

NATIONS UNIES
DROITS DE L'HOMME
HAUT-COMMISSARIAT



UNITED NATIONS
HUMAN RIGHTS
OFFICE OF THE HIGH COMMISSIONER

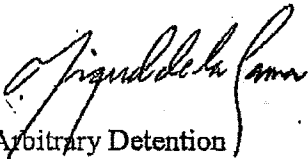
TÉLÉCOPIE • FACSIMILE TRANSMISSION

DATE: 16 September 2014

ATO: Permanent Mission of Sweden to the United Nations Office and other international organizations in Geneva

FAX: +41 22 908 08 10

TEL: +41 22 908 08 00

DE/FROM: Miguel de la Lama 
Secretary
Working Group on Arbitrary Detention

FAX: +41 22 917 9006

TEL: +41 22 917 9289

E-MAIL: wgad@ohchr.org

REF: G/SO 218/2

PAGES: 6 (Y COMPRIS CETTE PAGE/INCLUDING THIS PAGE)

COPIES: 1

OBJET/SUBJECT: Regular procedure communication in accordance with paragraph 15 of the Working Group on Arbitrary Detention's Methods of Work (A/HRC/16/47)

Please find enclosed a letter from the Chair-Rapporteur of the Working Group on Arbitrary Detention.

NATIONS UNIES
DROITS DE L'HOMME
HAUT-COMMISSARIAT



UNITED NATIONS
HUMAN RIGHTS
OFFICE OF THE HIGH COMMISSIONER

HAUT-COMMISSARIAT AUX DROITS DE L'HOMME • OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS
PALAIS DES NATIONS • 1211 GENEVA 10, SWITZERLAND
www.ohchr.org • TEL: +41 22 917 9289 • FAX: +41 22 917 9006 • E-MAIL: wgn@ohchr.org

REFERENCE:

[G/SO 218/2]

16 September 2014

Excellency,

I wish to draw your Excellency's Government's attention to a communication which was submitted to the Working Group for consideration pursuant to its regular procedure, leading to the adoption of an Opinion, concerning a case of alleged arbitrary deprivation of liberty reported to have occurred as a result of actions of the Swedish authorities. A summary of the communication is attached to the present letter.

In order to be able to render an Opinion with respect to the cases reported to it, the Working Group would appreciate receiving any information which your Excellency's Government may wish to provide regarding this case, and in particular, information on the allegations made therein, both in respect of the facts and the applicable legislation.

The Working Group would be grateful if you could provide it with a reply before 18 November 2014, so as to facilitate its task of investigating the cases. However, should your Excellency's Government desire an extension of this time limit, it shall inform the Working Group of the reasons for requesting one, so that it may be granted a further period of a maximum of one month in which to reply. In accordance with paragraph 15 of its Methods of Work, if no reply has been received upon expiry of the time limit set of 60 days, the Working Group may render an Opinion on the basis of all the information it has obtained.

Please accept, Excellency, the assurances of my highest consideration.



M Andenas

Mads Andenas
Chair-Rapporteur

His Excellency Mr. Jan Knutsson
Ambassador Extraordinary and Plenipotentiary
Permanent Representative of Sweden to the United Nations Office
and other international organizations in Geneva
Rue de Lausanne 82
1202 Geneva
Case postale 190
1211 Genève 20

Fax: +41 22 908 08 10

SWEDEN

The case summarized hereafter has been reported to the Working Group on Arbitrary Detention as follows:

1. Mr. Julian Assange, born on 3 July 1971, is an Australian national ordinarily residing in Sydney, Australia. He worked as a publisher and journalist prior to his arrest.
2. The source submits that Mr. Assange has been detained since 7 December 2010, including 10 days in isolation in London's Wandsworth prison; 550 days under house arrest, and thereafter detained in the Embassy of the Republic of Ecuador in London, United Kingdom. The source submits that both the Governments of the United Kingdom of Great Britain and Northern Ireland and Sweden are the forces responsible for holding the detainee under custody.
3. The source informs that Mr. Assange applied for political asylum on 19 June 2012 and was granted asylum by the Republic of Ecuador on 16 August 2012. It is alleged that Sweden refuses to recognize the political asylum granted to Mr. Assange. According to the source, Sweden insists that Mr. Assange must give up his right to political asylum and be extradited to Sweden, without any guarantee of *non-refoulement* to the United States where he faces, in its view, a well-founded risk of political persecution and cruel, inhumane and degrading treatment.
4. The source informs that Sweden issued a European Arrest Warrant against Mr. Assange for the purpose of obtaining his presence in Sweden for questioning in relation to a claimed investigation. No decision has yet been made as to whether there will be a prosecution and the investigation remains at the 'preliminary investigation' phase. Mr. Assange has not been charged with any crime in Sweden. Consequently, the source argues, Mr. Assange does not have the formal rights of a defendant, such as access to potentially exculpatory material.
5. On July 16, 2014, the Stockholm District Court upheld an arrest warrant for his questioning. The district court refused to acknowledge that Mr. Assange has been under a deprivation of liberty during his house arrest and during the time he has spent at the embassy. The district court only considers that he has been detained for the 10 days he was held in Wandsworth prison (7-16 December 2010). The district court has refused to acknowledge Mr. Assange's right to asylum.
6. The source submits during the period of his detention, Mr. Assange has been deprived of a number of his fundamental liberties. It argues that each aspect of the following circumstances has contributed an arbitrary element whose consequence has been or has become arbitrary detention. The key elements are:

- i. His inability to access the full intended benefit of the grant of asylum by the Republic of Ecuador in August 2012.
 - ii. The continuing and disproportionate denial of such access over a period of time in which its impact has become cumulatively harsh and disproportionate.
 - iii. The origins of the justification relied upon for his arrest to be pursued by Sweden under a European Arrest Warrant, and the way in which that request was validated and pursued with continuing effect to the present time.
7. The source emphasizes that Mr. Assange's detention is not by choice: Mr. Assange has an inalienable right to security, and to be free from the risk of persecution, inhumane treatment, and physical harm. The Republic of Ecuador granted Mr. Assange political asylum in August 2012, recognizing that he would face those well-founded risks if he were extradited to the United States. The only protection he has from that risk at the time being is to stay in the confines of the Embassy; the only way for Mr. Assange to enjoy his right to asylum is to be in detention.
 8. The source highlights that the Working Group on Arbitrary Detention has agreed in previous cases that a deprivation of liberty exists where someone is forced to choose between either confinement, or forfeiting a fundamental right—such as asylum—and thereby facing a well-founded risk of persecution. In its view, the European Court of Human Rights and the United Nations High Commissioner of Refugees similarly adhere to this principle.
 9. The source submits that Mr. Assange is deprived of his liberty against his will and his liberty has been severely restricted, against his volition. An individual cannot be compelled to renounce an inalienable right, nor can they be required to expose themselves to the risk of significant harm. Mr. Assange's exit from the Ecuadorian Embassy would require him to renounce his right to asylum and expose himself to the very persecution and risk of physical and mental mistreatment that his grant of asylum was intended to address. His continued presence in the Embassy cannot, therefore, be characterised as 'volitional'.
 10. The source argues that Mr. Assange's detention is arbitrary, and falls under Categories I, II, III and IV as classified by the Working Group. In particular, the context of his deprivation of liberty has arisen from the failure of Sweden by initiating a process against him to obtain his extradition, in the face of contradictory wishes expressed by "complainants", having not established a *prima facie* case, and refusing, unreasonably and disproportionately, to achieve a process of questioning of him, if desired, through the normal processes of mutual assistance. Further, by his offer of co-operation in facilitating a number of alternative methods short of being extradited to Sweden – where it is further stated as a matter of record, that he will then be imprisoned in Sweden on arrival and as a foreigner with no ties to Sweden, in custody until trial. Further, Mr. Assange is

under constant surveillance and the conditions in which he of necessity remains do not adhere to the minimum rules for detainees.

11. The source submits that Mr. Assange has been deprived of fundamental liberties against his will and the deprivation of Mr. Assange's liberty is arbitrary and illegal. The arbitrary nature of Mr. Assange's confinement in the Embassy of Ecuador in London is grounded in the following factors:
12. Sweden is obliged by applicable law and Convention obligations to recognise the asylum granted to Mr. Assange, and no exceptions apply (Categories II and IV). Mr. Assange faces a serious risk of refoulement to the United States. The right to asylum and the related protection against refoulement is recognised under customary international law.
13. The disproportionate nature of the actions taken by the Swedish prosecutor, including the insistence upon the issuing of a European Arrest Warrant rather than pursuing questions with Mr. Assange in the United Kingdom as provided for by mutual assistance protocols (Categories I and III). For over two years, the Prosecutor has refused to consider alternative mechanisms, which would allow Mr. Assange to be interviewed in a manner, which was compatible with his right to asylum. The disproportionality of the Prosecutor's decision is also aggravated by her failure to take into consideration Mr. Assange's fundamental right to asylum, especially in the context of the refusal of the Swedish authorities to provide assurances regarding non-refoulement. The Prosecutor has alternative mechanisms to secure information from Mr. Assange. If Mr. Assange leaves the confines of the Embassy, he forfeits his most effective and potentially only protection against refoulement to United States of America. Any hypothetical investigative inconveniences regarding the interview of Mr. Assange by video link or in the Embassy pale into insignificance when compared to the grave risk that refoulement poses to Mr. Assange's physical and mental integrity. Since the preliminary investigation has not progressed since 2010, it has not been completed in violation of Mr. Assange's right to a speedy resolution of the allegations against him, as per Article 14 (1) of the International Covenant on Civil and Political Rights. By virtue of the fact that Mr. Assange has been denied the opportunity to provide a statement, which is a fundamental aspect of the *audi alteram partem* principle, and access to exculpatory evidence, Mr. Assange has also been denied the opportunity to defend himself against the allegations. The Prosecutor is also fully aware that the practical consequence of this decision is that Mr. Assange is compelled to remain in the confinement of the Ecuadorian Embassy. This failure to consider alternative remedies has therefore consigned Mr. Assange to a lengthy pre-trial detention, which greatly exceeds any acceptable length for an uncharged person. The duration of such detention is *ipso facto* incompatible with the presumption of innocence. Since both the Swedish Prosecutor and the Stockholm District Court have refused to consider Mr. Assange's confinement under either house arrest or in the Embassy as a form of detention, he has been denied the right

to contest the continued necessity and proportionality of the arrest warrant in light of the length of this detention, i.e. his confinement in the Ecuadorian Embassy. According to the source, Mr. Assange is effectively serving a sentence for a crime for which he has not even been charged. The Swedish authorities have nonetheless refused to acknowledge that this confinement should be taken into consideration for the purposes of calculating sentence if Mr. Assange were to be convicted of any crime. His continued confinement therefore exposes him to a likely violation of *nemo debet bis vexari pro una et eadem causa*; if convicted in Sweden, he will be forced to serve a further sentence in relation to conduct for which he has already been detained. This is contrary to Article 14 (7) of the ICCPR.

14. The indefinite nature of this detention, and the absence of an effective form of judicial review or remedy concerning the prolonged confinement and the extremely intrusive surveillance, to which Mr. Assange has been subjected (Categories I, III and IV). Sweden has refused to recognise Mr. Assange's confinement as a form of detention, and as such he has had no means to seek judicial review as concerns the length and necessity of such confinement in the Embassy. Mr. Assange has been continuously subjected to highly invasive surveillance for the last four years. He has never been disclosed the legal basis for these particular surveillance measures, and in fact has little ability to do so as the United States national security investigation against him is still underway. He has thus been deprived of the ability to contest their necessity or proportionality. The prospect of indefinite confinement is, in itself, is a violation of the requirement set out by the Human Rights Committee that a maximum period of detention must be established by law, and upon expiry of that period, the detainee must be automatically released.

15. The absence of minimum conditions accepted for prolonged detention of this nature (such as medical treatment and access to outside areas) (Category III). The Embassy of the Republic of Ecuador in London is not a house or detention center equipped for prolonged pre-trial detention and lacks appropriate and necessary medical equipment or facilities. If Mr. Assange's health were to deteriorate or if he were to have anything more than a superficial illness, his life would be seriously at risk.

The Working Group would appreciate it if the Government of Sweden could, in its reply, provide it with detailed information about the current situation of Mr. Assange and clarify the legal provisions justifying his continued deprivation of liberty.