reclassify filings ICC-02/04-01/05-315-US-Exp, ICC-02/04-01/05-443-US-Exp and ICC-02/04-01/05-444-US-Exp, as well as their annexes, as confidential *ex parte* only available to the Prosecution and the Registry; and

**ORDERS** the Prosecution to file public redacted versions of filings ICC-02/04-01/05-315-US-Exp, ICC-02/04-01/05-443-US-Exp and ICC-02/04-01/05-444-US-Exp within two weeks of the issuance of this decision.

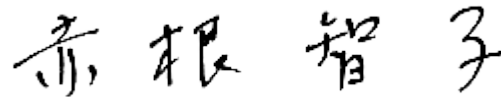
Done in English. A French translation will follow, but the English version remains authoritative.



**Judge Rosario Salvatore Aitala**  
**Presiding Judge**



**Judge Antoine Kesia-Mbe Mindua**



**Judge Tomoko Akane**

Dated this Thursday, 1 December 2022

At The Hague, The Netherlands