



Original: **English**

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

Date: **20 June 2022**

**PRE-TRIAL CHAMBER I**

**Before:** Judge Péter Kovács, Presiding Judge  
Judge Reine Adélaïde Sophie Alapini-Gansou  
Judge María Socorro Flores Liera

**SITUATION IN LIBYA**

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

**Public**

**Public Redacted Version of “Prosecution notification of the Death of Mahmoud Mustafa Busayf Al-Werfalli and Request to Withdraw the Warrants of Arrest”, 17 May 2022, ICC-01/11-01/17-23-Conf-Exp**

**Source:** Office of the Prosecutor

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

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**Unrepresented Victims**

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Victims**

**The Office of Public Counsel for the  
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**Detention Section**

**Victims Participation and Reparations  
Section**

**Other**

## Introduction

1. The Office of the Prosecutor (“Prosecution”) requests the Pre-Trial Chamber (“Chamber”) to withdraw the warrants of arrest issued for Mahmoud Mustafa Busayf Al-Werfalli (“AL-WERFALLI”) and to render them without effect because of the changed circumstances caused by AL-WERFALLI’s death.

## Confidentiality

2. Pursuant to regulation 23bis (2) of the Regulations of the Court, this filing and its annexes are classified as confidential, *ex parte*, available only to the Prosecution and the Registry, because they refer to filings and materials with the same level of classification. The filing is also classified as confidential, *ex parte* in order to [REDACTED].

## Procedural Background

3. On 1 August 2017, the Prosecution submitted, under seal, its first application for a warrant of arrest for AL-WERFALLI.<sup>1</sup>

4. On 15 August 2017, the Chamber granted the Application and publicly issued a warrant of arrest (“First Arrest Warrant”).<sup>2</sup>

5. On 1 May 2018, the Prosecution submitted, under seal, a request to amend the First Arrest Warrant.<sup>3</sup>

6. On 4 July 2018, the Chamber granted this request and publicly issued a second warrant of arrest (“Second Arrest Warrant”).<sup>4</sup>

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<sup>1</sup> ICC-01/11-01/17-1-US-Exp.

<sup>2</sup> ICC-01/11-01/17-2.

<sup>3</sup> ICC-01/11-01/17-9-US-Exp.

<sup>4</sup> ICC-01/11-01/17-13.

7. On 24 March 2021, reports began circulating online that AL-WERFALLI had been killed by unknown assailants in Benghazi that day.
8. [REDACTED]<sup>5</sup> [REDACTED].
9. [REDACTED]<sup>6</sup> [REDACTED]<sup>7</sup> [REDACTED].
10. [REDACTED]<sup>8</sup>.
11. [REDACTED].<sup>9</sup>
12. [REDACTED].<sup>10</sup> [REDACTED].<sup>11</sup>
13. [REDACTED].

**Request for the Arrest Warrants for AL-WERFALLI to be Withdrawn and to be  
Rendered without Effect because of his Death**

14. The Prosecution requests termination of the proceedings against AL-WERFALLI on account of his death. Although an official confirmation of AL-WERFALLI's death has yet to be received from the Libyan Authorities, the Prosecution relies on [REDACTED] and social media material [REDACTED] in support of its application.

15. [REDACTED] confirmed Al-WERFALLI's death [REDACTED].<sup>12</sup>  
[REDACTED].<sup>13</sup> [REDACTED].<sup>14</sup> [REDACTED].<sup>15</sup>

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<sup>5</sup> [REDACTED].

<sup>6</sup> [REDACTED].

<sup>7</sup> [REDACTED].

<sup>8</sup> [REDACTED].

<sup>9</sup> [REDACTED].

<sup>10</sup> [REDACTED].

<sup>11</sup> [REDACTED].

<sup>12</sup> [REDACTED].

<sup>13</sup> [REDACTED].

<sup>14</sup> [REDACTED].

<sup>15</sup> [REDACTED].

16. Since reports of AL-WERFALLI's death were first made, the Prosecution has received no information that suggests that AL-WERFALLI is still alive. To the contrary, all information received to date confirms that he is dead, including a number of posts on social media. On 24 March 2021, the Spokesman of the General Command of the LNA, Ahmed Al Mismari, posted condolences on Facebook.<sup>16</sup> On 25 March 2021, a video was posted on Facebook of an unidentified man stating that he was in charge of AL-WERFALLI's burial and responsible for all of AL-WERFALLI's debts.<sup>17</sup> Also on 25 March 2021, a video was posted on Facebook of AL-WERFALLI's mother in which she states that she will seek justice for her son.<sup>18</sup> Finally, on 27 March 2021, Abdelsalam Al Hassi, Commander of the Special Forces of the LNA, issued a video statement condemning the killing of Lieutenant Colonel Mahmoud AL-WERFALLI.<sup>19</sup>

17. Article 58(4) states that "the warrant of arrest shall remain in effect unless otherwise ordered by the Court". Accordingly, the Prosecution requests the Chamber to withdraw the First Arrest Warrant and the Second Arrest Warrant and to render them without effect because of AL-WERFALLI's death.

18. It is self-evident that the death of a person named in a warrant or an indictment terminates the criminal proceedings relating to that individual.<sup>20</sup> There is no doubt that AL-WERFALLI is now dead. In light of the information outlined above, there is no reason for the First Arrest Warrant and the Second Arrest Warrant to remain outstanding.

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<sup>16</sup> [REDACTED].

<sup>17</sup> [REDACTED].

<sup>18</sup> [REDACTED].

<sup>19</sup> [REDACTED].

<sup>20</sup> ICC-02/04-01/05; ICC-02/05-03/09, 4 October 2013; ICC-01/11-01/11-28; and ICC-02/04-01/05-248.

### **Conclusion**

19. For the foregoing reasons, the Prosecution requests that the Pre-Trial Chamber withdraw the First Arrest Warrant and the Second Arrest Warrant issued for AL-WERFALLI because of the changed circumstance caused by his death.



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**Karim A. A. Khan QC, Prosecutor**

Dated this 20<sup>th</sup> day of June 2022  
At The Hague, The Netherlands