Mandate of the Special Rapporteur on the right to privacy

REFERENCE: AL ECU 6/2019

18 April 2019

Excellency,

I have the honour to address you in my capacity as Special Rapporteur on the right to privacy, pursuant to Human Rights Council resolution 37/2.

In this connection, I would like to bring to the attention of your Excellency's Government information I have received in relation to restrictions on Mr. Julian Assange's right to privacy during his stay at the Embassy of Ecuador in London.

According to the information received:

Since Mr. Assange sought political asylum into the Embassy of Ecuador in June 2012, his stay has been subject to a variety of surveillance, both audio and video, through devices installed in the rooms he occupied as accommodation and workspace. This surveillance seems to have intensified in 2016, following the release by Wikileaks of data emanating from the Democratic National Party in the US. It was further intensified in early 2018, through additional devices that filmed and recorded his life and relations with the outside world on a 24 hours basis, including internet and telephone communications, rendering him unable to meet privately with doctors who visited him to examine him, colleagues he worked with, lawyers in preparation of his legal protection, as well as family, friends and other visitors. For instance, in February 2019, an independent medical doctor who had been assessing Mr. Assange's health for several years, visited Mr. Assange to examine him. The entire medical visit was monitored by two cameras. The doctor's confidential medical notes were removed from the meeting room where they met, when the doctor temporarily stepped out, and were later found in a space used by embassy surveillance staff. The notes had presumably been read and possibly copied. The level of surveillance was such that when meeting visitors, in order to reduce the risk that their conversations were monitored, Mr. Assange and his visitors had to speak over the noise of a radio to cover their voices and lessen the risk of being overheard. I have received several reliable detailed first-hand accounts to that effect.

In order to monitor in detail the life, words, contacts, exchanges and activities of Mr. Assange, the Ecuadorian National Intelligence Secretariat contracted in 2012 a private Spanish intelligence company named Undercover Global SL. That company is said to have monitored and filed detailed records of Mr. Assange's daily life, of his activities as then director of Wikileaks, and of all his meetings with visitors. From March 28, 2018, a wireless telecommunications block equipment began to be used in the Embassy, making it impossible for Mr. Assange to communicate with the outside world through telephone calls or

through the Internet. From that date, the visit regime to Mr. Assange was significantly restricted. Some of his electronic communications were restored in late 2018, although they continued to be monitored.

I also received allegations of the involvement of another company, a private cybersecurity company from Italy named Hacking Team, apparently hired by the Government of Ecuador to monitor Governments critics, journalists, human rights defenders and Mr. Assange. Many of these allegations are also in the public domain.

You will appreciate that, if the information outlined above is correct and these were to be judged measures which were a) not provided for by law and/or b) not necessary and/or c) not proportionate in a democratic society, then this would constitute a pattern over a period of time of several years of increasing, deeply invasive, and lately, apparently constant, violation of the right to privacy of Mr. Assange. This would be in contravention to Article 17 of the International Covenant on Civil and Political Rights which guarantees the right not to be subjected to arbitrary or unlawful interference with privacy, family, home or correspondence. Ecuador ratified the ICCPR on 6 March 1969.

In connection with the above alleged facts and concerns, please refer to the **Annex** on **Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is my responsibility, under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention, I would be grateful for your observations on the following matters:

- 1. Please provide information and any comments you have about the aforementioned allegations.
- 2. Please provide information regarding the measures taken to protect Mr. Assange's right to privacy during his stay at the Embassy of Ecuador in London.
- 3. In particular, please provide information about the measures taken by the Ecuadorean Government to protect the confidentiality of Mr. Assange's communications with the outside world, of his patient-doctor relationship, of his client- lawyer relationship, and his intimacy, including with regard to his contact with his visitors, colleagues, relatives and friends.

This communication and any response received from your Excellency's Government will be made public via the communications reporting <u>website</u> within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, I urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

I am additionally considering the possibility, in the near future, to publicly express my concerns in this regard, since I believe that the information received is sufficiently reliable to indicate a matter that warrants serious attention. I believe that public opinion has to be informed about the potential implications related to the allegations mentioned above. Any public expression of concern from my part would indicate that I have been in contact with Your Excellency's Government to clarify the relevant issues. An early response to this communication would be very much appreciated.

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

Joseph Cannataci Special Rapporteur on the right to privacy

Annex Reference to international human rights law

In connection with above alleged facts and concerns, I would like to refer to the Universal Declaration of Human Rights, which states in its Article 12, that No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interferences or attacks." This right is further codified in treaty law: the International Covenant on Civil and Political Rights (ICCPR), ratified by Ecuador in 1969 provides in its article 17 in almost similar terms. It is further codified in Article 11 of the American Convention on Human Rights, ratified by Ecuador on 12 August 1977: "No one may be the object of arbitrary or abusive interference with his private life, his family, his home, or his correspondence, or of unlawful attacks on his honour or reputation. Everyone has the right to the protection of the law against such interference or attacks."

The United Nations Human Rights Committee, in its General Comment No 16, has interpreted that under ICCPR article 17 "The obligations imposed (...) require the State to adopt legislative and other measures to give effect to the prohibition against such interferences and attacks as well as to the protection of this right.

General Comment No. 16, invites states to specify in their legislation which authorities and organs are legally established within the legal system of the State as competent to authorize interference in the right to privacy; as well as which authorities are legally entitled to exercise control over such interference with strict regard for the law, and to know in what manner and through which organs persons concerned may complain of a violation of the right provided for in article 17 of the Covenant. States are also invited to clarify the extent to which actual practice conforms to the law (paragraph 6). Subsequent paragraphs advise that:

- 7. As all persons live in society, the protection of privacy is necessarily relative. However, the competent public authorities should only be able to call for such information relating to an individual's private life the knowledge of which is essential in the interests of society as understood under the Covenant. Accordingly, the Committee recommends that States should indicate in their reports the laws and regulations that govern authorized interferences with private life.
- 8. Even with regard to interferences that conform to the Covenant, relevant legislation must specify in detail the precise circumstances in which such interferences may be permitted. A decision to make use of such authorized interference must be made only by the authority designated under the law, and on a case-by-case basis. Compliance with article 17 requires that the integrity and confidentiality of correspondence should be guaranteed de jure and de facto. Correspondence should be delivered to the addressee without interception and without being opened or otherwise read. Surveillance, whether electronic or otherwise, interceptions of telephonic, telegraphic and other forms of

communication, wire-tapping and recording of conversations should be prohibited. Searches of a person's home should be restricted to a search for necessary evidence and should not be allowed to amount to harassment. So far as personal and body search is concerned, effective measures should ensure that such searches are carried out in a manner consistent with the dignity of the person who is being searched. Persons being subjected to body search by State officials, or medical personnel acting at the request of the State, should only be examined by persons of the same sex.

- 9. States parties are under a duty themselves not to engage in interferences inconsistent with article 17 of the Covenant and to provide the legislative framework prohibiting such acts by natural or legal persons.
- 10. The gathering and holding of personal information on computers, data banks and other devices, whether by public authorities or private individuals or bodies, must be regulated by law. Effective measures have to be taken by States to ensure that information concerning a person's private life does not reach the hands of persons who are not authorized by law to receive, process and use it, and is never used for purposes incompatible with the Covenant. In order to have the most effective protection of his private life, every individual should have the right to ascertain in an intelligible form, whether, and if so, what personal data is stored in automatic data files, and for what purposes. Every individual should also be able to ascertain which public authorities or private individuals or bodies control or may control their files. If such files contain incorrect personal data or have been collected or processed contrary to the provisions of the law, every individual should have the right to request rectification or elimination.

Last, the General Assembly also stressed that surveillance, illegal or arbitrary, is a very intrusive act that violates the right to privacy and can contradict the principles of a democratic society (A / RES / 68/167).