

First arrest warrant in *Prosecutor v. Al-Werfalli*, ICC

Proposed citing: ICC, *The Prosecutor v. Mahmoud Mustafa Busayf Al-Werfalli*, Case no. ICC-01/11-01/17, Pre-Trial Chamber I, Decision of 15 August 2017, Arrest warrant (excerpt)

Source: available online at <https://www.icc-cpi.int/Pages/record.aspx?docNo=ICC-01/11-01/17-2> (20 February 2020)

Date of the decision: 15 August 2017

Author of the decision: International Criminal Court

Summary of the decision: The ICC Chamber found no information in the evidence to show that victims killed by the Al-Saiqa Brigade, an armed group joining the revolutionary forces, have been afforded a trial by a legitimate court, whether military or otherwise, that would comport with any recognised standard of due process.

Cited international law materials: Rome Statute of the International Criminal Court

Key words: non-recognised courts, responsible command, international war crimes, due process, Libyan National Army



Original: **English**

No.: **ICC-01/11-01/17**

Date: **15 August 2017**

PRE-TRIAL CHAMBER I

Before: Judge Joyce Aluoch, Presiding Judge
Judge Cuno Tarfusser
Judge Péter Kovács

SITUATION IN LIBYA

**IN THE CASE OF *THE PROSECUTOR* v. *MAHMOUD MUSTAFA BUSAYF
AL-WERFALLI***

Public

Warrant of Arrest

Operation Dignity as the BRSC was being driven out of Benghazi,³¹ and continued to remain engaged, making military advancements throughout the relevant period for the purpose of this warrant of arrest.³²

9. Mr Al-Werfalli joined the Al-Saiqa Brigade after the fall of the Gaddafi regime.³³ He has been in a commanding role since at least December 2015.³⁴ Currently he holds the position of Axes Commander.³⁵ He is reported to have many men under his command.³⁶ For example, on 9 April 2017, following instructions from Colonel Bukhmada, he issued an order to the al-Burkan Battalion, under the command of officer Ali Sa'd al-Tawurghi, to take up positions on the al-Sabiri axis.³⁷ Mr Al-Werfalli also has authority over at least one detention centre.³⁸

10. Mr Al-Werfalli appears to be directly responsible for the killing of, in total, 33 persons in Benghazi or surrounding areas, between on or before 3 June 2016 and on or around 17 July 2017, either by personally killing them or by ordering their execution. The persons killed appear to have been detained and to have been either civilians or persons *hors de combat*. There is no information in the evidence to show that they have been afforded a trial by a legitimate court, whether military or otherwise, that would comport with any recognised standard of due process. The executions took place in the course of seven incidents, as described below, and were exceptionally cruel, dehumanising and degrading.

³¹ LBY-OTP-0048-0296 and LBY-OTP-0053-1656.

³² LBY-OTP-0053-1733, at 1734; LBY-OTP-0053-1735, at 1736; LBY-OTP-0053-1737, at 1738.

³³ LBY-OTP-0048-0686, Track 1, 50:34-50:43; LBY-OTP-0053-1476, at 1477.

³⁴ LBY-OTP-0053-1535, at 1536.

³⁵ LBY-OTP-0053-1533, at 1534.

³⁶ LBY-OTP-0048-0686, Track 1, 01:05:46-01:05:56.

³⁷ LBY-OTP-0053-0317, at 0318.

³⁸ LBY-OTP-0053-0643, at 0661, para. 90; LBY-OTP-0048-0678, Track 1, 48:48-48:55.

FOR THESE REASONS, THE CHAMBER HEREBY

ISSUES a warrant of arrest for **Mahmoud Mustafa Busayf AL-WERFALLI**, a Libyan national, born in 1978, reported to live at Square 8, Number 40 Qundulah Road in the Bu-Hadimah area of Benghazi, commander in the Al-Saiqa Brigade, for his alleged criminal responsibility pursuant to articles 25(3)(a) and (b) of the Statute, for the war crime of murder under article 8(2)(c)(i) of the Statute, in seven incidents against 33 persons as described in Section II, which took place from on or before 3 June 2016 until on or about 17 July 2017 in Benghazi or surrounding areas, in Libya;

DECIDES that the warrant of arrest is issued publicly and may be communicated to any State or international organisation for the purpose of its execution;

DECIDES that, as soon as practicable, the Registrar shall: (i) prepare a request for cooperation seeking the arrest and surrender of Mr Al-Werfalli and containing the information and documents required by articles 89(1) and 91 of the Statute and rule 187 of the Rules of Procedure and Evidence; and (ii) transmit, in consultation and coordination with the Prosecutor, the request to the competent authorities of Libya or any other relevant State, or to any other competent authority, in accordance with article 87 of the Statute and Resolution 1970 of the United Nations Security Council to cooperate with the Court for the purpose of executing the request for arrest and surrender of Mr Al-Werfalli;

DIRECTS the Registrar to prepare and transmit to any relevant State, in consultation and coordination with the Prosecutor, any request for transit pursuant to article 89(3) of the Statute or any request for provisional arrest pursuant to article 92 of the Statute which may be necessary for the surrender of Mr Al-Werfalli;

ORDERS the Prosecutor to transmit to the Registry and to the Chamber all information available to her that may be of assistance in the execution of the request for arrest and surrender as well as any information of relevance to assessing any

risks to victims and witnesses associated with the transmission of the request for arrest and surrender;

ORDERS the Registrar to prepare, as soon as practicable, an Arabic translation of the present warrant of arrest for the purpose of transmitting it to the Libyan authorities;


ORDERS the Registrar to open a case record and to transfer first the Prosecutor's Application from the situation record into the case record; and

ORDERS the Prosecutor to prepare a public redacted version of the Application as soon as possible.

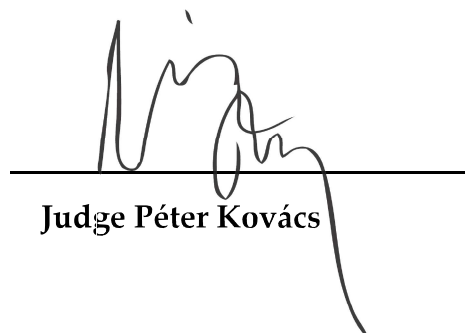
Done in both English and French, the English version being authoritative.



Judge Joyce Aluoch
Presiding Judge



Judge Cuno Tarfusser



Judge Péter Kovács

Dated this Tuesday, 15 August 2017

At The Hague, The Netherlands