



Ministry for Foreign Affairs  
Director-General for Legal Affairs

The Special Rapporteurs and  
Working Group to the Joint  
Communication AL SWE 1/2023

Office of the High Commissioner  
for Human Rights  
United Nations  
CH-1211 GENEVA 10  
Switzerland

### Joint Communication from Special Procedures

Reference: AL SWE 1/2023

Dear Special Rapporteurs and Members of the Working Group,

1. I have the honour of referring to your letter of 13 July 2023 in which the Swedish Government is invited to submit observations regarding the detention and expulsion of an individual (██████████) to Egypt.
2. In response to this invitation, I have the honour, on behalf of the Swedish Government, to submit the following.
3. Initially, the Government notes that ██████ has lodged an individual communication with the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, claiming that her expulsion to Egypt would be contrary to article 3 of the aforementioned Convention.<sup>1</sup> The Government has today submitted observations in respect of both the admissibility and merits of that communication. As regards the specific circumstances of ██████'s case, the alleged risk that she faces upon return to Egypt, and the individual risk assessment carried out by the domestic migration authorities, the Government refers to its observations in the case before the Committee against Torture. As expressed in those observations, the Government holds that the domestic authorities, throughout the numerous national proceedings, thoroughly examined ██████'s claims and other risk factors in light of the prevailing situation in Egypt, and that

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<sup>1</sup> Communication No. 1181/2023.

██████ has failed to plausibly demonstrate that she would be at risk of ill-treatment upon return to that country. Her claims were examined in two extensive ordinary proceedings and multiple proceedings concerning impediments to the enforcement of her expulsion orders, and the authorities found that her invoked grounds for protection, including those added in the course of time, were not sufficient to be granted protection in Sweden.

4. In that connection, the Government also wishes to inform the Special Rapporteurs and the Members of the Working Group that following the request from the Rapporteur on New Communications and Interim Measures that Sweden refrain from expelling ████████ to Egypt while her abovementioned complaint to the Committee of Torture is under consideration, the Swedish Migration Agency decided on 16 June 2023 to stay the enforcement of the her expulsion order until further notice. ████████ was released from detention at the same time (see para. 24 below).

5. In addition to the general reference to the Government's observations in the case before the Committee against Torture, the Government wishes to submit the following information.

#### 1. Relevant legal provisions

6. The relevant provisions concerning the right of aliens to enter and remain in Sweden are laid down in the Aliens Act (*Utlänningslagen 2005:716*). Under Chapter 5, Section 1 of the Aliens Act, refugees and persons eligible for subsidiary protection are entitled to a residence permit.

7. A 'refugee' refers to an alien who is outside his or her country of nationality, because he or she feels a well-founded fear of persecution on grounds of race, nationality, religious or political belief, or on grounds of gender, sexual orientation or other membership of a particular social group and is unable, or because of his or her fear is unwilling, to avail himself or herself of the protection of that country (Chapter 4, Section 1 of the Aliens Act). A 'person eligible for subsidiary protection' refers to, *inter alia*, an alien who is outside the country of his or her nationality because there is well-founded reason to assume that, upon return to his or her country of origin, the alien would run the risk of being subjected to corporal punishment, torture or other inhuman or degrading treatment or punishment (Chapter 4, Section 2 of the Aliens Act).

8. An expulsion order may, save for certain exceptions which are not relevant for ██████'s case, not be enforced until it has acquired legal force. Thus, an appeal against a negative decision by the Migration Agency to a migration court and, thereafter, to the Migration Court of Appeal has suspensive effect.

9. As regards the situation after an expulsion order has become final, it follows from Chapter 12, Sections 1–3 of the Aliens Act that the expulsion of an alien may never be enforced to a country where there is reasonable cause to assume that the alien would risk being subjected to the death penalty or to corporal punishment, torture, or other inhuman or degrading treatment or punishment, or to a country where the alien is not protected from being sent to another country in which the alien would run such a risk.

10. Furthermore, it follows from Chapter 12, Section 18 of the Aliens Act that a residence permit may be granted to an alien after his or her expulsion order has become final, *inter alia* if new circumstances come to light that mean that there is an impediment to enforcement under Section 1, 2 or 3. Moreover, it follows from Chapter 12, Section 19 of the Aliens Act that if a residence permit cannot be granted under Section 18, the Migration Agency shall re-examine the matter, if after an expulsion order has become final the alien invokes new circumstances that can be assumed to constitute a lasting impediment to enforcement under Section 1, 2 or 3 and these circumstances could not previously have been invoked by the alien, or the alien shows a valid excuse for not previously having done so.

11. An application for a residence permit or a new examination under Chapter 12, Sections 18 and 19, submitted after an expulsion order has become final, does not have automatic suspensive effect.

12. Regarding the detention of aliens, it follows from Chapter 1, Section 8 of the Aliens Act that the Act is to be applied so as not to limit the freedom of aliens to an unnecessary extent in the individual case. According to the case-law of the Supreme Administrative Court and the Migration Court of Appeal, this principle of necessity is supplemented by a principle of proportionality, which is generally applicable to Swedish authorities. The principle of proportionality means that a domestic authority must refrain from a decision, even when there is legal support for it, if the adverse consequences for the individual concerned are disproportionate in relation to the public interest that the relevant decision is supposed to fulfil (see RÅ 2003 not. 87, RÅ 2005 ref. 60, RÅ 2006 ref. 5, RÅ 2010 not. 7 and MIG 2014:15).

13. Under Chapter 10, Section 1 of the Aliens Act, an alien may be detained *inter alia* if the purpose is to prepare or implement the enforcement of an expulsion order. A detention order under this provision may only be issued if there is otherwise a risk that the alien commits a crime in Sweden, absconds, stays away, or in some other way prevents or hinders the enforcement of the expulsion order.

14. When determining whether there is a risk of an alien absconding, account may only be taken to the circumstance that the alien has: previously stayed away; stated that he or she has no intention of leaving the country if expelled; acted under a false identity; not cooperated to establishing his or her identity and thereby made the examination of the application for a residence permit more difficult; knowingly provided false information or withheld essential information; previously violated a re-entry ban; been convicted of an offense punishable by imprisonment; or been expelled by a general court on account of a crime committed (Chapter 1, Section 15 of the Aliens Act).

15. Under Chapter 10, Section 6 of the Aliens Act, an alien may be placed under supervision instead of being detained.

16. A decision on detention or supervision shall be set aside immediately if there are no longer grounds for the decision (Chapter 10, Section 9 of the Aliens Act). Every decision on detention or supervision, including questions concerning the treatment or placement of aliens being held in detention, may be appealed to a migration court (Chapter 14, Sections 9–10 of the Aliens Act).

## 2. The facts of the case

17. As to the facts of the case, the Government in this context wishes to submit the following information. ██████ applied for asylum in Sweden for the first time in 2013. The Migration Agency rejected her application and decided to expel her to Egypt, as she was not considered to have plausibly demonstrated that she was in need of international protection. The decision was appealed to the Migration Court, which rejected the appeal. The Migration Court of Appeal refused leave to appeal on 23 June 2015 and the decision to expel the ██████ became final and non-appealable.

18. ██████ was registered as absconded in August 2015 and the enforcement of her expulsion order was handed over to the Police Authority in October 2015.

19. On 23 June 2019, ██████'s first expulsion order became statute-barred.
20. ██████ subsequently applied for asylum in Sweden for the second time in October 2019. The Migration Agency rejected her application and decided again to expel her to Egypt, as she was not considered to have plausibly demonstrated that she was in need of international protection. The decision was appealed to the Migration Court, which rejected the appeal. The Migration Court of Appeal refused leave to appeal on 16 February 2021 and the new decision to expel ██████ became final and non-appealable.
21. After the second expulsion decision had become final and non-appealable, ██████ submitted three applications in 2021, 2022 and 2023 respectively for a residence permit or a new examination of the issue of a residence permit under Chapter 12, Sections 18 and 19 of the Aliens Act, claiming that there were impediments to the enforcement of her expulsion decision. Her applications were rejected, as the domestic authorities found that there were no impediments to the enforcement of her expulsion order.
22. On 5 May 2023, the Migration Agency decided that ██████ be placed in detention. In the decision, it was noted that the enforcement of her previous expulsion decision had been handed over to the Police Authority in October 2015 on grounds of abscondment. It was also noted that she on several occasions during 2022 had been called to meetings to discuss her return to Egypt and that she had been instructed to apply for a travel document. Furthermore, the Agency noted that at the last meeting to discuss the return to Egypt, held in May 2023, she had stated that she would not return voluntarily to Egypt. Against that background, the Agency concluded that there was a risk that ██████ would hinder or prevent the enforcement of her expulsion, and that there were therefore reasons for placing her in detention. As to the question of whether the more lenient measure of supervision was sufficient, the Agency noted that ██████ had previously absconded, that she in the current enforcement proceedings had been instructed to apply for a travel document, and that she had not cooperated in this. It was therefore not considered sufficient to place ██████ under supervision.
23. The decision on detention was enforced on 26 May 2023.
24. On 16 June 2023, the Migration Agency decided to set aside the decision on detention pursuant to Chapter 10, Section 9 of the Aliens Act (see para. 16 above). The Migration Agency noted that upon the request of the Committee against

Torture, the Agency had decided to stay the enforcement of ██████'s expulsion order until further notice. Since ██████'s case would be examined by the Committee against Torture, the Agency found that it could not be considered proportional to keep her in detention while the case was being examined, as the length of those proceedings could be considerable.

### 3. The Government's Observations

25. In the light of the foregoing, and with reference to the questions posed in the joint communication, the Government notes that ██████ had the possibility to appeal the Migration Agency's decisions rejecting her asylum applications to the Migration Court, and that she effectively used this possibility. Furthermore, in the second asylum proceedings, after the Migration Court rejected her appeal and the Migration Court of Appeal refused leave to appeal, there was an enforceable expulsion decision as from 16 February 2021 and until the Agency's decision to stay the enforcement of the expulsion order on 16 June 2023 (see para. 20). Any measures referred to in the joint communication with regard to the enforcement of ██████'s expulsion decision have been taken after that decision gained legal force (cf. para. 8). In that connection, the Government also wishes to reiterate that the applications for a residence permit or a new examination pursuant to Chapter 12, Sections 18–19 submitted by ██████ did not have automatic suspensive effect (see paras. 10–11 and 21 above).

26. As to ██████'s detention, the Government notes that the legal basis for detaining ██████ was to prepare or implement the enforcement of an expulsion order, and that there was considered to be a risk that she would otherwise hinder or prevent the enforcement of her expulsion order. The Government also notes that the alternative and less restrictive measure of supervision was considered, but that it was not deemed sufficient in the circumstances of the case. Finally, the Government notes that ██████ was released from detention when there were no longer considered to be grounds for the decision to detain her. Having regard to this and to the overall facts of the case, the Government holds that ██████ has been detained in accordance with relevant provisions in the Aliens Act, and that her detention was a reasonable, necessary, and proportionate measure.

### 4. Conclusion

27. In the light of the foregoing and in conclusion, the Government is of the view that the decision to expel ██████ was compatible with Sweden's duties under the

applicable international norms and standards, including the principle of non-refoulement. [REDACTED] had the benefit of both material and procedural safeguards, and she was not arbitrarily deprived of her liberty.

28. Thus, the Government holds that Sweden has complied with its duties under the applicable international norms and standards in [REDACTED]'s case.

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Please accept, dear Special Rapporteurs and Members of the Working Group, the assurances of my highest consideration.



Elinor Hammarskjöld  
Ambassador, Director-General for Legal Affairs