

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

REFERENCE:
UA GBR 6/2019

29 October 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.

I would like to thank Your Excellency's Government for its response dated 7 October 2019 to my communication sent on 27 May 2019 (GBR 3/2019) on the situation of Mr. Julian Assange. I have taken due note of the views expressed by Your Excellency's Government. I note however that they do not address my serious concerns with regard to the implementation, in this case, of the United Kingdom's international legal obligations in relation to the prohibition against torture and other cruel, inhuman or degrading treatment or punishment.

By way of the present letter, I reiterate queries, which I deem have been left without a satisfactory response. I also provide additional observations and clarifications, and express my grave concerns based on new information received concerning the current evolution of this case.

1. Cooperation with the Special Rapporteur

In terms of cooperation with my mandate, Human Rights Council resolution 34/19 urges Governments, inter alia:

- To cooperate fully with and to assist the Special Rapporteur in the performance of his or her tasks, to supply all necessary information requested by him or her and to fully and expeditiously respond to his or her urgent appeals (...);
- To respond favorably to the Special Rapporteur's requests to visit their countries, and to enter into a constructive dialogue with the Special Rapporteur on requested visits to their countries;
- To ensure proper follow-up to the recommendations and conclusions of the Special Rapporteur;
- To adopt a victim-centered and gender-sensitive approach in the fight against torture and other cruel, inhuman or degrading treatment or punishment, paying special attention to the views and needs of victims in policy development and

other activities relating to rehabilitation, prevention and accountability for torture and other cruel, inhuman or degrading treatment or punishment.

In this regard, I reiterate my thanks Your Excellency's Government for authorizing and facilitating my visit on 9 May 2019 to Mr. Julian Assange in the high-security facility HMP Belmarsh, as well as for the related meetings held with relevant UK authorities in London on 10 May 2019. I was able to carry out my visit in line with applicable terms of reference. The response of Your Excellency's Government to my resulting communication of 27 May 2019, however, has been disappointing.

The observations made and concerns expressed in my letter were based on a four-hour visit to Mr. Assange, which included a thorough physical and psychiatric examination in line with specialized professional and 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.

On this consolidated basis, my communication of 27 May 2019 expressed serious concerns, provided detailed explanations and made specific recommendations. Additionally, it formally requested further information from Your Excellency's Government as to: (a) the measures taken to safeguard Mr. Assange's human rights and dignity; (b) the investigative, preventative, and restorative measures taken or foreseen in this case; and (c) how these measures or the lack thereof are compatible with the international human rights obligations of the United Kingdom.

Despite significant efforts made by my mandate to ensure a prompt and objective assessment of this case, and despite the urgency of my requests, it took more than four months for Your Excellency's Government to respond. Moreover, the Government's response failed to address any of my recommendations and to provide any of the information requested, and made no effort towards engaging in a constructive dialogue with my mandate.

I deeply regret that, in interacting with my mandate on the follow-up of this case, Your Excellency's Government has not demonstrated the expeditiousness, diligence and cooperation expected by the Human Rights Council.

2. Duty to investigate, prosecute and redress

I note that Your Excellency's Government "rejects any allegation that Julian Assange has been subjected to torture in any form as a result of actions by the UK Government". I also note the Government's assertion that it "does not participate in, solicit, encourage or condone the use of torture for any purpose". Unfortunately,

however, the conduct of Your Excellency's Government in the present case severely undermines the credibility of the UK's commitment to the prohibition of torture and ill-treatment, as well as to the rule of law more generally.

Under applicable international law, the United Kingdom is obliged to criminalize acts of torture, including any form of attempt, complicity or participation in such acts (Art. 4 CAT), and to conduct prompt and impartial investigations, wherever there is reasonable ground to believe that an act of torture has been committed by perpetrators under its jurisdiction (Art. 12 CAT). It bears emphasizing that this includes not only acts of torture carried out by British officials themselves, but also any form of attempt, complicity and participation on the part of British officials in acts of torture or ill-treatment perpetrated by others (Art. 4 (1) CAT). The United Kingdom's legal obligation to prevent, investigate, prosecute, punish and redress acts of torture and ill-treatment does not depend on the victim being within the physical custody or territorial jurisdiction of the United Kingdom, but equally applies where there is reasonable ground to believe that British officials aided, assisted, participated in, or otherwise contributed to extra-jurisdictional acts of torture or ill-treatment (A/70/303).

Furthermore, not only the responsibility of officials at the operating level, but also the responsibility of superior officials and the political leadership must be fully investigated by competent, independent and impartial judicial authorities (CAT/GC2, para 26). Where investigations show that criminal conduct has occurred, the United Kingdom is legally obliged to prosecute and punish the perpetrators and to provide redress and rehabilitation to the victims (Arts. 5-9 and 13-14 CAT).

These obligations can also be derived, most notably, from Arts 2 and 7 CCPR, and Art. 3 ECHR. They must be exercised and interpreted in line with the universally recognized principles of *pacta sunt servanda* and of good faith (Art. 26 and 31 VCLT). Where a State fails to take effective measures of prevention, investigation, prosecution and redress, although it knows or has reasonable grounds to believe that its officials have perpetrated, instigated, participated in, or otherwise contributed to acts of torture or ill-treatment, including through consent and acquiescence, it incurs international legal responsibility for such acts.

As detailed in my communication of 27 May 2019, during my visit to Mr. Assange, a thorough forensic and psychiatric examination conducted in line with the "Istanbul Protocol" documented a clear pattern of symptoms typical for persons having been exposed to psychological torture for a prolonged period of time. Based on a careful evaluation of the available evidence, I found that the UK had contributed decisively to producing the observed medical symptoms, most notably through its participation, over the course of almost a decade, in Mr. Assange's arbitrary confinement, his judicial persecution, as well as his sustained and unrestrained public mobbing, intimidation and defamation.

The official findings of my mandate, supported by two experienced medical experts specialized in the examination of torture victims, unquestionably provide “reasonable ground to believe” that British officials have contributed to Mr. Assange’s psychological torture or ill-treatment, whether through perpetration, or through attempt, complicity or other forms of participation. Under Art. 12 of the Convention against Torture, British authorities do not have the political discretion to simply reject these findings, but have a clear and non-derogable treaty obligation to conduct a prompt and impartial investigation into these allegations and, if confirmed, to prosecute the perpetrators and provide redress and rehabilitation to Mr. Assange.

I am gravely concerned that Your Excellency’s Government seems to ignore its international obligations in this case. This reinforces my concerns expressed in a separate communication about the UK Government’s recent refusal to conduct a judicial inquiry into British involvement in the US torture and rendition programme (AL GBR 4/2019 of 19 August 2019) and, in conjunction with this refusal, gives the impression of a broader policy of impunity, which would be incompatible with the UK’s legal obligations and would seriously undermine the credibility of its commitment to human rights and the rule of law.

3. Arbitrary detention amounting to torture or ill-treatment at the Ecuadorian Embassy

I also note with serious concern that Your Excellency’s Government continues to reject the findings and recommendations of the UN Working Group on Arbitrary Detention (WGAD) of 4 December 2015, namely that it “does not accept that Mr. Assange was ever arbitrarily detained”, and claims that “he was free to leave the Ecuadorean Embassy at any time”.

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 violations of their human rights. In my assessment, there are substantial grounds for believing that, in the event of an extradition to the United States, and regardless of any assurances that may be provided by the United States, Mr. Assange would be in danger of being subjected to serious violations of his human rights including, most notably, his right to a fair trial, his right not to be arbitrarily detained, and his right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment. As demonstrated by the events surrounding his arrest on 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.

Given the recent history of both the United Kingdom and Sweden of cooperating with US-sponsored extraordinary rendition, arbitrary detention and torture; given also the

de facto impunity granted by both Governments to officials involved in such policies and practices; and given the gross arbitrariness of the Swedish “preliminary” investigation pursued against him for almost a decade with the substantial involvement of the UK, Mr. Assange had no reason to trust that either country would afford him a fair and impartial judicial proceeding in relation to a US extradition request and, in particular, that they would respect the peremptory prohibition of refoulement (Art. 3 CAT and Art. 7 CCPR).

On this background, and knowing that a secret grand jury in the US was examining the possibility of criminal charges against him, and that the UK had repeatedly stated that he would be arrested as soon as he entered British jurisdiction, Mr. Assange had serious reasons to believe that he could not leave the Ecuadorian Embassy without simultaneously exposing himself to the risk of serious violations of his human rights. It therefore cannot be claimed in good faith that Mr. Assange’s was “free to leave the Ecuadorian Embassy at any time”. Rather, as accurately stated by the WGAD, his confinement at the Ecuadorian Embassy amounted to a situation of arbitrary deprivation of liberty on the part of both the UK and Sweden.

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 based on the Istanbul Protocol showed that this threshold has clearly been crossed and that, after a prolonged exposure to a combination of arbitrary confinement, judicial persecution, and unrestrained public mobbing, Mr. Assange showed all the symptoms typical for psychological torture.

4. Continued arbitrary detention and due process violations amounting to torture and ill-treatment in the United Kingdom

I further note that, according to Your Excellency's Government, "Mr. Assange has been convicted under English law of failing to surrender to custody following due legal process"; that "Judges in the UK are completely impartial and independent from Government" and "hear cases based on the evidence presented and in accordance with the law". Moreover, Your Excellency's Government states that "Mr. Assange was legally represented", and "chose not to give or call evidence on his behalf" and, moreover, "did not appeal his conviction and has withdrawn his appeal against his sentence".

I do not deem it necessary, for the purposes of the present letter, to engage in a detailed analysis of English law, or to lay out the entire procedural history of Mr. Assange's judicial persecution in all involved jurisdictions. While the practical implementation of procedural rights allows for, and requires, a reasonable margin of judicial interpretation, no objective observer can escape the conclusion that Mr. Assange's due process rights have been seriously, consistently and deliberately violated in every phase of each judicial proceeding conducted against him in all involved jurisdictions. As far as the Governments of the United States, Ecuador and Sweden are concerned, my relevant concerns have been described at length in my separate communications to these Governments (UA USA 14/2019, UA SWE 2/2019 and UA ECU 10/2019 of 28 May 2019; AL USA 17/2019 and AL SWE 4/2019 of 12 September 2019; AL ECU 15/2019 of 2 October 2019).

As far as the UK is concerned, the most consequential violations of Mr. Assange's due process rights have included, inter alia: (a) the Crown Prosecution Service's sustained and proactive obstruction of Mr. Assange's rights in the Swedish proceedings from 2010 to 2017 as set out in my earlier communications UA GBR 3/2019 of 27 May 2019, UA SWE 2/2019 of 28 May 2019, and AL SWE 4/2019 of 12 September 2019; (b) documented conflicts of interest and repeated expressions of overt bias on the part of judicial magistrates in the course of the UK's criminal and extradition proceedings since 11 April 2019; (c) Mr. Assange's arbitrary conviction and grossly disproportionate imprisonment for having violated UK bail by seeking, and receiving (sic!), diplomatic asylum from political persecution by another UN Member State; and (d) what appears to be a deliberate, systematic and completely unwarranted obstruction of Mr. Assange's access to legal counsel, documents, and other facilities commensurate with the complexity and requirements of the relevant proceedings, thus effectively depriving him of his most basic right to an adequate defense.

The persistent recurrence of these due process violations in all involved jurisdictions has seriously undermined Mr. Assange's confidence in the independence and impartiality of the judicial proceedings conducted against him, and has exposed him to progressively severe anxiety, stress and helplessness which, with the passage of time, has clearly reached the threshold of psychological torture or other cruel, inhuman or degrading treatment.

It must be emphasized that it is the responsibility of the British State, and not of Mr. Assange or his defense counsel, to ensure that legal proceedings will be conducted in good faith, by independent and impartial judicial magistrates, and in full compliance with domestic and international law. The State's duty to ensure due process protects an inherent public interest of systemic importance. Therefore, its effective enforcement cannot be left to the defendant's discretion, or delegated to defense counsel, but must be proactively and consistently guaranteed by the State. In practice, a defendant's decision, in their own best interest, not to give or call evidence, not to appeal a particular decision, to withdraw such an appeal, or not to object to instances of political corruption and other official misconduct may be rooted in a wide range of personal, procedural, tactical, economic and other considerations not necessarily focusing on the rule of law. The prohibition of torture is universally recognized to be of absolute, non-derogable and even peremptory character. Therefore, grave and persistent due process violations amounting to torture or other cruel, inhuman or degrading treatment or punishment cannot under any circumstance be vindicated by the mere fact that the defendant has not availed himself of a legal remedy or other procedural measure which theoretically would have been at his disposal.

In exercising their due process obligations, State 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, crucially, 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 future revelation of further relevant information, I am of the considered opinion that recurring and serious violations of Mr. Assange's due process rights by UK authorities have rendered both his criminal conviction and sentencing for bail violation and the US extradition proceedings inherently arbitrary, to the point even of rendering any legal remedies a pointless formality devoid of prospect. The resulting anxiety, stress and hopelessness have significantly contributed to, and are currently the primary cause for, Mr. Assange's continued exposure to severe mental and emotional suffering which, in light of the circumstances, clearly amounts to psychological torture or other cruel, inhuman or degrading treatment or punishment.

5. Recent information regarding the continued deterioration of Mr. Assange's physical and mental health

As correctly predicted by the medical experts accompanying my visit on 9 May 2019, Mr. Assange's health subsequently deteriorated rapidly to the point where, on or around 18 May 2019, he had to be transferred to the health care unit of HMP Belmarsh and, on 30 May 2019, was temporarily unable to participate in an extradition hearing.

According to reliable information made available to me, since his transfer to the health care unit, Mr. Assange's state of health has further deteriorated and has recently entered a down-ward spiral which may well put his life in danger. Although Mr. Assange has served his sentence for bail violation and is now detained exclusively in relation to the US extradition request pending against him, he is reportedly held under oppressive conditions of isolation involving at least 22 hours per day in a single occupancy cell at the prison's health care unit. His isolation is only interrupted by daily walks of 45 minutes, church services, as well as meetings with his lawyers and social visits. He is not allowed to socialize with other inmates and, when circulating in the prison, corridors are cleared and all other inmates locked in their cells. Contrary to assurances given to me by the prison administration during my visit, and contrary to the general population of the prison, Mr. Assange reportedly still is not allowed to work or to go to the gym, where he could socialize with other inmates. Moreover, Mr. Assange's correspondence and contacts with visitors reportedly remain under close surveillance. Despite the obvious inappropriateness of such harsh and discriminatory treatment for a non-violent inmate held solely in relation to a pending extradition procedure, no adequate explanations appear to be given by the prison administration, and no alternative measures, such as house arrest, or his re-integration in the general population, seem to be envisaged.

Based on the information made available to me, the detention regime currently imposed on Mr. Assange appears to be unnecessary, disproportionate, and discriminatory and to perpetuate his exposure to psychological torture or other cruel, inhuman or degrading treatment or punishment. I am very concerned that, if the UK does not take urgent remedial measures to alleviate Mr. Assange's situation, his health may soon reach a critical stage, including the risk of death.

6. Recommendations and further inquiries

Given that, in my assessment, the current treatment and conditions of detention imposed on Mr. Assange expose him to prolonged and progressively severe suffering, which amounts to psychological torture or other cruel, inhuman or degrading treatment or punishment, and may well provoke an imminent danger to his life; given also that, in my assessment, Mr. Assange's extradition to the United States would expose him to a real risk of serious violations of his human rights, including torture or other cruel, inhuman or degrading treatment or punishment, I respectfully reiterate my urgent appeal to Your

Excellency's Government to take prompt and effective measures to alleviating his conditions of detention, stabilizing his health and safeguarding his human rights and dignity in the long-term. In particular,

- I strongly recommend that Your Excellency's Government retract the authorization for his extradition to the United States given by the preceding Government and proceed to releasing him from prison without further delay;
- Should this prove not to be possible, I strongly recommend that Your Excellency's Government find an alternative setting for Mr. Assange, which does not involve his imprisonment, such as house arrest in an open environment allowing him to regain his health and resume a normal social and professional life, and to adequately prepare for any judicial or administrative proceeding which may be pending against him.

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 herewith reiterate and extend the inquiries transmitted to Your Excellency's Government on 27 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, medical examinations, and judicial or other inquiries which may have been carried out, or which are foreseen, in relation to the allegations of psychological torture and other cruel, inhuman or degrading treatment or punishment, and the serious health concerns. If no such measures have been taken, please explain how this is compatible with the human rights obligations of the United Kingdom.
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. If no such measures have been taken, please explain how this is compatible with the human rights obligations of the United Kingdom.
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, 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 Kingdom.

5. Please provide detailed information about the conditions of detention of Mr. Assange including the reasons for his continued detention in the medical wing of the prison; the evolution of his health since his incarceration and the medical attention he is receiving; the reasons for the detention regime imposed upon him in terms of isolation and social contacts within the prison; and the detailed facilities afforded to him to adequately prepare his defense. In each case, please explain how the approach taken by the Your Excellency's Government is compatible with the human rights obligations of the United Kingdom.

Should Your Excellency's Government deem it to be useful, I remain at your disposal to conduct a second independent visit to Mr. Assange at his place of detention, together with the same two medical experts who accompanied my first visit, and to meet with relevant authorities with a view to clarifying any outstanding questions and finding an acceptable solution to this case.

In view of the urgency of the matter, I would welcome a prompt response to this communication. 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. My public expression of concern will indicate that I have been in contact with Your Excellency's Government 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