

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

REFERENCE:
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12 September 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 reference to my communication sent on 28 May (SWE 2/2019) on the case of Mr. Julian Assange, I would like to thank your Excellency's Government for the response dated 12 July 2019. While I sincerely appreciate the explanations provided and views expressed by your Excellency's Government, they do not alleviate my serious concerns with regard to the implementation, in this case, of Sweden's obligations in relation to the prohibition against torture and other cruel, inhuman or degrading treatment or punishment. By way of the present letter, I therefore would like to provide the following additional observations and clarifications, and to reiterate or further detail my queries to the extent I deem them to have been left without satisfactory response.

1. Relevance of the present case for the mandate of the Special Rapporteur

At the outset, I would like to clarify that the present case gives rise to three distinct areas of grave concern for my mandate.

- a) First, from a retrospective viewpoint, I am gravely concerned at Mr. Assange's state of health as observed during my visit, which showed all the symptoms typical for a person having been exposed to psychological torture for a prolonged period of time. In this respect, my aim is to identify the factors which may have contributed to producing the current situation and to recommend measures of investigation, redress and rehabilitation to be taken by the responsible States.
- b) Second, from a prospective viewpoint, I am gravely concerned that, in the event of his extradition to the United States, Mr. Assange would face a real risk of serious violations of his human rights, including treatment and conditions of detention amounting to torture or other cruel, inhuman or degrading treatment or punishment. In this respect, my aim is to substantiate the seriousness of my concerns and to urge all States that either are currently exercising jurisdiction over Mr. Assange, or that potentially may be doing so in the future, to strictly abide by the principles of due process and the absolute prohibition of refoulement towards a real risk of torture or other cruel, inhuman or degrading treatment or punishment.

- c) Third, from a policy viewpoint, I am gravely concerned that Mr. Assange is being prosecuted and abused for having published evidence for serious misconduct of State officials, including international crimes involving torture and other cruel, inhuman or degrading treatment or punishment, whereas the incriminated officials themselves are being granted impunity in flagrant violation of the most basic principles of justice, human dignity and the rule of law. In this respect, my aim is to urge the involved States to live up to their international obligation to conduct a prompt and impartial investigation wherever there is reasonable ground to believe that torture or ill-treatment has been committed, instigated, consented to or acquiesced in, to prosecute any violations, including mere attempts, complicity and participation, and to provide full redress and rehabilitation to the victims.

2. Independence of the judiciary

I sincerely appreciate the assertion of your Excellency's Government that it cannot interfere with, influence, or comment on the independent decisions taken by the Swedish prosecution and courts, most notably in relation to an ongoing Swedish criminal investigation. At the same time, I would recall that Sweden's international obligations in relation to the prohibition of torture and other cruel, inhuman or degrading treatment or punishment are not limited to the executive branch of Government, but apply to the country as a whole, and to all its public authorities and institutions, including the courts and prosecution, regardless of their institutional independence from the Government. The fact that, as a matter of diplomatic protocol, my communications are to be addressed to the Minister of Foreign Affairs does not prevent the Government from transmitting my observations, queries and recommendations to other relevant branches of Government, including the judiciary and the prosecution, and from seeking their responses and transmitting them back to my office. Any other interpretation would effectively prevent my mandate from examining torture and other cruel, inhuman or degrading treatment or punishment resulting from judgments, decisions, acts or omissions by the judiciary, the prosecution or the judicial police, which represent a significant proportion of the allegations received by my office on a global scale. I therefore respectfully request your Excellency's Government to render its good services with a view to ensuring that my queries are received and responded to by the appropriate authorities.

3. Reported arbitrariness of the preliminary investigation

I also note that your Excellency's Government rejects any suggestion "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 clarification of this question is relevant to my mandate, because the manner in which the preliminary investigation against Mr. Assange has been conducted by the Swedish prosecution appears to have contributed significantly, if not decisively, to various patterns of cruel, inhuman or degrading treatment which Mr. Assange has been exposed to since 2010.

At the outset, I would make clear that I do not prejudge the criminal culpability or innocence of Mr. Assange in relation to the allegations of sexual offences made against

him in Sweden and that, as a matter of law, Mr. Assange is both obliged and entitled to respond to these allegations in a prompt and impartial judicial proceeding guaranteeing full protection of his human rights, not only with regard to the Swedish criminal proceedings themselves, but also with regard to his potential subsequent onward extradition to the United States or any other country. It is the responsibility of the Swedish authorities to provide for an environment in which Mr. Assange can be confident that any Swedish legal proceedings against him are being conducted in good faith by independent and impartial judicial authorities, and that his human rights will be fully protected, not only in theory but also in practice. If Sweden is unable or unwilling to guarantee such an environment, then Mr. Assange is entitled to seek international protection.

In exercising and interpreting their international due process obligations, all Swedish authorities are bound, *inter alia*, by the prohibition of arbitrariness and the principle of good faith (Articles 26 and 31 VCLT). The presumption of good faith is defeated when, in a particular case, public authorities continuously and consistently conduct their proceedings in a manner which is incompatible with the principles of objectivity, independence, impartiality, and efficacy; when they do not make any attempt at investigating, correcting or redressing reported misconduct; and when they do not show the requisite consideration for the suspect's legitimate interests, including his right to a fair trial, the protection of his privacy and reputation and his protection from torture and other cruel, inhuman or degrading treatment or punishment.

Having examined all the evidence made available to me and without prejudice to the potential revelation of further supporting or contradicting information in the future, I am of the considered opinion that, in conjunction, the following circumstances, and acts or omissions of the Swedish authorities defeat the presumption that the preliminary criminal investigation against Mr. Assange has been, and currently is being, conducted in good faith and in compliance with the fundamental principles of due process and of justice:

- a) **Disregard for confidentiality and precaution:** In the evening of 20 August 2010, just a few hours after the two concerned women, AA and SW, had first appeared in a police station to enquire whether Mr. Assange could be compelled to take an HIV-test, the Swedish prosecution ordered the arrest of Mr. Assange and informed the tabloid newspaper 'Expressen' that he was suspected of having raped two women,
 - without making any prior attempt at giving Mr. Assange an opportunity to respond to these allegations;
 - despite the fact that, at that time, the first recorded police questioning of the first woman (AA) had not yet taken place, but started only at 11:31 hrs on the following day, 21 August 2010;

- despite the fact that a few hours earlier, at 18:40 hrs on 20 August 2010, the second woman (SW) had become so emotionally distraught that she decided to suspend her questioning and to leave the police station, as soon as she was told that the prosecution intended to use her testimony to arrest Mr. Assange for suspected rape;
- despite the fact that SW had sent text messages, including during her questioning at the police station, making clear that she was “choked (sic *shocked*) when they arrested him”, that she only wanted Mr. Assange to take an HIV-test, that she did not intend to accuse him of any offence but that the police were “keen to get their hands on him” and that “it was the police who made up the charges”;
- despite the fact that Mr. Assange was present in Sweden and easily could have been questioned before taking steps that would seriously and needlessly damage his reputation;
- despite the absence of any compelling evidence, any temporal urgency, or any relevant criminal history of Mr. Assange;
- and despite the requirement of anonymity, discretion and confidentiality regarding the identity of both the complainants and the suspect in preliminary investigations into allegations of sexual offence.

Similarly, on 30 August 2010, after Mr. Assange finally had been questioned by superior police officer MG, who had assured him full confidentiality, his interview was immediately leaked to the mass media.

While the Swedish Ombudsman for Justice is reported to have initiated an investigation into these breaches of confidentiality and precaution, this investigation appears to have been prematurely terminated or suppressed, or its conclusions have been withheld from the public. In sum, despite the strong bias and arbitrariness displayed already by the initial actions taken by the Swedish prosecution, and despite the unnecessary and disproportionate reputational harm resulting for Mr. Assange, no disciplinary or judicial sanctions seem to have been imposed on the responsible officials, thus displaying an official attitude of complacency, if not complicity regarding serious misconduct.

- b) **Disregard for exculpatory evidence:** Since August 2010, the Swedish prosecution has maintained and proactively disseminated an unqualified “rape suspect” narrative against Mr. Assange, despite the cardinal principle of presumption of innocence, and despite the existence of contradicting and exculpatory evidence seriously questioning the credibility of that narrative, including, most notably:

- that, on 25 August 2010, after having examined the evidence, including the original statements of SW and AA, Chief prosecutor of Stockholm EF

formally closed the rape investigation against Mr. Assange, stating that “I do not think there is reason to suspect that he has committed rape” and that the “conduct alleged by SW disclosed no crime at all”;

- that the forensic examination of a condom submitted as evidence, supposedly worn and torn by Mr. Assange during sexual intercourse with AA, revealed no DNA of either Mr. Assange or AA;
- that AA’s own conduct and text messages (including tweets) after the alleged offence fail to support the prosecution’s “rape” narrative including, inter alia: that AA insisted to continue to host Mr. Assange in her one-bedroom apartment, although several other persons expressly offered alternative accommodation for him; that AA agreed to serve as his press secretary and posted enthusiastic tweets expressing how much she enjoyed his company; that AA casually informed others about Mr. Assange’s intention to engage in sexual relations with SW, whose address and contact details were known to her, but did not warn SW or anybody else about having been sexually assaulted by Mr. Assange; that AA did not intend to report any crime against Mr. Assange, but took SW to a police station where IK, a friend of hers, worked as a police officer, so that SW could enquire about the possibility of compelling Mr. Assange to take a HIV-test; and that AA publicly affirmed, in a tweet of 22 April 2013, that she had not been raped;
- that SW’s own conduct, text messages and statements after the alleged offence not only discredit the prosecution’s “rape” narrative, but are even indicative of efforts at manipulating and instrumentalizing SW for the purpose of falsely accusing Mr. Assange, including, inter alia: that according to SW’s own words in the police report, after a brief exchange with Mr. Assange about having unprotected sex, devoid of any elements of coercion, incapacitation or deceit, SW “let him continue” to have unprotected intercourse with her, but later worried that she might have contracted HIV; that SW sent text messages during and after her questioning at the police station stating that she only wanted to get Mr. Assange to take an HIV-test, that she did not want to report any criminal offence, but was pressured into doing so by the Swedish police who were “keen to get their hands on him”, and that “it was the police who made up the charges”; and that SW refused to sign her statement, suspended her questioning and left the police station as soon as she was informed that the prosecution intended to use her testimony in order to arrest Mr. Assange on suspicion of rape.

Despite strong indications that the Swedish police and prosecution deliberately manipulated and pressured SW, who had come to the police station for an entirely different purpose, into making a statement which could be used to arrest Mr. Assange on the suspicion of rape, against SW’s own will and her own interpretation of her experience, no investigation for abuse of function, coercion or false accusation seems to have been conducted, and no disciplinary or judicial sanctions imposed on the responsible officials.

c) **Proactive manipulation of evidence:** According to evidence made available to me, once the alleged rape-case involving SW had been formally closed by the Chief prosecutor of Stockholm on 25 August 2010:

- On the following day, on 26 August 2010, police officer IK, who had formally questioned SW on 20 August 2010, modified and replaced the content of SW's original statement in the police database, upon instruction of her superior officer MG and without consulting SW;
- SW's modified statement was then handed to CB, the legal counsel appointed by the State to represent AA and SW, who submitted it to a different prosecutor (MN) who, based on this modified statement, re-opened the investigation against Mr. Assange for rape of SW and expanded the alleged offence against AA to several counts of coercion and sexual molestation on 1 September 2010.

Despite strong indications of deliberate suppression and manipulation of evidence by the police, no investigation seems to have been conducted, and no disciplinary or judicial sanctions imposed on the responsible officials.

d) **Disregard for conflicts of interest:** In the context of this concerted effort towards re-opening the criminal investigation against Mr. Assange, I note with serious concern:

- that investigating police officer IK, who conducted the formal police questioning of SW, had been a personal friend of AA's already before these events;
- that SW's original statement of 20 August 2010, which constitutes a critical piece of evidence, is no longer available, but has been replaced on 26 August 2010 by the statement unilaterally modified by police officer IK upon instruction of her superior officer MG;
- that superior officer MG later also conducted the formal questioning of Mr. Assange of 30 August 2010;
- that prosecutor MN, despite requests by Mr. Assange's defence counsel, expressly refused to allow any police officer other than MG to question Mr. Assange, so that MG's reported sick leave prevented any further questioning of Mr. Assange until his departure from Sweden on 27 September 2010;
- that legal counsel CB, who represented AA and SW, was appointed by the State for the purpose of challenging Chief Prosecutor EF's decision to close the rape investigation against Mr. Assange;

- that legal counsel CB had previously served as Equality Ombudsman for the Swedish Government, and ran an attorney’s office together with TB, who had been Minister of Justice at the time when Swedish security police unlawfully kidnapped and handed over two persons to CIA-custody and subsequent torture;
- that Facebook entries made by police officer IK, who had questioned SW and modified her statement, include pictures of herself with former Minister TB and show a strong bias against Mr. Assange, describing the decision of Chief Prosecutor EF to close the rape investigation as a “scandal”, and expressing her confidence that the women’s newly appointed legal counsel, namely “our (sic!) dear, eminent and exceedingly competent CB will hopefully establish a little order!”, and that the “overrated Assange bubble (is) ready to burst”;
- that complainant AA, police officer IK, her superior MG, prosecutor MN, state-appointed legal counsel CB, and former Justice Minister TB, were all connected through the same political party and/or agenda, and that some of them were even personal friends and/or campaigning together for the upcoming elections.

Although all key persons involved in manipulating the evidence and re-opening the preliminary investigation against Mr. Assange have been connected through multiple close personal and political ties and showed a strong bias against Mr. Assange, no conflicts of interest seem to have been registered or investigated, and no decisions of recusal or other remedial measures seem to have been taken with regard to the involved officials.

e) **Disregard for the requirements of necessity and proportionality:** In November 2010, Swedish prosecutor MN decided to issue a detention order, a European Arrest Warrant, and a related Interpol “red notice” for wanted fugitives, in order for Mr. Assange to be questioned in relation to the sexual offence allegations made against him:

- although Mr. Assange had already voluntarily submitted to questioning by the Swedish police on 30 August 2010 concerning the allegations made by AA;
- although, thereafter, Mr. Assange had remained in Sweden at the disposal of the prosecution for more than three weeks but, despite repeated requests, was not questioned or otherwise allowed to respond to the allegations made by SW;
- although, prior to his departure from Sweden, Mr. Assange’s defence counsel had requested, and received, the prosecutor’s express authorization for Mr. Assange to leave the country;
- although, after his departure, Mr. Assange had proposed several dates on which he was prepared to return to Sweden for questioning;

- although Mr. Assange had also offered, alternatively, to respond to questions in London, or by phone, via video link, or in writing;
- although all of these possibilities were declined by the Swedish prosecutor for unconvincing reasons such as work-load, schedule incompatibility, sick leave of police officer MG, and legal obstacles that subsequently were acknowledged not to exist;
- although a public international arrest warrant for suspicion of rape would foreseeably exacerbate the unnecessary and disproportionate reputational damage already caused to Mr. Assange by the prosecution's previous breaches of confidentiality.

The prosecution's decision to refuse to question Mr. Assange personally while he was still in Sweden, and through readily available alternative means after his departure, but to aggressively pursue his arrest and extradition, appears to seriously violate the basic principle according to which a detention is permissible only when strictly necessary and proportionate. This was expressly confirmed by the refusal of Uppsala District Court, on 3 June 2019, to grant a new detention order and extradition request against Mr. Assange, ruling that the preliminary investigation could be completed, and that a decision of whether or not to press formal charges could be reached, by questioning Mr. Assange in London, a measure which Mr. Assange reportedly had always agreed to and repeatedly proposed to the Swedish prosecution.

- f) **Disregard for the right to information and adequate defence:** By the time the Swedish prosecution decided to order Mr. Assange's detention in absentia, almost three months had passed since the alleged offences. Despite repeated requests addressed to the prosecution by Mr. Assange's Swedish defence counsel (BH), however, the prosecution still refused to inform either of them of the precise allegations made against Mr. Assange, or to provide them with any other essential case documents, thus seriously violating Mr. Assange's right of information and obstructing his ability to prepare his defence in line with the basic principles of due process.
- g) **Disregard for the right of appeal to the European Court of Human Rights:** On 15 June 2012, one day after the British Supreme Court had dismissed Mr. Assange's challenge to the Swedish extradition request, Swedish prosecutor MN reportedly requested that Mr. Assange's time window to appeal to the European Court of Human Rights be reduced to "zero", subjecting him to immediate arrest and extradition, the only conceivable purpose of which could be to deliberately deprive Mr. Assange of his right to appeal to the Court and, thereby, of his protection from potentially irreparable harm contrary to the European Convention on Human Rights.

h) **Disregard for the Mutual Legal Assistance agreement:** From October 2010 until March 2015, Swedish prosecutor MN openly declined to question Mr. Assange through video link or in person in London, arguing that legal obstacles prevented her from doing so:

- although Mr. Assange had repeatedly proposed his availability for such questioning to the Swedish prosecution;
- although the questioning of suspects or witnesses in the United Kingdom was reportedly standard practice applied by Sweden in dozens of contemporaneous criminal investigations under the Mutual Legal Assistance agreement with the United Kingdom;
- and although the Swedish prosecutor's refusal and subsequent procrastination caused the alleged offence against complainant AA to expire under the applicable statute of limitations, thus effectively depriving AA, Mr. Assange and the general public of any opportunity to obtain the truth and justice concerning these allegations.

It was only in March 2015 that the Swedish prosecutor agreed to question Mr. Assange in the Ecuadorian Embassy, thus disproving her earlier claims of legal obstacles, when it became clear that her continued refusal to do so would cause the Swedish Supreme Court to lift the detention order due to considerations of proportionality. Once the arrest warrant had been upheld by the Swedish Supreme Court by reference to the prosecutor's efforts of obtaining authorization to question Mr. Assange in London, however, the process was further delayed by apparent procrastination and obstruction on the part of both the Swedish and the Ecuadorian authorities, so that Mr. Assange's long-awaited questioning finally could take place only in late November 2016, more than six years after the alleged offences. As the relevant decisions of both the Swedish Supreme Court (2015) and Uppsala District Court (2019) confirm, the Swedish prosecution's inflexible insistence on Mr. Assange's extradition, instead of pursuing readily available alternative possibilities of completing its preliminary investigation, was neither required by Swedish law, nor compatible with the general due process requirement of proportionality and, therefore, raises serious doubts as to the good faith motivation of the Swedish prosecution.

i) **Complacency or complicity with third-party interference:** Given that the Swedish investigation against Mr. Assange has no material, territorial or personal link to the United Kingdom or the United States, I am particularly concerned at the following correspondence, which suggest Swedish complacency, or even complicity, with third-party interference on the part of the British Crown Prosecution Service (CPS) and, potentially, the US Federal Bureau of Investigation (FBI):

- In January 2011, the British Crown Prosecution Service (CPS) asserted in emails to the Swedish prosecutor: *"Please do not think that the case is being*

dealt with as just another extradition request” and “it would not be prudent for the Swedish authorities to try to interview the defendant in the UK”.

- On 15 August 2012, in an unprecedented move triggering worldwide protest, the British Foreign Secretary sent a *note verbal* to the Ecuadorian Government warning that, if Ecuador were to offer asylum to Mr. Assange, the United Kingdom might raid the Embassy premises in order to carry out his arrest, and stating that: *"We very much hope not to get to this point"*.
- On 31 August 2012, in reference to a news article suggesting that Sweden was considering to close the investigation against Mr. Assange, the British CPS sent an email to the Swedish prosecutor urging her: *"Don't you dare get cold feet!!"*
- On 18 October 2013, referring to the possibility that Sweden may be obliged to "lift the detention order (...) and to withdraw the European arrest warrant", the Swedish prosecutor wrote to the British CPS: *"This would affect not only us but you too in a significant way"* and, subsequently, *"I am sorry that this came as a (bad) surprise. It is certainly OK for you to take your time to think this over. (...) I hope I didn't ruin your weekend."*
- On 29 November 2013, apparently referring to a news article of the previous day entitled "US ready to 'drop' plans to prosecute Julian Assange", the British CPS wrote to the Swedish prosecutor: *"I have absolutely no idea (...) what discussions or negotiations may have been going on. I most certainly have not been involved in any of them. I am not sure to what extent you are aware of this apparent (US) development (...)."*
- On 12 July 2012, the British CPS received an email from the Swedish deputy prosecutor, assuring that she and the prosecutor filed all emails related to Mr. Assange *"in special folders, not available to or traceable for anybody but ourselves"*.
- In a press conference of 19 May 2017, the Swedish prosecutor confirmed that she and her deputy had received an email from an FBI officer concerning the case of Mr. Assange, but claimed that all copies of this email had been deleted and that no one remembered the name of the sender nor the precise request made in that correspondence.

While this correspondence raises more questions than it answers, its tone and content does suggest that the British CPS had strong interests, independently from those pursued by the Swedish prosecution, in discouraging Mr. Assange's questioning in London, but also in preventing the envisaged closure of the investigation and withdrawal of the arrest warrant by Sweden – an option which the Swedish prosecutor poignantly described as a "bad surprise" not for Sweden, but for the United Kingdom, which the British CPS would need think through carefully .

j) **Refusal to guarantee non-refoulement:** Throughout nine years of preliminary investigation against Mr. Assange, Sweden has consistently declined to provide him with assurances that, in the event of an extradition request by the United States, he would not be surrendered to the United States in violation of Art. 3 of the CAT and Art. 7 of the CCPR:

- despite widespread international practice, particularly in extradition cases, of requesting and giving diplomatic assurances with regard to respect for human rights, including the prohibition of direct or indirect non-refoulement in case of a forthcoming extradition request by a third State;
- although the peremptory prohibition of refoulement towards the risk of torture and ill-treatment takes precedence over any obligation or restriction that may arise under national law, or under any existing extradition treaty or other international arrangement;
- and although Mr. Assange had a credible fear of extrajudicial onward extradition by Sweden to the United States, particularly given Sweden's history of arbitrarily handing over persons to CIA custody and subsequent torture (*Agiza v. Sweden*, CAT/C/34/D/233/2003, and *Alzery v. Sweden*, CCPR/C/88/D/1416/2005).

In this context, I would note that, in a letter dated 10 April 2019, the British authorities declined to engage in a dialogue with my mandate regarding a potential US extradition request for Mr. Assange, stating "that it would not be appropriate for officials to speculate on hypothetical scenarios". The following day, on 11 April 2019, Mr. Assange was expelled from the Ecuadorian Embassy and arrested by the British police, triggering the immediate disclosure of a US extradition request which clearly had been planned, prepared, and coordinated well in advance and was based on a secret Grand Jury indictment dated 6 March 2018.

While your Excellency's Government claims that "any discussion about an extradition of Mr. Assange to a third state is therefore strictly hypothetical", both general international diplomatic practice in high-profile extradition cases and information made available to me concerning the case of Mr. Assange suggest that preliminary exchanges between Sweden and the United States regarding a potential extradition request would already have taken place, thus rendering the envisaged scenario anything but hypothetical.

k) **Pervasive procedural procrastination:** More generally, I observe with serious concern that:

- between 2010 and 2019, the preliminary investigation conducted against Mr. Assange in Sweden has been opened by one prosecutor, closed by another, re-opened and then closed again by a third, only to be re-opened by a

fourth, without any decisive procedural progress being achieved for almost a decade;

- in the course of more than nine years of “preliminary” investigation, Mr. Assange has been questioned twice, numerous statements from complainants and witnesses have been collected, and several DNA-analyses have been carried out, but the prosecutor is still unable to produce sufficient evidence to press formal charges;
- in July 2019, one year before the final expiry of the applicable 10-year statute of limitation for the only remaining allegation against Mr. Assange, the Swedish prosecution claimed that its preliminary investigation still was not sufficiently advanced to allow the questioning of Mr. Assange;
- since 2010, the Swedish prosecution appears to do everything to maintain the unqualified “rape suspect” narrative it has been disseminating, while at the same time avoiding to expose the evidentiary merits of this narrative to transparency and independent public scrutiny.

Overall, the continued procrastination on the part of the Swedish prosecution, which has already caused the expiry of AA’s allegations in August 2015, is now increasingly likely to also cause SW’s allegations to expire under the applicable 10-year statute of limitations, thus foreseeably depriving not only Mr. Assange, but also AA and SW, as well as the general public of any opportunity to establish the truth regarding these allegations and to ensure accountability, justice and redress. It is clear that, in this scenario, the reputational harm to Mr. Assange would be irreversible.

4. Sweden’s disagreements with UN Human Rights Mechanisms

I further note that your Excellency’s Government disagrees both with the findings of the UN Working Group on Arbitrary Detention (WGAD) of 4 December 2015 that Mr. Assange was subject to arbitrary confinement in the Ecuadorian Embassy, and with my mandate’s finding that Sweden is internationally responsible for exposing Mr. Assange to psychological torture or other cruel, inhuman or degrading treatment or punishment. While I appreciate that your Excellency’s Government may have its own appreciation on some of the relevant legal underpinnings, Sweden’s repeated reluctance to adequately address serious concerns expressed by the relevant UN human rights mechanisms, to alleviate unacceptable human rights impacts of its policies and practices, and to take legally required measures of investigation, prosecution, redress and rehabilitation, does not reflect positively on the credibility of Sweden’s commitment to human rights, and has the potential of weakening the effectiveness of the UN human rights system as a whole.

In this context, I would like to reiterate that Sweden has a documented history of extra-judicially surrendering persons to US custody and subsequent torture, and of granting impunity to its responsible officials in breach of the principle of mandatory

criminal investigation under both international and national law (*Agiza v. Sweden*, CAT/C/34/D/233/2003, and *Alzery v. Sweden*, CCPR/C/88/D/1416/2005). I also recall that, already in the *Agiza* case, Sweden was found to have failed to disclose relevant information and, to cooperate fully with the UN Committee against Torture as required under the CAT (§ 13.10). Moreover, Sweden consistently refused to provide Mr. Assange with assurances against his potential onward extradition to the United States in violation of Art. 7 ICCPR and Art. 3 CAT. Against this background, exacerbated by the pervasive arbitrariness with which the criminal investigation against him was conducted by the Swedish prosecution, Mr. Assange had a credible fear that, once extradited to Sweden, he would be transferred to the United States without due regard to universally recognized principles of due process and non-refoulement.

As is well known, as soon as Mr. Assange was arrested by the British police on 11. April 2019, the United States immediately issued a request for his extradition, which indicates that the US authorities were well aware of, and prepared for, the impending arrest. This illustrates that, irrespective of whether or not Sweden has already received a formal US extradition request, it was reasonable for Mr. Assange to expect that such a request would be issued immediately if ever he were to come under Swedish jurisdiction. Given these circumstances, it cannot be claimed in good faith that Mr. Assange's confinement in the Ecuadorian Embassy was "voluntary" and that he was "free to leave at any time", nor that it was necessary and proportionate for a lawful purpose. I therefore concur with the WGAD's opinion that Mr. Assange's confinement in the Ecuadorian Embassy amounted to arbitrary deprivation of liberty.

5. Arbitrary detention and torture

While arbitrary deprivation of liberty does not necessarily amount to torture or other cruel, inhuman or degrading treatment or punishment, there is an undeniable link between both prohibitions. In conjunction, the arbitrary character of detention, its protracted and/or indefinite duration, the refusal to provide information, the denial of basic procedural rights and the increasingly intrusive, invasive and oppressive conditions of detention due to constant surveillance and harassment, can cumulatively inflict serious psychological harm which may well amount to torture or other ill-treatment (CCPR/C/116/D/2233/2013). Thus, even factors that may not necessarily amount to torture or ill-treatment when applied as an isolated measure and for a very limited period of time, such as unjustified detention, delayed access to procedural rights or moderate physical discomfort, can cross the relevant threshold if applied cumulatively and/or for a prolonged or open-ended period of time. The longer a situation of arbitrary detention and inadequate conditions 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 ill-treatment has been breached (A/HRC/37/50, §§25-27). In the present case, a thorough medical examination according to the Istanbul Protocol showed that this threshold has clearly been reached and that, after a prolonged exposure to a combination of arbitrary confinement and unrestrained public mobbing, Mr. Assange showed all the symptoms typical for psychological torture. Overall, there appears to have been a deliberate, sustained and concerted effort by the

United States, Sweden, the United Kingdom and, more recently, Ecuador, with a view to isolating, demonizing, harassing and, ultimately, silencing Mr. Assange.

6. International responsibility of Sweden

The medical, factual and circumstantial evidence at my disposal shows that the manner in which Sweden conducted its preliminary investigation against Mr. Assange, including the unrestrained and unqualified dissemination and perpetuation of the “rape-suspect” narrative, was the primary factor that triggered, enabled and encouraged the subsequent campaign of sustained and concerted public mobbing and judicial persecution against Mr. Assange in various countries, the cumulative effects of which can only be described as psychological torture. In my assessment, without the arbitrariness of the Swedish investigation, Mr. Assange most likely would not have been exposed to abuse and defamation amounting to torture or other cruel, inhuman or degrading treatment or punishment.

This mandate has consistently taken the position that the prohibition of torture and other ill-treatment is not territorially limited (A/70/303, para 65-66) and that its applicability does not depend on physical custody, but on the ability of a State to inflict pain, suffering or humiliation meeting the definitional requirements of articles 1 or 16 of the CAT (A/72/178, para 33-36). Moreover, the obligation to take effective preventative measures under articles 2 and 16 CAT is not limited to potential victims within the State’s jurisdiction, but “clearly encompasses action taken by States in their own jurisdictions to prevent torture or other ill-treatment extraterritorially” (A/70/303, §33). Thus, irrespective of geographical location of Mr. Assange, Sweden has a legal obligation to prevent, prosecute and punish acts of torture and ill-treatment against him caused from within Swedish jurisdiction, including mere “attempts”, “complicity” and “participation” (Art. 4(1) CAT).

There is compelling evidence that Swedish officials have actively and knowingly contributed to the psychological torture or other cruel, inhuman or degrading treatment or punishment inflicted on Mr. Assange, whether through direct perpetration, or through complicity or participation, any of which is sufficient to trigger Sweden’s international obligation to investigate, prosecute, and provide redress and rehabilitation under the CAT and the CCPR.

Moreover, by knowingly creating, sustaining, disregarding and refusing to alleviate a situation inflicting severe suffering on Mr. Assange, Sweden’s international responsibility can also be based on “aid and assistance” given to one or more of the other States involved in the persecution and torture of Mr. Assange (Art. 16 ILC ARSIWA), and on other forms of joint responsibility (Art. 47 ILC ARSIWA). Finally, given that the prohibition of torture and the related principle of non-refoulement are of peremptory character, both take precedence over any other right or duty Sweden may have under international or national law.

7. Duty to investigate, prosecute and punish

Under Arts. 4 and 12 of the CAT, States are obliged to criminalize any act of torture, including any form of attempt, complicity and participation, and to conduct a prompt and impartial investigation wherever there is reasonable ground to believe that such an act has been committed within or from their jurisdiction. In addition, the responsibility of superior officials, whether for direct instigation or encouragement of torture or ill-treatment or for consent or acquiescence therein, must be fully investigated through competent, independent and impartial judicial authorities (CAT GC2, para 26).

Depending on the outcome of such investigation, States are obliged to prosecute and punish violations and to provide redress and rehabilitation (Arts. 5-9 and 13-14 CAT). These obligations, which can also be derived from Arts 2 and 7 CCPR, must be exercised and interpreted in line with the universally recognized principles of *pacta sunt servanda* and of good faith, in accordance with the ordinary meaning to be given to the terms of the Convention in their context and in the light of its object and purpose, namely to “make more effective the struggle against torture and other cruel, inhuman or degrading treatment or punishment throughout the world” (Preamble CAT; Art. 26 and 31 VCLT). I therefore note with satisfaction the express commitment of your Excellency’s Government to the “principle of mandatory criminal investigation” in Swedish law, “which means that a criminal investigation must be initiated as soon as there is cause to believe that an offence has been committed”.

As detailed in my letter of 28 May 2019, during my visit to Mr. Assange on 9 May 2019, a thorough forensic and psychiatric examination conducted in line with the “Istanbul Protocol” showed a clear pattern of symptoms typical for persons having been exposed to psychological torture for a prolonged period of time. Based on a detailed evaluation of the available evidence, I found that the arbitrary manner in which Sweden conducted and communicated its criminal investigation against Mr. Assange has contributed decisively to producing the observed medical effects symptomatic of psychological torture.

These findings by the undersigned mandate holder and two independent medical experts experienced and specialized in the examination of torture victims unquestionably provide “reasonable ground to believe” that Swedish officials have decisively contributed to Mr. Assange’s psychological torture. **Swedish authorities therefore do not have the discretion to simply refute these findings, but have a clear and unequivocal treaty obligation to conduct a prompt and impartial investigation into these allegations and, in case of violations, to prosecute and punish the perpetrators, and to provide redress and rehabilitation to Mr. Assange.**

In conclusion, therefore, I call on your Excellency’s Government, in line with its treaty obligations under the CAT, the CCPR and the ECHR, to conduct a prompt and impartial investigation with a view to providing a detailed and conclusive response to the queries detailed in my letter of 28 May 2019 as restated and complemented below:

1. Please provide **any additional information and any comment** you may have on the above-mentioned allegations and considerations.
2. **Please explain, point by point and in detail, the compatibility of each of the acts and omissions of the Swedish authorities described in Section 3 above, and of the overall impact of the Swedish investigation on the rights and reputation of Mr. Assange**, with Sweden's international human rights obligations, in particular with the presumption of innocence and with the principles of legality, impartiality, necessity, proportionality, efficacy and good faith, all of which are intrinsic due process requirements indispensable to justice and the rule of law;
3. 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 my mandate's assessment of the psychological torture and other cruel, inhuman or degrading treatment or punishment inflicted upon Mr. Assange**, which resulted from acts or omissions occurring in or from the jurisdiction of Sweden. If no such measures have been taken, please explain how this is compatible with the human rights obligations of Sweden.
4. 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 Sweden. If no such measures have been taken, please explain how this is compatible with the human rights obligations of Sweden.
5. 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 Sweden, 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 Sweden.

Should Mr. Assange come under Swedish jurisdiction for any reason, I urge your Excellency's Government to **refrain from expelling, extraditing or otherwise surrendering Mr. Assange to the United States or any other jurisdiction**, until his right to asylum under refugee law or subsidiary protection under international human rights law has been determined in a transparent and impartial proceeding granting all due process and fair trial guarantees, including the right to appeal to any relevant international judicial or non-judicial mechanism. Finally, I urge all relevant Swedish authorities to cease disseminating, without delay, any news or information prejudicial to Mr. Assange's

dignity and integrity, and to his rights to a fair and impartial proceeding in line with the highest standards of human rights law.

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.

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.

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

While I do not wish to prejudge the accuracy of the information received, I would like to draw the attention of your Excellency's Government to the relevant international norm and standards that are applicable to the issues brought forth by the situation described above.

The absolute and non derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment has been codified in articles 2 and 16 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), as well as in article 7 of the International Covenant on Civil and Political Rights (ICCPR), which Sweden has ratified on 8 January 1986 and 6 December 1971 respectively.

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"; and that, "[f]or the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights".

This absolute prohibition against refoulement in the CAT is stronger and strengthens the same prohibition in **refugee law**, meaning that persons may not be returned even when they may not otherwise qualify for refugee or asylum status under Article 33 of the 1951 Refugee Convention or domestic law. Accordingly, non-refoulement under the CAT must be assessed independently of refugee or asylee status determinations, so as to ensure that the fundamental right to be free from torture or other ill-treatment is respected even in cases where non-refoulement under refugee law may be circumscribed.

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."

I would also like to draw the attention of your Excellency's Government to **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, stresses the importance of effective legal and procedural safeguards in this regard, and recognizes that **diplomatic assurances**, where given, do not release States from their obligations under international human rights, humanitarian and refugee law, in particular the principle of non-refoulement."

Furthermore, **paragraph 7d of Human Rights Council Resolution 16/23** (2011) urges States “(n)ot 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, [...]”