Ministry for Foreign Affairs Sweden

Director-General for Legal Affairs

Stockholm 3 November 2014 UF2014/58264/UD/FMR

Mr Mads Andenas Chair-Rapporteur for the Working Group on Arbitrary Detention Office of the High Commissioner for Human Rights United Nations CH-1211 GENEVA 10 Switzerland

## Communication from Working Group on Arbitrary Detention

Reference: G/SO 218/2

Sir,

- 1. I have the honour of referring to your letter of 16 September 2014 in which the Swedish Government is invited to submit any information it may wish regarding a case of alleged arbitrary deprivation of liberty concerning Mr. Julian Assange. In response to the invitation, I have the honour, on behalf of the Swedish Government, to submit the following.
- 2. To begin with, as regards the current situation of Mr. Assange, the Government may submit the following. On 18 November 2010, a Swedish prosecutor requested that Mr. Assange should be detained in his absence on probable cause suspected of rape, two counts of sexual molestation and unlawful coercion. On the same day, the Stockholm District Court decided to detain Mr. Assange in his absence. The decision was upheld by the Svea Court of Appeal on 24 November 2010. In order to execute the detention order, the Swedish prosecutor issued an international arrest warrant as well as a European Arrest Warrant (Council Framework Decision, 2002/584/JHA, hereinafter referred to as the "EAW").
- 3. As understood by the Government, in February 2011, the City of Westminster Magistrates' Court ruled that Mr. Assange should be surrendered to Sweden in accordance with the EAW. This decision was upheld by the High Court in a ruling of 2 November 2011 and by the Supreme Court on 30 May 2012. As a result of the EAW, Mr. Assange was apprehended in the United Kingdom and was detained there between 7 and 16 December 2010. He was thereafter subject to certain restrictions, such as house arrest. On 16 August 2012, Mr. Assange was granted asylum by the Republic of Ecuador and he has since June 2012 resided at the Ecuadorian Embassy in London.

Visitors' address

Malmtorgsgatan 3

- 4. Mr. Assange requested a reconsideration of the detention order before the Stockholm District Court on 24 June 2014. On 16 July 2014, the Stockholm District Court ruled that the decision on detention in absentia should be upheld. Mr. Assange has appealed the decision to the Svea Court of Appeal and a decision on the matter is still pending.
- 5. 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. According to the source, Mr. Assange faces a well-founded risk of political persecution and cruel, inhumane and degrading treatment. In this respect, the Government would like to submit the following.
- 6. To begin with, the Government would like to emphasise that it is important to the Swedish Government that all countries act in accordance with international human rights standards, including their treaty obligations.
- 7. The Government firstly finds it pertinent to clarify the difference between the procedures pertaining to an EAW and the question concerning a guarantee of *non-refoulement* or extradition to a third state. The surrendering of persons within the European Union is based on EU-law and the common area for justice and the principle of mutual recognition of judicial decisions and judgements. The EAW is applied throughout the EU and it provides improved and simplified judicial procedures designed to surrender people for the purpose of conducting *inter alia* a criminal prosecution. In the current case, an EAW has been issued by a Swedish prosecutor due to the fact that Mr. Assange is suspected of serious crime in Sweden and has been detained in his absence for those crimes.
- 8. The procedures pertaining to extradition is based on multilateral and bilateral treaties as well as on Swedish law, i.e. the Act on Extradition (1957:668). According to the Act, extradition may not be granted unless the criminal act is punishable in Sweden and corresponds to an offence for which imprisonment for one year or more is prescribed by Swedish law. If there is a risk of persecution, or, under certain conditions, if the offense is considered to be a military offense or a political offense, extradition may not be granted. Furthermore, an extradited person may not have the death penalty imposed for the offence. A decision on extradition is taken by the Government, after an investigation and opinion by the Prosecutor General's Office and, in case the person sought does not consent to extradition, a subsequent decision by

the Swedish Supreme Court. Should the Supreme Court find that there are any obstacles to extradition, the Government is bound by this decision.

- 9. The Government finds it important to emphasise that, to this date, no request for extradition regarding Mr. Assange has been directed to Sweden. Any discussion about an extradition of Mr. Assange to a third state is therefore strictly hypothetical. Furthermore, as has been explained above, any potential decision for extradition must be preceded by a thorough and careful examination of all the circumstances of the particular case. Such an examination cannot be made before a state has requested extradition of a specific person and specified the reasons invoked in support of the request. In addition, if a person has been surrendered to Sweden pursuant to an EAW, Sweden must obtain the consent of the surrendering state, in this case the United Kingdom, before being able to extradite the person sought to a third country. In light of the above, the Government refutes the submission made by the source that Mr. Assange faces a risk of *refoulement* to the United States.
- 10. In any case, the Government holds that the Swedish extradition and EAW procedures, contain sufficient safeguards against any potential extradition in violation of international human rights agreements.
- 11. In relation to the submission by the source that Sweden is obliged by applicable law and Convention obligations to recognise the diplomatic asylum granted to Mr. Assange by the authorities of the Republic of Ecuador, the Government would like to submit the following.
- 12. Regrettably, the source does not specify which law and Convention obligations Sweden is obliged to recognize. However, in the Government's opinion, general international law does not recognize a right of diplomatic asylum as implied by the source. The International Court of Justice has confirmed this fundamental position. The Government would also like to emphasise that the Latin American Convention on Diplomatic Asylum does not constitute general international law. On the contrary, it is a regional instrument and no similar instruments or practices exist elsewhere. Accordingly, the Government does not find itself bound by the aforementioned regulations.
- 13. It should furthermore be noted that according to relevant international instruments, including the Latin American Convention on Diplomatic Asylum, the right to seek and enjoy asylum does not apply if an applicant as grounds of asylum invokes that he or she is wanted for ordinary, non-political, crime (see e.g. Article 14 of the Universal Declaration of Human

- Rights). In this respect, the Government notes that Mr. Assange is suspected of rape, sexual molestation and unlawful coercion, all non-political crimes, and can therefore not rely on the above legal frameworks in this respect.
- 14. In light of the above, the Government refutes the source's allegation that Sweden is obliged by applicable law and Convention obligations to recognise the asylum granted.
- 15. The source further alleges that Mr. Assange's detention is arbitrary, and falls under Categories I, II, III and IV as classified by the Working Group. In this regard, the Government firstly notes that the source has not explained how the situation of Mr. Assange corresponds to the above-mentioned criteria adopted by the Working Group on Arbitrary Detention. For example, the Government notes that, except for the source's mentioning of Article 14 of the International Covenant on Civil and Political Rights, it is unclear under which other relevant international legal framework, if any, Mr. Assange is invoking his rights.
- 16. In any case, the Government contests that Mr. Assange is being deprived of his liberty in violation of the criteria adopted by the Working Group and that, accordingly, the Minimum Rules for the Treatment of Prisoners would apply to his situation. In this regard, the Government notes that Mr. Assange, voluntarily, has chosen to reside at the Ecuadorian Embassy. Mr. Assange is free to leave the Embassy at any point and Swedish authorities have no control over his decision to stay at the Embassy. Mr. Assange can therefore not be regarded as being deprived of his liberty due to any decision or action taken by the Swedish authorities. In this respect, the Government specifically notes that there is no causal link between Mr. Assange's current situation at the Ecuadorian Embassy and the EAW issued by the Swedish authorities, cf. Opinion No. 9/2008 (Yemen), and Opinion No. 30/2012 (Islamic Republic of Iran). The Government holds that Mr. Assange is free to leave the Ecuadorian Embassy at any point in time.
- 17. In relation to the submission that Mr. Assange does not have the formal rights of a defendant during the Swedish preliminary investigation, such as access to potentially exculpatory material, the Government would like to submit the following.
- 18. In Sweden, a Swedish authority, usually a prosecutor or a police officer, is responsible for conducting a preliminary investigation. The purpose of the preliminary investigation is to produce all the evidence in favour of, or against, a crime and a particular suspect. During a preliminary investigation, a

suspect is entitled to examine all the investigation material upon which the allegation is based, and to request the police to carry out further investigations, such as questioning witnesses. The prosecutor is not allowed to issue an indictment unless the suspect has declared that no further actions or measures are required in the preliminary investigation.

- 19. It may be added that since 1995, the European Convention on Human Rights, as well as the Additional Protocols ratified by Sweden, form part of Swedish law. Article 6 of the Convention is therefore an integrated part of Swedish legislation. Hence, the Swedish legislation regarding the criminal procedure, including the preliminary investigations, meets the requirements of the Convention. In light of the above, the submission that Mr. Assange does not have the formal rights of a defendant lacks merit.
- 20. As regards the submission that Mr. Assange's deprivation of liberty has arisen from Sweden's failure in refusing to consider alternative mechanisms and to question him through the procedures of mutual legal assistance, the Government holds the following.
- 21. To begin with, according to the Swedish Instrument of Government (1974:152) the Swedish Government may not interfere in an ongoing case handled by a Swedish public authority. Swedish authorities, including the Office of the Prosecutor and the courts, are thus independent and separated from the Government. In the case at hand, the Swedish prosecutor in charge of the preliminary investigation has determined that Mr. Assange's personal presence is necessary for the investigation of the crimes of which he is suspected. The prosecutor has the best knowledge of the ongoing criminal investigation and is therefore best placed to determine the specific actions needed during the preliminary investigation. In relation to suspicions of serious crime, such as the ones at hand, the interests of the victims are an important aspect of the considerations made by the prosecutor.
- 22. As regards Mr. Assange's potential detention in Sweden, the Government would like to clarify that as soon as Mr. Assange is in Sweden, the prosecutor must notify the district court. A new hearing will then be held before the court, where Mr. Assange attends personally. Thus, it is always for the district court to decide upon the issue of whether Mr. Assange should be detained or released.
- 23. The source also submits that the Stockholm District Court in its decision on detention on 16 July 2014 refused to acknowledge Mr. Assange's right to asylum. In this respect, the Government may clarify the following.

24. In its decision on 16 July 2014 (case No. B 12885-10), the Stockholm District Court ruled exclusively on the matter of whether Mr. Assange should continue to be detained in his absence. Essentially, the District Court stated the following. As a result of the EAW, Mr. Assange has been detained in the period between 7 to 16 December 2010 and he has thereafter been subject to various restrictions. These have, without being equated with a deprivation of liberty, of course, been very tough for Mr. Assange. The fact that Mr. Assange chooses to remain in the Ecuadorian embassy in the United Kingdom is, in the court's opinion, not to be considered as a deprivation of liberty and should therefore not be regarded as a consequence of the decision to detain him in his absence. The District Court further stated that it does not seem to be possible to surrender Mr. Assange at present, as he is residing at an embassy, but that this is not sufficient reason to rescind the order for his detention. However, the District Court makes no reference to Mr. Assange's potential right to asylum, as suggested by the source.

25. In sum, and with reference to what has been stated above and in response to the invitation of the Working Group, the Government holds that Mr. Assange does not face a risk of *refoulement* contrary to international human rights obligations to the United States; that Sweden is not obliged by applicable law and Convention obligations to recognise the diplomatic asylum granted to Mr. Assange; that Mr. Assange is currently not deprived of his liberty in violation of the criteria adopted by the Working Group; and that international law as well as other treaty obligations are being complied with by the Swedish authorities when handling the criminal investigation related to Mr. Assange.

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

Anders Rönquist

Ambassador