



**Convention against Torture  
and Other Cruel, Inhuman  
or Degrading Treatment  
or Punishment**

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**Committee against Torture**

**Communication No. 467/2011**

**Decision adopted by the Committee at its fiftieth session, 6–31 May  
2013**

<i>Submitted by:</i>	Y.B.F., S.A.Q. and Y.Y. (represented by counsel, Tarig Hassan)
<i>Alleged victims:</i>	The complainants
<i>State party:</i>	Switzerland
<i>Date of complaint:</i>	24 June 2011 (initial submission)
<i>Date of decision:</i>	31 May 2013
<i>Subject matter:</i>	Expulsion of the complainants to Yemen
<i>Substantive issue:</i>	Risk of torture upon return to the country of origin
<i>Procedural issue:</i>	-
<i>Article of the Convention:</i>	3
	[Annex]

## Annex

### **Decision of the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (fiftieth session)**

concerning

#### **Communication No. 467/2011**

*Submitted by:* Y.B.F., S.A.Q. and Y.Y. (represented by counsel, Tarig Hassan)

*Alleged victims:* The complainants

*State party:* Switzerland

*Date of complaint:* 24 June 2011 (initial submission)

*The Committee against Torture*, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

*Meeting* on 31 May 2013,

*Having concluded* its consideration of complaint No. 467/2011, submitted to the Committee against Torture by Y.B.F., S.A.Q. and Y.Y. under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

*Having taken into account* all information made available to it by the complainants, their counsel and the State party,

*Adopts* the following:

#### **Decision under article 22, paragraph 7, of the Convention against Torture**

1.1 The complainants are Y.B.F. (born on 17 April 1970), his wife, S.A.Q. (born on 26 October 1983), and their son, Y.Y. (born on 30 August 2007), all nationals of Yemen. The first two complainants are asylum seekers, whose applications for asylum were rejected and, at the time of submission of the complaint, they were awaiting expulsion to Yemen. They claim that their expulsion to Yemen would constitute a violation by Switzerland of article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The complainants are represented by counsel Tarig Hassan.

1.2 On 29 June 2011, under rule 114, paragraph 1 (former rule 108, paragraph 1), of its rules of procedure (CAT/C/3/Rev.5), the Committee requested the State party to refrain from expelling the complainants to Yemen while their complaint was under consideration by the Committee. On 12 July 2011, the State party informed the Committee that the Federal Office for Migration of Switzerland had requested competent authorities to stay the execution of the expulsion order in relation to the complainants until further notice.

**The facts as presented by the complainants**

2.1 The complainants lived in the city of Aden, in the southern part of Yemen. Y.B.F. (the first complainant) worked as a technician in a petroleum refinery.

2.2 On 21 May 2009, the first complainant participated in a demonstration organized by supporters of the Southern Movement, which calls for the independence of South Arabia (South Yemen) from Yemen. The protest rally in question was against the unequal pay between employees of the petroleum refineries in the north and the south of Yemen, as well as against other forms of discrimination towards southerners. When police officers started to disperse the demonstrators, he received a truncheon blow to the nose and was arrested. He was held at al-Mansoura prison in Aden, accused of being a supporter of the al-Herak movement, questioned and intimidated. While in detention, delegates of the non-governmental organization al-Mauna visited the prison and took the first complainant's personal data. He was released on 30 June 2009 but remained under surveillance.

2.3 On 6 July 2009, the first complainant was arrested at his home and beaten. He was then brought to al-Brika Police Centre, where individuals detained for political reasons were usually kept, until the evening of the next day when another demonstration of the Southern Movement was expected to take place. After his release, the first complainant was informed by one of his friends working for the intelligence service that the former was registered as an activist of the Southern Movement by the Political Security Organization and might be apprehended again at any moment. As a consequence, the first complainant decided to begin organizing the departure of his family.

2.4 On 12 January 2010, security service officers visited the first complainant's home in Aden. As he was not present, they left a summons issued by the Ministry of Interior, al-Brika Directorate. The summons referred to article 64 of the Criminal Code. The first complainant complied with the order and went to the al-Brika Police Centre, where he was threatened verbally and detained for 24 hours.

2.5 On 19 January 2010, the complainants left Yemen by plane with a Schengen visa issued by the Italian Embassy and travelled to Milan, transiting through Cairo. On 21 January 2010, they arrived in Switzerland and applied for asylum.<sup>1</sup>

2.6 The first complainant is an active member of the Southern Movement in Switzerland, which is referred to by the complainants interchangeably as the Southern Democratic Assembly and the Southern Mobility Movement. He is responsible for the Movement's public relations in the canton of Fribourg. He regularly attends meetings and demonstrations. Reacting to the upheavals in Yemen, the first complainant has become more and more active within the organization in Switzerland. Several high-ranking members of the Southern Democratic Assembly have provided attestations and letters in support of the first complainant's asylum application.

2.7 On 27 January 2010 and 10 February 2010, the Federal Office for Migration held asylum interviews with the complainants. On 5 May 2010, the Office rejected the complainants' asylum requests and ordered their expulsion, stating that the complainants' accounts could not be deemed credible. In the light of the fact that the complainants left Yemen lawfully by plane from the international airport in Sana'a, the Federal Office for Migration questioned, in particular, the first complainant's claim that he had been registered by the security service in Yemen as an activist of the Southern Movement. Furthermore, the complainants' claim that their passports were destroyed by a smuggler

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<sup>1</sup> The asylum application of S.A.Q. is based in its entirety on the alleged persecution of her husband by the Yemeni authorities.

upon their arrival to Switzerland was interpreted by the Federal Office for Migration as an attempt to conceal the real date and circumstances of their departure from Yemen. In addition, the first complainant failed to provide the Federal Office for Migration with an attestation from the non-governmental organization that had visited him in the al-Mansoura prison, despite his initial claim that he could undoubtedly obtain such an attestation.

2.8 On 7 June 2010, the complainants appealed the decision of the Federal Office for Migration to the Federal Administrative Court, which upheld their expulsion order on 4 January 2011. Referring to the description of the first complainant's arrest and detention after 21 May 2009, the Federal Administrative Court stated that he had not provided enough details. In particular, he had not been able to provide the name of the non-governmental organization that had allegedly visited al-Mansoura prison while he had been detained there, and he had contacted this organization with the request to provide an attestation only after the first negative asylum decision by the Federal Office for Migration. The attestation that was issued by al-Mauna on 11 May 2010 and provided by the first complainant to the Federal Administrative Court did not fully correspond to his statements, since he had never claimed before the asylum authorities to have been a human rights activist before his arrest. Moreover, two diverging, non-official translations of this attestation from the Arabic original were submitted. Furthermore, the first complainant had not been able to mention any other public demonstrations having taken place after his release. The Federal Administrative Court stated that the first complainant's efforts to obtain travel visas and organize the departure of his family from Yemen were incompatible with his alleged surveillance. He had left Yemen with his own passport and legally obtained visa, which would not have been possible had he had actually been wanted by the Political Security Organization or been under surveillance. The Federal Administrative Court also questioned authenticity of the summons issued by the Ministry of Interior, al-Brika Directorate, which the first complainant submitted together with his asylum application. Moreover, no war, civil war or situation of generalized violence prevailed in Yemen that would put at risk any person originating from this country irrespective of his or her individual circumstances. Finally, the Federal Administrative Court concluded that the first complainant had not engaged in any concrete political activity since his arrival in Switzerland.

2.9 On 28 January 2011, the complainants asked for a revision of the judgement rendered by the Federal Administrative Court and provided new evidence in support of their claims, namely, an attestation issued on 22 January 2011 by the Secretary of Information of the Southern Democratic Assembly based in the United Kingdom, and another attestation issued on 23 January 2011 by the office of the former President of the Democratic Republic of Yemen, Ali Salim al-Beidh. On 15 February 2011, the complainants submitted a scanned copy of the attestation issued on 19 January 2011 by the al-Mansoura prison authorities and confirming the detention of the first complainant from 21 May 2009 to 30 June 2009. In addition, the complainants provided a number of documents concerning activities of the first complainant in Switzerland, such as articles from the Internet and photographs of demonstrations that were attended by him throughout the year 2010 and in March 2011.

2.10 On 27 May 2011, the Federal Administrative Court rejected the complainants' request for revision. With respect to the new evidence submitted by the first complainant (see paragraph 2.9 above), the Federal Administrative Court held that, even on the assumption that these documents were authentic and not written by complaisance, it was insufficient to prove his alleged persecution. In particular, the attestation issued by al-Mansoura prison authorities did not specify the reasons for detaining the first complainant but just referred to "criminal proceedings". The fact that the first day of his detention coincided with the demonstration organized by the Southern Movement in Aden was

insufficient, in the opinion of the Federal Administrative Court, to establish a causal link between the two events.

2.11 The Federal Administrative Court did not assess most of the evidence relating to the first complainant's political activities in Switzerland for procedural reasons due to the delay in presenting it to the asylum authorities.<sup>2</sup> It stated, however, that there was no reason to assume that the first complainant would be at risk of being subjected to treatment contrary to the Convention upon return to Yemen due to his political activities in exile. Thus, he appeared to be a mere participant in some of the numerous demonstrations organized by the Southern Democratic Assembly in Switzerland and it would be practically impossible for the Yemeni authorities to identify each of the participants thereof, except for some well-known opposition leaders. Furthermore, the complainants did not establish that, following recent changes in the social and political situation in Yemen, the activities of the first complainant in Switzerland had led to a significant change of circumstances for them after the completion of the ordinary asylum proceedings. The Federal Administrative Court concluded, therefore, that the execution of the expulsion order in relation to the complainants was lawful, reasonable and possible.

2.12 The complainants submit that they have exhausted all available domestic remedies to obtain redress before the State party's asylum authorities. They are obliged by law to leave Switzerland; in case of non-compliance, they would be forcibly deported to Yemen.

### **The complaint**

3.1 The first complainant submits that he is at a real and imminent risk of being subjected to torture or other inhuman and degrading treatment if he were forcibly returned to Yemen. He adds that, considering the extremely violent and unstable situation in Yemen, his wife and their son would be at an imminent risk of suffering serious harm as well. He argues that, by expelling him and his family to Yemen, Switzerland would violate its obligations under article 3 of the Convention.

3.2 The complainants submit that their accounts provided in the framework of the asylum proceedings were detailed, substantiated and credible. Furthermore, these accounts were confirmed by a number of independent reports.<sup>3</sup> They add that the first complainant never claimed to have been a high-ranking member of the Southern Movement. Nevertheless, he was perceived as a critic of the Government by the Yemeni authorities and put under intense pressure. His departure from Yemen in January 2010 was only possible with the help of a friend, significant financial investments and due to his low profile.

3.3 As to the reasoning of the Federal Administrative Court that the summons and the attestation issued by al-Mansoura prison authorities did not specify the reason for the first complainant's detention (see paragraph 2.9 above), he refers to the reports by the Amnesty International<sup>4</sup> and the United States Department of State,<sup>5</sup> documenting widespread police brutality and torture of suspected supporters of the Southern Movement, as well as of the

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<sup>2</sup> The complainants did not establish, inter alia, that it was impossible for them to provide this information in the course of the ordinary asylum proceedings and before the decision of the Federal Administrative Court of Switzerland on their appeal of 7 June 2010.

<sup>3</sup> See Amnesty International, *Yemen: Cracking Down Under Pressure*, London, 2010, p. 67, and BBC, "Civil war fears as Yemen celebrates unity", 21 May 2009, available at [http://news.bbc.co.uk/2/hi/middle\\_east/country\\_profiles/8062225.stm](http://news.bbc.co.uk/2/hi/middle_east/country_profiles/8062225.stm).

<sup>4</sup> See Amnesty International, "Yemen – Amnesty International Report 2010", available at <http://www.amnesty.org/en/region/yemen/report-2010#>.

<sup>5</sup> See the United States Department of State, "2009 Human Rights Report: Yemen", 11 March 2010, available at <http://www.state.gov/j/drl/rls/hrrpt/2009/nea/136083.htm>.

ordinary criminal detainees in Yemen, and submits that he would have been subjected to serious ill-treatment even if he had not been wanted for political reasons.

3.4 The complainants submit that the risk of their persecution in Yemen is aggravated by the first complainant's political activities in Switzerland. He is a member of the Southern Democratic Assembly in Switzerland and his name and photographs have been linked to the Assembly and published on the Internet. Furthermore, he holds an important position in the canton of Fribourg. The Swiss authorities acknowledge in the judgement of the Federal Administrative Court of 27 May 2011 that the Southern Democratic Assembly is or has been closely monitored by the Yemeni authorities. They state that persons identified as leaders of this movement may be at risk of persecution in case of return. The Federal Administrative Court considered, however, that the first complainant's activities and position were not of sufficient prominence to trigger a well-founded fear of persecution. The first complainant argues that there are reasons to believe that he will be apprehended upon his return, due to his past experiences in Yemen and because he comes from a politically active family. It should be assumed, therefore, that his family name alone is sufficient to trigger the suspicion of the Yemeni authorities.

3.5 The complainants argue that the current political situation in Yemen is extremely unstable and is characterized by high insecurity and violence.<sup>6</sup> Since President Ali Abdullah Saleh's injury and subsequent departure, protests have continued. Whether he will return or whether there will be a regime change remains unclear. They add that the Southern Mobility Movement has played a crucial role in the organization and perpetuation of protests.<sup>7</sup> They submit that it should be assumed that if the current regime remains in place, members of the Southern Movement would be at a real and imminent risk of being exposed to reprisals.

#### **State party's observations on the merits**

4.1 On 25 January 2012, the State party submitted its observations on the merits. It recalled the facts of the complaint and notes the first complainant's arguments before the Committee that he would run a personal, real and serious risk of being subjected to torture if returned to his country of origin. He did not present any new elements that would call into question the decisions of the State party's asylum authorities but rather disputed their assessment of the plausibility of his allegations.

4.2 According to article 3 of the Convention, States parties are prohibited from expelling, returning or extraditing a person to another State where there exist substantial grounds for believing that he or she would be subjected to torture. To determine the existence of such grounds, the competent authorities must take into account all relevant considerations, including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.<sup>8</sup> The existence of gross, flagrant or mass violations of human rights is not in itself a sufficient basis for

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<sup>6</sup> See Human Rights Watch, "Days of bloodshed in Aden", 9 March 2011, available at <http://www.hrw.org/reports/2011/03/09/days-bloodshed-aden-0>.

<sup>7</sup> See the Jamestown Foundation, "Filling the void: the Southern Mobility Movement in South Yemen", 25 April 2011, available at [http://www.jamestown.org/single/?no\\_cache=1&tx\\_ttnews%5Btt\\_news%5D=37845](http://www.jamestown.org/single/?no_cache=1&tx_ttnews%5Btt_news%5D=37845).

<sup>8</sup> The State party refers to the Committee's General Comment No. 1 (1997) on the implementation of article 3 of the Convention in the context of article 22 (*Official Records of the General Assembly, Fifty-third Session, Supplement No. 44 (A/53/44)*, annex IX), paras. 6 and 8; and to the Committee's jurisprudence in Communication No. 94/1997, *K.N. v. Switzerland*, Views adopted on 19 May 1998, para. 10.2, and Communication No. 100/1997, *J.U.A. v. Switzerland*, Views adopted on 10 November 1998, paras. 6.3 and 6.5.

concluding that an individual might be subjected to torture upon his or her return to his or her country, and additional grounds must exist for the risk of torture to qualify under the meaning of article 3 as “foreseeable, real and personal”.

4.3 The State party submits that it is aware that the general situation in Yemen is characterized by instability since the beginning of the riots in January of 2011, and that until now the human rights situation has been characterized, *inter alia*, by arbitrary arrests by the police, especially by the secret service, and by the frequent occurrence of torture and ill-treatment in detention.<sup>9</sup> However, these facts do not constitute a situation of generalized violence. There can be no question of systematic, serious, flagrant or mass violations of human rights under the Convention. The resignation of President Ali Abdullah Saleh on 23 November 2011 did not change in principle the general situation in Yemen. His resignation has not resulted in either a worsening or a noticeable improvement of the situation. The State party adds that, according to the Committee’s jurisprudence, the situation in Yemen is not in itself a sufficient basis for concluding that the complainant might be subjected to torture upon his return to that country. It argues that the complainant has not demonstrated that he would face a foreseeable, real and personal risk of being subjected to torture if returned.

4.4 With reference to the Committee’s General Comment No. 1 (para. 8 (b)), the State party submits that torture or ill-treatment allegedly suffered by the complainant in the past is one of the elements that should be taken into account in assessing the risk of him or her being subjected to torture or ill-treatment if returned to the country of origin. In this regard, the State party recalls the complainant’s claims that he was arrested and detained in 2009 after participating in a demonstration organized by the Southern Democratic Assembly, that he received a truncheon blow to the nose during the arrest, that he was questioned once during his detention and was threatened verbally, that he was released on 30 June 2009 after having spent 40 days in detention, that he was again detained overnight on 6 July 2009 on the eve of another demonstration, that he was searched for by the security service officers at his home on 12 January 2010 and summoned to report himself to the al-Brika Police Centre, where he was detained for 24 hours and threatened.

4.5 As to the attestation issued on 22 January 2011 by the Southern Democratic Assembly (see paragraph 2.9 above), the State party submits that it is not decisive, since the attestation does not contain any indication as to how the information about the first complainant’s detention was obtained and verified. Therefore, it cannot be excluded that this attestation was written solely on the basis of the first complainant’s statements.

4.6 The State party further notes that, in order to prove his arrest and detention, the first complainant also provided another attestation issued on 23 January 2011 by the office of the former President of the Democratic Republic of Yemen (see paragraph 2.9 above). According to this attestation, the first complainant is an active personality in the Southern Movement and he was one of those who were “expelled from their work and who have suffered from prejudices and police pursuits, as well as from detention by the organs of the regime”. In this regard, the State party submits that, similar to the attestation issued by the Southern Democratic Assembly, this document is also written in general terms and it does not indicate the source of the information. Therefore, the attestation cannot be considered as evidence of such a probative value that it would overturn the conclusion that has been

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<sup>9</sup> See Amnesty International, “Yemen – Amnesty International Report 2008”, available at <http://www.amnesty.org/en/region/yemen/report-2008>, and United States Department of State, “2007 Country Reports on Human Rights Practices – Yemen”, 11 March 2008, available at <http://www.state.gov/j/drl/rls/hrrpt/2007/100610.htm>.

reached by the State party's asylum authorities on the basis of the first complainant's own statements.

4.7 As to the attestation issued on 19 January 2011 by al-Mansoura prison authorities (see paragraph 2.9 above), the State party submits that, independently of the question of the authenticity of this document, it demonstrates that the first complainant has indeed been detained but does not necessarily support the alleged reasons for his detention put forward by the first complainant. According to the translation provided, he was detained because of criminal proceedings. The State party argues that this attestation is not decisive. The fact that, according to the attestation, the first day of the detention coincided with a time when, according to various sources, a demonstration took place at Aden is insufficient to prove the veracity of the first complainant's assertions about the reasons for his alleged detention.

4.8 The State party concludes that the evidence submitted by the first complainant is not decisive, because it does not have sufficient probative value to outweigh the elements of improbability identified in the context of the domestic proceedings. For the same reasons, the first complainant is unable to demonstrate that he would be personally at concrete and serious risk of being subject to acts prohibited under the Convention if returned to his country of origin.

4.9 The State party further argues, with reference to the Committee's General Comment No. 1 (para. 8 (e)), that another element to be taken into account when assessing the first complainant's risk of being subjected to torture if returned to his country of origin is whether he has engaged in political activities in Yemen. The State party notes in this regard that during his asylum interviews the first complainant stated that he had been a member of the Yemeni Socialist Party before the unification of Yemen in 1990. The first complainant clearly stated that he became a member in order to benefit from certain privileges that a membership in the Yemeni Socialist Party entailed. In addition, the situation before the unification was not, according to the first complainant, the source of his asylum application. As to the situation after unification, the first complainant admitted that he was neither a member of any political party nor politically active. The State party adds that his only political activity seems to have been his participation in the demonstration on 21 May 2009, which is confirmed by the fact that he could not mention any other demonstrations that took place between his release and his departure from the country.

4.10 The State party adds that during the proceedings before the Federal Office for Migration, the first complainant has provided an attestation issued on 19 April 2010 by the Southern Democratic Assembly in the United Kingdom. The author of this attestation, A.N., states that the first complainant is a national of South Yemen who is involved in the activities of the Southern Movement and who was subjected to persecution, detention and torture. A.N. also describes the political situation in Yemen over the past two years. The State party's authorities have considered this attestation as a "complaisance" document without any probative value, given that it contained only general information and did not correspond to the first complainant's own statements as to his involvement in the activities of the Southern Movement.

4.11 According to the attestation issued on 22 January 2011 and provided by the first complainant to the Federal Administrative Court, A.N. states that his own sources in Yemen have confirmed that the first complainant was actively involved in the Southern Movement and that he was arrested and detained from 21 May 2009 to 30 June 2009 due to his participation in a demonstration in Aden. In view of the arguments advanced by the State party's asylum authorities with regard to the attestation issued by the Southern Democratic Assembly on 19 April 2010, which led them to conclude that the facts alleged by the first complainant were implausible, the State party submits that the new attestation should also be considered as written by complaisance, because it reiterates the earlier allegation that the first complainant was involved in the activities of the Southern



Movement. The first complainant has stated, however, that he had not actively participated in the movements against the oppression of the South before his alleged arrest on 21 May 2009.

4.12 The State party also notes the second complainant's own assertion that she had left Yemen for the sole purpose of following and accompanying her husband. As for herself, she has not experienced any problems with the Yemeni authorities, but was frightened when officers visited their home searching for her husband. In addition, she has never been politically active.

4.13 As to the first complainant's political activities in Switzerland, the State party notes that he claims in his complaint to the Committee to have actively supported the cause of the South Yemeni community since his arrival in Switzerland. He claims to be a member of the Southern Democratic Assembly and to be responsible for the organization's public relations in the canton of Fribourg. As part of his political activities, he participated in several meetings of this organization as well as demonstrations organized by it. In this regard, the first complainant provided an attestation of affiliation issued on 22 January 2011 by the Southern Democratic Assembly in the United Kingdom, and an attestation issued on 23 January 2011 by the office of the former President of the Democratic Republic of Yemen, as well as photographs and articles about demonstrations attended by him.

4.14 The State party's asylum authorities have found that the evidence submitted by the first complainant was insufficient to render credible his alleged future risk of being subjected to ill-treatment. It adds that both attestations issued by the Southern Democratic Assembly in the United Kingdom should be considered as written by complaisance. Although the second attestation mentions that the first complainant is indeed active in this organization, it fails to specify either his activities or his role. It states simply that the return of the first complainant to Yemen constitutes a high risk, without providing any substantiation in support of this statement.

4.15 According to the evidence submitted, the activities of the first complainant are mainly limited to his participation in five demonstrations organized by the Southern Democratic Assembly or other exiles originating from South Yemen. With reference to the judgement of the Federal Administrative Court of 27 May 2011, the State party submits that there is concrete evidence that the activities of the Southern Democratic Assembly have been closely observed by the Yemeni authorities in the past and that some particularly active persons or members of the governing structures of the organization could have been exposed to harm if returned to their country of origin. However, the first complainant has not established that he played in this organization a role likely to attract the attention of the authorities. He appears to be a mere participant of demonstrations organized by the Swiss branch of the Southern Democratic Assembly. However, such demonstrations being numerous not only in Switzerland but also in other countries, it is virtually impossible for the Yemeni authorities to focus not only on persons deemed to be opinion leaders, but also on each of the demonstrators appearing in such a context. The State party's asylum authorities established that his political activities in Switzerland were not of such significance that he could be identified by the Yemeni authorities as a well-known opponent of the existing regime. Even the first complainant's position as head of public relations of the Southern Democratic Assembly in the canton of Fribourg is not of such significance that it would make him particularly vulnerable.

4.16 Furthermore, the State party adds that the photographs of demonstrations that are accessible on the Internet do not allow the conclusion that the Yemeni authorities have taken note of the first complainant's activities in Switzerland. The sole fact that he is identifiable on the photographs is not enough to demonstrate a risk of ill-treatment in case of return. It is also difficult, for obvious practical reasons, to identify individual participants

in a large demonstration if they are not previously known to the Yemeni authorities, which does not appear to be the case in the present complaint.

4.17 The State party also points to a number of factual inconsistencies in the first complainant's account, and therefore questions his credibility. It notes, in particular, that he left Yemen lawfully by plane from the international airport in the capital, which would not have been possible had he actually been wanted by the Political Security Organization or been under surveillance. Moreover, in light of his training and profession, the first complainant would not have recklessly taken the risk of being questioned during the passenger checks on the internal and international flights and would have instead left Yemen by ground transport.

4.18 The State party also submits that the first complainant could provide only limited information about the circumstances of his arrest on 21 May 2009, his detention for 40 days at al-Mansoura prison and the questioning to which he was subjected, as well as about two subsequent 24-hour detentions. Furthermore, the summons issued by the Ministry of Interior, al-Brika Directorate, did not specify the reasons for summoning the first complainant. Even assuming that this document is authentic, it is insufficient to establish an eventual risk of persecution, since the first complainant could have been summoned for any other reason and then released after a short detention.

4.19 The State party also recalls that the first complainant provided little information about the visit of a member of the organization whose pressure led to his release and that he had not been able to name this organization during the asylum interviews. Moreover, the first complainant had contacted this organization with the request to provide an attestation only after the first negative asylum decision by the Federal Office for Migration, although the Office had given him a time limit for submitting this document. Furthermore, two diverging, non-official translations of this attestation from the Arabic original had been submitted, with the second translation "correcting" the first translation on the basis of the observations made by the Federal Office for Migration. The State party's asylum authorities noted that this attestation did not mention either the name of the first complainant or the manner in which the information had been obtained. In addition, its contents did not fully correspond to the first complainant's statements, since he had never claimed to be a human rights activist or a member of any political organization.

4.20 The State party argues that, in these circumstances, the asylum authorities cannot be reproached for having determined that the first complainant's claims were implausible and that his allegations on the key points were contrary to logic and general experience and, therefore, lacked credibility.

4.21 The State party submits that, in light of the foregoing, there are no substantial grounds for fearing that the first complainant would be concretely and personally exposed to torture if returned to Yemen. His allegations and the evidence he provided do not allow the conclusion that his return would expose him to a foreseeable, real and personal risk of torture. The State party, therefore, invites the Committee to find that the return of the first complainant and his family to Yemen would not constitute a violation of the international obligations of Switzerland under article 3 of the Convention.

#### **The complainants' comments on the State party's observations**

5.1 On 2 April 2012, the complainants commented on the State party's observations. As to the State party's arguments that there is no situation of generalized violence and that there is no practice of systematic human rights violations in Yemen, the complainants recall their initial submission of 24 June 2011, which referred to various sources that suggested

the opposite. In addition, they refer to a number of recent reports<sup>10</sup> indicating that torture and other ill-treatment are widespread practices in Yemen and that they are committed, generally with impunity, against detainees held in connection with politically motivated acts, peaceful demonstrations or ordinary criminal offences.

5.2 With regard to the State party's arguments that the first complainant has not been able to prove that he would face a foreseeable, personal and real risk of being subjected to torture if returned to Yemen, and that the attestations provided by him to the asylum authorities have been written by complaisance, the first complainant recalls that he handed in several official documents in support of his allegations and that these allegations find confirmation in independent reports. The State party, however, has not substantiated its claim that these documents may be inauthentic. In particular, there are no specific indications of falsification. As to the State party's criticism that the attestations do not indicate the source of the information that they contain, the complainants argue that since it is impossible for them to prove the authenticity of these documents, they must be accepted as evidence until proven inauthentic.

5.3 In relation to the State party's assertion that the first complainant did not take part in significant political activity before his departure from Yemen, except for the demonstration that led to his arrest, the first complainant recalls that he was a member of the Yemeni Socialist Party before the unification of Yemen. He adds that, while his statement that he was a member in order to obtain certain privileges clearly implies that he did not agree with the views of the Yemeni Socialist Party, he also stated during the asylum interviews that he always had a certain "internal anger", meaning that he was unhappy with the political situation and wanted things to change. The first complainant submits that the demonstration in the course of which he had been beaten and arrested together with his earlier membership in the Yemeni Socialist Party were apparently enough to make him a target of the Yemeni authorities. Moreover, irrespective of his previous political motivation, it does not take much to trigger the suspicion of the Yemeni authorities and to consequently face torture or other ill-treatment.

5.4 The first complainant further submits that the attestation issued on 22 January 2011 by the Southern Democratic Assembly in the United Kingdom states, inter alia, that his previous political activities and his membership in the Southern Democratic Assembly has made him a target of the Yemeni security service.

5.5 As to the State party's arguments summarized in paragraphs 4.15 and 4.16 above, the first complainant submits that he holds an important position in the Southern Democratic Assembly in the canton of Fribourg and adds that there are reasons to believe that he will be apprehended upon his return to Yemen due to his past experiences in that country. Moreover, a simple search on the Internet could reveal his political activities in exile. The first complainant recalls his initial claims that he comes from a politically active family and that his family name alone is sufficient to trigger the suspicion of the Yemeni authorities (see paragraph 3.4 above). Furthermore, due to his detention in Yemen after the demonstration of 21 May 2009, it is very likely that he is known to the Yemeni authorities and will therefore be identified by them upon arrival.

5.6 Concerning the credibility of the explanations given by the first complainant as to how he left Yemen, he submits that the friend who helped him organize the departure put himself at a risk. The first complainant adds that there is no reason why this should not be

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<sup>10</sup> See UN News Centre, "New outbreak of violence displaces thousands more in Yemen – UN refugee agency", 9 March 2012, available at <http://www.un.org/apps/news/story.asp?NewsID=41500>; and Amnesty International, *Yemen: Submission to the UN Human Rights Committee, 104th session of the Human Rights Committee, 12–30 March 2012*, London, 2012.

compatible with the reality in Yemen, as claimed by the State party. Furthermore, his accounts were detailed, substantiated and credible. The first complainant recalls that he never claimed to have been a high-ranking member of the Southern Movement. Nevertheless, he was perceived as a critic of the Government by the Yemeni authorities and put under intense pressure. His departure from Yemen in January 2010 was only possible with the help of the friend and significant financial investments, and due to his low profile.

5.7 The first complainant argues that there is a real and imminent risk that he would be subjected to torture or other inhuman and degrading treatment if he were forcibly returned to Yemen. He adds that by expelling him and his family to that country, Switzerland would violate its obligations under article 3 of the Convention.

### **Issues and proceedings before the Committee**

#### *Consideration of admissibility*

6.1 Before considering a claim contained in a communication, the Committee must decide whether it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5(a), of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

6.2 The Committee recalls that, in accordance with article 22, paragraph 5(b), of the Convention, it shall not consider any communication from an individual unless it has ascertained that the individual has exhausted all available domestic remedies. The Committee notes that in the instant case the State party has recognized that the complainants have exhausted all available domestic remedies. As the Committee finds no further obstacles to admissibility, it declares the communication admissible.

#### *Consideration of the merits*

7.1 In accordance with article 22, paragraph 4, of the Convention, the Committee has considered the present communication in the light of all information made available to it by the parties concerned.

7.2 The issue before the Committee is whether the removal of the first complainant and his family to Yemen would violate the State party's obligation under article 3 of the Convention not to expel or to return (*refouler*) a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture. The Committee must evaluate whether there are substantial grounds for believing that the first complainant would be personally in danger of being subjected to torture upon return to Yemen. In assessing this risk, the Committee must take into account all relevant considerations, pursuant to article 3, paragraph 2, of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. However, the Committee recalls that the aim of such a determination is to establish whether the individual concerned would be personally at a foreseeable and real risk of being subjected to torture in the country to which he or she would return.

7.3 The Committee recalls its General Comment No. 1, according to which the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. While the risk does not have to meet the test of being "highly probable" (para. 6), the Committee notes that the burden of proof generally falls on the complainant, who must present an

arguable case that he or she faces a “foreseeable, real and personal” risk.<sup>11</sup> The Committee further recalls that in accordance with its General Comment No. 1, it gives considerable weight to findings of fact that are made by organs of the State party concerned,<sup>12</sup> while at the same time it is not bound by such findings and instead has the power, provided by article 22, paragraph 4, of the Convention, to freely assess the facts based upon the full set of circumstances in every case.

7.4 The Committee notes that the State party has drawn its attention to perceived factual inconsistencies in the first complainant’s account. The Committee also takes note of the information furnished by the first complainant on the points raised by the State party. It considers, however, that these inconsistencies in the first complainant’s account do not constitute an obstacle for the Committee’s assessment of the risk of torture in case of his expulsion to Yemen.

7.5 In assessing the risk of torture in the present case, the Committee notes the first complainant’s claims that between May 2009 and January 2010 he had been arrested and detained by the Yemeni authorities on three separate occasions and that in the course of these detentions he had been subjected to beatings and threats. It further notes the State party’s argument that these allegations were not substantiated by the first complainant before the State party’s asylum authorities during the ordinary asylum proceedings and that the evidence provided by him did not specify the reasons for any of these detentions. The Committee also notes that the State party questions the authenticity of the attestations issued by the al-Mansoura prison authorities, al-Mauna, the Southern Democratic Assembly based in the United Kingdom and the office of the former President of the Democratic Republic of Yemen, because, inter alia, they did not indicate the source of the information that they contained and did not fully correspond to the first complainant’s own accounts. The Committee also takes note of the information furnished by him on these points. It observes in this regard that the first complainant has not submitted any evidence supporting his claims of having been subjected to ill-treatment by the Yemeni authorities prior to his arrival in Switzerland, including medical reports attesting that he was injured as a result of receiving a truncheon blow to his nose, or suggesting that the Political Security Organization or other authorities in Yemen have been looking for him since.

7.6 The Committee further notes the first complainant’s allegations about his involvement in the activities of the Southern Democratic Assembly. It notes, in particular, that he claims to hold an important position in the Southern Democratic Assembly in the canton of Fribourg, with his name and photographs being linked to this organization and published on the Internet. The Committee further notes the first complainant’s claim that he comes from a politically active family and that his family name alone is sufficient to trigger the suspicion of the Yemeni authorities, but observes that he has not elaborated on this claim or presented any evidence to support it. In the Committee’s view, the first complainant has failed to adduce sufficient evidence about the conduct of any political activity in Switzerland of such significance that would attract the interest of the Yemeni authorities, nor has he submitted any other evidence to demonstrate that the authorities in his home country are looking for him or that he would face a personal risk of being tortured if returned to Yemen.

7.7 The Committee concludes accordingly that the information submitted by the first complainant, including the unclear nature of his political activities in Yemen prior to his

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<sup>11</sup> See, inter alia, Communication No. 203/2002, *Mr. A.R. v. The Netherlands*, decision adopted on 14 November 2003; and Communication No. 258/2004, *Mostafa Dadar v. Canada*, decision adopted on 23 November 2005.

<sup>12</sup> See, inter alia, Communication No. 356/2008, *N.S. v. Switzerland*, decision adopted on 6 May 2010, paragraph 7.3.

departure from that country and the low-level nature of his political activities in Switzerland, is insufficient to show that he would personally be exposed to a risk of being subjected to torture if returned to Yemen. The Committee is concerned at the many reports of human rights violations, including the use of torture, in Yemen,<sup>13</sup> but recalls that for the purposes of article 3 of the Convention the individual concerned must face a foreseeable, real and personal risk of being tortured in the country to which he or she is returned. In the light of the foregoing, the Committee deems that such a risk has not been established.

7.8 As the cases the first complainant's wife and their son are dependent upon his case, the Committee does not find it necessary to consider these cases separately.

8. In the light of the above, the Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, concludes that the decision of the State party to expel the complainants to Yemen would not constitute a violation of article 3 of the Convention.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

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<sup>13</sup> The Committee notes that Yemen is also a State party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and recalls its 2010 concluding observations (CAT/C/YEM/CO/2/Rev.1), paras. 8, 12 and 13.