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Date: **13 December 2022**

PRE-TRIAL CHAMBER II

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

SITUATION IN UGANDA

IN THE CASE OF THE PROSECUTOR vs. JOSEPH KONY and VINCENT OTTI

Public

Public Redacted Version of “Prosecutor’s Request that the Warrant of Arrest for Vincent OTTI Be Withdrawn and Rendered without Effect because of His Death (ICC-02/04-01/05-315-Conf-Exp, dated 7 October 2008)”

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The Office of the Prosecutor (“OTP”) respectfully requests Pre-Trial Chamber II (“PTC II”) to order that the warrant of arrest issued for Vincent OTTI (“OTTI”) be withdrawn and rendered without effect pursuant to Article 58(4) of the Rome Statute (“Statute”) because of the changed circumstances caused by OTTI’s death.¹

Reasons for Filing Under Seal

This application and its Annexes are being filed under seal pursuant to Article 68 of the Statute and Rule 81(2) and (4) of the Rules of Procedure and Evidence (“Rules”) as certain information contained herein is currently under seal and available to the Prosecutor only. In addition, the application contains information that can identify witnesses and/or impair ongoing investigations.

Procedural Background

1. On 8 July 2005, PTC II issued warrants of arrest, naming Joseph KONY, Vincent OTTI, Okot ODHIAMBO, Raska LUKWIYA and Dominic ONGWEN, and specifying the charges of crimes against humanity and war crimes.²
2. On 11 July 2007, PTC II terminated the proceedings against Raska LUKWIYA after his death was confirmed.³
3. On 26 October 2007, the Registrar sent a Note Verbale to the Government of the Democratic Republic of the Congo (“GoDRC”) for information on the status of those wanted for arrest.⁴ On 12 November 2007, the GoDRC responded that it was unable

¹ The Prosecution also notes that in its decision to terminate proceedings against Raska LUKWIYA, the Chamber stated “that the purpose of criminal proceedings is to determine individual criminal responsibility and that the Chamber cannot exercise jurisdiction over a person who has deceased.” In this decision the Chamber stated further “that the death of a person requires that proceedings against that person be terminated, further to which all relevant documents are rendered without effect.” ICC-02/04-01/05-248, p. 4.

² ICC-02/04-01/05-1.

³ ICC-02/04-01/05-248, p. 4.

⁴ ICC-02/04-01/05-263-Conf, p. 4.

to provide any information on the LRA or their location. The Procureur-Général stated that: “[REDACTED].”⁵

4. On 8 November 2007, the OTP filed a “Submission of Information Regarding Vincent Otti” wherein the OTP provided preliminary information regarding the reported death of OTTI.⁶ That same day, the OTP also transmitted a request for information on the status of Vincent OTTI to the Government of Uganda (“GoU”). On 30 November 2007, the GoU responded by stating that “[REDACTED].”⁷
5. On 10 December 2007, the OTP filed the “Prosecution’s Submission in Advance of Hearing Scheduled for 11 December 2007” wherein the OTP provided additional information regarding the reported death of OTTI and information regarding LRA defections which occurred subsequent to his reported execution.⁸ On 11 December 2007, during a closed session hearing, the OTP stated that it had information indicating that OTTI was dead and would take additional investigative steps to assess the veracity of these reports.⁹
6. Since that time, neither the GoU nor the GoDRC have provided any additional information regarding the status of Vincent OTTI to the OTP or the Registry. It should be noted that the confirmation of the death of OTTI in this situation is complicated by the fact that OTTI was reportedly killed in a remote and currently inaccessible part of the DRC which is under the control of the LRA.
7. As the territorial states appeared unable to confirm the death of Vincent OTTI, the OTP conducted its own investigation to this effect. These steps included the interview of four former LRA officers who defected and were present in the area when OTTI was executed. The OTP also collected an audio recording of an interview

⁵ ICC-02/04-01/05-263-Conf-Anx3.

⁶ ICC-02/04-01/05-258.

⁷ Fax from Ag. Solicitor General, Ministry of Justice and Constitutional Affairs, dated 30 November 2007, in response to OTP RFA ref. OTP.Uganda-SolGen.mb.07112007 transmitted to the GoU on 7 November 2007.

⁸ ICC-02/04-01/05-264-US-Exp.

⁹ ICC-02/04-01/05-T-7-CONF-ENG ET, pp. 20-21.

of Joseph KONY. This interview, where KONY discusses the death of OTTI, was recorded on 22 January 2008 for radio broadcast on Radio Mega FM in Gulu.¹⁰ This evidence, in combination with other open source materials and the fact that twelve months have passed without anyone having seen or heard from OTTI, in the Prosecution's view, confirm that OTTI is dead.

Evidence Establishing the Death of Vincent OTTI

8. Before providing the evidence, it is helpful to first provide a description of the LRA base as it existed at the time of OTTI's execution. The LRA base was a complex of several camps located in eastern Garamba National Park, DRC (see Annex A). The main camp within the LRA base was referred to as "Boo" (see Annex B). At the time of the execution of OTTI, "Boo" was where the majority of the senior commanders, as well as the majority of the LRA fighters and dependents resided. OTTI was in charge of "Boo" and it served as his main residence. For the purpose of this submission OTTI's camp will be referred to as "Boo".
9. On all four sides of "Boo" were four smaller LRA camps, each between 2 and 3 miles from "Boo". The LRA camp south-west of "Boo" was the main residence of Joseph KONY. It was referred to by the LRA as "Angica", an Acholi word for *cold* or by the name "Eskimo". KONY's camp was heavily guarded with two circles of security around the base and three bodyguard detachments within its compound (see Annex C). When KONY called for meetings with his top LRA commanders, as a matter of protocol, they would camp in designated areas between the two circles of security and would generally enter the compound unarmed.¹¹ For the purposes of this submission, KONY's camp will be referred to as "Eskimo".

¹⁰ UGA-OTP-0208-0504.

¹¹ On 2 October 2007, several of the top LRA commanders were armed in order to arrest Otti. This appears to have been an exception to the usual protocol. None of the witnesses mentioned that Otti or the other commanders arrested that day in the compound were armed.

Summary of LRA Insider Statements

Witness #1: [REDACTED]¹² (UGA-W-0162)

See Annex D: UGA-OTP-0219-0692 at 0693 to 0726; UGA-OTP-0219-0727 at 0728 to 0758

10. [REDACTED] is a Ugandan national of Acholi origin. [REDACTED] defected from the LRA in [REDACTED]. At the time of his defection, he held the rank of [REDACTED] and was [REDACTED], one of the brigades that protect Joseph KONY.¹³

11. [REDACTED] had observed for some time that the two LRA leaders had different views on the ongoing peace talks and that OTTI was disobeying orders.¹⁴ According to [REDACTED], KONY informed him personally that he had decided to kill OTTI because OTTI was dividing the LRA.¹⁵ [REDACTED] was also informed that fighters were selected and specially trained to carry out the arrest and execution.¹⁶

12. According to [REDACTED], OTTI was invited by orders of KONY to a meeting at “Eskimo” on 2 October 2007.¹⁷ At around 8:30 am on 2 October 2007, OTTI arrived at the camp¹⁸ and after greeting other LRA commanders in the meeting area, [REDACTED] OTTI being arrested at gun point by Bok Abudema and Otto Agweng. OTTI was then bound and blind folded.¹⁹ [REDACTED] overheard Okot ODHIAMBO speaking to KONY, who was outside the camp, by satellite phone. KONY ordered ODHIAMBO to organise the execution of OTTI.²⁰ Okot ODHIAMBO then transmitted the order to Bok Abudema telling him to go quickly and kill them

¹² [REDACTED].

¹³ UGA-OTP-0219-0692 at 0703 to 0704.

¹⁴ UGA-OTP-0219-0692 at 0697 to 0700.

¹⁵ UGA-OTP-0219-0692 at 0711.

¹⁶ UGA-OTP-0219-0692 at 0712.

¹⁷ UGA-OTP-0219-0692 at 0713.

¹⁸ UGA-OTP-0219-0692 at 0716.

¹⁹ UGA-OTP-0219-0692 at 0716 to 0722.

²⁰ UGA-OTP-0219-0727 at 0732.

or he (Abudema) would be in their place.²¹ Abudema then organised a small group of four LRA soldiers who took OTTI, along with two other LRA commanders thought to be loyal to OTTI, to an area just outside the camp.²² Abudema then ordered the LRA soldiers to fire and OTTI and the two other commanders were then shot to death.²³ This occurred at approximately 9am.²⁴ [REDACTED] did not see the actual execution but was 100 meters away when the execution took place and heard the gun shots.²⁵ The bodies of OTTI and the two other commanders were left where they were shot dead and were only buried two or three days after.²⁶ [REDACTED] was also subsequently informed of the execution by one of the LRA fighters [REDACTED], who told [REDACTED] fired the bullets that killed OTTI.²⁷

Witness #2: [REDACTED] (UGA-W-0165)

See Annex E: UGA-OTP-0219-0454 at 0458 to 0475; UGA-OTP-0219-0583 at 0584 to 0603; UGA-OTP-0219-0604 at 0605 to 0613; UGA-OTP-0219-0497 at 0513 to 0515;

13. [REDACTED] is a Ugandan national of Acholi origin, born in [REDACTED] and abducted by the LRA in 2000.²⁸ [REDACTED] defected from the LRA in [REDACTED] 2008. [REDACTED]. During the period immediately preceding the

29

14. According to [REDACTED], he travelled with OTTI from “Boo” to “Eskimo” when KONY issued orders for a meeting with his senior commanders. On the day of the meeting, [REDACTED] was with OTTI and witnessed OTTI’s arrest.³⁰ According to [REDACTED], soon after his arrest, OTTI was taken to an area approximately 500

²¹ UGA-OTP-0219-0727 at 0732.

²² The two other LRA commanders who were arrested and executed alongside OTTI were Ben Acellam (Col.) and Otim Record (Capt.).

²³ UGA-OTP-0219-0727 at 0735.

²⁴ UGA-OTP-0219-0692 at 0705 and UGA-OTP-0219-0727 at 0732 to 0735.

²⁵ UGA-OTP-0219-0727 at 0737.

²⁶ UGA-OTP-0219-0727 at 0743.

²⁷ UGA-OTP-0219-0727 at 0736.

²⁸ UGA-OTP-0219-0497 at 0499.

²⁹ UGA-OTP-0219-0497 at 0513 to 0515.

³⁰ [REDACTED] states that OTTI was arrested and executed on 3 September. However, other witness statements and information indicate that this occurred on 2 October not 3 September. UGA-OTP-0219-0583 at 0591 to 0592.

meters outside “Eskimo” and executed by a firing squad.³¹ [REDACTED], he did not see the execution but heard the gun shots and was informed by other members of the LRA that OTTI had been executed.³²

15. The day after OTTI was executed, [REDACTED] attended a meeting wherein LRA leader Joseph KONY announced the promotion of then third in command Okot ODHIAMBO to the position of second in command of the LRA, a position formerly held by OTTI.³³ [REDACTED] maintained his position [REDACTED], but after the execution of OTTI was now accountable to Okot ODHIAMBO who took over OTTI’s responsibilities.³⁴ Since that time, [REDACTED] never saw OTTI again nor does he know of anyone who has seen OTTI since.

Witness #3: [REDACTED]³⁵ (UGA-OTP-WWWW-0163)

See Annex F: UGA-OTP-0218-0764 (paras 10 to 17)

16. [REDACTED] is a Ugandan national of Acholi origin, born in [REDACTED]. At the time of his defection from the LRA in [REDACTED].³⁶
17. [REDACTED] first noticed tensions between KONY and OTTI in 2007 when OTTI refused to follow orders for the LRA to go to the Central African Republic to conduct attacks and abductions.³⁷
18. According to [REDACTED], OTTI was called for a meeting by KONY at “Eskimo” on 2 October 2007. [REDACTED] travelled with OTTI to “Eskimo” that morning.³⁸ [REDACTED] stated that OTTI went into “Eskimo” and was immediately arrested.³⁹ At the same time, [REDACTED] other members of OTTI’s guard were also arrested

³¹ UGA-OTP-0219-0583 at 0592 to 0593.

³² UGA-OTP-0219-0583 at 0592 to 0593.

³³ UGA-OTP-0219-0583 at 0596.

³⁴ UGA-OTP-0219-0497 at 0515 and UGA-OTP-0219-0497 at 0594 to 0595.

³⁵ [REDACTED]

³⁶ UGA-OTP-0218-0764 and UGA-OTP-0218-0766.

³⁷ UGA-OTP-0218-0766.

³⁸ UGA-OTP-0218-0766.

³⁹ UGA-OTP-0218-0766.

and taken to a location around the first line of KONY's defensive parameter.⁴⁰ [REDACTED] did not see the execution of OTTI but heard the gun shots around 10am and was later informed by other members of the LRA that OTTI had been executed.⁴¹ [REDACTED] Col. Ben Acellam was also executed at the same time as OTTI.⁴² At around 2pm on 2 October, KONY held a meeting with the LRA, without OTTI's presence, where he stated that indiscipline would no longer be tolerated.⁴³ When [REDACTED] returned to "Boo", he saw that the personal effects of OTTI and those of Acellam had been removed and OTTI's wives were in the process of being redistributed to other commanders and that Okot ODHIAMBO now occupied the home of OTTI.⁴⁴

Witness #4: [REDACTED] (UGA-OTP-WWWW-0164)

See Annex G: UGA-OTP-0219-0771 at 0785 to 0798; UGA-OTP-0219-0799 at 0800 to 0812.

19. [REDACTED] is a Ugandan national of Acholi origin, born in [REDACTED]. At the time of [REDACTED], he held the rank of [REDACTED],⁴⁵ [REDACTED].
20. [REDACTED] first noticed tensions between KONY and OTTI in 2006 when the peace process began.⁴⁶ [REDACTED] was in "Boo" on 1 October 2007 when orders were received from KONY to convene a meeting at his base the following day.⁴⁷ At the time the order was given for the meeting, [REDACTED] had become aware of KONY's plan to arrest OTTI at the meeting along with other commanders including himself.⁴⁸ [REDACTED] knew about KONY's plan due to his position [REDACTED] and his good relations with LRA members under KONY.⁴⁹

⁴⁰ UGA-OTP-0218-0766.

⁴¹ UGA-OTP-0218-0766.

⁴² UGA-OTP-0218-0766.

⁴³ UGA-OTP-0218-0764 at 0767.

⁴⁴ UGA-OTP-0218-0767.

⁴⁵ UGA-OTP-0219-0771 at 0793.

⁴⁶ UGA-OTP-0219-0771 at 0785 to 0789.

⁴⁷ UGA-OTP-0219-0771 at 0793.

⁴⁸ [REDACTED]

⁴⁹ UGA-OTP-0219-0771 at 0795.

21. On the morning of 2 October, instead of leaving with the rest of the group to go to Kony's base, [REDACTED] made an excuse to stay behind in "Boo" [REDACTED].⁵⁰ Sometime between 9am and 10am, [REDACTED] stated that he heard gun shots coming from the area of "Eskimo" and suspected that OTTI and the other commanders had been arrested and possibly killed.⁵¹ After he heard the shots, [REDACTED].⁵²
22. Later in the evening of 2 October, [REDACTED] received information that LRA fighters had entered the houses of OTTI and the other commanders perceived to be loyal to OTTI and took or destroyed their belongings and that their wives were also taken.⁵³ According to [REDACTED], this type of action confirmed to him that these commanders had been killed.⁵⁴ That night, after the houses were looted, [REDACTED].⁵⁵

Other Information Verifying the Death of Vincent OTTI

23. The OTP collected the audio recording of a radio interview recorded on 22 January 2008 wherein Joseph KONY discussed the circumstances of OTTI's death (see Annex H).⁵⁶ In the interview, KONY stated that the reported killing of OTTI was an internal LRA matter that should not concern anyone. KONY stated "So, any issue about OTTI no one in Uganda can say anything about it whatever the situation – whether we killed OTTI, or we jailed OTTI, or we did nothing. It is all to our

⁵⁰ UGA-OTP-0219-0771 at 0796 to 0797 and UGA-OTP-0219-0799 at 0805.

⁵¹ UGA-OTP-0219-0771 at 0796 to 0797. At the time of the shooting [REDACTED] was approximately 3 miles from the execution site, see UGA-OTP-0219-0771 at 0800 to 0801.

⁵² UGA-OTP-0219-0771 at 0796 to 0797.

⁵³ UGA-OTP-0219-0799 at 0801.

⁵⁴ UGA-OTP-0219-0799 at 0801.

⁵⁵ UGA-OTP-0219-0799 at 0802 to 0803.

⁵⁶ UGA-OTP-0219-0838 (English transcription of UGA-OTP-0208-0504).

disadvantage or advantage and not to someone who is there at home, to someone who is there in Uganda.”⁵⁷

24. On 23 January 2008, Dr. Riek Machar, Vice President of Southern Sudan and Mediator of the Juba Peace Talks, reported to the media that Joseph KONY had officially confirmed to him that Vincent OTTI was dead.⁵⁸ The killing of OTTI was also reported in the media by Ugandan officials.⁵⁹

Composite Information regarding the Events Leading to the Death of Vincent OTTI

25. Although there are some minor discrepancies in the statements in regards to the date and time of the execution of Vincent OTTI, all four witnesses described a common series of events that led up to the execution of Vincent OTTI by firing squad. The Prosecution submits that the following composite series of events are confirmed by the information summarised above.

- The decision to execute Vincent OTTI was taken by Joseph KONY due to a conflict between the two over the peace process and due to OTTI's disobeying orders. Once KONY took the decision to execute OTTI, loyal LRA fighters were selected for training and a plan was made to arrest and execute Vincent OTTI and other commanders perceived to be loyal to OTTI.

⁵⁷ UGA-OTP-0219-0838 (English transcription of UGA-OTP-0208-0504) at 0842. Also see “Ugandan rebel leader tells local radio station he killed his deputy,” *AP*, 23 January 2008 (available at <http://www.iht.com/articles/ap/2008/01/23/africa/AF-GEN-Uganda-Rebels.php>) (last accessed 6 October 2008).

⁵⁸ “Rebel Kony confirms Otti's death- Machar,” *The Monitor*, 24 January 2007 (available at http://www.monitor.co.ug/artman/publish/news/Rebel_Kony_confirms_Otti_s_death-_Machar.shtml) (last accessed 6 October 2008) and “Uganda: Kony Confirms Otti's death”, *New Vision*, 24 January 2007 (available at <http://allafrica.com/stories/200801231116.html>) (last accessed 6 October 2008) and “LRA Chief Confirms Deputy's Death,” *IWPR*, 24 January 2007 (available at http://www.iwpr.net/?p=acr&s=f&o=342188&apc_state=henfacr342181) (last accessed 6 October 2008).

⁵⁹ “Death of LRA's deputy leader casts shadow over peace talks,” *IRIN*, 28 January 2008 (available at <http://www.irinnews.org/report.aspx?ReportID=76445>) (last accessed 6 October 2008); “Uganda says rebel's death may hurt peace talks,” *Reuters*, 24 January 2008 (available at <http://africa.reuters.com/top/news/usnBAN444294.html>) (last accessed 6 October 2008); On 8 November, Kony reportedly called Gulu Chairman Nibert Mao stating that Otti was under arrest. See “Kony Breaks Silence on Otti”, *IWPR*, 9 November 2007 (available at http://iwpr.net/index.php?apc_state=hen&s=o&o=l=EN&p=acr&s=f&o=340491) (last accessed 6 October 2008).

- Early in the morning of 2 October, OTTI travelled from “Boo” to “Eskimo” following orders of KONY to convene a meeting of the LRA High Command.
- Soon after entering “Eskimo”, OTTI was arrested and taken to a site just outside “Eskimo” and executed by firing squad. OTTI’s body was buried where he was executed.

Conclusion

For the foregoing reasons, the OTP respectfully requests the Pre-Trial Chamber to withdraw the warrant of arrest issued for Vincent OTTI and render it without effect, because of the changed circumstances caused by OTTI’s death. The OTP notes that if the information set out above is made public, there is a high likelihood that the witnesses interviewed by the OTP (and named above) will be identified. Consequently, the OTP respectfully requests the Chamber to keep the details of this filing sealed in order to protect witness security as well as the security of LRA members remaining inside the LRA.



Karim A.A. Khan KC, Prosecutor

Dated this 13th day of December, 2022

At The Hague, The Netherlands