

**Submission to the United Nations Human Rights Committee for the Netherlands'
Review under the International Covenant on Civil and Political Rights**



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June 2019

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I. Submitting Organization

Americans for Democracy & Human Rights in Bahrain (ADHRB) is an accredited non-governmental organization in special consultative status with the United Nations (UN) Economic and Social Council (ECOSOC) that fosters awareness of, and support for, democracy and human rights in Bahrain and the Arab Gulf. ADHRB was formed in 2002, formally incorporated in 2008, and received its tax-exempt status in the United States in 2009.

Unless indicated otherwise, the information presented in this report is based on primary research and documentation, including through our United Nations (UN) Complaint Program, by which we work with victims of human rights violations to record and submit evidence of abuse to the Special Procedures. This information is based on extensive interviews and primary documentation.

II. Introduction

The Netherlands is a signatory party to the International Covenant on Civil and Political Rights (ICCPR), signing 25 June 1969 and ratifying 11 December 1978.

This report assesses the role of the Government of the Netherlands in the recent *refoulement* of Bahraini citizen **Ali Mohamed AlShowaikh**. ADHRB submits that the Dutch government was aware of the human rights situation in Bahrain, as the Bahraini government's human rights violations have been well-recorded at the international level. As such, the return of Mr. AlShowaikh despite Bahrain's abysmal human rights record exhibits a disregard for Mr. AlShowaikh's human rights, in particular the right to life; right to freedom from torture; right to liberty and security of the person; and the right to a fair and impartial trial, among others. **ADHRB has consent to represent Mr. AlShowaikh and to publicly advocate on his behalf.**

This disregard for Mr. AlShowaikh's rights under international law and his *refoulement* are in violation of the Netherlands' obligations under the ICCPR.

III. Background on Mr. AlShowaikh

Mr. AlShowaikh is a 28-year-old Bahraini citizen and one of thousands who participated in peaceful marches and protests in February 2011, calling for democracy and reform. Mr. AlShowaikh only participated in these protests before the Bahraini authorities forcibly suppressed them, assisted by forces from Saudi Arabia and the United Arab Emirates.

On 31 January 2017, a number of prisoners escaped from Jau Prison, the main place of incarceration for adult males in Bahrain. Mr. AlShowaikh fled Bahrain on 9 February 2017, after hearing rumors that he may have been wanted for various crimes, including harboring some of these individuals, although he was not aware of any official charges against him. Mr. AlShowaikh travelled to the United Arab Emirates, then Iran, and ultimately to the Netherlands, where he sought asylum. Mr. AlShowaikh's brother is a refugee in Germany, and he has publicly spoken against the actions of the Bahraini government. Mr. AlShowaikh believes that his brother's activism may be the reason that the Bahraini authorities have targeted him.

In October 2018, the Dutch government rejected his asylum request. Mr. Al Showaikh asked local authorities to deport him to any country other than Bahrain, where he feared being subjected to torture, forced to make a false confession, and subjected to an unfair trial. However, the Dutch government deported him to Bahrain on 20 October 2018. He was immediately arrested after arriving by airport police officers.

Officers disappeared him for 11 days, transporting him to the Criminal Investigations Directorate (CID) for investigation. The officers interrogated him and subjected him to torture in order to coerce him into signing a confession. Mr. AlShowaikh was not represented by legal counsel when he was brought before the Office of Public Prosecution (OPP), and he informed the office that his confession had been obtained through “physical and psychological torture.” Regardless, the OPP ordered his detention pending trial. Mr. AlShowaikh was not permitted to meet with a lawyer for ten weeks.

Mr. AlShowaikh was tried under the Protecting Society from Terrorist Acts Law. This law has been repeatedly criticized by the United Nations on multiple occasions because it violates international human rights standards. In particular, the Human Rights Committee expressed concerns that the law “includes an overly broad definition of terrorism that provides too much room for interpretation”¹ and raised concerns about the “extensive” use of the counter-terror law against human rights defenders and political activists.²

On 28 February 2019, Bahrain’s Fourth High Criminal Court sentenced him to life imprisonment, revocation of his Bahraini nationality, and a fine of 500 Bahraini dinars on the charges of (1) harboring and concealing members of a terrorist group, (2) possession of unauthorized firearms and ammunition for the use of disrupting public order, and (3) harboring and concealing fugitives charged with felonies which are punishable with the death penalty or prison terms. His citizenship was later reinstated by royal order on 20 April 2019,³ following international pressure on Bahrain’s arbitrary use of deprivation of citizenship, including by the High Commissioner for Human Rights.⁴

Mr. AlShowaikh was transferred to Jau Prison, where he remains. He reports that within the prison, he is currently sharing a cell with 16 other individuals, though the cell was originally intended to only house eight prisoners. He reports that the prison administration has placed extra mattresses in the cell to accommodate more individuals, with the mattresses placed on the floor between beds during the night. He also reports that he is only permitted to exit his cell for one hour per day, and that the prison administration has deprived himself and other inmates from medical care.

IV. Violations of Articles 6, 7, 9, 10, 13, and 14 of the ICCPR

While the ultimate responsibility for Mr. AlShowaikh’s torture, unfair trial, and current conditions of detention lies with the Bahraini authorities who perpetrated these abuses, the Netherlands shares in the blame, as none of these violations would have occurred but for his forced return to Bahrain.

1. Article 6 - Right to Life

Article 6 of the ICCPR provides that “[e]very human being has the inherent right to life... [and] [n]o one shall be arbitrarily deprived of his life.” Bahrain has not abolished the death penalty. In January 2017, the Bahraini government carried out its first executions in ten years, executing three individuals who alleged that they had been tortured to coerce confessions.⁵

In returning Mr. AlShowaikh to Bahrain, the Netherlands put him at risk of his right to life, as the Netherlands had reason to believe that Mr. AlShowaikh was wanted in connection for terrorist crimes

¹ Human Rights Comm., *Concluding observations on the initial report of Bahrain*, 3516th meeting, Jul. 19, 2018, U.N. Doc. CCPR/C/BHR/CO/1 (Nov. 15, 2018), para. 29.

² *Id.*

³ Bahrain News Agency, *HM King orders reinstatement of citizenship of 551 convicts*, BNA (Apr. 21, 2019), <https://www.bna.bh/en/HMKingordersreinstatementofcitizenshipof551convicts.aspx?cms=q8FmFJgiscL2fwlzON1%2bDh%2bjQDtO6xrJDAIxe%2fob2kY%3d>.

⁴ Press Release, *UN human rights chief deeply concerned by mass terrorism convictions in Bahrain*, OHCHR (Apr. 18, 2019), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24502&LangID=E>.

⁵ *Urgent Appeal to the Government of Bahrain*, U.N. Ref. UA BHR 1/2017 (Jan. 19, 2017).

(some of which carry the death penalty), and as Mr. AlShowaikh expressed his concerns for his personal and physical safety. As such, ADHRB submits that the Netherlands was in violation of its Article 6 obligations by returning Mr. AlShowaikh to Bahrain.

2. Article 7 – Prohibition on Torture

Article 7 of the ICCPR provides that “[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.” The Human Rights Committee has extended this to include the prohibition on non-refoulement, stating that “States parties must not expose individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment upon return to another country by way of their extradition, expulsion or refoulement.”⁶ The use of torture in Bahrain is so open and notorious that the government of the Netherlands knew or should have known that the risk that Mr. AlShowaikh would be subjected to torture was particularly high.

The use of torture in Bahrain has been publicly noted by multiple human rights bodies, including the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the Committee Against Torture, and the Human Rights Committee. The various Special Rapporteurs on torture signed or authored 45 communications to the Government of Bahrain concerning 180 individual victims between 2011 and October 2018, when Mr. AlShowaikh was returned to Bahrain. Torture is so prevalent in Bahrain that the former Special Rapporteur Juan Mendez requested a country visit in 2014, which has never been conducted.⁷

The Committee Against Torture also noted the prevalence of torture in Bahrain during its review of Bahrain’s second and third periodic report in May 2017, stating “the Committee is concerned that there continue to be *numerous and consistent allegations of widespread torture and ill-treatment of persons who are deprived of their liberty* in all places of detention and elsewhere, particularly at the Criminal Investigations Directorate, at the moment of arrest, during pretrial detention and in prisons, in order to extract confessions or as punishment.”⁸

The Human Rights Committee echoed these concerns a year later, stating “The Committee is concerned about reports that *acts of torture and ill-treatment are often committed by law enforcement officials, including as a means of eliciting confessions*, that, despite the prohibition in domestic law, confessions obtained under duress have been used as evidence in court and that allegations made by defendants in this respect have not been adequately investigated. *The Committee is also concerned about reports of torture in prisons, particularly in the Jau prison.* It notes with concern the lack of information on investigations carried out and convictions handed down vis-à-vis the number of complaints of torture and ill-treatment.”⁹

Mr. AlShowaikh was also at a heightened risk of torture upon his return to Bahrain due to the political status of his family. Mr. AlShowaikh’s brother is a refugee in Germany, and has been openly critical of the Bahraini government. Mr. AlShowaikh believes that he may have been targeted for arrest by authorities for this reason. His belief is reasonable, as the Bahraini authorities have regularly targeted the family members of Bahrainis who have fled the country and sought asylum. One such example is that of Sayed Ahmed Alwadaei, whose family was determined to have been detained in reprisal for Alwadaei’s human rights

⁶ Human Rights Comm., *General comment No. 20: Article 7 (Prohibition of torture, or other cruel, inhuman or degrading treatment or punishment)*, 44th Sess., Mar. 10, 1992, U.N. Doc. CCPR (Mar. 10, 1992), para. 9.

⁷ Comm. Against Torture, *Concluding observations on the second and third periodic reports of Bahrain*, 1533rd and 1534th meetings, May 8-9, 2017, U.N. Doc. CAT/C/BHR/CO/2-3 (29 May, 2017), para. 40.

⁸ *Id.*, para. 8 (emphasis added).

⁹ Human Rights Comm., *Concluding observations on the initial report of Bahrain*, *supra* n. 1, para. 37 (emphasis added).

work by the Working Group on Arbitrary Detention.¹⁰ Their cases were also included in the Human Rights Committee's concluding observations on Bahrain in July 2018¹¹ and the Assistant Secretary-General's report on reprisals in September 2018.¹²

In addition to the various UN bodies raising the issue of torture in Bahrain, the Government of the Netherlands was well aware of the human rights situation in Bahrain generally, having signed several joint statements on Bahrain at the Human Rights Council in 2013,¹³ 2014,¹⁴ and 2015,¹⁵ some of which explicitly included references to allegations of torture.

Considering the prevalence of torture and ill treatment in Bahrain in general, and the heightened risk of torture for Mr. AlShoaiikh due to his family, and considering that Mr. AlShoaiikh explicitly communicated his reasonable fear of being subjected to torture if returned to Bahrain, we submit that the Netherlands knew that Mr. AlShoaiikh was at risk of ill treatment or torture, and was in violation of its Article 7 ICCPR obligations by refouling him.

3. Article 9 – Right to Liberty and Security of Person

Article 9 of the ICCPR provides that “[n]o one shall be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law.” In the instant case, the Netherlands had reason to know that Mr. AlShoaiikh was at risk of arbitrary detention, as he communicated to the authorities in his asylum claim that he was wanted for terrorist crimes, which he believed were brought against him as a reprisal for his brother's public criticism of the government.

The Government of the Netherlands also had knowledge of the Bahraini government's widespread use of arbitrary detention, as it has been well documented by human rights organizations and various UN bodies. It has been estimated that Bahrain has between 3,000 and 4,000 political prisoners.¹⁶ Additionally, the Working Group on Arbitrary Detention signed 41 communications to the Government of Bahrain concerning at least 498 individual victims between 2011 and October 2018, when Mr. AlShoaiikh was returned to Bahrain. Additionally, the Working Group on Arbitrary Detention issued 12 opinions concerning 17 individuals in the same period.

¹⁰ Working Group on Arbitrary Detention, *Opinion No. 51/2018 concerning Sayed Nazar Naama Baqquer Ali Yusuf Alwadaei, Mahmood Marzooq Mansoor and Hajar Mansoor Hassan (Bahrain)*, 82nd Sess., Aug. 20-24, 2018, U.N. Doc. A/HRC/WGAD/2018/51 (Jan. 7, 2019).

¹¹ Human Rights Comm., *Concluding observations on the initial report of Bahrain*, *supra* n. 1, para. 59.

¹² Human Rights Council, *Rep. of the Secretary-General, Cooperation with the United Nations, its representatives and mechanisms in the field of human rights*, 39th Sess., Sept. 10-28, 2018, U.N. Doc. A/HRC/39/41 (Aug. 13, 2018), Annex A.

¹³ Switzerland (on behalf of the Cross Regional Group), Human Rights Council, 24th Sess., Sept. 9-27, 2013, Oral Statement, (Sept. 9, 2013), available on the extranet at https://extranet.ohchr.org/sites/hrc/HRCSessions/RegularSessions/24thSession/OralStatements/Switzerland_Cross_Regional_GD_01.pdf.

¹⁴ Switzerland (on behalf of a group of countries), Human Rights Council, 26th Sess., Jun. 10-27, 2014, Oral Statement, (Jun. 10, 2014), available on the extranet at https://extranet.ohchr.org/sites/hrc/HRCSessions/RegularSessions/26thSession/OralStatements/40_Switzerland_01.pdf.

¹⁵ Switzerland (on behalf of a group of countries), Human Rights Council, 30th Sess., Sept. 14-Oct. 2, 2015, Oral Statement, (Sept. 14, 2015), available on the extranet at https://extranet.ohchr.org/sites/hrc/HRCSessions/RegularSessions/30thSession/OralStatements/45_Switzerland_on%20behalf%20group%20of%20states_GD_2_NV.pdf.

¹⁶ Press Release, *Bahrain Continues Harassment and Imprisonment of Human Rights Defenders*, Freedom House (Aug. 12, 2016), <https://freedomhouse.org/article/bahrain-continues-harassment-and-imprisonment-human-rights-defenders>.

In sending Mr. AlShowaikh to Bahrain, the Netherlands knowingly sent him to a country with a high rate of arbitrarily detained individuals and political prisoners, and placed him at risk of being detained in violation of his human rights. As such, the Netherlands violated his right to liberty and security of person under Article 9 of the ICCPR.

4. Article 10 – Rights of Persons Deprived of Liberty

Article 10 of the ICCPR provides that “[a]ll persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.” In the case of Mr. AlShowaikh, his places of detention could have been predicted as either the Criminal Investigations Directorate (CID), Dry Dock Detention Center, or Jau Prison. All three of these institutions have been identified as locations where torture and ill treatment occur at alarming rates, by civil society as well as UN offices.

In particular, the CID was identified by the Committee Against Torture as a location where individuals are tortured to produce confessions,¹⁷ while Jau was identified as a particular location of torture and ill treatment by the Human Rights Committee.¹⁸ The Committee Against Torture also noted the overcrowding in Bahraini detention centers, raising concerns about “poor material and hygiene conditions in places of detention, including inadequate bathing and toilet facilities, lack of access to adequate quantities of food and to good quality food, lack of access to health care, lack of outdoor activities and unnecessary restrictions on family visits.”¹⁹ Poor detention conditions in Jau were also communicated by Special Procedures offices on multiple occasions, most recently in a communication concerning cuts to the water supply in July 2018.²⁰

As such, there was reasonable evidence that Mr. AlShowaikh would be subjected to inhuman and degrading conditions of detention. The Netherlands, by ignoring these reports and returning Mr. AlShowaikh to Bahrain, has contributed to the violation of Mr. AlShowaikh’s rights under Article 10 of the ICCPR.

5. Article 13 – Prohibition on Expulsion of Aliens

Article 13 of the ICCPR provides “[a]n alien lawfully in the territory of a State Party . . . may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall . . . be allowed to submit the reasons against his expulsion and to have his case examined by, and be represented for the purpose before, the competent authority . . .” As an asylum-seeker, Mr. AlShowaikh had the right to be present in the Netherlands during the determination of his refugee status, and was therefore “lawfully in the territory” of the Netherlands, as the ICCPR requires.²¹ As such, he was entitled to the protections of Article 13, and his expulsion could only result from procedures in accordance with law.

Mr. AlShowaikh reported that during his asylum proceedings, the Dutch authorities rejected his claim on the grounds that the Bahraini documents he provided were not originals. Mr. AlShowaikh requested a reasonable one-week extension to obtain these documents, which the Dutch authorities did not permit. As such, we submit that his expulsion from the Netherlands lacked the requisite procedural due process, was therefore not “in accordance with the law,” and was in violation of Article 13 of the ICCPR.

¹⁷ Comm. Against Torture, *Concluding observations on the second and third periodic reports of Bahrain*, *supra* n. 7, para 8.

¹⁸ Human Rights Comm., *Concluding observations on the initial report of Bahrain*, *supra* n. 1, para. 37.

¹⁹ Comm. Against Torture, *Concluding observations on the second and third periodic reports of Bahrain*, *supra* n. 7, para 22.

²⁰ *Urgent Appeal to the Government of Bahrain*, U.N. Ref. UA BHR 4/2018 (Jul. 31, 2018).

²¹ See Human Rights Comm., *General Comment No. 15 “The position of aliens under the Covenant”*, 27th Sess., Apr. 11, 1986, U.N. Doc. CCPR (Apr. 11, 1986), para. 10; see also *Anna Maroufidou v. Sweden*, Communication No. 58/1979, U.N. Doc. CCPR/C/OP/1 at 65 (1984), para. 9.2.

We also note that when his claim was rejected, Mr. AlShowaikh pleaded to be sent to “any country other than Bahrain,” due to his fears of torture and ill treatment. The Human Rights Committee has stated that in applying Article 13, “an alien who is expelled must be allowed to leave for any country that agrees to take him.”²² In the instant case, it appears as though no alternative destinations were considered by the Netherlands in expelling him from the country. We therefore submit that his return to Bahrain was further in violation of Article 13.

6. Article 14 – Fair Trial Rights

Article 14 of the Covenant provides for a number of fair trial guarantees, including the right to be informed promptly of criminal charges, to have adequate time and access to legal counsel to prepare a defense, and to be tried in one’s own presence, among others. However, the judicial system in Bahrain is notorious for serious violations of these rights, and is especially known for preventing individuals from access to legal counsel and admitting confessions obtained through torture as evidence.

In particular, the Committee Against Torture noted “the Committee remains concerned at numerous reports of the continued widespread use of forced confessions as evidence in courts . . . It is also concerned at the widespread acceptance by judges of forced confessions, the fact that some individuals are reported to have been sentenced to 25 years of imprisonment on the basis of confessions made under torture, and the refusal of judges to take into account in court visible signs of torture shown by the defendants.”²³

The Human Rights Committee also raised concerns about the partiality of the judiciary in Bahrain, stating “the Committee is concerned about the fact that judges are appointed by royal order and that several of them have renewable employment contracts of one to three years, a circumstance that jeopardizes the security of their tenure.”²⁴ The Human Rights Committee also raised concerns surrounding fair trials in the particular context of Bahrain’s counter-terror laws, noting multiple reports of trials conducted in violation of Article 14.²⁵

In returning Mr. AlShowaikh to Bahrain, the Netherlands surrendered him to a judiciary that has been recognized at the international level for conducting patently unfair trials, including using confessions obtained through torture and preventing individuals from having access to legal counsel. As such, the Netherlands’ deportation of Mr. AlShowaikh showed a disregard for his fair trial rights under the Covenant, and allowed for him to be subjected to an unfair trial in another State Party.

V. Conclusion

For the foregoing reasons, ADHRB submits that the Government of the Netherlands violated its treaty obligations under Articles 6, 7, 9, 10, 13, and 14 of the ICCPR in the forcible return of Mr. AlShowaikh to Bahrain.

²² Human Rights Comm., *Concluding observations on the initial report of Bahrain*, *supra* n. 1, para. 10.

²³ Comm. Against Torture, *Concluding observations on the second and third periodic reports of Bahrain*, *supra* n. 7, para. 16.

²⁴ Human Rights Comm., *Concluding observations on the initial report of Bahrain*, *supra* n. 1, para. 45.

²⁵ *Id.*, para. 29.