

**Mandates of the Working Group on Arbitrary Detention; the Working Group on Enforced or Involuntary Disappearances and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health**

REFERENCE:  
UA LBY 4/2017

13 November 2017

Mr. Ahmed O.O. Elhwat,

We have the honour to address you in our capacity as Working Group on Arbitrary Detention; Working Group on Enforced or Involuntary Disappearances and Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, pursuant to Human Rights Council resolutions 33/30, 27/1 and 33/9.

In this connection, we would like to bring to the attention of your Government information we have received concerning the alleged arbitrary arrest and detention of Mr. **Hosny Ashor al-Mesmary**, a Libyan national and business man; in circumstances that could also constitute an enforced disappearance.

According to the information received:

On 18 February 2017, Mr. Hosny Ashor al-Mesmary was driving his private vehicle in the al-Hadiq neighborhood in Benghazi when two armed men stopped and arrested him without a warrant. The two men were identified as members of the Benghazi Security Committee, an armed group which is headed by Salim Al-Fargani. The group is affiliated with the Libyan National Army (LNA), a coalition of armed groups not affiliated with the recognized Government of National Accord. The LNA is reportedly under the control of General Khalifa Haftar and in control of Eastern Libya.

Mr. Al-Mesmary is currently believed to be held at the al-Kuweifiya detention facility, a main place of detention in Benghazi, controlled by the Benghazi Security Committee. Shortly after the arrest of Mr. Al-Mesmary, members of his family approached this facility inquiring about his whereabouts and employees at the facility confirmed that he was being held in the Internal Security controlled wing of the facility, but they denied the family members permission to visit him. One of the several wings of the detention facility is under the control of the Benghazi Internal Security, a nominally governmental security agency operating in Benghazi under the control of the LNA.

Mr. Al-Mesmary is reportedly being held incommunicado. Since his arrest on 18 February 2017, he has not been granted access to a lawyer. His family has not

obtained permission to visit him or been able to communicate with him via phone or any other means of contact. They have also not been able to obtain information on any formal charges against him or the reason for his arrest.

On 20 July 2017, relatives of Mr. Al-Mesmary submitted a written appeal to the Military Prosecutor in Benghazi. The family requested the authorities to provide information on the reason for the arrest of Mr. Al-Mesmary and the basis for his continued detention in solitary confinement, and demanded that he either stand trial or be released. In the appeal, the relatives again requested permission to visit Mr. Al-Mesmary and they also submitted their serious concerns about his health condition and requested that he be examined by a doctor due to his recent heart surgery.

A copy of the appeal was submitted to the Eastern Libya Military Governor as well as the Chief of Staff of the LNA.

On 15 August 2017, another appeal was submitted on behalf of Mr. Al-Mesmary to the Military Prosecutor of the LNA. In the appeal, concerns were expressed at the health condition of Mr. Al-Mesmary who suffers from high blood pressure and diabetes and has recently undergone a heart surgery. The appeal also contained a request for access to visit him.

To date, Mr. Al-Mesmary's family has not received any response to their appeal from either agency.

On 27 July 2017, a representative of the United Nations Support Mission to Libya (UNSMIL) contacted the Chief Military Prosecutor in Benghazi via phone. The UNSMIL representative requested that the detention of Mr. Al-Mesmary in the al-Kuwiefiya detention facility be confirmed and that his family be allowed to visit him.

The Chief Military Prosecutor responded that the relatives of Mr. Al-Mesmary should visit his office in person to convey their request. The family subsequently approached the office of the Military Prosecutor. He reportedly personally denied that Mr. Al-Mesmary was detained in the military wing of the al-Kuwiefiya facility, and accordingly, that the case did not fall under his area of responsibility. He did not deny or confirm that Mr. Al-Mesmary was held in one of the other wings of the detention facility.

The family has not received any official information on the reason for Mr. Al-Mesmary's arrest, neither from the detaining party nor the Prosecutor of Benghazi. To their knowledge, he has not been formally charged with any crime.

The arrest of Mr. Al-Mesmary appears to be related to the complaint he submitted on 16 February 2017 to the Criminal Investigation Department in relation to several hostage takings which he was subjected to in 2013 and 2014.

It is further alleged that certain current members of the Criminal Investigation Department were previously members of Ansar al-Sharia, a United Nations Security Council designated terrorist group which Mr. Al-Mesmary is said to have accused of taking him hostage.

These allegations are based on threats made against Mr. Al-Mesmary via phone and SMS messages shortly after he submitted the complaint, from individuals he believes to be identified as officers of the Criminal Investigation Department.

#### *Details of the previous abductions*

Mr Al-Mesmary was reportedly kidnapped by a local armed group in Benghazi in 2013 and released after one day against a ransom of 150,000 Libyan Dinar.

Furthermore, he was reportedly abducted twice by Ansar al-Sharia in 2014. His first abduction lasted for three days. He was subsequently kidnapped for a second time in 2014 from the street by armed men who dragged him into their car. The kidnappers were believed to be affiliated with Ansar Al-Sharia.

Mr. Al-Mesmary was held for two months in an area called Om-Al-Dananer, five kilometers west of Benghazi. His kidnappers demanded a ransom of five million Libyan Dinar. The family was able to reduce the sum to two million. After handing over the cash, Mr. Al-Mesmary was still not released, but eventually escaped.

After his release, Mr. Al-Mesmary was threatened by his kidnappers, whom he identified as members of the Criminal Investigation Department in Benghazi, into transferring a deed of a piece of land to a contractor company in Benghazi.

Without expressing at this stage an opinion on the facts of the case and on whether the detention of Mr. Al-Mesmary is arbitrary or not, we would like to appeal to your Government to take all necessary measures to guarantee his right not to be deprived arbitrarily of liberty and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9 and 10 of the Universal Declaration of Human Rights, and articles 9 and 14 of the International Covenant on Civil and Political Rights (ICCPR), acceded to by Libya on 15 May 1970. The above allegations also appear to contravene the right of everyone to the highest attainable standard of physical and mental health, as guaranteed by article 12 of the International Covenant on Economic, Social and Cultural Rights, acceded to by Libya on 15 May 1970.

Concerning the whereabouts of Mr. Al-Mesmary, we would like to bring to your Government's attention the United Nations Declaration on the Protection of All Persons from Enforced Disappearance which sets out necessary protection by the State, and in particular that no State shall practice, permit or tolerate enforced disappearances (article 2) and that each State shall take effective legislative, administrative, judicial or other measures to prevent and terminate acts of enforced disappearance in any territory under its jurisdiction (article 3). In addition, article 10 of the Declaration establishes the right to access of competent national authorities to all places of detention; to be held in an officially recognized place of detention, in conformity with national law and to be brought before a judicial authority promptly after detention; to accurate information on the detention of persons and their place of detention being made available to their family, counsel or other persons with a legitimate interest; and article 12 the right to the maintenance in every place of detention of official up-to-date registers of all detained persons.

The full texts of the human rights instruments and standards recalled above are available on [www.ohchr.org](http://www.ohchr.org) or can be provided upon request.

In view of the urgency of the matter, we would appreciate a response on the steps taken by your Government to safeguard the rights of Mr. Al-Mesmary, in compliance with Libya's international human rights commitments.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.
2. Please explain how the factual and legal grounds for the arrest and detention of Mr. Al-Mesmary are compatible with the international human rights obligations of Libya under the ICCPR.
3. Please explain the reasons why Mr. Al-Mesmary has been denied access to a lawyer and has been denied the right to receive family visits since his arrest.
4. Please inform the reasons why the whereabouts of Mr. Al-Mesmary have not been officially confirmed.

5. Please provide information on measures taken to ensure access to adequate healthcare in detention for Mr. Al-Mesmary, including access to timely and specialized medical treatment for his diabetes and heart condition.

While awaiting a reply to this communication, we urge your Government to ensure that while the case of Mr. Al-Mesmary is being investigated, interim measures are taken to protect his human rights; and in the event that the investigation confirm that the allegations are correct, to ensure the accountability of any person responsible for the alleged violations.

Your Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Lastly, we would like to inform your Government that after having transmitted an urgent appeal such as this to the Government, the Working Group on Arbitrary Detention may also transmit the case to the Government through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. The present communication in no way prejudices any opinion the Working Group may render. The Government is expected to respond separately to the present urgent appeal and to the communication of the Working Group under its regular procedure.

Please accept, Mr. Ahmed O.O. Elhwat, the assurances of our highest consideration.

Elina Steinerte  
Vice-Chair of the Working Group on Arbitrary Detention

Bernard Duhaime  
Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances

Dainius Pūras  
Special Rapporteur on the right of everyone to the enjoyment of the highest attainable  
standard of physical and mental health