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Statement of the Government of the Republic of Ecuador on the asylum request of Julian Assange

On June 19, 2012, the Australian citizen Julian Assange, showed up on the headquarters of the Ecuadorian Embassy in London, with the purpose of requesting diplomatic protection of the Ecuadorian State, invoking the norms on political asylum in force. The requester has based his petition on the fear of an eventual political persecution of which he may be a victim in a third State, which can use his extradition to the Swedish Kingdom to obtain in turn the ulterior extradition to such country.

The Government of Ecuador, faithful to the asylum procedure, and attributing the greatest seriousness to this case, has examined and assessed all the aspects implied, particularly the arguments presented by Mr. Assange backing up the fear he feels before a situation that this person considers as a threat to his life, personal safety and freedom.

It is important to point out that Mr. Assange has made the decision to request asylum and protection from Ecuador because of the accusations that, according to him, have been formulated for supposed "espionage and betrayal" with which the citizen exposes the fear he feels about the possibility of being surrendered to the United States authorities by the British, Swedish or Australian authorities, thus it is a country, says Mr. Assange, that persecutes him because of the disclosure of compromising information for the United States Government. He equally manifests, being "victim of a persecution in different countries, which derives not only from his ideas and actions, but from his work by publishing information compromising the powerful ones, by publishing the truth and, with that, unveiling the corruption and serious human rights abuses of citizens around the world".

Therefore, for the requester, the imputation of politic felonies is what backs up his request for asylum, thus in his criteria, he faces a situation that means to him an imminent danger which he cannot resist. With the purpose of explaining the fear he has of a possible political persecution, and that this possibility ends up turning into a situation of impairment and violation of his rights, with risk for his integrity, personal security and freedom, the Government of Ecuador considered the following:

1. That Julian Assange is a communication professional internationally awarded for his struggle on freedom of expression, freedom of press and human rights in general;
2. That Mr. Assange shared with the global population privileged documented information that was generated by different sources, and that affected officials, countries and organizations;
3. That there are serious indications of retaliation by the country or countries that produced the information disclosed by Mr. Assange, retaliation that can put at risk his safety, integrity and even his life;
4. That, despite the diplomatic efforts carried out by the Ecuadorian State, the countries from which guarantees have been requested to protect the life and safety of Mr. Assange, have denied to provide them;
5. That, there is a certainty of the Ecuadorian authorities that an extradition to a third country outside the European Union is feasible without the proper guarantees for his safety and personal integrity;
6. That the judicial evidence shows clearly that, given an extradition to the United States, Mr. Assange would not have a fair trial, he could be judge by a special or military court, and it is not unlikely that he would receive a cruel and demeaning treatment and he would be condemned to a life sentence or the death penalty, which would not respect his human rights;
7. That, even when indeed Mr. Assange has to respond to the investigation open in Sweden, Ecuador is aware that the Swedish prosecutor's office has had a contradictory attitude that prevented Mr. Assange from the total exercise of the legitimate right to defense;
8. That Ecuador is convinced that the procedural rights of Mr. Assange have been infringed during that investigation:
9. That Ecuador has verify that Mr. Assange does not count with the adequate protection and help that he should receive from the State of which he is a citizen;
10. That, according to several public statements and diplomatic communications made by officials from Great Britain, Sweden and the United States, it is deduced that those governments would not respect the international conventions and treaties and would give priority to internal laws of secondary hierarchy, contravening explicit norms of universal application; and,
11. That, if Mr. Assange is reduced to preventive prison in Sweden (as it is usual in that country), it would initiate a chain of events that will prevent the adoption of preventive measures to avoid his extradition to a third country.

Accordingly, the Ecuadorian Government considers that these arguments back up Julian Assange's fears, thus he can be a victim of political persecution, as a consequence of his determined defense to freedom of expression and freedom of press, as well as his position of condemn to the abuses that the power infers in different countries, aspects that make Mr. Assange think that, in any given moment, a situation may come where his life, safety or personal integrity will be in danger. This fear has leaded him to exercise his human right of seeking and receiving asylum in the Embassy of Ecuador in the United Kingdom.

Article 41 of the Constitution of the Republic of Ecuador defines clearly the right to grant asylum. Regarding those dispositions, the rights to asylum and shelter are fully recognized, according to the law and international human rights instruments. According to such constitutional norm:

"People who are in a situation of asylum and shelter will enjoy special protection that guarantees the full exercise of their rights. The State will respect and guarantee the principle of no return, aside from the humanitarian and judicial emergency assistance".

Moreover, the right to asylum is recognized in the Article 4.7 of the Organic Law of Foreign Service of 2006, which determines the faculty of the Ministry of Foreign Affairs, Trade and Integration of Ecuador to know the cases of diplomatic asylum, according to the laws, the treaties, the rights and the international practice.

It is important to outline that our country has outstood over the last years for welcoming a huge number of people who have requested territorial asylum or refuge, respecting with no restriction the principle of no return and no discrimination, while adopting measures towards granting the refugee status in an efficient way, bearing in mind the circumstances of the requesters, most of them Colombians escaping the armed conflict in their country. The High Commissioner of the United Nations for Refugees has praised Ecuador's refugee policy, and has highlighted the meaningful fact that these people have not been confined to refugee camps in this country, but they are integrated to society, in full enjoyment of their human rights and guarantees.

Ecuador states the right to asylum in the universal brochure of human rights and believes, therefore, that the effective application of this right requires the international cooperation that our countries can provide, without which its enouncement would be unfruitful, and the institution would be completely ineffective. For these

reasons, and bearing in mind the obligation that all the States have assumed to collaborate in the protection and promotion of Human Rights, as it is established in the United Nations Charter, invites the British Government to provide its contingent to reach this purpose.

For those effects, Ecuador has been able to verify, in the course of analysis of the judicial institutions regarding the asylum, that to the confirmation of this right attend fundamental principles of general international law, which because of their importance have universal value and scope, for they are consistent with the general interest of the international community as a whole, and count with the full recognition of all the States. Those principles, which are contemplated in the different international instruments, are the following:

1. The asylum in all its forms is a fundamental human right and creates obligations *erga omnes*, meaning, "for all", the States.
2. The diplomatic asylum, the refuge (territorial asylum), and the right to not being extradited, expelled, surrendered or transferred, are comparable human rights, thus they are based on the same principles of human protection: no return and no discrimination with no distinction of unfavorable character for reasons of race, color, sex, language, religion or belief, political or other type of opinions, national or social origin, birth or other condition or similar criteria.
3. All these forms of protection are ruled by the *pro homine* principles (meaning, most favorable to the human being), equality, universality, indivisibility, complementarity, and inter dependency.
4. The protection is produced when the State which grants the asylum, refuge or requested, or the protective potency, considers that there is a risk or fear that the protected person may be a victim of political persecution, or are charged with political felonies.
5. It corresponds to the State which grants the asylum to qualify the causes of asylum and, in the case of extradition, to value the evidences.
6. Regardless of the modality or form in which it is presented, the asylum has always the same cause and the same legal object, meaning, political persecution, which is a legal cause; and to safe guard the life, personal safety and freedom of the protected person which is a legal object.
7. The right to asylum is a fundamental human right; therefore, it belongs to the *ius cogens*, meaning, the system of imperative norms of right recognized by the international community as a whole, which does not admit a contrary agreement, annulling the treaties and dispositions of international law against it.
8. In the unforeseen cases on the law in force, the human being is under the safe guard of the humanity principles and the demands of the public conscience or under the protection and empire of the principles of the law of people derived from the established uses, of the humanity principles and the dictates of the public conscience.
9. The lack of international convention or internal legislation of the States cannot be legitimately claimed to limit, impinge or deny the right to asylum.
10. The norms and principles that rule the rights to asylum, refuge, no extradition, no surrender, no expulsion and no transference are convergent, to the necessary extent to perfect the protection and providing it with the most efficiency. In this sense, the international bill of human rights, the right to asylum and refuge and the humanitarian law are complementary.
11. The rights of protection to the human being are based on ethical principles and values universally admitted and, therefore, they have a humanitarian, social, solidarity, assistant and pacific character.
12. All the States have the duty to promote the progressive development of the international bill of human rights through effective national and international laws.

Ecuador considers that the right applicable to Mr. Julian Assange's case is integrated by the whole principles, norms, mechanisms and procedures foreseen on the international instruments of human rights (regional or universal), which contemplate among their dispositions the right to seek, receive and enjoy asylum for political reasons; the Conventions that regulate the right to asylum and the right of refugees, and that recognize the right to not be surrendered, returned or expelled when there are founded fears of political persecution; the Conventions that regulate extradition and that recognize the right to not be extradited when this measure can mask political persecution; and the Conventions that regulate the humanitarian right, and that recognize the right not to be transferred when there is a risk of political persecution. All these modalities of asylum and international protection are justified by the need to protect this person of an eventual political persecution, or a possible imputation of political felonies and/ or felonies connected to these last ones, which, to Ecuador's judgment, not only would put at risk the life of Mr. Assange, but would also represent a serious injustice committed against him.

It is undeniable that the States, having contracted with so numerous and substantive international instruments- many of them judicially binding- the obligation to provide protection or asylum to people persecuted for political reasons, have expressed their will to establish a judicial institution of protection of human rights and fundamental freedoms, founded as a right in a generally accepted practice, which gives those obligations an imperative character, *erga omnes* that, being bonded to respect, protection and progressive development of human rights and fundamental freedoms, are a part of the *ius cogens*. Some of those instruments are mentioned below:

1. **United Nations Charter** of 1945, Purposes and Principles of the United Nations: obligation of all the members to cooperate in the promotion and protection of human rights;
2. **Universal Declaration of Human Rights** of 1948: the right to seek and enjoy asylum in any country, for political reasons (Article 14);
3. **American Declaration of the Rights and Duties of Man** of 1948: the right to seek and enjoy asylum in any country, for political reasons (Article 27);
4. **Geneva Convention** of August 12, 1949, regarding the Due Protection of Civilians in War Times: in no case it is due to transfer the protected person to a country where they can fear persecutions because of their political opinions (Article 45);
5. **Convention on the Refugees Statute** of 1951, and its New York Protocol of 1967: forbids to return or expulse refugees to countries where their life and freedom may be in danger (Article 33.1);
6. **Convention on Diplomatic Asylum** of 1954: the State has the right to grant asylum and to qualify the nature of the felony or reasons of persecution (Article 4);
7. **Convention on Territorial Asylum** of 1954: the State has the right to admit in its territory people it judges convenient (Article 1), when they are persecuted for their beliefs, opinions or political filiations, or by actions that may be considered political felonies (Article 2), not being able the asylum granting State, to return or expulsed the asylum seeker that is persecuted for political reasons or felonies (Article 3); in the same way, the extradition does not proceed when it is about people who, according to the required State, are persecuted for political felonies, or for common felonies that are committed with political purposes, nor when the extradition is requested obeying political motives (Article 4);
8. **European Extradition Treaty** of 1957: forbids the extradition if the requested Part considers that the felony imputed has a political character (Article 3.1);
9. **2312 Declaration on Territorial Asylum** of 1967: establishes the granting of asylum to the people that have such right according to Article 14 of the Universal Declaration of Human Rights, including people who fight against colonialism (Article 1.1). The denial of admission, expulsion or return to any State where they can be object of persecution is forbidden (Article 3.1);
10. **Vienna Convention on the Law of the Treaties** of 1969: establishes that the norms and imperative principles of general international right do not admit a contrary agreement, being null the treaty that at the moment of its conclusion enters in conflict with one of these norms (Article 53), if a peremptory norm of the same character arises, every existent treaty that enters in conflict with that norm is null and ended (Article 64). As far as the application of these articles, the Convention authorizes the States to demand their accomplishment before the International Court of Justice, with no requisition of conformity by the demanded State, accepting the tribunal's jurisdiction (Article 66 b). The human rights are norms of the *ius cogens*.
11. **American Convention on Human Rights** of 1969: the right to seek and receive asylum for political reasons (Article 22. 7);
12. **European Convention on the Suppression of Terrorism** of 1977: the required State has the faculty to deny extradition when there is danger of persecution or punishment of the person for their political opinions (Article 5);
13. **Inter American Convention for Extradition** of 1981: the extradition does not proceed when the requested has been judge or condemned, or is going to be judge before an exception tribunal or ad hoc in the required State (Article 4.3); when, with arrangement to the qualification of the required State, it deals with political felonies, or connected felonies or common felonies persecuted with political purposes; when from the case's circumstances, can be inferred that the persecuted purposes is mediated for considerations of race, religion or nationality, or that the situation of the person is at risk of being aggravated for one of those reasons (Article 4.5). The Article 6 disposes, regarding the Right to Asylum, that "none of the exposed in the present Convention may be interpreted as a limitation to the right to asylum, when this proceeds".
14. **African Charter on Human and Peoples' Rights** of 1981: the right of the persecuted individual to seek and obtain asylum in other countries (Article 12.3);

15. **Cartagena Declaration** of 1984: recognizes the right to refuge, to not being rejected in the borders and to not being returned;
16. **Charter of Fundamental Rights of the European Union** of 2000: establishes the right to diplomatic and consular protection. Every citizen of the Union may seek refuge, in the territory of a third country, in which the Member State of nationality is not represented, to the protection of diplomatic and consular authorities of any member State, in the same conditions of the nationals of that State (Article 46).

The Government of Ecuador considers important to outline that the norms and principles recognized in the international instruments mentioned, and in other multi lateral treaties, have preeminence over the internal laws of the States, thus such treaties are based in a universally oriented normative by intangible principles, from which a greater respect is derived, guarantee and protection of human rights against unilateral attitudes of the same States. This would subtract efficiency to the international law, which otherwise has to be strengthened, so the respect of fundamental rights is consolidated in function of integration and ecumenical character.

On the other hand, since Julian Assange requested political asylum to Ecuador, dialogues of high diplomatic level have been held, with the United Kingdom, Sweden and the United States.

In the course of these conversations, our country has appealed to obtain from the United Kingdom the strictest guarantees so Julian Assange faces, with no obstacles, the judicial process open in Sweden. Such guarantees include that, once treated his legal responsibilities in Sweden, he would not be extradited to a third country; this is, the guarantee that the specialty figure will not be applied. Unfortunately, and despite the repeated exchanges of texts, the United Kingdom never gave proof of wanting to achieve political compromises, limiting to repeat the content of the legal texts.

Julian Assange's lawyers requested the Swedish justice to take statements of Julian Assange in the premises of the Ecuadorian Embassy in London. Ecuador translated officially to the Swedish authorities its will to facilitate this interview with the purpose of not intervening or obstacle the judicial process that is carried out in Sweden. This is a perfectly legal and possible measure. Sweden did not accept it.

On the other hand, Ecuador searched the possibility that the Swedish Government would establish guarantees to avoid the onward extradition of Assange to the United States. Again, the Swedish Government rejected any commitment on that sense.

Finally, Ecuador directed a communication to the Government of the United States to know officially its position on the Assange's case. The consults referred to the following:

1. If there is a legal process in course or the intention to carry out such process against Julian Assange and/or the founders of the Wikileaks organization;
2. In the case of the above being truth, what kind of legislation, in which conditions and under which maximum penalties would those people be subjected;
3. If there is the intention of requesting the extradition of Julian Assange to the United States.

The answer of the United States has been that they cannot offer information on the Assange's case, with the allegation that it is a bilateral matter between Ecuador and the United Kingdom.

With these antecedents, the Government of Ecuador, faithful to its tradition to protect those who seek shelter in its territory or in the premises of its diplomatic missions, has decided to grant diplomatic asylum to the citizen Julian Assange, on the basis of the request presented to the President of the Republic, through a written communication dated in London on June 19, 2012, and complemented by a communication dated in London on June 25, 2012, for which the Ecuadorian Government, after carrying out a fair and objective assessment of the situation exposed by Mr. Assange, attending his own sayings and argumentations, intakes the requester's fears, and assumes that there are indications that allow to assume that there may be a political persecution, or that such persecution may be produced if the opportune and necessary measures are not taken to avoid it.

The Government of Ecuador has the certainty that the British Government will know how to value the justice and rectitude of the Ecuadorian position, and in consistency with these arguments, trusts that the United Kingdom will offer as soon as possible the guarantees or safe conducts necessities and pertinent to the situation of the asylum requester, so their Governments can honor with their actions the fidelity they owe to the international laws and institutions that both nations have contribute to shape along their common history.

It also trusts to maintain inalterable the excellent bonds of friendship and mutual respect that unite Ecuador and the United Kingdom and their respective people, confident as they are in the promotion and defense of the same principles and values, and because they share similar concerns about democracy, peace, Good Living, which can

only be possible if the fundamental rights of all people are respected.


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