

UA SWE 2/2019 and related cases UA GBR 3/2019; UA USA 14/2019 and UA ECU 10/2019 stand modified by a follow-up letter issued by the SR on Torture to clarify some of the points in the original letter following disclosure of new facts as they became available through further research on the case. Please read the original letter in conjunction with the follow-up letter number OL SWE 3/2019.

UA SWE 2/2019 y los casos relacionados UA GBR 3/2019; UA USA 14/2019 y UA 10/2019 se modificaron mediante una carta de seguimiento emitida por el Relator Especial sobre la tortura para aclarar algunos de los puntos de la carta original tras la revelación de nuevos hechos, tal como quedaron disponibles a través de nuevas investigaciones sobre el caso. Por favor, lea la carta original junto con la carta de seguimiento número OL SWE 3/2019.

Mandate of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

REFERENCE:
UA USA 14/2019

28 May 2019

Excellency,

I write in my capacity as UN Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, pursuant to Human Rights Council resolutions 34/19, and in connection with my visit to the United Kingdom of Great Britain and Northern Ireland from the 9 to 10 May 2019 to interview and examine Mr. Julian Assange, detained since 11 April 2019 in HMP Belmarsh prison and meet with representatives of the Ministry of Justice, the Home Office and other relevant interlocutors.

The primary purpose of my visit was to examine Mr. Assange's current state of health – physical and psychological – in order to assess whether the circumstances and treatment he has been exposed and subjected to since his confinement at the Ecuadorian Embassy in 2012 or, respectively, his potential extradition or transfer to another country, amount to torture or other cruel, inhuman or degrading treatment or punishment, as absolutely prohibited in universally applicable human rights law including, most notably, the UN Convention against Torture (UNCAT) and the Covenant on Civil and Political Rights (CCPR).

During my visit, I was assisted by Prof. Duarte Vieira Nuno (medical forensic expert) and Dr. Pau Perez-Sales (psychiatrist). Both experts are specialized in examining, identifying and documenting the medical effects of physical and psychological torture and other cruel, inhuman or degrading treatment or punishment.

Based on direct, verified information collected prior, during and after my visit, I am copying below my initial observations and recommendations which were transmitted to the United Kingdom on 27 May 2019. Similar letters will be sent to the Governments of Ecuador and Sweden.

According to the information received:

On 11 April 2019, the Metropolitan Police Service (MPS), at the invitation of the Government of Ecuador, entered the Embassy of Ecuador in London to apprehend Mr. Julian Assange. He was forcibly taken into police custody and arrested for

breaching the 1976 Bail Act in connection with his failure to surrender to the court in June 2012 for extradition to Sweden, and in connection with an extradition request by the United States of America. That same day, Mr. Assange was taken to Westminster Magistrates' Court where a judge convicted Mr. Assange for bail violation almost seven years earlier, without allowing him sufficient time for the preparation of his defense, refusing to consider important evidence suggesting a conflict of interest of another judge involved in that proceeding, and personally insulting Mr. Assange as a "narcissist, who cannot go beyond his own self-interest".

On 1 May 2019, Mr. Assange was sentenced at Southwark Crown Court to 50 weeks imprisonment – nearly the maximum provided by law - which the UN Working Group on Arbitrary Detention in a press statement of 3 May 2019 described as disproportionate to the minor gravity of his offence. The sentencing judge reportedly read from a pre-typed judgment, without even considering the detailed mitigating evidence presented by Mr. Assange's defense counsel as to the real risk of serious harm which his compliance with the terms of his bail would have exposed him to.

On 2 May 2019 an initial hearing took place at the same court relating to an extradition request made by the United States for Mr. Assange. On 13 May 2019, the Swedish prosecuting authorities announced that they were re-opening a preliminary criminal investigation for sexual offences against Mr. Assange, an investigation which had already been formally closed twice in 2010 and 2017, and which had never produced tangible evidence or led to formal charges.

On 23 May, the US justice department extended the basis for its extradition request by filing 17 new charges against Mr. Assange, including under the Espionage Act.

Mr. Assange is currently serving his sentence and awaiting the continuation of his extradition proceedings to the United States, and possibly to Sweden, at HMP Belmarsh, a high-security prison in south-east London.

1. Concerns regarding current conditions of detention

At the time of my visit, Mr. Assange was held in cell 37 of Block 2 and, like other inmates in this block, had access to an outside yard for between 30 and 60 minutes per day, depending on the weather conditions. According to the prison staff, he was also entitled to apply for access to the library and the gym, and to interact with other inmates in the shared areas of the Block 2 during the so-called "association" time, which was said to last between 3 and 4 hours per day, either in the morning or the afternoon. The prison staff acknowledged, however, that Mr. Assange had not yet been able to access the gym

or the library since his arrival at HMP Belmarsh, primarily due to his frequent absences from the block for court appearances, medical care, and meetings with lawyers and other external visitors. During “association” time, like other inmates, Mr. Assange was permitted to use one of the telephones installed in the shared area of the block to call authorized numbers including, most notably, his legal team. Expenses for such calls and other purchasable items, such as pens and paper, were limited to GBP 15 per week. This budget could be increased once Mr. Assange started to work, which was not yet the case at the time of my visit. According to the prison staff, after an initial induction period, the normal daily routine for convicted inmates, such as Mr. Assange, was to work for between 3 and 4 hours in the morning or the afternoon, and to spend the other half of the day in “association” time as described above. All three meals were said to be taken by inmates in their cells, in the case of Mr. Assange in a freshly painted single occupancy cell measuring approximately 2 meters (width) by 3 meters (length) by 2,3 meters (height), equipped with a bed and bedding, a cupboard, a note-board, basic sanitary installations, a plastic chair and a medium sized window. Mr. Assange had received numerous letters, which he was allowed to keep in his cell.

In general terms, at the time of my visit, the conditions of detention, as well as the daily routine and disciplinary regime applied to Mr. Assange appeared to meet the requirements of the Standard Minimum Rules for the Treatment of Prisoners (also known as the “Mandela Rules”, updated and adopted by the UN General Assembly on 5 November 2015). Contrary to prior reports received, at the time of my visit, Mr. Assange was not being held in solitary confinement, but was confined to his cell for approximately 20 hours per day. While this may be acceptable for an induction period of a few days, Mr. Assange now should be granted regular access to the library, the gym and opportunities for meaningful work and social engagement. More importantly, however, I am seriously concerned that the restrictive “B-type” security regime applied to Mr. Assange, including the limited frequency and duration of lawyers’ visits and the lack of access to a computer (even without internet), severely hampers his ability to adequately prepare for the multiple and complex legal proceedings that are pending against him. It must be emphasized that, in contrast to most other convicts, Mr. Assange’s legal cases are still pending and require not only frequent and extensive exchange with lawyers covering various jurisdictions, but also the facilities to draft written statements and correspondence.

2. Concerns regarding current state of health

Prior to my visit, I received consistent reports that Mr. Assange’s physical and mental health had seriously deteriorated in the course of his confinement at the Ecuadorian Embassy and had reached a critical state in the course of the past year. On 9 May 2019, I was able to conduct confidential interviews with Mr. Assange and a thorough physical and psychiatric examination in line with specialized medical protocols, most notably the universally recognized “Manual on the Effective Investigation and

Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment” (also known as the “Istanbul Protocol”). In order to triangulate and consolidate the collected information, numerous additional sources have also been consulted including, most notably, several medical experts who have had the opportunity to examine Mr. Assange on one or several occasions during his confinement at the Ecuadorian Embassy.

While the precise medical data collected, including the exact diagnoses produced by the medical examinations conducted during my assessment of Mr. Assange remain subject to source and patient confidentiality, the resulting medical conclusions, as far as they are relevant for the observations of my mandate, can be summarized as follows:

From a strictly physical point of view, several aspects of Mr. Assange’s health condition and cognitive and sensory capacity have been, and still are, significantly impaired as a direct consequence of his long-term confinement in the Ecuadorian Embassy, without access to natural sunlight and adequate medical and dental care. At the time of the physical examination, the most urgent physical conditions had been adequately attended to by the health care unit at HMP Belmarsh, and no immediate life-threatening condition or imminent risk of serious and irreparable harm was observed.

From a psychological perspective, Mr. Assange showed all symptoms typical for prolonged and sustained exposure to severe psychological stress, anxiety and related mental and emotional suffering in an environment highly conducive to major depressive and post-traumatic stress disorders (PTSD). Both medical experts accompanying my visit agreed that Mr. Assange is in urgent need of treatment by a psychiatrist of his own choice and confidence, whom he does not associate with the detaining authorities, and that his current condition is likely to deteriorate dramatically, with severe and long-term psychological and social sequels, in the event of prolonged exposure to significant additional stressors, such as those expected to arise in the event of his extradition to the United States or any other country refusing to provide guarantees against refoulement to the United States.

In this regard, I am alarmed at information received after my visit, that on or about 18 May 2019, Mr. Assange was moved to the health care unit within HMP Belmarsh. The reason for this transfer appears to be a serious deterioration of the medical symptoms observed during my visit, now also involving a significant loss of weight, thus confirming Mr. Assange’s continued exposure to progressively severe psychological suffering and the ongoing exacerbation of his pre-existing trauma.

3. Causal relation between current medical symptoms and previous treatment and conditions

For almost seven years, from June 2012 to April 2019, Mr. Assange was physically confined to the Embassy of Ecuador, where he was exposed to a progressively controlled, restricted and closely monitored environment with increasingly limited contact to the outside world. In these circumstances, significant extraneous interfering factors can be excluded, and the primary causes for the physical and psychological symptoms observed during the visit can be identified and assigned with a high degree of certainty. More specifically, based on the known evolution of the factual circumstances impacting Mr. Assange's daily life during the past seven years, a clear and direct causal relation can be established between the serious psychological trauma and other medical symptoms observed and his well-documented, prolonged exposure to the following factors:

- a) **Prolonged arbitrary confinement by the United Kingdom and Sweden:** All records available to me show that Mr. Assange voluntarily and consistently cooperated with the Swedish police and prosecutors, both during his presence in Sweden in 2010 and after he sought refuge at the Ecuadorian Embassy in June 2012, in relation to the allegations of sexual offences which had been made against him. However, there is compelling evidence that Swedish and British prosecuting authorities, through concerted actions and omissions, have deliberately created and maintained a long-term situation rendering Mr. Assange unable to travel to Sweden for additional questioning, and to comply with British bail conditions, without simultaneously having to expose himself to the materially unrelated risk of onward extradition or surrender to the United States and, thereby, to a real risk of serious violations of his human rights.

As has been accurately determined by the UN WGAD in its decision of 4 December 2015, this situation effectively exposed Mr. Assange to prolonged, involuntary and arbitrary confinement in the Ecuadorian Embassy, and also deprived him of adequate dental and medical care for a period of almost seven years. As my mandate has previously observed, the longer a situation of arbitrary confinement lasts, and the less the affected person can do to influence their own situation, the more intense their mental and emotional suffering will become, and the higher the likelihood that the prohibition of torture and other cruel, inhuman or degrading treatment or punishment has been breached (A/HRC/37/50, §27).

- b) **Public shaming and judicial harassment by Sweden:** Records made available to me show that, in 2010, after Mr. Assange had fully cooperated with Swedish police and prosecution concerning allegations of sexual misconduct made against him, the Chief Prosecutor of Stockholm stated that "I don't think there is reason to suspect that he has committed rape" and closed the investigation, determining that

the “conduct alleged by (the complainant) disclosed no crime at all”. Upon appeal, the investigation was re-opened by a different prosecutor shortly thereafter, reportedly after the statement of the complainant had been modified to include more prejudicial language. The mass media were informed, resulting in widespread dissemination of a distorted and misleading narrative portraying Mr. Assange as a “rape” suspect, thus suggesting a violent offence far more serious than the facts alleged by the complainants themselves. In reality, the most serious allegation made against Mr. Assange seems to involve the predictably unresolvable question of whether, during consensual intercourse with the complainant, and unbeknownst to her, Mr. Assange had ripped his condom intentionally, or merely accidentally.

For almost nine years, the Swedish authorities have consistently maintained, revived and fueled the “rape”-suspect narrative against Mr. Assange, despite the legal requirement of anonymity, despite the mandatory presumption of innocence, despite the objectively unrealistic prospect of a conviction, and despite contradicting evidence suggesting that, in reality, the complainants never intended to report a sexual offence against Mr. Assange, but that they had been pressured (“railroaded”) into doing so by the Swedish police and had subsequently decided to “sell” their story to the tabloid press.

The resulting reputational harm to Mr. Assange was perpetuated and exacerbated by the Swedish prosecutor’s persistent rejection, contrary to standard practice in many other cases, of all possibilities which would have enabled Mr. Assange to respond to questions of Swedish prosecution without simultaneously having to expose himself to the risk of refoulement to the United States. At no point did the Swedish prosecuting authorities make any attempt to prevent, contain or redress reputational harm to Mr. Assange, or to protect his human dignity by publicly rejecting and rectifying obvious exaggerations and misrepresentations of the allegations made against him.

The announcement of 13 May 2019 that the Swedish prosecuting authorities had re-opened the preliminary investigation into the same allegations made already in 2010 against Mr. Assange compounds my serious concern that, in this case, the “rape” suspect narrative appears to be misused to deliberately undermine his reputation and credibility and, ultimately, to facilitate his indirect refoulement from the United Kingdom to the United States.

- c) **Coercive harassment and defamation by Ecuador:** Several first-hand witnesses confirmed that the initial five years of co-existence between Mr. Assange and the staff at the Ecuadorian Embassy from June 2012 to May 2017 were marked by respectful and friendly relations. After the election of the new Ecuadorian Government in 2017, the Ecuadorian authorities reportedly began to deliberately

create and maintain circumstances rendering Mr. Assange's living conditions increasingly difficult and oppressive, with the apparent aim of coercing him to voluntarily leave the Embassy, or to trigger a health crisis which would justify his involuntary transfer to a hospital under British jurisdiction, where he could be arrested. Between March 2018 and April 2019, the progressively severe harassment of Mr. Assange by the Ecuadorian authorities reportedly culminated in a situation marked by **excessive regulation, restriction and surveillance** of Mr. Assange's communications, meetings with external visitors (including lawyers and medical doctors) and his private life; by **various degrees of harassment** by security guards and certain diplomatic staff; and by the **public dissemination** of distorted half-truths, defamations and deliberately debasing statements, including by the State leadership. On 11 April 2019, the Ecuadorian authorities 'suspended' Mr. Assange's Ecuadorian citizenship, terminated his diplomatic asylum, and invited British police to arrest him inside the Embassy, without any form of due process, without adequate advance notification and without any apparent medical necessity or other material urgency. His sudden expulsion from the Embassy in the hands of the British police did not allow Mr. Assange to collect and take his belongings with him, including his documents which may contain confidential information related to his sources as a journalist and publisher. The risk that this sensitive information may fall in the wrong hands would be an additional source of extreme anxiety for any journalist.

- d) **Sustained and unrestrained public mobbing, intimidation and defamation in the United States, United Kingdom, Sweden and Ecuador:** There is abundant evidence that, since August 2010, the Governments of the United States, the United Kingdom, Sweden, and (since May 2017) Ecuador have progressively either acquiesced in, consented to, instigated, or even initiated or actively contributed to a sustained and unrestrained campaign of public mobbing, intimidation and defamation against Mr. Assange, consisting of a constant stream of public statements not only by the mass media and influential private individuals, but also by current or former political figures and senior officials of various branches of government, including judicial magistrates personally involved in proceedings against Mr. Assange. These statements have ranged from deliberate ridicule, insult and humiliation, to distorted reporting and misleading criminal accusations, and from open threats and instigation of violence, to repeated calls for his assassination or murder. Despite the grave, repeated and deliberately degrading and intimidating nature of these acts, none of the mentioned Governments have expressed public disapproval or taken appropriate measures of prevention, protection and redress, thus displaying an attitude of complacency (at best) and complicity (at worst), and creating an atmosphere of impunity encouraging further abuse and vilification.

Mr. Assange's exposure to these cumulative factors over a prolonged period of time, with the active participation of several Governments, or at their instigation, or with their consent or acquiescence, has resulted in patterns of severe and traumatic pain and suffering, including chronic anxiety, stress and depression, and an intense sense of humiliation, isolation, vulnerability and powerlessness.

I am therefore gravely concerned that, starting from August 2010, Mr. Assange has been, and currently still is, exposed to progressively severe pain and suffering, inflicted through various forms and degrees of cruel, inhuman or degrading treatment or punishment, the cumulative effects of which clearly amount to psychological torture.

I condemn, in the strongest terms, the deliberate, concerted and sustained nature of the abuse intentionally inflicted on Mr. Assange and seriously deplore the consistent failure of all involved Governments to take measures for his protection against sustained patterns of public mobbing, intimidation and defamation.

The evidence made available to me strongly suggests that the primary international responsibility for the described patterns of cruel, inhuman or degrading treatment or punishment, and the resulting exposure of Mr. Assange to psychological torture, rests with the Governments of the United Kingdom, Sweden, Ecuador, and the United States, both jointly for the foreseeable cumulative effect, and separately for their respective contributions through direct perpetration or, as the case may be, through instigation, consent, or acquiescence, as well as through failure to prevent such abuse being perpetrated against Mr. Assange by persons acting within their jurisdiction.

4. Risks in the event of direct or indirect extradition or transfer to the United States:

In light of the extradition request made by the United States and the re-opening of the preliminary criminal investigation against Mr. Assange in Sweden, I am also gravely concerned about the risks arising for Mr. Assange in the event of his extradition or surrender to the United States, whether directly from the United Kingdom (direct refoulement) or indirectly via Sweden or any other intermediary third country (indirect refoulement).

- a) **Concerns related to the impunity for torture in the United States:** In the recent past, the United States Government has repeatedly refused to investigate and prosecute torture and other cruel, inhuman or degrading treatment or punishment perpetrated by its officials, despite compelling and undisputed evidence, particularly in cases involving national security. The Government has also exercised strong pressure on other States, the United Nations or the International Criminal Court to prevent non-US criminal investigations against

US officials on such charges. While the United States of America formally recognizes the prohibition of torture and other cruel, inhuman or degrading treatment or punishment, its reluctance to implement and enforce this formal commitment in cases involving national security and its own officials has been and continues to be a matter of serious concern to my mandate.

- b) **Concerns related to conditions of detention:** If extradited to the United States, I fear that Mr. Assange may be detained in a high security prison (“Supermax”) or in an institution with comparable conditions of detention and treatment, both during his trial and after his conviction. In the past, my mandate has repeatedly requested to carry out an official country visit to the United States to examine the prison system and treatment of inmates from the perspective of the prohibition of torture and other cruel, inhuman or degrading treatment or punishment. The Government of the United States never agreed to facilitate such a visit in compliance with the terms of reference of my mandate, thus preventing an independent on-site assessment by the Special Rapporteur.

However, there are numerous consistent reports, based on first-hand accounts, indicating that both Federal and State level detention centres routinely practice measures of control and discipline, without recourse to judicial review, which in the view of my mandate amount to torture or other cruel, inhuman or degrading treatment or punishment. These measures include, most notably, the practice of prolonged or indefinite solitary confinement and other forms of social and sensory deprivation, in-cell restraints, shackling in stress positions, and excessively intrusive strip-searches. Persons with physical or mental disabilities and other vulnerabilities have been reported not to receive the medical care required by their condition. In 2016, my predecessor on the mandate determined that Ms. Chelsea Manning, whose case is related to that of Mr. Assange, was detained in conditions amounting to cruel, inhuman or degrading treatment, or even torture (A/HRC/19/61/Add.4., pp. 74/75).

- c) **Concerns related to psychological ill-treatment:** Severely intimidating and debasing public statements made by current and former state officials, media representatives and other influential persons in the United States suggest that, if extradited or otherwise surrendered to the United States, Mr. Assange will be exposed to an environment of public vilification, arbitrariness and judicial bias, which will be even more intense than has been the case so far. Given the strongly perceptible public and official prejudice held against Mr. Assange in the United States, there are serious reasons to doubt that he would receive a fair trial before an impartial judicial body as required under human rights law. This prospect, in conjunction with the effects of the traumatic abuse and degradation he already has been subjected to, would almost certainly result in aggravated, profound and prolonged psychological, social and physical distress and suffering incompatible

with the prohibition of torture and other cruel, inhuman or degrading treatment or punishment.

- d) **Concerns regarding cruel, inhuman or degrading punishment:** In light of the public prejudice prevailing in the United States against Mr. Assange, and the threat which the publishing activities of Wikileaks are perceived to present to US national security I am gravely concerned that US authorities intend to make an “example” of him, in order to punish him personally, but also to deter others who may be tempted to engage in similar activities as Wikileaks or Mr. Assange. I therefore fear that, irrespective of his personal criminal culpability, and whatever offence he may in reality have committed or contributed to, Mr. Assange will be confronted with overly expansive charges and subjected to excessively severe criminal sanctions.

This concern has been significantly exacerbated by reports that, on 23 May 2019, the US Department of Justice has added 17 new charges to their extradition request for Mr. Assange, including under the Espionage Act and each of them carrying a potential sanction of 10 years of imprisonment, which currently results in a possible maximum penalty of 175 years of imprisonment. It is my understanding that, in principle, the US can add further charges to their extradition request until 11 June 2019. Further, I am currently examining concerns that, after a potential extradition of Mr. Assange to the United States, the broad description of facts in the US extradition request might subsequently be used as a basis for adding even more serious charges, as appears to be permissible under the current UK/US extradition treaty, potentially carrying the death penalty or a life sentence without parole, both of which would constitute absolute barriers to refoulement under human rights law. Finally, I am currently examining concerns that the mechanism of temporary surrender, or any other form of informal transfer without full judicial review, might potentially be used by the United Kingdom or by Sweden to circumvent the due process requirements of a full extradition proceeding in line with the absolute and non-derogable prohibition of refoulement towards a real risk of torture or other cruel, inhuman or degrading treatment or punishment.

In light of these concerns, and taking into full consideration the serious deterioration of Mr. Assange’s physical and psychological health resulting from the combination of factors described in this letter, I underscore my most serious concern that, if Mr. Assange were to be extradited or otherwise surrendered to the United States, or to Sweden or any other State refusing to provide full guarantees against onward extradition or surrender to the United States, he would be exposed to a real risk of torture or other cruel, inhuman or degrading treatment or punishment. It must be emphasized that, in circumstances such as these, the instrument of diplomatic assurances, even in conjunction with post-extradition monitoring mechanisms, is inherently incapable of providing the

required safeguards and, for this reason, has been widely criticized for being used as a loophole undermining the principle of non-refoulement (A/HRC/37/50, para. 45-48; A/70/303, para. 69).

Should Mr. Assange come under the jurisdiction of the United States for any reason, I urge your Excellency's Government to ensure that any proceedings conducted against him meet the highest human rights standards in terms of judicial and procedural guarantees, taking further into account that Mr. Assange has no duty of allegiance to the United States but benefits from the full protection of the fundamental right to freedom of expression. Moreover, I urge the United States Government to ensure that Mr. Assange not be subjected to any form of torture or cruel, inhuman or degrading treatment or punishment, including prolonged solitary confinement and other excessively harsh conditions of detention, or grossly disproportionate sanctions such as the death penalty or a life sentence without parole.

In view of the urgency of the matter, I would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of the above-mentioned person(s) in compliance with international instruments.

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 any additional information and any comment you may have on the above-mentioned allegations.
2. Please provide the details and, where available, the results of any investigation, and judicial or other inquiries which may have been carried out, or which are foreseen, in relation to those allegations of psychological torture and other cruel, inhuman or degrading treatment or punishment which resulted from acts or omissions occurring in or from the jurisdiction of the United States. If no such measures have been taken, please explain how this is compatible with the human rights obligations of the United States.
3. Please provide the details of any measures which have been taken, or which are foreseen, for the purpose of protecting Mr. Assange from further infliction of torture and other cruel, inhuman or degrading treatment or punishment through acts or omissions occurring in or from the jurisdiction of the United States. If no such measures have been taken, please explain how this is compatible with the human rights obligations of the United States of America.

4. Please provide the details of any measures which have been taken, or which are foreseen, for the purpose of ensuring that Mr. Assange obtains redress for the harm inflicted on him by acts or omissions occurring in or from the jurisdiction of the United States, including fair and adequate compensation and the means for full physical, psychological and reputational rehabilitation. If no such measures have been taken, please explain how this is compatible with the human rights obligations of the United States.

I intend to publicly express my concerns in this case in the near future, given that, in my view, the evidence supporting my concerns is sufficiently consistent and reliable to indicate a matter warranting urgent public attention. Any public expression of concern on my part will indicate that I have been in contact with your Excellency's Government, as well as the other concerned Governments, to share my views, concerns and recommendations, and to clarify the issue in question.

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

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

Nils Melzer
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or
punishment

Annex

Reference to international human rights law

Under universally applicable human rights law, States have the obligation to protect the physical and mental integrity of all persons within their jurisdiction and, most notably, to prevent acts or omissions amounting to torture and other cruel, inhuman or degrading treatment or punishment. These fundamentally important obligations are reflected in the Universal Declaration of Human Rights (UDHR) and codified, inter alia, the International Covenant on Civil and Political Rights (ICCPR), to which the United States ratified on 8 June 1992, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to which the United States ratified on 21 October 1994.

Definition of torture

Article 1 of the Convention against Torture defines ‘torture’ as “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.” The concept of ‘other cruel, inhuman or degrading treatment or punishment’, within the meaning of Article 16 of the Convention against Torture, does not necessarily require the elements of severity, intentionality or purposefulness but implies the absence of a valid legal justification for the resulting pain, suffering or humiliation, namely its necessity and proportionality for a lawful purpose (A/72/178, para. 31, and E/CN.4/2006/6, paras. 38–41).

Paragraph 8a of Human Rights Council Resolution 16/23, reminds States that “Intimidation and coercion, as described in **article 1 of the Convention against Torture**, including serious and credible threats, as well as death threats, to the physical integrity of the victim or of a third person can amount to cruel, inhuman or degrading treatment or to torture.”

Risk of torture or ill-treatment if extradited

Article 3 of the CAT provides that, “[n]o State Party shall expel, return (“refouler”) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture”.

I would also like to refer to **paragraph 9 of the General Comment No. 20 of the Human Rights Committee** in which it states that State parties “must not expose

individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment upon return to another country by way of extradition, expulsion or refoulement.”

Diplomatic assurances are insufficient as a procedural safeguard

This principle has been consistently affirmed by the Human Rights Council and the General Assembly, for instance in **paragraph 7 of the Resolution A/RES/70/146 of the UN General Assembly** which urges States “not to expel, return (“refouler”), extradite or in any other way transfer a person to another State where there are substantial grounds for believing that the person would be in danger of being subjected to torture, and recognizes that *diplomatic assurances*, where used, do not release States from their obligations under international human rights, humanitarian and refugee law, in particular the principle of non-refoulement.”

The former **Special Rapporteur on Torture, in his report A/60/316**, concluded after a thorough review of the practice that “*diplomatic assurances* are unreliable and ineffective in the protection against torture and ill-treatment upon return as diplomatic assurances are not legally binding, therefore they carry no legal effect and no accountability if breached; and the person whom the assurances aim to protect has no recourse if the assurances are violated” (para 51). This assessment was confirmed and expanded on by the current Special Rapporteur in his report A/HRC/37/50, para. 45-48.

Minimum Standards regarding adequate health care

Moreover, as outlined by **the UN Standard Minimum Rules for the Treatment of Prisoners (see the revised version adopted on 5 November 2015 and renamed “Mandela Rules”)**, the provision of health care is the responsibility of the state authorities. **Rule 27(1)** furthermore provides that all prisons shall ensure prompt access to medical attention in urgent cases. Prisoners who require specialized treatment or surgery shall be transferred to specialized institutions or to civil hospitals. Where a prison service has its own hospital facilities, they shall be adequately staffed and equipped to provide prisoners referred to them with appropriate treatment and care.

Further, to take note, in this respect, of the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the updated set of principles for the protection of human rights through action to combat impunity as a useful tool in efforts to prevent and combat torture” and “(t)o ensure that victims of torture or other cruel, inhuman or degrading treatment or punishment obtain redress, are awarded fair and adequate compensation and receive appropriate social, psychological, medical and other relevant specialized rehabilitation.

Please find hereafter the follow-up letter OL SWE 3/2019

Sírvase encontrar a continuación la carta de seguimiento OL SWE 3/2019

Mandate of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

REFERENCE:
OL SWE 3/2019

12 July 2019

Excellency,

I have the honour to address you in my capacity as Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolution 34/19.

In this connection, I would like to bring to the attention of your Excellency's Government a follow up communication in light of additional evidence that has been made available to me (in the original Swedish language), which warrants a slight correction and extension of my observations as far as the rape-allegations raised by the Swedish prosecution are concerned, as contained in my communication sent on 27 May (GBR 3/2019) and 28 May respectively (SWE 2/2019, ECU 10/2019 and USA 14/2019) on the case of Mr. **Julian Assange**.

Firstly, due to an apparent translation and filing error in the materials at my disposal when describing the rape allegation made against Mr. Assange, my original communication erroneously refers to the facts described by complainant AA, which the prosecutor herself found not to amount to rape but to sexual molestation. Instead, my letter should have correctly referred to the case of complainant SW, which is the only case still pending against Mr. Assange in Sweden, and the only one in which the Swedish prosecution claimed probable cause to suspect rape.

Secondly, even as far as the alleged rape of complainant SW is concerned, new evidence made available to me, including police records in the original Swedish language, shows that SW herself never claimed to have been raped, and that there are no other indications of coercive or incapacitating circumstances suggesting her lack of consent at the relevant time.

Thirdly, the evidence submitted by complainant AA in support of the alleged incident of sexual assault other than rape consists of a condom, supposedly worn and torn during intercourse with Assange, which was found to carry no DNA of either Assange or complainant AA, and which therefore seriously undermines the credibility of these allegations against Mr. Assange.

In order to avoid any misunderstandings, I therefore wish to bring to your Excellency's attention a sentence on page 6 of my original communication that needs to be revised, namely "In reality, the most serious allegation made against Mr. Assange seems to involve the predictably unresolvable question of whether, during consensual intercourse with the complainant, and unbeknownst to her, Mr. Assange had ripped his condom intentionally, or merely accidentally."

The revised and correct text below replaces the above-referenced sentence and now reads as:

"In reality, as far as the alleged incident of rape is concerned, there are no allegations by the concerned woman or other indications of coercive or incapacitating circumstances suggesting lack of consent, as would be required for a finding of rape. Moreover, the evidence submitted by the second woman in support of the alleged incident of sexual assault other than rape consists of a condom, supposedly worn and torn during intercourse with Assange, which was found to carry no DNA of either Assange or the concerned woman."

I would like to underline that these revisions have no consequences whatsoever for the validity or legal implications of my observations, but even strengthen and consolidate my conclusion as to the arbitrariness of the "rape-suspect" narrative imposed by the Swedish prosecution not only on Mr. Assange, but also on the two involved women and the general public.

This correction is specifically relevant to the Government of Sweden. Since my original communication was sent to the United Kingdom of Great Britain and Northern Ireland, Ecuador and the United States of America, a copy of this follow up communication will also be sent to these concerned States as it is important that this corrected text, based on additional information, is also brought to their attention.

This follow up communication and any response received from your Excellency's Government will be made public via the communications reporting website within 60 days of the issuing of the original communication on this case. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

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

Nils Melzer
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment