



Stockholm
12 July 2019
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Ministry for Foreign Affairs
Director-General for Legal Affairs

Mr. Nils Melzer
Special Rapporteur on Torture and
Other Cruel, Inhuman or Degrading
Treatment or Punishment
Office of the High Commissioner
for Human Rights
United Nations
CH-1211 GENEVA 10
Switzerland

Communication (reference UA SWE 2/2019)

Dear Sir,

1. I have the honour of referring to your letter of 28 May 2019 regarding Mr Julian Assange. I wish to submit the following response on behalf of the Swedish Government.

2. Firstly, the Government wishes to emphasise that the domestic legal proceedings against Mr Assange are being handled by independent public authorities. According to the Swedish Instrument of Government (1974:152), the Swedish Government may not interfere in an ongoing case handled by a Swedish authority. Swedish authorities, including the Office of the Prosecutor and the courts, are thus independent and separate from the Government. This principle of independence is fundamental to the Swedish form of government. Courts of law, administrative authorities and others performing public administration functions are required to pay regard in their work to the equality of all before the law and observe objectivity and impartiality. The rule of law applies. The Government is constitutionally prevented from commenting on or influencing the independent decisions of the Swedish Prosecution Authority.

3. Swedish law also applies the principle of mandatory criminal investigation, which means that a criminal investigation must be initiated as soon as there is cause to believe that an offence has been committed. During a criminal investigation, certain coercive measures may be imposed to advance the criminal investigation. The principle of proportionality must then be applied, i.e. that the intrusion or other detriment to the suspect is in reasonable proportion to the potential benefit gained from the measure.

4. The Government would like to emphasise that these principles also apply to the public authorities', including the prosecutors', handling of the criminal suspicions in the case at hand. In this respect, the Government notes that the Swedish Supreme Court, when re-examining the issue of detention in absentia regarding Mr Assange in May 2015, concluded that the detention order was deemed to be in accordance with the principle of proportionality and that there were no grounds for revoking the order.

5. The Government cannot comment on the ongoing Swedish criminal investigation.

6. Regarding the media reporting in relation to Mr Assange, the following may be noted. The principle of public access to information governs access to information regarding the activities of public authorities. This principle means that the public and media, such as newspapers, radio and television, have a legal right to insight into the activities of Swedish public authorities. This principle is fundamental to the Swedish form of government. While public access to information may be restricted by legislation on secrecy, secrecy is normally not applied to a decision to discontinue a criminal investigation or to information contained in a court's decision. Public authorities and their officials conduct independent examinations of whether certain information should remain secret. The right of the public and the media to access information is an important safeguard for the rule of law.

7. Officials and others in the service of the state or municipalities are normally entitled to disclose information to newspapers, radio and television for publication, or to personally publish information (the right to communicate and publish information). This right is protected under the Swedish Constitution. However, this right is not without exceptions, as certain rules on secrecy may still apply. The right to communicate and publish information in the media is of fundamental importance to the freedom of speech and a free press.

8. The Government also notes that the statement of facts provided in your letter in no way justifies the conclusion that the Swedish public authorities had any other grounds for their actions than the investigation of the criminal offence Mr Assange is suspected of in Sweden. The Government strongly refutes your conclusion in this regard.

9. The Government wishes to emphasise that it has no right to interfere with the decisions of any public authority in the present case. The exercise of public power under the law by independent public authorities is an important safeguard for the rule of law.

10. You also allege that Mr Assange was subject to prolonged, involuntary and arbitrary confinement in the Ecuadorian Embassy, and refers in this regard to the opinion of the UN Working Group on Arbitrary Detention (WGAD) of 4 December 2015.

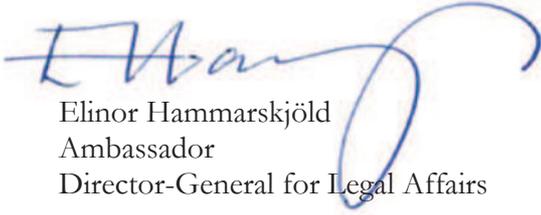
11. As was stated in the Government's response to the WGAD's opinion, the Government does not agree with the WGAD's opinion and its conclusion that Sweden has violated international law. In fact, Mr Assange chose, voluntarily, to remain at the Ecuadorian Embassy, and the Swedish authorities have had no control over his decision to do so. Mr Assange was free to leave the Embassy at any time. He cannot be considered to have been deprived of his liberty while at the Embassy due to any decision or action taken by the Swedish authorities.

12. In relation to the alleged risk of extradition to the United States of Mr Assange, the Government finds it pertinent to clarify the difference between the procedures pertaining to a European Arrest Warrant (EAW) and any question concerning a guarantee of *non-refoulement* or extradition to a third state. The surrendering of persons within the European Union is based on EU law and the common area for justice and the principle of mutual recognition of judicial decisions and judgments. The EAW is applied throughout the EU and it provides improved and simplified judicial procedures designed to surrender people for the purpose of conducting *inter alia* a criminal prosecution.

13. The Government finds it important to emphasise that, to date, no request for extradition regarding Mr Assange has been directed to Sweden. Any discussion about an extradition of Mr Assange to a third state is therefore strictly hypothetical. Furthermore, as has been explained above, any potential decision for extradition would have to be preceded by a thorough and careful examination of all the circumstances of the particular case. Such an examination cannot be made before a state has requested extradition of a specific person and specified the grounds invoked in support of the request. In addition, if a person has been surrendered to Sweden pursuant to an EAW, Sweden must obtain the consent of the surrendering state, before being able to extradite the person sought to a third state.

14. Lastly, you allege that the international responsibility for the exposure of Mr Assange to cruel, inhuman or degrading treatment or punishment, as well as psychological torture, rests with the Swedish Government and other mentioned governments. The Government has serious concerns about this statement. Such a statement lacks any support in international law, including human rights law. The Government has not acted in contravention of its human rights obligations in relation to the case of Mr Assange.

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



Elinor Hammarskjöld
Ambassador
Director-General for Legal Affairs