

## Sweden

### Universal Periodic Review - 21st session 2014-2018

Submitted by a coalition of the following 16 international human rights, fair trial, and jurist organizations:

American Association of Jurists (AAJ), Arab Lawyers Union (ALU), Association des Avocats Africains Antillais et Autres de France (5AF), Association Droit Solidarite, Bangladesh Democratic Lawyers Association, CAGE, CHARTA 2008, European Association of Lawyers for Democracy and World Human Rights (ELDH), Eva Joly Institute for Justice & Democracy (EJI), Giuristi Democratici, Italy (Italian Democratic Lawyers Association), International Association of Democratic Lawyers (IADL), Indian Association of Lawyers, Movimento dos Trabalhadores Rurais sem Terra (MST), National Lawyers Guild (NLG), National Union of People's Lawyers of the Philippines, and Rättssäkerhetsorganisationen.

Contact details proceed at the end of the report.

#### I. SUMMARY

1. This joint submission highlights issues of liberty, due process, and fair trial at the preliminary investigation stage in Sweden.
2. This submission highlights a growing problem in Sweden—prosecutors have too much power that is not meaningfully checked by law. The discretionary powers of prosecutors in Sweden, particularly at the preliminary investigation stage, lead to numerous breaches of fundamental human rights guaranteed by international instruments to which Sweden is party. These include a) the right to liberty and security of the person, b) the prohibition of inhumane and degrading treatment, c) the right to equal treatment, and d) the right to a fair trial.
3. This submission presents two situations where these violations occur. **First, Swedish prosecutors routinely place suspects in lengthy, isolated, or unexplained pre-charge detention.** Since the UPR in 2010 Sweden has taken some steps to strengthen legal safeguards to deter prosecutors from abusively detaining suspects. However, these steps have failed in practice. Recent statistics<sup>1</sup> show Sweden remains among the worst countries in the EU, if not the worst, in pre-charge detention. This violates the right to liberty and security of the person, the prohibition of inhumane and degrading treatment, and the right to a fair trial.
4. **Second, where individuals under investigation are located outside Sweden, prosecutors will engage in remote pre-trial questioning in some cases but not others.** The decisions whether or not to question remotely are made without any coherent explanation or basis. No basis is required under Swedish law, which suggests that these decisions are arbitrary. Most recently, the failure to question Julian Assange, who is located at the Embassy of Ecuador in London, has dragged out his pre-trial investigation nearly four years. Selectively applying pre-

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<sup>1</sup> Published by the Swedish Public Prosecution Authority in January 2014. Åklagarmyndigheten. “Häktningstider och restriktioner.”

[http://www.aklagare.se/PageFiles/12915/rapport\\_haktningstider.pdf](http://www.aklagare.se/PageFiles/12915/rapport_haktningstider.pdf) (accessed 12 June 2014).

trial questioning procedures in this way violates the right to equal treatment and causes undue delays, denying the right to a fair and speedy trial.

5. **Sweden has already received criticism in relation to the excessive powers of the prosecutor.** For instance, the European Commission has recommended that powers be removed from the prosecutor, particularly in its use of the European Arrest Warrant to extradite individuals to Sweden.<sup>2</sup>
6. **Sweden must commit to take all necessary measures to ensure equal application of the law.** The Swedish Prosecutor General should instruct prosecutors to:
  - a) expediently resolve existing cases where suspects are in lengthy, isolated, or unexplained pre-charge detention;
  - b) not place future suspects in lengthy, isolated, or unexplained pre-charge detention;
  - c) provide explanation to suspects located in other jurisdictions regarding any decisions to not question them remotely; and
  - d) expediently resolve any investigations where suspects are located in other jurisdictions.
7. Additionally, the Swedish Prosecutor General should take over especially lengthy and problematic cases, particularly those in which preliminary investigations have reached a stalemate.
8. Finally, Sweden should make the following amendments to its Judicial Code:
  - a) The discretionary powers of the prosecutor must be subject to judicial review at every stage of the preliminary investigation;
  - b) When suspects are located in other jurisdictions, prosecutors must be compelled to utilize judicial cooperation mechanisms, and must provide a basis for their decisions to not question suspects remotely; and,
  - c) The Code must explicitly specify a time limit for pre-trial proceedings and allow judges to control delays induced by prosecutor inaction.

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<sup>2</sup> Final Report on the Fourth Round of Mutual Evaluations 8302/3/09 REV 3.

## II. CONSIDERED BACKGROUND: INTERNATIONAL LEGAL FRAMEWORK

9. The right to equality and non-discrimination in judicial proceedings and the prohibition against inhuman and degrading treatment are fundamental human rights—nearly universally acknowledged by international and regional human rights instruments to which Sweden is a party, including the International Covenant on Civil and Political Rights (ICCPR), the Convention Against Torture (CAT) and the European Convention of Human Rights (ECHR).

### *Right to equal treatment and a speedy trial - Article 14 ICCPR, Article 6 ECHR*

10. Article 14 of the ICCPR, ratified by Sweden in 1971, requires that “all persons shall be equal before the courts and tribunals,” that all persons have the right to be “tried without undue delay,” and to “examine, or have examined, the witnesses against him.” These guarantees place on governments affirmative obligations to fulfill rights, rather than just obligations of non-interference. Article 6 of the ECHR guarantees the right to “fair and public hearing within a reasonable time.”
11. The Human Rights Committee, monitoring implementation of the ICCPR, has found that **delays of years between arrest and trial are typically enough to satisfy the definition of “undue delay” under the ICCPR.**<sup>3</sup>
12. **Discrimination can occur not only by law, but also by the actions of public officials, including prosecutors.** Article 14, General Comment 32 of the ICCPR, an authoritative interpretation of customary international law, observes that “a situation in which an individual’s attempts to access the competent courts or tribunals are systematically frustrated de jure or de facto runs counter to the guarantee of article 14.”

### *Right to liberty and security of person – Article 9 ICCPR, Article 5 ECHR*

13. Article 5 of the ECHR and Article 9 of the ICCPR guarantee the right to be free from unlawful detention. It is well-settled that holding individuals in uncertain conditions is a deprivation of their liberty.<sup>4</sup> The deprivation of liberty is one of the most intrusive measures the state can impose on an individual.

### *Prohibition against torture and cruel, inhuman or degrading treatment or punishment – Article 7 ICCPR, Article 3 ECHR*

14. Article 7 of the ICCPR establishes that “no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.” The prohibition is also contained in Article 3 of the ECHR and the UN Convention Against Torture (CAT).
15. The broad powers of prosecutors can breach these obligations. The Subcommittee on

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<sup>3</sup> See *J. Leslie v. Jamaica*, Communication No. 564/1993, UN doc. GAOR, A/53/40 (vol. II), p. 28, para. 9.3 (29 month delay violated Article 14); *C. Smart v. Trinidad and Tobago*, Communication No. 672/199, UN doc. GAOR, A/53/40 (vol. II), p. 149, para. 10.2 (two year delay found to violate).

<sup>4</sup> ICCPR Article 14’s General Comment 32 recognizes the relationship between the guarantee of a speedy trial and deprivation of liberty, requiring a speedy trial “to avoid keeping persons too long in a state of uncertainty about their fate and to ensure that such deprivation of liberty does not last longer than necessary in the circumstances of the specific case, but also to serve the interests of justice.”

Prevention of Torture, Operational Protocol of the Convention Against Torture and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment produced reports, in 2008 and 2009 respectively, directly linking breaches of this article (relating to lengthy detention and the imposition of restrictions) to the broad powers of the prosecutor at the preliminary investigation phase.

### III. CONSIDERED BACKGROUND: POWERS OF THE PROSECUTOR IN SWEDEN

16. According to the European Commission's Mutual Evaluation Report on Sweden, "**Sweden does not follow the so called 'investigating judge model' and Swedish prosecutors have very strong powers compared with the situation in other Member States: they may decide on any kind of measures during investigation, including coercive measures, with some exceptions.**"<sup>5</sup>
17. Sweden grants prosecutors powers that should only be in the hands of independent, judicial authorities. Euro Justice, a network of European Prosecutors-General, observed in a report that "in Swedish political practice the distinction between the executive and judicial power . . . is not systematically adhered to."<sup>6</sup> Further, "the judicial powers of the prosecution service have been extended step-by-step since the 1960s, mostly without meeting any serious opposition." The clearest example of this is the Swedish prosecutor's ability to issue inter-EU extradition orders, called European Arrest Warrants (EAW). An internal evaluation report of the Council of the European Union<sup>7</sup> called on EU states to "[restrict] the mandate of non-judicial authorities" in issuing EAWs. Nevertheless, **no mechanism is provided in Sweden to challenge a prosecutor's decision to issue an EAW before a court.**

### IV. DETENTION: ROUTINE IMPOSITION OF LENGTHY PRE-TRIAL DETENTION AND RESTRICTIONS

#### *General safeguards governing detention*

18. The **Swedish Code of Judicial Procedure**, the primary instrument governing the rights of accused during preliminary investigation and trial, **stipulates in Chapter 23, §4** that "**The investigation should be conducted so that no person is unnecessarily exposed to suspicion, or put to unnecessary cost or inconvenience. The preliminary investigation shall be conducted as expeditiously as possible. When there is no longer reason for pursuing the investigation, it shall be discontinued.**"
19. Since the previous UPR some legal safeguards have been instituted after recommendations by international monitoring bodies—notably the Act on Detention,<sup>8</sup> requiring that a "control or coercive measure" be "reasonably proportionate" to the objective of the measure.

#### *Right to liberty and security of the person: Lengthy detention*

20. The proportion of remand prisoners out of the entire prison population remains extraordinarily

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<sup>5</sup> Doc. 9927/2/08 REV 2, 21 October 2008, §2.1.

<sup>6</sup> EUROJUSTICE, Country Report: Sweden, <http://www.euro-justice.com/files/file.php?id=27> (accessed 12 June 2014).

<sup>7</sup> Final Report on the Fourth Round of Mutual Evaluations 8302/3/09 REV 3.

<sup>8</sup> Swedish Code of Statutes 2010:611, entered into force 1 April 2011.

high. **In 2010, Fair Trials International found that detainees in remand or pre-trial detention comprised 24% of the totality of Sweden's prison population.**<sup>9</sup>

21. **Sweden does not have a time limit on how long the pre-trial stage will last or how long a person can be held in pre-trial detention.**<sup>10</sup> According to figures published by the Swedish Public Prosecution Authority in January this year, out of the 9,415 people in remand and detention in 2013:

- 52% were placed in remand and detained for 30 days or more;
- 30% were detained for over 61 days; and
- 26 people were detained for over 361 days, among investigations concluded in 2012.<sup>11</sup>

22. **Once a person is charged, and if they are in custody at the time of the indictment, the trial must take place within two weeks. Only when an indictment (åtal) is brought does the suspect acquire the formal rights of the accused.** According to the former president of the International Prison Chaplains' Association, the widespread practice in Sweden of restricting prisoners in pre-trial detention is impeding the ability to prepare for trial. She added that remand conditions in Sweden are the “worst in Europe.”<sup>12</sup>

#### *Inhuman and degrading treatment: Restrictions*

23. **In 2013, 70% of the 9,415 people placed in pre-trial detention in Sweden were placed under some form of restriction**—such as restricted visits, phone calls, correspondence, contacts with other inmates, and access to newspapers, radio and television—for some length their detention, according to figures published by the Swedish Public Prosecution Authority this year.<sup>13</sup>

24. “Many [remand prisoners] considered that the only reason why they were being prohibited contact with their family members was to ‘break’ them,” according to a 2009 report by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment. The report recommended that prosecutors be given guidelines to justify such restrictions.<sup>14</sup>

25. The US State Department, 2010 Human Rights Sweden report found that it appears that restrictions are imposed almost automatically.<sup>15</sup>

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<sup>9</sup> Fair Trials International, The European Arrest Warrant seven years on –the case for reform, Appendix 1, May 2011, [http://ec.europa.eu/justice/newsroom/criminal/opinion/files/110510/appendix\\_2\\_-\\_comparative\\_research\\_en.pdf](http://ec.europa.eu/justice/newsroom/criminal/opinion/files/110510/appendix_2_-_comparative_research_en.pdf).

<sup>10</sup> *Ibid.*

<sup>11</sup> The lack of disaggregated statistical data, particularly prior to the introduction of the Cåbra case management system in 2012, makes the monitoring the situation of detention difficult, which is acknowledged in the Prosecution Authority's own report published in January 2014.

<sup>12</sup> *Ibid.*

<sup>13</sup> Åklagarmyndigheten. “Häktningsstider och restriktioner” January 2014

<sup>14</sup> Council of Europe, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), Report to the Swedish Government, CPT/Inf (2009) 34, 11 December 2009 <http://www.cpt.coe.int/documents/swe/2009-34-inf-eng.pdf> (accessed 12 June 2014).

<sup>15</sup> US Department of State, Bureau of Democracy, Human Rights, and Labor, '2010 Human Rights Report: Sweden' - 2010 Country Reports on Human Rights Practices, 8 April 2011 <http://www.state.gov/j/drl/rls/hrrpt/2010/eur/154453.htm> (accessed 12 June 2014).

26. **Despite the strengthened legal safeguards of the Act on Detention,<sup>16</sup> detention with restrictions continues to be the norm.** The discretionary powers of the prosecutor have not been sufficiently restrained in practice, meaning that Sweden continues to incur serious violations of the rights of the accused, in many cases before they are even charged.

## **V. CASE STUDY OF THE SELECTIVE APPLICATION OF INVESTIGATIVE MEASURES, RESULTING IN BREACH OF EQUALITY BEFORE THE LAW AND LIBERTY AND SECURITY OF THE PERSON**

27. Where individuals under investigation are located outside Sweden, prosecutors will engage in remote pre-trial questioning in some cases but not others. The decisions whether or not to question remotely are done without any coherent explanation or basis.
28. **One such case is the investigation against Julian Assange, which is important for several reasons. It concerns Sweden's longest running pre-trial deprivation of liberty, and raises serious concerns regarding Sweden's ability to guarantee equal treatment and the right to a fair trial.**
29. At the time of this submission, the preliminary investigation of Mr. Assange **has remained open for almost four years, costing at least an estimated \$10 million to date.**<sup>17</sup> Chapter 23, §4 of the Swedish Judicial Code requires investigations to be conducted expeditiously without causing unnecessary cost and inconvenience.
30. Mr. Assange was initially placed under arrest in absentia for 24 hours (20-21 August 2010). However, the arrest warrant was canceled after the case was taken over by the Chief Prosecutor of Stockholm, Eva Finne, who assessed that the evidence did not support the crimes for which he was accused. Mr. Assange was authorized by Prosecutor Marianne Ny to leave the country. The prosecutor then issued a new arrest warrant in absentia. Since then Mr. Assange has unsuccessfully fought extradition in the UK courts, and was granted political asylum by Ecuador. For two years he has resided in the Embassy of Ecuador, in London.<sup>18</sup>
31. Mr. Assange's de facto deprivation of liberty is the direct result of the actions of the prosecutor, who provides no coherent explanation for refusing to question him.
32. A well-functioning cooperation framework exists in the EU for questioning suspects abroad.<sup>19</sup> **Questioning suspects abroad at the preliminary investigation phase is routine practice in**

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<sup>16</sup> Swedish Code of Statutes 2010:611, entered into force 1 April 2011. The Act establishes that “[a] control or coercive measure may only be used if it is reasonably proportionate to the objective of the measure. If a less intrusive measure is sufficient it shall be used” (Section 6) and “Every prisoner shall be treated with respect for his or her human dignity and with understanding for the special difficulties associated with the deprivation of liberty” (Section 4), [https://www.kriminalvarden.se/upload/om\\_kriminalvarden/dokument/Hakteslagen-engelska.pdf](https://www.kriminalvarden.se/upload/om_kriminalvarden/dokument/Hakteslagen-engelska.pdf).

<sup>17</sup> Benjamin Russell, “Police spend £6 MILLION guarding WikiLeaks founder Julian Assange at Ecuador Embassy” *Express* 25 April 2014, <http://www.express.co.uk/news/uk/472378/Police-spend-6-MILLION-guarding-WikiLeaks-founder-Julian-Assange-at-Ecuador-Embassy>.

<sup>18</sup> These are based on the Agreed Facts submitted by both Sweden and Mr. Assange in the Supreme Court of the UK, available at <http://www.scribd.com/doc/80912442/Agreed-Facts-Assange-Case/>.

<sup>19</sup> See European Council Act of 29 May 2000 established the EU Convention for Mutual assistance in criminal matters between Member States; and Sweden's International Legal Assistance in Criminal Matters Act (2000:562); International Legal Assistance in Criminal Matters Ordinance (2000:704); Notification (2004:745) of agreements referred to in the International Legal Assistance in Criminal Matters Act (2000:562).

**most cases in Sweden. It has not depended on the gravity of the offense or similar criteria:**

- *Arboga murder case*: Swedish police traveled to Germany to question a murder suspect in 2008. The suspect was subsequently put on trial and convicted in Sweden.
- *Uppsala Christmas murder case*: Swedish police traveled to Serbia to question a murder suspect in 2012. The suspect was subsequently charged and extradited to Sweden, where he was put on trial.
- *The G4S helicopter robbery case*: a Swedish citizen named Alexander Eriksson was questioned by Swedish police in Serbia in 2010. That same year, he was extradited, tried and convicted in Sweden.
- *The Trustor affair*: UK citizen Jonathan Guinness (Lord Moyne) was accused of involvement of the disappearance of £50,000,000 from the accounts of the Swedish investment firm Trustor (of which he was director). An arrest warrant was issued in absentia, but it was dropped after Lord Moyne agreed to being questioned in the UK. The Swedish Prosecutor traveled to London to question him in 1997. He was put on trial in Sweden and acquitted in 2001.
- *The Prosolvia case*: A major fraud case in which one of the suspects, Dan Lejerskär, a cofounder of a company, was repeatedly questioned at the Swedish consulate in San Francisco by the prosecutor between 1998-2005 during the investigation phase. His defense lawyer was present. Lejerskär was tried and acquitted.

33. **In the case of Mr. Assange, at least four formal offers have been made to the prosecution to interview him in person, in writing, via telephone, or via video-link.<sup>20</sup> All offers have been declined.** Per Article 14, General Comment 32 of the ICCPR, “a situation in which an individual’s attempts to access the competent courts or tribunals are systematically frustrated de jure or de facto runs counter to the guarantee of article 14.”

34. The prosecutor admits that under law it is possible to question Mr. Assange in the UK, but that the prosecutor does not deem it “appropriate.”<sup>21</sup>

35. The Swedish Prosecution Authority's spokesperson conceded in an interview with the BBC that decisions to question suspects abroad are completely discretionary:

\*PA Spokesperson: The prosecutor has stated that according to circumstances in the investigation her opinion is that it's necessary that [Mr. Assange] is present in Sweden, and she hasn't stated exactly what circumstances, but that's her statement.

\*BBC: But isn't it the case that Swedish prosecutors have gone abroad to question defendants in serious cases at other times?

\*PA Spokesperson: Yes that's true. It has happened. And it's for the individual. It's for

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<sup>20</sup> These requests were made 12th November 2010 by Mr. Assange’s appellate counsel; 25 July 2012 by the state of Ecuador; February 2014 by Mr. Assange’s defense counsel; and April 2014 by the Ambassador of Ecuador to London.

<sup>21</sup> Submission to UK Magistrate’s Court, 14 February 2011.

the prosecutor to decide which measures to take. So it's all about what the prosecutor decides to do.

\*BBC: But what you're saying is there are circumstances in this case that make it very different. It's hard to understand what they might be.

\*PA Spokesperson: Yeah. And the prosecutor hasn't stated exactly what kind of circumstance - what circumstances - but that's her decision.<sup>22</sup>

36. Leading judicial commentators in Sweden have observed that this selective treatment violates the right to a fair trial. Retired prosecutor Rolf Hillegren wrote in the legal publication *Dagens Juridik* that: “For reasons unknown, the prosecutor [in the Assange case] has . . . painted herself into a corner out of which there is no honourable exit. . . . Based on this it can be said that Assange is being subjected to unequal treatment to his detriment.”<sup>23</sup> The Secretary General of the Swedish Bar Association stated that the prosecutor's refusal to question Assange “is of course a matter of prestige.”<sup>24</sup>
37. The refusal of the prosecutor to question Mr. Assange in the UK has also led to prejudicial statements by public officials:
- Foreign Minister Carl Bildt falsely stated that traveling to London to question Assange “was not permitted,” leading to a newspaper headline “No one is above the law: Carl Bildt’s message to Julian Assange.”<sup>25</sup>
  - Minister of Health and Social Affairs Goran Hagglund called Mr. Assange “A coward who doesn’t dare take his case to court.”<sup>26</sup>
38. **The methods employed by the prosecutor in Mr. Assange’s case are a clear violation of his fundamental human rights, yet they remain beyond the reach of judicial review.** At best, a superior prosecutor (but not a judicial authority) could compel the prosecutor to conduct the case differently. There is no remedy for abusive decisions taken by prosecutors.
39. **Discretionary decisions ultimately lead to distrust in the legal system.** Where prosecutorial decisions have an international dimension, such as where an EAW is issued, other jurisdictions are forced to respond to these decisions, **extending these problems of trust in the legal system beyond Sweden's borders.** The Swedish Code of Judicial Procedure provides no solution.

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<sup>22</sup>BBC Radio 4 – The World at One, June 2012 <http://audioboo.fm/boos/928311-swedish-prosecution-authority-on-julian-assange-case-the-world-at-one-bbc-radio-4>.

<sup>23</sup>Rolf Hillegren “Assange is being discriminated against – the Senior Prosecutor has Painted Herself into a Corner with no Honourable Exit” (“Assange särbehandlas negativt - överåklagaren har målat in sig i ett hörn utan hedervärd återvändo”) *Dagens Juridik*, 18 February 2014, <http://www.dagensjuridik.se/2014/02/assange-sarbehandlas-negativt>.

<sup>24</sup>*Agenda*, SVT, 2 February 2014, <http://www.svtplay.se/video/1781295/2-2-21-15-textat>.

<sup>25</sup>Metro Sweden “Bildt: Assange lives in a fantasy world” 17 August 2012

<http://www.metro.se/nyheter/bildt-assange-lever-i-en-fantasivarld/EVHlhq!u3VdpS19qCsHI/>.

<sup>26</sup>Goran Hagglund, Tweet, <http://archive.today/8plzE>.



## VI. CONCLUSION

40. **Swedish prosecutors routinely place suspects in lengthy, isolated, or unexplained pre-charge detention.** Since the UPR in 2010 Sweden has taken some steps to strengthen legal safeguards to deter prosecutors from abusively detaining suspects. However, these steps have failed in practice.
41. It is encouraging that a report by the Swedish Prosecution Authority published in January 2014 has offered recommendations regarding the practice of imposing lengthy pre-trial detention and restrictions. However, **no significant improvement in this area has been observed since the implementation of the 2010 Act of Detention.**
42. **The selective failure to question Julian Assange, who is located at the Embassy of Ecuador in London, has dragged out his pre-trial investigation nearly four years in violation of Articles 14 of the ICCPR and Article 6 of the ECHR.**

## VII. RECOMMENDATIONS

43. Sweden must commit to take all necessary measures to ensure equal application of the law. The Swedish Prosecutor General should instruct prosecutors to:
  - a) expediently resolve existing cases where suspects are in lengthy, isolated, or unexplained pre-charge detention;
  - b) not place future suspects in lengthy, isolated, or unexplained pre-charge detention;
  - c) provide explanation to suspects located in other jurisdictions regarding any decisions to not question them remotely; and
  - d) expediently resolve any investigations where suspects are located in other jurisdictions.
44. Additionally, the Swedish Prosecutor General should take over especially lengthy and problematic cases, particularly those in which preliminary investigations have reached a stalemate.
45. Finally, Sweden should make the following amendments to its Judicial Code:
  - a) The discretionary powers of the prosecutor must be subject to judicial review at every stage of the preliminary investigation;
  - b) When suspects are located in other jurisdictions, prosecutors must be compelled to utilize judicial cooperation mechanisms, and must provide a basis for their decisions to not question suspects remotely; and
  - c) The Code must explicitly specify a time limit for pre-trial proceedings and allow judges to control delays induced by prosecutor inaction.