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[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 in the United Kingdom. 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 revised 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.

Mads Andenas
Chair-Rapporteur
Working Group on Arbitrary Detention

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UNITED KINGDOM

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 private of his liberty 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. 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 reported that the United Kingdom refuses to recognize the political asylum granted to Mr. Assange and it issued a statement to the effect that it would arrest him if he tried to leave the confines of the Ecuadorian Embassy for any purpose or under any conditions. British police maintain a perimeter and around-the-clock surveillance of the Embassy and all visitors.
4. The source adds 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.
5. According to the source, the United Kingdom 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 of America where, in the source's view, he faces a well-founded risk of political persecution and cruel, inhumane and degrading treatment.
6. The source informs that the extradition to Sweden was litigated prior to Mr. Assange obtaining asylum, and prior to the existence of new evidence regarding risk of torture in the United States. It submits that despite the fact that the United Kingdom Extradition Act law was recently amended to prevent extradition where someone has not been charged with a crime, and therefore Mr. Assange would not be extradited under the new law, Mr. Assange has no available judicial remedies.
7. The source submits that during the period of his detention, Mr. Assange has been deprived of a number of his fundamental liberties. It argues that each aspect of he

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 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 failure to acknowledge in Mr. Assange's case, that UK law and procedure has now been altered so that he would no longer, if facing arrest today, be liable to extradition under the European Arrest Warrant, and yet no benefit from that change in the law has been facilitated to him. The source informs that the Anti Social Behaviour, Crime and Policing Act 2014 now in force under Section 156 introduces a bar to extradition whereby an "accusation" will be insufficient to require extradition. Now a charge, rather than a preliminary accusation, will be required to facilitate extradition under a European Arrest Warrant.
8. The source emphasizes that Mr. Assange's deprivation of liberty 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. 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.
 9. 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.
 10. The source submits that Mr. Assange is detained 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. Therefore his continued presence in the Embassy cannot, therefore, be characterised as 'volitional'.
 11. 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 as a result of the failure of the

United Kingdom Government to refuse to facilitate an extradition warrant where the accusation is self-evidently contradictory and unsafe, has not constituted a *prima facie* case, but moreover, where it is an accusation and not a charge, and has been issued by a prosecutor and not a judicial authority. The recognition of the UK that neither is a satisfactory basis for an extradition request to be complied with, has been stated as not applying retrospectively to Mr. Assange, but yet further, no attempts have been made in the light of these changed circumstances to resolve his case fairly, equitably, and in recognition that these are not only the current laws of the United Kingdom, but the principles upon which the United Kingdom intends to base its acceptance or progression of extradition requests for others but not for Mr. Assange, whose case raised both issues by which others have now benefited. 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.

12. The source submits that Mr. Assange has been deprived of fundamental liberties against his will and that the deprivation of Mr. Assange's liberty is arbitrary and illegal. The arbitrary nature of Mr. Assange's confinement in the Embassy of the Republic of Ecuador in London is grounded in the following factors:
13. The failure of the United Kingdom authorities to give effect to the changes in its own law, both in the Supreme Court decision and in legislation, either to provide Mr. Assange with an assurance regarding *non-refoulement*, or safe passage to Ecuador (Categories II and IV). The United Kingdom is obliged by applicable law and Convention obligations to recognise the asylum granted to Mr. Assange, and no exceptions apply. 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.
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). Although the United Kingdom indicated in 2012 that it would establish a working group to regulate Mr. Assange's situation, it has failed to do so, thus depriving Mr. Assange and the Ecuadorian authorities of a mechanism through which they could attempt to resolve or mitigate violations of Mr. Assange's rights. The United Kingdom 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. Mr. Assange 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 therefore 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 the United Kingdom 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.