BALTASAR GARZÓN REAL & CARLOS POVEDA MORENO

International Juridical Consortium

CONSTITUTIONAL JUDICIAL UNIT HEADQUARTERED IN THE CITY OF QUITO, PICHINCHA PROVINCE METROPOLITAN DISTRICT.

I, **DR. CARLOS HERNÁN POVEDA MORENO,** of adult age, Attorney at law of the courts of this country and PhD in Jurisprudence, [redacted], from the city of Latacunga, Cotopaxi province, carrier of citizenship cell number [redacted], married, email addresses: [redacted], in my capacity as private Defense Attorney, vested in the territory of the Republic of Ecuador, legally representing Mr. **JULIAN PAUL ASSANGE**, of Ecuadorian nationality, carrier of citizenship cell number [redacted], presently domiciled in the Ecuadorian Embassy of London, UK, as political asylee; presents most politely before you the **ACTION OF PROTECTION** in conformity with article 88 of the Constitution from the Republic of Ecuador as well as 10, 39, 40, 41 numerals 3 and 4; and, 42 of the Organic Law of Constitutional Guarantee and Control within the following clauses:

FIRST: IDENTIFICATION OF THE PETITIONER.

Is detailed within the section *ut supra* carrier of citizenship cell number [redacted].

SECOND: IDENTIFICATION OF THE RESPONDENTS.

Through this action of protection the following individuals are sued as defendants: AMBASSADOR **JOSE VALENCIA AMORES** in his capacity as Counsellor and Minister of External Affairs and Human Mobility of the Republic of Ecuador, as well as representative of said state post under article 4, numeral 1 and 7 of the Organic Law of Foreign Service.

The address of the Ministry of Foreign Affairs and Human Mobility is located in Carrion Street E1-76 and 10 de Agosto Avenue, postal district 170526 of the city of Quito, Metropolitan District, phone #0059322993200.

Also named as defendant under article 3 and 6 of the Law of State Attorney General, is Dr **IÑIGO SALVADOR CRESPO**, in his capacity as State Attorney General, domiciled in Amazonas Street # 39-123 and Arízaga, in the city of Quito, Metropolitan District, Pichincha province, phone #0059322941300.

THIRD: DESCRIPTION OF THE DAMAGING ACT OR OMISSION WHICH VIOLATED THE RIGHT

3.1. On March 28 of the year 2018, the Government of Ecuador via its Ministry of Foreign Affairs and Human Mobility emitted an official communication of international scope through Ecuadorian social media outlining the following:

> *"The Government of Ecuador has suspended the channels which allow Julian Assange to communicate with the outside world beyond the Ecuadorian embassy in London, where this citizen is dwelling in a situation of international protection for six years due to a potential risk to his life and integrity.*
>
> *This measure was adopted due to Assange's non-compliance with the written agreement he reached with the Government in late 2017, by which he was obligated not to emit messages which would create interference in relations with other states.*
>
> *The Government of Ecuador advises that Assange's behavior, with his messages through social networks, poses a risk to the good relations this country maintains with the UK, the remaining European states as well as other nations. For all of this, to prevent potential damages, the London embassy interrupted Assange's access to outside communication this 27 of March,"*

3.2. A document was delivered, titled "**SPECIAL PROTOCOL FOR VISITS, COMMUNICATION AND MEDICAL ATTENTION of Mr. JULIAN PAUL ASSANGE**", composed of THIRTY TWO specific dispositions regulating the following scopes: a) Visits, b) Communications, c) Medical Attention, d) Annex 1 in reference to a protocol for emergency medical care.

But, in addition, the following regulations which have never been placed under consensus, or any disposition to add critique or feedback are contained in the part *in fine* of the presented document:

> *"[...] In light of the budget cuts, the Embassy will be unable to pay any expense of feeding, medical care, laundry or other expenses derived of Mr Julian Assange's stay, starting December 01 of 2018, those expenses for basic services of the estate: rental, electricity, drinking water, heat and Wifi communication services outlined in the protocol.*
>
> *Non-compliance with the obligations stated in the Special Protocol on the part of the asylee could devolve in the termination of diplomatic asylum on the part of the Ecuadorian State, or in accordance with the pertinent international instruments. The Ecuadorian state reserves the right to accept or reject the explanations that Mr Assange may provide in writing with respect to the non-compliance with obligations under this protocol.*
>
> *This Special Protocol will enter into force on delivery of a copy, together with a translation in the English language, to Mr Julian Paul Assange. The Head of the Ecuador Diplomatic Mission will raise an Act of delivery-reception, availed by the Consul of Ecuador in London, which he will remit to the Chancellery of Ecuador via Quipux.*

The Embassy of Ecuador will be able to modify this Special Protocol at any time as circumstances require. The Head of Diplomatic Mission will notify Mr Julian Assange in writing of changes made to the present Protocol, which will come into effect as soon as said notification is produced. [...]".

This is clearly a unilateral and arbitrary act, the protocol having not been signed by a competent authority in order to enact these measures, with no mention as to whether these measures are administrative or judicial, not disclosing the procedure followed in order to approve these measures, restrictive of rights, and without even indicating which administrative or judicial recourse assists the affected party in questioning or reverting the decision. In other words, this is simply a measure imposed by the Ecuadorian State, offering no possibility of either discussing the subjects inserted in this instrument, or of inserting dispositions of mutual agreement, making this an arbitrary and unilateral disposition in a radical restriction of the most elementary rights of a citizen.

3.3. FACTUAL AND LEGAL BACKGROUND.

3.3.1. On August 16, 2012, the Government of the Republic of Ecuador granted Mr Julian Assange diplomatic asylum following his arrival at the Ecuadorian embassy in London on June 19 of that same year, with the purpose of requesting international protection in light of the various international agreements and instruments of asylum and Human Rights of which our country is a subscriber and a state party.

The basics of this request were founded on the existing accusations of "espionage" and "treason" against Mr Assange on the part of the USA, for his work as editor-in-chief and journalist of the WikiLeaks organization, for which the existence was exposed of a well-founded fear of his being extradited to the USA, in addition to a serious and effective persecution in different countries for the periodical publication of information which harmed the interests of very powerful countries. In fact, Sweden, a country which claimed him for an unsustainable preliminary investigation (not even judicial), systematically denied him guarantees of non-extradition to the United States, for which, were he remitted to this Scandinavian country, the journalist could end up within the North American jurisdiction where a secret case against him before the Grand Jury exists.

The petition of diplomatic asylum is circumscribed to the imputation of offenses of political character, which induces an imminent danger. In this regard, therefore, the Ecuadorian Government, prior to the granting of the right of asylum, considered the following:

*"[…] **3.3.1**. Julian Assange is a communications professional internationally awarded for his fight in favor of freedom of speech, freedom of press, and human rights in general;*

***3.3.2**. That Mr Assange shared with the global public privilege documented information generated by various sources which affected government officials, countries and organizations;*

***3.3.3**. That serious signs exist of retaliation on the part of the country or countries which produced the information divulged by Mr Assange, a reprisal which can put his safety, integrity, and even his life, at risk;*

***3.3.4**. That, despite the diplomatic efforts carried out by the Ecuadorian State, those countries of which sufficient guarantees to protect the safety and life of Julian Assange have been requested, have refused to provide such guarantees;*

***3.3.5.** That a certainty exists on the part of Ecuadorian authorities that an extradition is feasible to a third country outside the EU without the required guarantees for his safety and personal integrity;*

***3.3.6.** That legal evidence clearly shows that, were an extradition to the USA to occur, Mr Assange would not have a fair trial, could be judged by special or military courts, and it is not improbable that he will be applied a cruel and degrading treatment, or be sentenced to life imprisonment or capital punishment, for which his human rights would not be respected;*

***3.3.7.** That, although Mr Assange must respond for the investigation opened in Sweden, Ecuador is aware that the Swedish prosecution has offered a contradictory attitude which prevented Mr Assange from completely exercising his legitimate right to a defense;*

***3.3.8.** That Ecuador is convinced that the procedural rights of Mr Assange have been impaired during said investigation;*

***3.3.9.** That Ecuador has established that Mr Assange is without the attention he is due from the State of which he is a citizen;*

***3.3.10**. That, in light of the public declarations and diplomatic communications shared by officials from Great Britain, Sweden and the United States of America, the inference is that said governments would not respect international agreements and treaties, and would prioritize internal laws of secondary hierarchy, contravening express norms of universal application; and,*

***3.3.11.** That, were Mr Assange to be reduced to pre-trial detention in Sweden (as is the custom of that country), a chain of events would unfold which would prevent the adoption of ulterior protection measures to avoid a possible extradition to a third country. […]"*

These have been the arguments in favor of the Ecuadorian State granting diplomatic asylum, because it vindicates and acknowledges the right to freedom of speech and press, as well as it denotes the abuses of certain countries, for which this international protection was granted in the Ecuadorian embassy headquartered in the city of London, with the intent of materializing said asylum, through the corresponding safe-conduct, in a subsequent territorial refuge in our country, something that did not happen due to the failure of the United Kingdom to comply with its international obligations.

This protection was argued on the basis of several constitutional provisions such as Article 41, 4.7 of the Organic Law of the Foreign Service of the year 2006, the Charter of the United Nations of 1945,
the Universal Declaration of Human Rights of 1948, the American Declaration of the Rights and Duties of Man of 1948, the Geneva Convention of 1949, the Convention on the Status of Refugees of 1951 and its Protocol of New York of 1967, the Convention on Diplomatic Asylum of 1954, the Convention on Territorial Asylum of 1954, the European Convention on Extradition of 1957, Declaration 2312 on Territorial Asylum, the Vienna Convention on the Law of Treaties of 1969, the American Convention on Human Rights of 1969, the European Convention for the Suppression of Terrorism of 1977, the Inter-American Convention on Extradition of 1981, the African Charter on the Rights of Man and Peoples, the Cartagena Declaration of 1984, and the Charter of Fundamental Rights of the European Union of 2000.

It was reaffirmed in the document of Chancellor Guillaume Long to the Minister of Foreign Affairs of the United Kingdom Boris Johnson on September 6, 2016.

> *"[...] The legal status of Mr Julian Assange has sought and received political asylum on the part of Ecuador based on the provisions of Article 22.7 of the American Convention on Human Rights of 1969, Articles II and IV of the Caracas Convention on Diplomatic Asylum of 1954, Article 14.1 of the Universal Declaration of Human Rights of 1948, and the relevant provisions of the Geneva Convention on the Status of Refugees of 1951 and the New York Protocol of 1967 as well as other fundamental norms and principles that govern the field of human rights. [...] "*

Under these factual and legal presuppositions, political asylum is maintained in the Ecuadorian Embassy of the City of London, United Kingdom, for the lapse of more than SIX YEARS, the same which remains unalterable to this day, without this right having been respected as of the present date, which becomes cruel, inhuman and degrading treatment as stated by the Working Group on Arbitrary Detention of the Human Rights Council of the UN.[1] This international body requested that the United Kingdom and Sweden should guarantee Mr Assange's freedom, whom it deemed was arbitrarily detained, even requiring that he be compensated for the damages caused. In addition, the UN body stated that Ecuador was complying with international human rights protection obligations in this case.

3.3.2. In January of the year 2018 a team of physicians composed of doctors Sondra Crosby, Brock Chisholm and Sean Love, within a twenty-hour medical analysis of Mr Julian Assange concluded the following:

> *"[...] The embassy is not equipped for prolonged detention and lacks the equipment or medical facilities necessary to provide a reasonable environment for Mr. Assange, a determination with which we agree,"* say the specialists, who consider that*"the prolonged uncertainty of indefinite detention inflicts deep psychological and physical trauma above and beyond the expected stressors of incarceration [...]."*

1 Resolution No. 54/2015 of the Working Group on Arbitrary Detention of the United Nations, dated 11 July 2016,adopted at the 33 session.

“[...] While the results of the assessment are protected by physician-patient confidentiality, it is our professional opinion that his continued confinement is physically and mentally dangerous to him and a clear violation of his human right to health care,” the specialists said *[…]"*

In other words, this medical report demonstrates in a reliable way the health conditions that have originated from the indefinite confinement, and the sequels that they leave in the person of the Asylee, and this converges with the conclusions of the Working Group on Arbitrary Detention of the United Nations.

3.3. Through an advisory opinion signed with the number 025/18 of 30 May 2018, the Inter-American Court of Human Rights resolves the consultation of the Ecuadorian State, within the following parameters:

" [...] 2. The right to seek and receive asylum within the framework of the Inter-American system is configured as a human right to seek and receive international protection in foreign territory, including with this expression the status of refugee according to the relevant United Nations instruments or corresponding national laws, and territorial asylum in accordance with the various Inter-American conventions on the subject, in the terms of paragraphs 61 to 163.

3. Diplomatic asylum is not protected under article 22.7 of the American Convention on Human Rightsor under article XXVII of the American Declaration of Human Rights, so it must be governed by the very inter-State level conventions that regulate them together with the provisions of internal laws, in the terms of paragraphs 61 to 63.

4. The principle of non-refoulement is demandable by any foreign person, including those seeking international protection, over which the state in question is exercising authority or whether they be under its effective control, irrespective of their being located in land, river, maritime or airspace territory belonging to said State in the terms of paragraphs 164 to 199.

5. The principle of non-refoulement not only requires that the person not be returned, but imposes positive obligations over States, in the terms of paragraphs 194 to 199. [...]".

In accordance with article 426, second sub-paragraph of the Constitution of the Republic of Ecuador, the various international human rights instruments are recognized as internal order, which configures for all public authorities, in this case, jurisdictional, the obligation to apply the respective block of constitutionality and convention control, for which this advisory opinion must be of mandatory application in order for the present action to reach resolution.

3.4. Finally, on October 16, 2018, during session number 316, and it was expected to continue with session 539, the first matter before the assembly concerned "Draft resolution submitted by Assembly member Paola Vintimilla on the naturalization process of Mr Julian Assange,” where the question of declassifying information concerning this case was being debated; it was revealed that the Foreign Ministry of Ecuador did not consider the material classified, so the representative of the legislature had accessed other documentation that was not necessarily that of the process which had been requested.

During the morning hours of Wednesday October 17, extremely personal information of Mr Julian Assange was posted in a report of the newspaper "The Guardian," that we understand is part of the documents delivered by the Ministry of Foreign Affairs.

FOURTH: CONSTITUTIONAL VIOLATIONS PERPETRATED BY A PUBLIC AUTHORITY

The administrative act concerned affects the person taking this protective action in relation to the following constitutional provisions, as well as violates and transgresses the following principles of interpretation:

4.1. IMPEDING THE EXERCISE OF FUNDAMENTAL RIGHTS ENSHRINED IN THE CONSTITUTION OF THE REPUBLIC OF ECUADOR

Article 66 of the Constitution of the Republic of Ecuador, which literally states as follows:

> ***"[...] Numeral 3:*** **The right to personal well-being, which includes:**
>
> > **a) Bodily, psychological, moral and sexual safety.**
> > ***c) Prohibition of torture, forced disappearance and cruel, inhuman or degrading treatments and punishments.***
>
> ***4.*** **The right to formal equality, material equality and non-discrimination.**
>
> ***6.*** **The right to voice one's opinion and express one's thinking freely and in all of its forms and manifestations.**
>
> ***17.*** **The right to freedom of work. No one shall be obligated to carry out free or forced labor, unless provided for by law.**
>
> ***18.*** **The right to honor and a good reputation. The law shall protect the image and voice of every person.**
>
> ***19.*** **The right to protection of personal information, including access to and decision about information and data of this nature, as well as its corresponding protection. The gathering, filing, processing, distribution or dissemination of these data or information shall require authorization from the holder or a court order.** ***[...]"***

By the facts disclosed and referred to Your Honor, it can be observed that the asylum granted and recognized by the Ecuadorian State by virtue of its exercise of sovereignty has lasted for six years to a journalist and editor-in-chief of a legitimate medium, pursued by the free exercise of press and publication. This journalist suffers from a grave persecution by third States that have engaged in persecutory acts against activities to ensure transparency and information, activities exposing abuses committed by those powers, which have been part of systematic violations of human rights, against individuals and groups.

Although the ability to avoid these types of actions does not belong exclusively and solely to the State of Ecuador, which at the time showed the bravery and universal dignity of granting the asylum, it is no

less true that the moment communications have been radically cut off, this has produced an isolation of Mr Assange to the outside world, without visits or telematic contact, which has truly become torture. Now, after months of this merciless isolation imposed on a person in a situation of clear vulnerability, full isolation is raised due to a situation of presumed regulation by means of a protocol which, again, will keep Mr Assange under harsh and restrictive incommunicado detention, under threat of termination of protection, something that contradicts Ecuador's international obligations, which were recently revisited by the UN Working Group on Arbitrary Detention or the Inter-American Court of Human Rights.

The arguments which could have been expressed in the justification of the Ecuadoran Government have no basis. Mr Assange makes use of his social communication means as any other citizen of the world. And hence he writes and expresses his opinions in that agora of international communication. It makes no sense that Ecuador would restrict the freedom of expression of a citizen or that it would understand that what a citizen thinks freely in his private networks of social communication would affect it diplomatically. The demands made by third States to Ecuador do not really refer to such comments in social networks, but are simply an excuse to pressure Ecuador to put an end to Mr Assange’s asylum.

The personal conditions borne by Mr Assange during these six years have reduced his physical and psychological health, as is apparent in the interdisciplinary medical report, because he is confined to a small space without the possibility of exercising his profession. Now, in addition to this, visits of his family, friends and people who want to contact him for professional reasons are restricted, which inevitably gives rise to a worsening of his condition of asylum, which in itself is deplorable. In addition to the above are the restrictions he has suffered in recent months, which are now being concretized with the aforementioned protocol, considerably affecting his right to defense, since his lawyers, who have to litigate the complicated situation, are prevented from being able to communicate with their defendant in conditions of confidentiality and with the necessary guarantees required by attorney-client privilege.

The legal effect of his conditions was considered by the Working Group on Arbitrary Detention at its 74th session, on 30 November 2015, which noted among other conclusions, that:

> *1. Firstly, Mr. Assange was held in isolation in the Wandsworth prison in London for 10 days, from 7 December to 16 December 2010 and this was not challenged by any of the two Respondent States. In this regard, the Working Group expresses its concern that he was detained in isolation at the very beginning of the episode that lasted longer than 5 years. The arbitrariness is inherent in this form of deprivation of liberty, if the individual is left outside the cloak of legal protection, including the access to legal assistance (para. 60 of the Working Group’s Deliberation No. 9 concerning the definition and scope of arbitrary deprivation of liberty under customary law). Such a practice of law in general corresponds to the violations of both rules proscribing arbitrary detention and ensuring the right to a fair trial, as guaranteed by articles 9 and 10 of the UDHR and articles 7, 9(1), 9(3), 9(4), 10 and 14 of the ICCPR.*
>
> *2. That initial deprivation of liberty then continued in the form of house arrest for some 550 days. This again was not contested by any of the two States. During this prolonged period of house arrest, Mr. Assange had been subjected to various forms of harsh restrictions, including*

monitoring using an electric tag, an obligation to report to the police every day and a bar on being outside of his place of residence at night. In this regard, the Working Group has no choice but to query what has prohibited the unfolding of judicial management of any kind in a reasonable manner from occurring for such extended period of time.

3. It is during that period that he has sought refuge at the Embassy of the Republic of Ecuador in London. Despite the fact that the Republic of Ecuador has granted him asylum in August 2012, his newly acquired status has not been recognized by neither Sweden nor the UK. Mr. Assange has been subjected to extensive surveillance by the British police during his stay at the Ecuadorian Embassy to this date.

4. In view of the foregoing, the Working Group considers that, in violation of articles 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights (ICCPR), Mr. Assange has not been guaranteed the international norms of due process and the guarantees to a fair trial during these three different moments: the detention in isolation in Wandsworth Prison, the 550 days under house arrest, and the continuation of the deprivation of liberty in the Embassy of the Republic of Ecuador in London, United Kingdom.

5. The Working Group also views that Mr. Assange's stay at the Embassy of the Republic of Ecuador in London to this date should be considered as a prolongation of the already continued deprivation of liberty that had been conducted in breach of the principles of reasonableness, necessity and proportionality.

6. The Working Group, in its Deliberation No. 9, had already confirmed its position on the definition of arbitrary detention. What matters in the expression 'arbitrary detention' is essentially the word "arbitrary", i.e., the elimination, in all its forms, of arbitrariness, whatever the phase of deprivation of liberty concerned (para. 56). Placing individuals in temporary custody in stations, ports and airports or any other facilities where they remain under constant surveillance may not only amount to restrictions to personal freedom of movement, but also constitute a de facto deprivation of liberty (para. 59). The notion of "arbitrary" stricto sensu includes both the requirement that a particular form of deprivation of liberty is taken in accordance with the applicable law and procedure and that it is proportional to the aim sought, reasonable and necessary (para. 61).

7. The Human Rights Committee, in its General Comment No. 35 on Article 9 also stated that "An arrest or detention may be authorized by domestic law and nonetheless be arbitrary. The notion of "arbitrariness" is not to be equated with "against law", but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law, as well as elements of reasonableness, necessity, and proportionality." (para. 12, as was reiterated in para. 61 of the Deliberation No. 9 of the Working Group).[2] [...]

---

[2] In this regard, see also part I and part II, section C of the United Nations Minimum Rules for the Treatment of Prisoners (Mandela rules), UN doc, A/RES/70/175.

8. The Working Group is convinced once again that, among others, the current situation of Mr. Assange staying within the confines of the Embassy of the Republic of Ecuador in London, United Kingdom, has become a state of an arbitrary deprivation of liberty. The factual elements and the totality of the circumstances that have led to this conclusion include the followings: 1) Mr. Assange has been denied the opportunity to provide a statement, which is a fundamental aspect of the audi alteram partem principle, the access to exculpatory evidence, and thus the opportunity to defend himself against the allegations; (2) the duration of such detention is ipso facto incompatible with the presumption of innocence. Mr. Assange 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; (3) ***the indefinite nature of this detention, and the absence of an effective form of judicial review or remedy concerning the prolonged confinement and the highly intrusive surveillance, to which Mr. Assange has been subjected; (4) the Embassy of the Republic of Ecuador in London is not and far less than a house or detention centre equipped for prolonged pre-trial detention and lacks appropriate and necessary medical equipment or facilities. It is valid to assume, after 5 years of deprivation of liberty, Mr. Assange's health could have been deteriorated to a level that anything more than a superficial illness would put his health at a serious risk and he was denied his access to a medical institution for a proper diagnosis, including taking a MRI test; (5) with regard to the legality of the EAW, since the final decision by the Supreme Court of the United Kingdom in Mr. Assange's case, UK domestic law on the determinative issues had been drastically changed, including as a result of perceived abuses raised by Sweden's EAW, so that if requested, Mr. Assange's extradition would not have been permitted by the UK.*** *Nevertheless, the Government of the United Kingdom has stated in relation to Mr. Assange that these changes are "not retrospective" and so may not benefit him. A position is maintained in which his confinement within the Ecuadorian Embassy is likely to continue indefinitely. The corrective UK legislation addressed the court's inability to conduct a proportionality assessment of the Swedish prosecutor's international arrest warrant (corrected by s. 157 of the Anti-Social Behaviour, Crime and Policing Act 2014, in force since July 2014). The corrective legislation also barred extradition where no decision to bring a person to trial had been made (s. 156).*

If we consider that this resolution was issued on January 22 of the year 2016, Your Honor can imagine that the personal situation has generated greater affectation and can trigger unforeseeable situations, by the recourse of limiting even more the elementary conditions that each person should enjoy.

The advisory opinion assigned number 25/2018 requested by the Ecuadorian Government before the Inter-American Court of Human Rights, establishes in its summary the arguments that provide certain safeguards that are operational in the institution of diplomatic asylum where provisions of the American Convention on Human Rights and the American Declaration of the Rights and Duties of Man are applicable, and defines how this applies to diplomatic asylum:

“ii) Diplomatic asylum: consists of the protection that a State provides in its legations, warships, military aircraft and camps, to the national or habitual residents of another state where they are pursued for political reasons, for their beliefs, opinions or political affiliation or for acts that may be considered as political or common crimes. […].”

Similarly, in this supranational opinion, its instrumentation and effectiveness is enshrined, in light of the various international Human Rights instruments at regional and universal levels. It also mentions the prevalence of conformity to the Latin American political reality, in two conventions, the Convention on Territorial Asylum and the Convention on Diplomatic Asylum, both of which were adopted in 1954.

In terms of differentiation, although at present both asylum and refuge are treated in an identical way, they could be differentiated in the physical place of international protection, the first in legations or ships, aircraft or camps, and the second, in foreign territory without these conditions.

In this regard, the Advisory Opinion establishes the following legal criterion:

“[...] 98. The legal value of the criteria developed by this Court regarding the right to asylum under refugee status has been reaffirmed by the States of the continent in the Declaration and Plan of Action of Brazil in 2014, as an expression of their opinio juris, in which they maintained that:

Recognize developments in the jurisprudence and doctrine of the Inter-American Court of Human Rights, in those countries in which they apply, regarding the content and scope of the right to seek and grant asylum enshrined in the regional human rights instruments, their relationship to international refugee instruments, the jus cogens character of the principle of non-refoulement, including non-rejection at borders and indirect refoulement, and the integration of due process guarantees in refugee status determination procedures, so they are fair and efficient [...]".

At present, to maintain that there are differentiations or different statuses between asylum and refuge is to undermine the conditions of people who are in a situation of vulnerability, at times severe vulnerability as in the present case, in which, in addition to the condition of persecution, a quasi-prison regime has been introduced with the imposition of the so-called "Special Protocol", that is to say, compounding the effects on a single individual, of persecution by the third State on the one hand and the deplorable treatment imposed by the State of protection on the other.

Under this criterion, as stated by the Inter-American Court of Human Rights, the following specific duties for the grantor State are consolidated:

(i) the obligation not to return (non-refoulement) and its extraterritorial application; (ii) the obligation to allow asylum applications and not to reject them at the border; (iii) the obligation not to penalize or sanction irregular entry or presence, and non-detention; (iv) the obligation to provide effective access to a fair and efficient refugee status determination procedure; (v) the obligation to ensure minimum due process guarantees in fair and efficient procedures for

determining refugee status; (vi) the obligation to adapt procedures to the specific needs of children and adolescents; (vii) ***the obligation to grant international protection if the definition of refugee is met and to ensure the maintenance and continuity of refugee status;*** *(viii)* ***the obligation to interpret the exclusion clauses restrictively; and*** *(ix)* ***the obligation to provide equal access to rights as set out in the 1951 Convention.***

Under these considerations it is necessary to emphasize that the existence of a principle of formal and material equality[3] with co-nationals is vital in cases of international protection, but the regrettable imposition of the isolation has undermined the rights to work, to health, to defense and to family unification, and the application of the Special Protocol now incorporates a sanction that results in the termination of asylum when there is a transgression of the provisions of this document, thereby violating Ecuador's obligations of protection under international law emphasized by the international bodies consulted on this case.

Even more so when the Ecuadorian State granted this prerogative, through its Executive, having received this request, and which considered that there were sufficient reasons to grant the asylum, reasons that remain to this date.

The Inter-American Court of Human Rights additionally considers that third countries can impede the attainment of this right. The asylum is obviously opposed by US officials, representatives of the legislatures of that State, which even at present have tried to put pressure on the Ecuadorian State to put an end to the asylum enjoyed by journalist Julian Assange, when these North American officials defined him to our country as a *"common criminal or computer terrorist."*[4]

To a greater abundance, when referring to the term jurisdiction the Court has pointed out:

"[...] 174. Similarly, the Human Rights Committee has recognized the existence of extraterritorial conduct by States involving the exercise of their jurisdiction over another

---

3 169. Within the framework of the Convention, article 1.1, which is a general rule whose content extends to all the provisions of the treaty, puts in charge of the States Parties the fundamental duties, with *erga omnes* character, to respect and enforce respect – to guarantee – the rules of protection and to ensure the effectiveness of the rights recognized therein in all circumstances and in regards to all persons, "without any discrimination whatsoever" 181. These obligations are imposed on States, for the benefit of human beings under their respective jurisdictions, and irrespective of nationality or immigration status of those protected182 and must be carried out in light of the principle of equality and non-discrimination before the law 83. Thus, in the protection of human rights, the notion of restriction to the exercise of state power is included necessarily184.

170. Moreover, the Court has emphasized that there exists an indissoluble link between the duty to respect and guarantee human rights and the principle of equality and non-discrimination185. The Court has pointed out that the notion of equality is detached directly from the unity of nature of the human race and is inseparable from the essential dignity of the person, before which it is incompatible with any situation that is conducive to treating a particular group with privilege, for considering it superior; or, conversely, for considering it inferior, to treat it with hostility or in any way discriminate from the enjoyment of rights that are awarded to those who are not considered incurred in such situation186. In the current stage of evolution of international law, the fundamental principle of equality and non-discrimination has entered the domain of *jus cogens*. On it rests the legal scaffolding of the national and international public order and it permeates the entire legal system. States must refrain from carrying out actions which in any way are aimed, directly or indirectly, to create situations of discrimination *de iure* or *de facto*187.

4 Journalistic notes of June 27, 2018 published in Ecuadorian social media, under the title "Democrats expect Mike Pence to press Ecuador over the asylum of Julian Assange"

territory or over persons outside their territory.[193] It is therefore the duty of State Parties to respect and ensure the rights set forth in the International Covenant on Civil and Political Rights "to everyone who is under the authority or effective control of the State Party even if not within the territory of the State Party".[194] In particular, the Committee has recognized that the acts of consular officials may fall within the scope of the International Covenant on Civil and Political Rights.[195] The International Court of Justice has reaffirmed this assertion, stating that "the Covenant on Civil and Political Rights is applicable with respect to acts of a State in the exercise of its jurisdiction outside its own territory".[196]

Thus, legal rights must be given effect within the territory of Ecuador, even if the embassy is in the city of London, but in addition the catalogue of rights are enforceable in settings such as this one, where the State of Ecuador must show evidence that it has not broken fundamental prerogatives with its latest actions, nor must it invoke sovereignty as an argument for impacting the conditions of the asylee.

The most effective right in this case is the application of the principle of **NON-REFOULEMENT** or **NO DEVOLUCIÓN**, which, as the Inter-American Court considers, becomes the **cornerstone of protection** for refugees and asylum-seekers, since the use of this mechanism protects the rights to life, liberty and/or integrity of the protected person.

In this respect, the Court has been very clear, stating that this protection is not only restricted to foreign people, therefore any interpretation that attempts to imply that the Ecuadorian nationality of Mr Julian Assange would lead to restricting the interpretation of the rights of the protected person, would be tantamount to compounding his vulnerable condition and also discriminating against him on grounds of nationality or origin.

In this respect the affirmation of the Inter-American Court is categorical, when it maintains that:

*"[...]**195. Thus, the Court considers that, within the framework of the American Convention, an interview with the person and a preliminary assessment of the risk of return is required. Indeed, this Court has already stated that:***

*[...] **where an alien alleges before a State a risk of refoulement, the competent authorities of that State shall at least interview the person, giving him or her due opportunity to state the reasons for the refusal of refoulement, and carry out a prior or preliminary assessment to determine whether or not such a risk exists and, if it is established, he or she should not be returned to his or her country of origin or where the risk exists*** [...]. - the italics, bold and underline correspond to the undersigned.

It follows that, before proceeding to any type of termination of asylum, the condition of asylee must necessarily be assessed to establish whether the State risks violating his rights in doing so. In the present case we have stated and it has been determined that the risk is of exposure to extradition agreements that will result in his being put on trial in the United States of America under the Espionage Act, as was the case of Chelsea Manning, whom the United States alleges was a WikiLeaks source, and of whom the UN Rapporteur Against Torture stated in his visit had been subjected to cruel, inhuman and degrading treatment in a military prison. Everything suggests that Mr Assange

would face the same fate in the United States. The so-called Special Protocol issued by the Ministry of Foreign Affairs and Human Mobility does not contemplate the *non-refoulement* obligation, instead it provides arbitrarily that transgressing the protocol terminates international protection *ipso jure.*

To finalize, the Inter-American Court itself, specifically indicates the following:

> *"[...] 198. The Court also considers that the legal situation of the person cannot be left in limbo or prolonged indefinitely.[233] Thus, the Court has specified, in other cases than the one examined here, that the person not only has the right not to be returned, but that this principle also requires State action, [234] taking into account the object and purpose of the rule. However, the fact that the person cannot be returned does not per se imply that the State must necessarily grant asylum at its diplomatic mission, [235] but that there remain other obligations on the State to take diplomatic measures, including the request to the territorial State to issue a laissez-passer, or other measures under its authority and, in accordance with international law, to ensure that applicants' convention rights are guaranteed [...]".*

It is to be noted that as a sovereign state Ecuador requested this Advisory Opinion, which should be applied by the jurisdictional authorities if the neglect comes from other powers of the State, as long as they serve to protect the rights of Mr Assange, and any measure that affects them must be marginalized, outlawed and impeded.

4.2. UNILATERAL IMPOSITION OF THE SO-CALLED SPECIAL PROTOCOL OF VISITATION, COMMUNICATIONS AND MEDICAL ATTENTION ON MR JULIAN ASSANGE.

The documents analyzed identify the rights and prerogatives of an internationally protected person, as is the case of Julian Assange, and these rules regulate the activities within the embassy in which the Asylee is located. This document, however, contains no reference as to the authorship or responsibility of the public official who created this body of rules.

From a formal standpoint, and in accordance with Article 133, which provides for the regulation of organic and ordinary laws:

> **"[...] The organic laws will be those which:... 2. Regulate the exercise of constitutional rights and guarantees [...] ."**

The content, provisions and manner of functioning of these normative bodies is regulated through the Organic Code of the Legislative Function, which establishes a qualified majority and the rules relating to the promotion and restriction of Rights, and is also defined by Advisory Opinion OC-6/86 issued by the Inter-American Court of Human Rights of 9 May 1986.

In this regard it mentions:

> *"[...] 24. The reservation of law for all acts of intervention in the sphere of freedom, within democratic constitutionalism, is an essential element for the rights of man to be legally protected and fully exist in reality. In order for the principles of legality and reservation of law*

to constitute an effective guarantee of the rights and freedoms of the human person, not only is its formal proclamation required, there must also exist a regime that guarantees efficiently its application as well as an adequate control of the exercise of the competences of the organs. [...]"

Even more where the respective international protection exists, and a regime of behaviour is imposed on a person in a situation of diplomatic asylum, when there is clear evidence that there is a restriction of rights which regulate the day-to-day activities of Julian Assange.

In addition, the content of various provisions, *prima facie*, contain arbitrary elements, to mention but a few:

Firstly, the aforementioned protocol, in its first paragraph, speaks of "diplomatic asylum", which seriously contradicts what our country was saying, which has always defended in international instances that the institution of asylum is one, and therefore Mr Assange is assisted by political asylum, since the figure of diplomatic asylum is merely instrumental in obtaining a safe-conduct to the territory so that political asylum can materialise once the person is within the country of protection. Furthermore, this same first paragraph of the aforementioned protocol warns that the granting of asylum is temporary and that it will depend on compliance with the protocol, which signifies, in addition to an unacceptable threat, a disregard of the most basic international obligations, since asylum is not an instrument of political disposition, but is granted or ceased on the justification of the existence or termination of the danger of persecution.

On the other hand, with regard to point "A" concerning "VISITS", the identification of persons who wish to visit Mr Assange, is aimed to create a control or censorship on the part of the embassy or chancellery that would arrogate to itself an assumption of decision-making power over the profile of persons to whom access would or would not be granted. Not even the ordinary penitentiary regime contains such limitation and were one to exist, it is being equated to someone who is not a prisoner on remand, although with these measures, he is, in fact, reduced to that condition. Moreover, it is arbitrary to request personal information from all those who visit the embassy in order to accumulate data that may later be leaked to the press, as has already occurred with lists of visitors, passports and other personal information leaked by the previous security company to the press and, according to some media, even to the FBI. No provisions exist in the Ecuadorian legal system that give the power to impose measures that are solely intended to control people who want to have contact with Julian Assange. Such rules are completely arbitrary. The embassy has no right to interfere with the Asylee's private relations. This contravenes the most elementary rights. What is intended with this decision is to exercise absolute control over the Asylee and his defense, as well as that of the persons or organizations with which he meets. Beyond the controls for entry in any enclosure, the other measures are unnecessary and illegitimate, not to mention the serious damage to the right to defense that these disproportionate measures create as they relate to Mr Assange's lawyers – something further aggravated in paragraph 13, when the protocol states that the neglect of all the foregoing implies the automatic cessation of asylum, in an exceptional measure for international human rights law, since

asylum is stable and/or ceases attending to a judgment of risk and danger, but never as a result of a unilateral discretionary act.

The protocol then continues with its point "B", in reference to "COMMUNICATIONS," which draws an Orwellian scenario of absolute control over all of Mr Assange's communications. Even in the penitentiary regime prisoners are entitled to several free calls and to authorized use of the Internet, and never at their personal cost as the protocol sets out.

In addition, paragraph 19 within point "B" relative to "COMMUNICATIONS," seeks to register all electronic devices of visitors, which is a new violation and, in the case of the lawyers, an unacceptable meddling, because it makes his defense vulnerable to what use they can make with that information. And the protocol goes as far as warning in its paragraph 20 that if a visitor accesses the enclosure with an electronic device, said visitor will be reported for "attack against the authority" to the British authorities.

As with the section on visits, this point "B" on communications also ends, in paragraph 25, with the threat of termination of the asylum in the event of non-compliance, a statement which once again disregards the whole International Order on the matter of refuge, where it identifies that the beginning and/or termination of this institution must respond to the assessment of effective danger and not at the authorities' whim.

Subsequently, the protocol outlines what pertains to "MEDICAL CARE" in its point "C". Paragraph 26 stipulates that Mr Assange should undergo compulsory medical checks quarterly, at his own cost, which is absolute coercion of the Asylee. Paragraph 27 indicates that the state of Ecuador will notify him of the obligation to submit, as in a penitentiary regime. In addition, paragraph 28 requires the identification and control of the data from the physicians attending Mr Assange. Paragraph 28 requires that the doctors who assist Mr Assange surrender personal data, which places said doctors in a compromised situation, because they are unaware of the use which will be made of such data, which, on the other hand, could be leaked by security personnel. But probably the most threatening element concerning medical care is the power that paragraph 30 grants the head of the diplomatic mission in case of a medical emergency to transfer him to a nearby medical centre, something that would put the Asylee himself at serious risk, because the British authorities have expressed their intention to detain him under any circumstance, something that in a real emergency situation would put Mr Assange at serious risk during the time of that detention.

Special mention should be made to paragraph 33 of the protocol, where Mr Assange is instructed to keep his chambers clean and to provide due care for his pet, under the sanction of the cat being forcibly withdrawn by the head of the mission. The inclusion of this paragraph subtracts what little semblance of seriousness this particular document could have, a document which will go down in history as a legal eccentricity.

Lastly, the protocol concludes by warning that, due to budgetary cuts, the embassy will not be able to cover food, medical care, laundry and other necessities, which turns the protection outrageous for the Asylee, casting shame on the State itself and degrading the institution of asylum.

Finally, the protocol before concluding once again includes a threat of termination of the asylum. It is clear that the protocol is written with a view to non-compliance with a number of exorbitant conditions and lacking all logic with respect to a person who has been living in deplorable conditions for more than six years. The permanent self-exemption of all responsibility on the part of the State of Ecuador, draws attention to itself because it appears that the institution of asylum does not generate obligations to said State, as if it were a reality detached from its own decision made in 2012.

Therefore, this protocol breaks with the doctrine of the proper acts of the state of Ecuador, which without any argument or legal basis—on the contrary, breaking away from it— imposes new and different conditions, extremely burdensome both to the affected as well as to his rights, which are significantly curtailed as a result.

The regime and its effects do not derive from a specialized constitutional body, since no responsible authority exists or process of elaboration of restriction of rights is in place, rather it is an instrument that lacks authorship and is based on threatening an imminent risk to terminate the asylum.

FIFTH: THERE IS NO OTHER ADEQUATE AND EFFECTIVE JUDICIAL DEFENCE MECHANISM TO PROTECT THE VIOLATED RIGHT.

The ordinary protection action is not considered a residual and subsidiary repair mechanism, but can be constitutionally requested directly and autonomously, even when taken in conjunction with other legal actions.

Likewise, any internal judicial or administrative action implies an excessive duration in the proceedings, which would lead to additional detriment arising from the violation of the constitutional rights as has already been discussed.

Under this order of ideas, the Constitutional Court of Ecuador in mandatory jurisprudence number 001-16-PJO-CC points out the following:

> ***"It is not about knowing the competence that the judges have of the contentious-administrative jurisdiction to solve the cases submitted to their knowledge by order of law; what should be clear is that, concerning the acts or omissions to which the violation of constitutional rights is attributed, the contentious-administrative path, as well as the others foreseen in ordinary jurisdiction (which would constitute other "mechanisms of judicial defense") become ineffective for the protection of those rights ..."***

In the present case, the imminent termination of the asylum granted cannot be reduced to a claim for administrative contentious actions that would add additional layers to the claim as such against the Ecuadorian State, rather, this personal situation which Mr Assange is in must be analyzed and resolved in a manner that is both effective and urgent, given our certainty that the imposition of the so-called Special Protocol is a justification to give way to the termination of his international protection.

SIXTH: DAMAGE CAUSED.

Mr Assange, Ecuadorian citizen under the jurisdiction of our country in the Embassy of Ecuador in London, has lived for more than 6 years confined to a small space in a small apartment in London, without access to light of day and fresh air. In this situation of absolute infringement of his rights, arbitrarily detained according to the findings of the UN Working Group on Arbitrary Detention, Mr Assange has been deprived of his most basic rights, which has caused him unquestionable physical, moral, familial and professional damage.

To this difficult situation is added the regime of absolute isolation, without telematic communication with the outside world and without receiving visits, which he has been suffering at the Embassy of Ecuador in London since March 27 of this year, a situation that has aggravated even more the physical, moral, family and career damage inflicted on this person. Currently, with the provision of the protocol described above, a situation has been created where the damage is further aggravated through an extreme system of restrictions on visits, communications and other rights, under threat of sanction of being expelled for non-compliance. All this is imposed without minimum legal safeguards, given that these are extremely restrictive measures that severely aggravate existing harm without identifying the authority that dictated it or indicating the pertinent remedy to contest these measures.

SEVENTH: NOTIFICATION.

This protection action will be communicated to the respondents at the locations indicated in the second section, and additional respective notification will be made to the locations that are indicated using whatever type of communication indistinctly.

EIGHTH: AFFIDAVIT OF NON-SUBMISSION OF OTHER CONSTITUTIONAL GUARANTEE.

I declare under oath that I have not filed any other constitutional guarantee within the jurisdiction.

NINTH: ANNEXED DOCUMENTS.

9.1. Official communiqué of Ecuador's foreign minister, Ricardo Patiño, which reports that the President of the Republic of Ecuador grants asylum to Mr Julian Assange;

9.2. Official communiqué restricting Mr Assange's communications to the interior of the Embassy of Ecuador in the City of London;

9.3. Opinions adopted by the Working Group on Arbitrary Detention in its 74th session, dated 30 November 2015. Opinion number 54/2015 with regard to Julian Assange (Sweden and the United Kingdom of Great Britain and Northern Ireland);

9.4. Advisory Opinion OC-25/18 dated 30 May 2018 requested by the Republic of Ecuador. "The institution of asylum and its recognition as a human right in the Inter-American System of Protection (Interpretation and scope of articles 5, 22.7 and 22.8, in relation to article 1.1 of the American Convention on Human Rights";

9.5. Special Protocol of Visits, Communications and Medical Attention to Mr Julian Paul Assange;

and,

9.6. Medical report on the health conditions of Mr Julian Assange in January of the year 2018 issued by Sondra Crosby, Brock Chisholm and Sean Love.

TENTH: PETITION

Given this background we specifically request:

10.1. That the restrictions on the use of telecommunications by Julian Assange are lifted at the Ecuadorian Embassy of the City of London; as well as the limitations to the visits of the Asylee in general; and, extensive access to the international legal team is offered to enable them the exercise of their right to defense in any area;

10.2. That it is ordered not to apply the content of the so-called special protocol on visits, communications and medical care to Mr Julian Paul Assange for considering it unconstitutional in substance, form and establishing mechanisms restrictive of rights; and

10.3. As a mechanism of symbolic reparation, the content of the judgment in accepting this action of protection be published in the principle public communications channels of the Republic of Ecuador.

ELEVENTH: AMICUS CURIAE.

Under the provisions of article 12 of the Organic Law of Judicial Guarantees and Constitutional Control, we have already requested that representatives and experts in the quality of *amicus curiae* be heard, whose opinions will serve to better resolve this constitutional guarantee presented to your authority.

TWELFTH: APPEARANCE OF MISTER JULIAN PAUL ASSANGE.

Inasmuch as this constitutional guarantee must access the petitioner directly, and given the status of political refugee, I request that Mr Julian Paul Assange be allowed to appear at the respective hearings through video conferencing, which must be processed and endorsed by mail to the Embassy of Ecuador in London, channeled through the Lord Chancellor of the Republic of Ecuador.

I request to receive correspondeing notifications in the judicial box marked with the number 6171 of this district, without prejudice of being notified by means of electronic mail address[redacted]
.

THIRTEENTH: DESIGNATION OF DEFENSE COUNSEL.

I also authorize, in addition to Dr. Carlos Poveda Moreno, Attorneys Julio César Llanganate and María Fernanda Poveda Sánchez, professionals of the law, to exercise individual or joint defense in the present action of protection.

We accompany the authorization properly protocolized.

Mr Baltasar Garzón Real signs additionally this constitutional right, as head of the International Legal Team of Mr Julian Paul Assange.

BALTASAR GARZÓN REAL
LEGAL ATTORNEY JULIAN ASSANGE

DR. CARLOS POVEDA MORENO.
MAT. PROF. 152 C.A.X.

ATTY. JULIO CÉSAR LLANGANATE.

REG. PROF. 05-2011-25 F.A

ATTY. MARIA FERNANDA POVEDA SÁNCHEZ.

REG. PROF. 05-2015-28 F.A.