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.

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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).

P**aragraph 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

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

PALAIS DES NATIONS • 1211 GENEVA 10, SWITZERLAND

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

THE PERMANENT MISSION
OF THE
UNITED STATES OF AMERICA
TO THE
UNITED NATIONS AND OTHER INTERNATIONAL ORGANIZATIONS
IN GENEVA

July 16, 2019

Nils Melzer

Special Rapporteur on torture

And other cruel, inhuman or degrading treatment or punishment

Human Rights Council

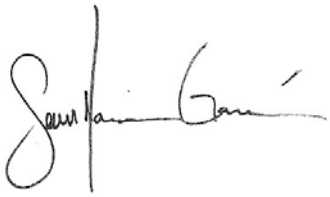
Geneva, Switzerland

Dear Mr. Melzer:

Thank you for your letter dated May 28, 2019, in which you express concerns regarding the treatment of Julian Assange. While your letter contains numerous assertions relating to alleged conduct by the United States, the United Kingdom, Sweden, and Ecuador with respect to Mr. Assange, this communication addresses only those assertions concerning the United States.

Please find enclosed a U.S. response to your letter.

Sincerely,



Sean M. Garcia

Acting Human Rights Counselor

SUBJECT: U.S. Response Regarding Possible Extradition of Julian Assange

As a preliminary matter, the United States notes that your characterization of Mr. Assange's self-imposed time in the Ecuadorian Embassy in London as "prolonged arbitrary confinement" is fundamentally wrong. Mr. Assange voluntarily stayed in the Embassy to avoid facing lawful criminal charges pending against him. As such, his time in the Embassy did not constitute confinement and was in no way arbitrary.

Further, the United States does not accept the assertion on page eight of your letter that the United States bears international responsibility for "patterns of cruel, inhuman or degrading treatment or punishment" and "psychological torture" of Mr. Assange. Mr. Assange is not, and never has been, in the custody of the United States, nor has the United States instigated, consented to, or acquiesced in the alleged torture or cruel, inhuman or degrading treatment or punishment of Mr. Assange. The assertion to the contrary in your letter appears to rest on the allegation that there has been "sustained and unrestrained public mobbing, intimidation and defamation" of Mr. Assange in the United States. The letter refers to alleged public statements by, among others, the mass media, influential private individuals, current and former political figures, and senior government officials, and suggests that the United States was obligated to publicly disapprove or prevent such statements. The United States rejects the proposition that the types of public statements listed in your letter constitute cruel, inhuman or degrading treatment or punishment, much less torture, as defined by the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). Further, the United States is deeply concerned by the suggestion that independent reporting or other commentary and discourse on public figures could amount to torture or cruel, inhuman or degrading treatment or punishment. Such a position by the Special Rapporteur has dangerous implications for freedom of expression, democracy, and the rule of law. The United States also rejects the suggestion that it has an obligation to suppress protected speech in order to uphold its obligations under the CAT and notes in this regard its firm commitment to freedom of expression, including for members of the media, consistent with the U.S. Constitution and the United States' obligations under international human rights law. Finally, and contrary to the allegations in your letter, the U.S. legal system provides redress for individuals who wish to assert claims of defamation.

In addition, the United States categorically rejects the claims in your letter that the United States will torture or otherwise mistreat Mr. Assange if he is extradited to the United States to face criminal prosecution. The United States takes its obligations under international human rights law very seriously. Individuals extradited to the United States are afforded due process under U.S. law and fair trial guarantees; U.S. law protects individuals in the U.S. justice system from torture and cruel, inhuman or degrading treatment or punishment, including through protections under the Fifth, Eighth, and Fourteenth Amendments to the U.S. Constitution. It is inarguable that our system of law is consistent with our obligations under international human rights law.

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

REFERENCE:
AL USA 17/2019

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 (USA 14/2019) on the case of Mr. Julian Assange, I would like to thank your Excellency's Government for the response dated 16 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 the United States' 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 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. Risks of torture or ill-treatment arising in US jurisdiction

I note that your Excellency's Government disagrees with my assessment that, in the event of an extradition to the United States, Mr. Assange would be exposed to a real risk of torture or other cruel, inhuman or degrading treatment or punishment. While US law may be formally consistent with the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment, in practice, successive US Governments have proven to be either unable or unwilling to ensure the full and effective implementation of this prohibition as required, inter alia, under the Convention against Torture of 1984, the Covenant of Civil and Political Rights of 1966, the Geneva Conventions of 1949, and customary international law.

As detailed in my letter of 28 May 2019, my mandate has received consistent and reliable information confirming the routine use by US detaining authorities of cruel, inhuman or degrading practices incompatible with the prohibition of torture and ill-treatment, particularly against national security defendants or convicts held under a maximum-security regime, such as would presumably be applied to Mr. Assange. Moreover, with the exception of a number of officials having acted *ultra vires*, the United States Government has shown a pervasive reluctance to prosecute US officials on any level of the civilian, military and political hierarchy for planning, instigating, perpetrating, consenting to, or acquiescing in acts of torture and other cruel, inhuman or degrading treatment or punishment, including prima facie war crimes, in contravention to its obligation to investigate and prosecute such abuse under, inter alia, the Convention against Torture of 1984, the Covenant of Civil and Political Rights of 1966, the Geneva Conventions of 1949, and customary international law.

As stated by the Committee against Torture, it "is a matter of urgency that each State party should closely monitor its officials and those acting on its behalf and should identify and report to the Committee any incidents of torture or ill-treatment as a consequence of anti-terrorism measures, among others, and the measures taken to investigate, punish, and prevent further torture or ill-treatment in the future, with particular attention to the legal responsibility of both the direct perpetrators and officials in the chain of command, whether by acts of instigation, consent or acquiescence"(CAT/C/GC/2, para 7). In this context, it should be recalled that no

exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, nor an order from a superior officer or a public authority may be invoked as a justification of torture (art. 2(2) and (3) CAT; CAT/C/GC/2, para 26). Further, under universally recognized customary international law, individual criminal responsibility also arises where military commanders or other superiors, including political leaders, fail to prevent, suppress or prosecute international crimes, although they know or should have known that such crimes have been, are being or are about to be committed by subordinates under their effective control.

Despite compelling evidence provided by the 2014 Senate Committee Report and numerous other reliable sources, the United States Government reportedly has not only failed to hold its officials to account for acts of torture and ill-treatment, but has also threatened other States, as well as officials of the International Criminal Court with criminal, financial and other sanctions in the event of any investigation being initiated into war crimes and crimes against humanity involving US officials. Moreover, the US Government has consistently prosecuted and imposed harsh sanctions on whistleblowers exposing serious international crimes committed by its officials, including torture and ill-treatment, in stark contradiction to basic rule of law principles such as justice and equality before the law. In sum, except for isolated cases of officials having acted *ultra vires*, the US Government today has an established track record of granting and systematically enforcing impunity for serious international crimes perpetrated by its officials, including torture and other cruel, inhuman or degrading treatment or punishment. As a result, assurances given by your Excellency's Government as to the effectiveness of due process guarantees and human rights protections afforded by the US legal and justice system lack the credibility and reliability that would be required to render Mr. Assange's extradition to the United States permissible under international law.

As this mandate has consistently observed, where there are substantial grounds for believing that a person would be in danger of being subjected to treatment, procedures, conditions or sanctions amounting to torture or other cruel, inhuman or degrading treatment or punishment, diplomatic assurances have proven to be incapable of providing the protection required under the peremptory principle of non-refoulement (A/HRC/37/50, para. 48; A/70/303, para. 69). The prohibition of refoulement towards the risk of torture or ill-treatment under Art. 3 CAT and Art. 7 CCPR is absolute and non-derogable and, therefore, applies irrespective of "the nature of the activities in which the person engaged" (CAT/C/18/D/34/1995, para 9.8) and even "irrespective of whether the individual concerned has committed crimes and the seriousness of those crimes" (CAT/C/22/D/104/1998, para 6.4).

3. WGAD finding of arbitrary detention

I also note that your Excellency's Government disagrees with the finding of the United Nations Working Group on Arbitrary Detention (WGAD) of 4 December 2015 that Mr. Assange's confinement at the Ecuadorian Embassy amounted to arbitrary deprivation of liberty, and that the US Government is of the view, instead, that

Mr. Assange "voluntarily stayed in the Embassy to avoid facing lawful criminal charges pending against him".

First, I would point out that, for the entire duration of Mr. Assange's confinement in the Ecuadorian Embassy, there have been no serious "criminal charges pending against him", except that, by seeking - and receiving - political asylum at the Ecuadorian Embassy, Mr. Assange was unable to comply with the bail conditions imposed by a British Court. As far as the alleged sexual offences in Sweden are concerned, I would observe that the Swedish prosecution has now been conducting its "preliminary" investigation into this matter for more than 9 years, has questioned Mr. Assange twice, has collected numerous statements from complainants and witnesses, and has carried out several DNA-analyses, but so far has been unable to produce evidence sufficient to press formal charges against Mr. Assange. Between 2010 and 2019, this preliminary investigation has been opened by one prosecutor, closed by another, re-opened and then again closed by a third, only to be re-opened by a fourth prosecutor, without any decisive procedural progress being achieved for almost a decade. On the contrary, the evidence produced, the surrounding circumstances, and the manner in which the investigation was conducted have proven to be highly controversial, if not exculpatory. Overall, it is difficult to escape the impression that, in this case, the Swedish prosecution has been deliberately misusing the "rape-suspect" narrative as a pretext to undermine Mr. Assange's credibility and reputation and, possibly, to facilitate his indirect refoulement from the United Kingdom to the United States. Finally, as far as the lawfulness of the US charges against Mr. Assange is concerned, I note that seventeen of the eighteen currently known charges relate to "obtaining", "receiving" and "disclosure" of national defense information by a non-US publisher without any duty of allegiance or contractual obligation towards the United States, all of which presumably would be protected under the human right to freedom of opinion and expression. The only remaining charge against Mr. Assange relates to a minor and completely inconsequential offence involving his alleged – unsuccessful - attempt to help breaking a computer password, which did not aim at gaining access to unauthorized information or cause any damage or harm but, if successful, might have helped his source to cover her tracks. In sum, I would reiterate that, for the entire duration of Mr. Assange's confinement at the Ecuadorian Embassy, no serious criminal charges were pending against him, and that the only conceivable reason for him to refuse to leave the Embassy was that he had a credible fear of being exposed to serious violations of his human rights in case of his extradition to the United States.

Second, whether a particular situation of confinement qualifies as "deprivation of liberty" for the purposes of human rights law depends not only on whether the concerned person has a *de jure* "right" to leave, but also on whether they are *de facto* able to exercise this right without exposing themselves to serious harm. As detailed previously, I am convinced that, in the event of an extradition to the United States, Mr. Assange would face a real risk of serious violations of his human rights, including the prohibition of torture and other cruel, inhuman or degrading treatment or punishment. Moreover, as demonstrated by the events of 11 April 2019, Mr. Assange was right to assume that, if ever he were to leave the Ecuadorian Embassy, the United States would immediately

request his extradition, either directly from the United Kingdom or indirectly via Sweden. Given that both the United Kingdom and Sweden have had a history of cooperating with US-sponsored arbitrary detention and torture, given also the arbitrary manner in which the Swedish criminal investigation against Mr. Assange has been conducted and, moreover, given Sweden's express refusal to provide assurances against his onward extradition to the United States, Mr. Assange had no reason to be confident that Sweden or the United Kingdom would afford him a fair and impartial judicial proceeding in relation to a US extradition request and, in particular, that either country would respect the peremptory prohibition of refoulement (Art. 3 CAT and Art. 7 CCPR). Mr. Assange's concerns have been proven right by the fact that the British criminal and extradition proceedings conducted against him since his arrest on 11 April 2019 have been marked by numerous serious violations of his right to a fair trial including, most notably, documented conflicts of interest and overt bias on the part of involved judicial magistrates, a disturbingly disproportionate sanction for his bail violation and, most importantly, the consistent obstruction of Mr. Assange's access to legal counsel and legal documents commensurate with the complexity of the relevant proceedings, thus effectively rendering him unable to prepare his defence. Under these circumstances, Mr. Assange was justified in assuming that he could not leave the Ecuadorian Embassy without simultaneously exposing himself to a real risk of serious and irreparable harm through refoulement to the United States. Therefore, Mr. Assange's confinement in the Ecuadorian Embassy was neither "voluntary", nor necessary and proportionate for a lawful purpose but, as accurately stated by the WGAD, amounted to a situation of arbitrary deprivation of liberty in violation of Art. 9 CCPR.

Third, 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 deprivation of liberty and inadequate conditions of detention 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.

4. "Public mobbing" as torture or other cruel, inhuman or degrading treatment

I further note that your Excellency's Government disagrees with my finding that, in the United States, there has been an ongoing campaign of "sustained and unrestrained public mobbing, intimidation and defamation" of Mr. Assange, that "the types of public statements listed in (my) letter constitute cruel, inhuman or degrading treatment or punishment, much less torture" and "that the United States was obligated to publicly disapprove or prevent such statements", a proposition which is considered to have "dangerous implications for freedom of expression, democracy and the rule of law".

While I fully agree that freedom of expression is an essential human right that should not be unduly restricted, it cannot be "interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms" recognized in the CCPR, including the prohibition of torture and other cruel, inhuman or degrading treatment or punishment (articles 5(1) and 7 CCPR). According to Article 19 CCPR, the exercise of the right to freedom of expression carries with it special duties and responsibilities and may therefore be subjected to certain restrictions, most notably when necessary for the "respect of the rights or reputations of others". Clearly therefore, it cannot be permissible to refer to the right to freedom of expression in order to justify extreme forms of public expression that deliberately inflict pain, suffering or humiliation amounting to psychological torture or other cruel, inhuman or degrading treatment, a risk which is particularly relevant where the targeted person or group is isolated, vulnerable and defenseless. Indeed, even in the extreme circumstances of armed conflict, the duty of "humane treatment" under international humanitarian law requires that both civilians and combatants in the power of the enemy be protected against "intimidation and against insults and public curiosity" (Articles 13(2) of the Third Geneva Convention and article 27 of the Fourth Geneva Convention of 1949).

I presume that your Excellency's Government bases its own understanding of psychological torture on 18 U.S. Code §2340, which defines "severe mental pain or suffering" as the "prolonged mental harm caused by or resulting from", inter alia, "the intentional infliction or threatened infliction of severe physical pain or suffering" or "the threat of imminent death", and requires that victim be in the "custody or physical control" of the perpetrator. I would point out, however, that this definition is under-inclusive compared to the requirements of Art. 1 CAT. In particular, the definition of torture in Art. 1 CAT requires neither custody or physical control, nor the threat or infliction of physical pain or suffering, or the threat of imminent death. In these decisive aspects, US national law clearly falls short of the definitional requirements of the CAT, thus excluding widespread methods of torture, such as sensory deprivation, mental manipulation and destabilization, isolation, humiliation, and threats relating to the infliction of severe mental and emotional suffering.

From the perspective of human rights law, public insults, ridicule and humiliation may be tolerated as mere "mudslinging" in the context of a political debate, but can easily

turn into “mobbing” or “bullying” when deliberately targeting an isolated, vulnerable and defenseless person or group, and may even amount to “persecution”, particularly when State officials get involved. Especially when combined with serious threats and intimidation, the prolonged exposure to mobbing or persecution can have grave, irreversible and even life-threatening psychological and physical consequences. Even though the methods used may often seem insignificant when considered in isolation, their relentless repetition and accumulation against an isolated and powerless person or group can inflict severe mental and emotional suffering and, ultimately, lead to medical crises including total exhaustion, disorientation, and even nervous collapse or cardiovascular failure. Therefore, the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment requires States not only to abstain from exposing powerless individuals to unjustified intimidation, insults and humiliation, including threats of unlawful violence, but also to take effective preventative measures with a view to protecting their privacy and human dignity (Articles 2 and 16 CAT and Articles 2 and 7 CCPR; CAT/C/GC/2, §18).

5. International responsibility of the United States

Last but not least, I note that your Excellency’s Government further disagrees with my assessment as to the United States’ international responsibility for the observed patterns of psychological torture and other cruel, inhuman or degrading treatment or punishment, notably because “Mr. Assange is not, and never has been, in the custody of the United States, nor has the United States instigated, consented to, or acquiesced in the alleged torture or cruel, inhuman or degrading treatment or punishment of Mr. Assange”.

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 in line with the plain text of Art. 1 and 16 of the CAT, that its applicability does not depend on custody or physical control, but on the ability of a State to inflict pain, suffering or humiliation meeting the definitional requirements of these provisions (A/72/178, para 33-36). In practice, a finding of torture requires the “powerlessness” of the victim (i.e. inability to resist or escape the infliction of severe pain or suffering), whereas a finding of other cruel, inhuman or degrading treatment or punishment does not. Given that Mr. Assange was demonstrably unable to resist or escape his arbitrary, progressively severe isolation, surveillance and harassment inside the Ecuadorian Embassy, and his relentless exposure to public mobbing, insults and intimidation from the outside world, I am of the view that, at least from March 2018, he was in a continuous state of “powerlessness” and that his exposure to the combination of these factors, cumulatively and over a prolonged period of time, produced the observed medical symptoms typical for psychological torture.

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 the geographical location of Mr. Assange, the United States has a legal obligation to prevent, prosecute and punish any contribution to acts of torture and ill-treatment against him

emanating from persons under US jurisdiction, including mere "attempts", "complicity" and "participation" (Art. 4(1) CAT). Further, where a State knows or has reasonable grounds to believe that private actors perpetrate or contribute to acts of torture or other cruel, inhuman or degrading treatment, but fails to exercise due diligence to prevent such abuse, it incurs international legal responsibility through consent, acquiescence (CAT/C/GC/2, para. 7 and 18; A/70/303, para 70).

Accordingly, there are three different possibilities for the United States to acquire international responsibility for acts of torture or other cruel, inhuman or degrading treatment or punishment against Mr. Assange, namely: (a) through the direct legal attribution to the United States of torture and ill-treatment that has been perpetrated, or contributed to, by its officials or agents, including through mere attempt, complicity, or participation; (b) through failure of US authorities to comply with their related positive obligations, most notably to prevent, prosecute and redress torture and ill-treatment perpetrated by officials and private persons under US jurisdiction or control; and (c) through the indirect involvement of the United States in torture and ill-treatment attributable to other States of non-state actors, most notably through aid and assistance, direction and control, or coercion (ILC Arts 16-18 ARSIWA).

I am seriously concerned at the apparent failure of US authorities to take any measure for the protection of Mr. Assange's integrity, to discourage the escalating campaign of public mobbing, and to prevent at least the most extreme forms of "hate speech" incompatible with human dignity, including incitement to violence, and repeated calls for Mr. Assange's assassination or murder, all of which have decisively contributed to produce the observed medical symptoms of psychological torture.

6. Duty to investigate, prosecute and punish

Under Arts. 4 and 12 of the CAT, States are obliged to criminalize acts of torture, including any form of attempt, complicity or 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).

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. Moreover, due to the specific circumstances of Mr. Assange's case, the primary causes for these symptoms could be identified and assigned with a high degree of certainty and included, inter alia, Mr. Assange's prolonged exposure to sustained and unrestrained public mobbing, intimidation and defamation, including by persons and institutions acting from within the jurisdiction of the United States.

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 officials and private persons under US jurisdiction have proactively contributed to Mr. Assange's psychological torture. US 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 and the CCPR, 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:

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 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 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.

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

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 the government of your Excellency has ratified on 21 October 1994 and 8 June 1992 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, […]."