

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: **English**

No.: ICC-02/04-01/05

Date: 15 November 2023

**PRE-TRIAL CHAMBER II**

**Before:** Judge Rosario Salvatore Aitala, Presiding Judge  
Judge Tomoko Akane  
Judge Sergio Gerardo Ugalde Godínez

**SITUATION IN UGANDA**

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

**Public**

**With confidential *ex parte* annexes I and II, only available to the Prosecution**

**Third Request to Terminate Proceedings against Vincent Otti**

**Source:** Office of the Prosecutor

**Document to be notified in accordance with regulation 31 of the *Regulations of the*****Court to:****The Office of the Prosecutor**

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**Counsel for Defence****Legal Representatives of the Victims****Legal Representatives of the Applicants****Unrepresented Victims****Unrepresented Applicants for  
Participation/Reparation****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**

Mr Osvaldo Zavala Giler

**Counsel Support Section****Victims and Witnesses Unit****Detention Section****Victims Participation and Reparations  
Section****Other**

1. The Office of the Prosecutor respectfully renews its request to terminate proceedings against Vincent Otti on account of his death, pursuant to article 58(4) of the Rome Statute. Additional evidence gathered since the Chamber's decision of 1 December 2022 corroborates previously submitted evidence that Mr Otti was killed in 2007. The Prosecution considers that further investigation will not result in more definitive evidence of Mr Otti's death. In light of these circumstances, and mindful of the Chamber's stated availability to consider a new request based on additional evidence,<sup>1</sup> the Prosecution informs the Chamber of the additional evidence obtained and requests that the proceedings against Mr Otti be terminated with immediate effect.

### Background

2. On 8 July 2005, the Chamber, in a previous composition, issued a warrant of arrest for Mr Otti, for 33 counts of war crimes and crimes against humanity.<sup>2</sup>

3. Mr Otti's death was publicly reported as early as November 2007; the Prosecution provided several such reports to the Chamber on 8 November 2007.<sup>3</sup>

4. 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".<sup>4</sup> That filing summarised then-available evidence, including public statements by Joseph Kony and witness statements obtained by the Prosecution, indicating that Mr Otti had been killed on Mr Kony's orders in early October 2007, in Garamba National Park, Democratic Republic of the Congo (DRC).

5. On 28 March 2022, the Prosecution filed a renewed request to terminate proceedings against Mr Otti on account of his death.<sup>5</sup> That filing summarised additional evidence of Mr Otti's death, including sworn witness testimony from the ICC trial of Dominic Ongwen. The Prosecution also submitted additional information in support of its renewed request on 23 May 2022.<sup>6</sup>

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<sup>1</sup> ICC-02/04-01/05-448, para. 7.

<sup>2</sup> ICC-02/04-01/05-54.

<sup>3</sup> ICC-02/04-01/05-258.

<sup>4</sup> ICC-02/04-01/05-315-Red.

<sup>5</sup> ICC-02/04-01/05-443-Red.

<sup>6</sup> ICC-02/04-01/05-444-Red.

6. On 1 December 2022, the Chamber rejected the Prosecution's renewed request to terminate the proceedings, but stated its availability to consider a new request based on additional evidence.<sup>7</sup>

### Submissions

7. Since the Chamber's December 2022 decision, the Prosecution has taken additional steps to obtain evidence of Mr Otti's death. The Prosecution has inquired with witnesses regarding leads for additional information, interviewed two new witnesses with relevant knowledge of the events, further reviewed its existing evidence collection, and submitted additional requests for assistance to the Ugandan authorities.

8. The evidence collected through these efforts corroborates the previously existing evidence of Mr Otti's death. Witness UGA-OTP-P-1030 is a former forced wife of Joseph Kony. She heard the gunshots that she believes killed Mr Otti, and then heard Mr Kony take credit for the killing.<sup>8</sup> Witness UGA-OTP-P-0455 is a former LRA commander. He discussed the plan to kill Mr Otti with Mr Kony, and then heard the gunshots which he believes killed Mr Otti, although he did not see Mr Otti's body.<sup>9</sup>

9. The investigative steps taken by the Prosecution have not identified any living eyewitness to Mr Otti's death. One person named by witnesses as being directly involved in the killing was reportedly killed by the Ugandan military in the Central African Republic on 1 January 2010.<sup>10</sup>

10. The Prosecution has been unable to locate or recover Mr Otti's body. The Prosecution notes that Mr Otti was allegedly killed more than 15 years ago, in a remote area within Garamba National Park, DRC. In the words of witness P-0455, Mr Otti "was taken deep inside the bush and killed [...] there".<sup>11</sup> These circumstances make

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<sup>7</sup> ICC-02/04-01/05-448, para. 6-7.

<sup>8</sup> Confidential *ex parte* Annex I, para. 82-83.

<sup>9</sup> Confidential *ex parte* Annex II.

<sup>10</sup> S. Etinga, All Africa, "Le général Bok Abudema, chef militaire de la LRA, abattu en RCA", 5 January 2010, available online at <http://fr.allafrica.com/stories/201001050384.html> (last visited 14 November 2023).

<sup>11</sup> Confidential *ex parte* Annex II (draft transcript of UGA-OTP-00000333, p. 8, l. 298).

the future recovery of Mr Otti's body, or other physical evidence of his death, highly unlikely.

11. Finally, the Prosecution has also been unable to obtain a death certificate for Mr Otti. In response to the Prosecution's further request for assistance, the Ugandan authorities have informed the Prosecution that no death certificate exists. They referred the Prosecution to witness accounts provided previously, which the Prosecution has already submitted to the Chamber.<sup>12</sup>

12. In light of the above, the Prosecution considers that all available evidence indicates that Mr Otti was killed in a remote area of the DRC in October 2007. The Prosecution has not encountered any information that would suggest Mr Otti is alive. In light of these circumstances, and the investigative steps taken to date, further investigation is unlikely to result in more definitive evidence proving his death. To bring some degree of closure to the victims and communities affected by Mr Otti's crimes, the Prosecution therefore requests that the proceedings against Mr Otti be terminated.

### **Conclusion and Relief Requested**

13. For the above reasons, the Prosecution respectfully renews its request that the Chamber terminate proceedings against Mr Otti with immediate effect.



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**Karim A.A. Khan KC, Prosecutor**

Dated this 15<sup>th</sup> day of November, 2023  
At The Hague, The Netherlands

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<sup>12</sup> ICC-02/04-01/05-444-Red.