

Situation in Libya

ICC-PIOS-CIS-LIB-03-003/18

The Prosecutor v. Mahmoud Mustafa Busyf Al-Werfalli

Updated: July 2018

ICC-01/11-01/17

Mahmoud Mustafa Busyf Al-Werfalli

Suspected of murder as a war crime allegedly committed in Libya in 2016 and 2017. Not in ICC custody.



Date of birth: 1978

Place of birth: Werfalla Tribe, West of Libya

Nationality: Libyan

Title: Major in the Al-Saiqa Brigade

Warrant of arrest: 15 August 2017

Second Warrant of arrest: 4 July 2018

Charges

Pre-Trial Chamber I considers that there are reasonable grounds to believe that, under article 8(2)(c)(i) and 25(3)(a) and (b) of the Rome Statute, Mahmoud Mustafa Busyf Al-Werfalli is criminally responsible for:

- Murder as a war crime allegedly committed in Libya, in the context of seven incidents against 33 persons in the non-international armed conflict in Libya, from on or before 3 June 2016 until on or about 17 July 2017.
- Murder as a war crime in the context of an eighth incident which took place on 24 January 2018, when Mr. Al-Werfalli allegedly shot dead 10 persons in front of the Bi'at al-Radwan Mosque in Benghazi, Libya.

Alleged crimes (non-exhaustive list)

Pre-Trial Chamber I found that there are reasonable grounds to believe that:

- An armed conflict not of an international character has been ongoing on the territory of Libya, from at least early March 2011, between governmental forces and different organized armed groups, or among various such armed groups, which include the Al-Saiqa Brigade. The Al-Saiqa Brigade has been involved in the armed conflict ever since the days of the revolution against the Gaddafi regime and since May 2014.
- The Al-Saiqa Brigade was organized in a hierarchical structure, with field commanders, acting under the overall command of Colonel Bukhmada; (ii) orders circulated down the chain of command and were obeyed; and (iii) the brigade had the ability to plan military operations and put them into effect.
- Mr Al-Werfalli is alleged to have directly committed and to have ordered the commission of murder as a war crime in the context of seven incidents, involving 33 persons, which took place from on or before 3 June 2016 until on or about 17 July 2017 in Benghazi or surrounding areas, in Libya.
- Mr Al-Werfalli personally committed the murders described in Incidents 1, 2, 3 and one of the murders described in Incident 7, and he ordered, as a superior to others in the Al-Saiqa Brigade, the commission of the murders described in Incidents 4, 5, 6, and 19 of the murders described in Incident 7, in Benghazi or surrounding areas, in Libya.
- Mr Al-Werfalli acted with intent and knowledge, and that he was aware of the status of the victims and of the factual circumstances that established the existence of the non-international armed conflict.
- The Chamber noted that after the issuance of the first arrest warrant, armed clashes among forces affiliated with the Government of National Accord, international forces and armed groups have continued to occur on the territory of Libya.
- The Chamber found reasonable grounds to believe that an armed conflict not of an international character has been ongoing on the territory of Libya from at least early March 2011 until at least February 2018 between governmental forces and different organized armed groups or among various such armed groups, including the Al-Saiqa Brigade
- There are reasonable grounds to believe that Mr. Al-Werfalli continued to act as a commander in the Al-Saiqa Brigade and that he had been in a commanding role since at least December 2015.

- The available evidence indicates that there are reasonable grounds to believe that Mr. Al-Werfalli is directly responsible for the killing of 10 persons in front of the same Bi'at al-Radwan Mosque, in the Salmani district of Benghazi on 24 January 2018.

Modes of liability:

The Chamber finds reasonable grounds to believe that Mr Al-Werfalli bears criminal responsibility for:

- (i) His direct participation to the commission of the (article 25(3)(a)); and
- (ii) as a superior, for the commission of crimes by his subordinates under his ordering (article 25(3)(b)).

Key judicial developments

REFERRAL AND OPENING OF THE INVESTIGATION

On 26 February 2011, the United Nations Security Council decided unanimously (15 votes in favour) to refer the situation in Libya since 15 February 2011 to the ICC Prosecutor, stressing the need to hold accountable those responsible for attacks, including by forces under the control of those responsible, on civilians.

After conducting a preliminary examination of the situation, the ICC Prosecutor concluded, on 3 March 2011, that there is a reasonable basis to believe that crimes under the ICC's jurisdiction have been committed in Libya, since 15 February 2011, and decided to open an investigation in this situation.

FIRST WARRANT OF ARREST

The arrest warrant against Mahmoud Mustafa Busyf Al-Werfalli was requested by the ICC Prosecutor on 1 August 2017. On 15 August 2017, Pre-Trial Chamber I issued the arrest warrant for Mr Al-Werfalli. .

SECOND ARREST WARRANT

On 1 May 2018, the Prosecutor submitted, under seal, a request to amend the warrant of arrest for an additional war crime. On 4 July 2018, Pre-Trial Chamber I issued a second warrant of arrest for Mahmoud Mustafa Busyf Al-Werfalli, complementing the first warrant of arrest against him. The Chamber found the case against Mr. Al-Werfalli to be admissible before the Court, due to the lack of investigative activities in Libya.

The warrant of arrests were both issued publicly and may be communicated to any State or international organisation for the purpose of its execution. The suspect is not in ICC custody

Composition of Pre-Trial Chamber I

Judge Péter Kovács, Presiding Judge
Judge Marc Perrin de Brichambaut
Judge Reine Adelaide Sophie Alapini-Gansou

Representation of the Office of the Prosecutor

Fatou Bensouda, Prosecutor
James Stewart, Deputy Prosecutor

Defence Counsel for Mahmoud Mustafa Busyf Al-Werfalli

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Legal Representatives of the Victims -