

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

REFERENCE:
AL ECU 15/2019

2 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.

In reference to my communications sent on 18 April 2019 (ECU 5/2019) and 28 May (ECU 10/2019) on the case of Mr. Julian Assange, I would like to thank your Excellency's Government for its responses of 18 June 2019 and 26 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 Ecuador's obligations in relation to the prohibition against torture and other cruel, inhuman or degrading treatment or punishment. By way of the present letter, I therefore would like to provide the following additional observations, clarifications, and to reiterate my queries to the extent I deem them to have been left without satisfactory response.

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

I note the view of your Excellency's Government that the questions raised in my communications of 18 April 2019 (ECU 5/2019) and 28 May 2019 (ECU 10/2019) lack a clear connection with my mandate, as determined by Human Rights Council resolution 34/19. The text of resolution 34/19 expressly requests the mandate holder, *inter alia*, "to seek, receive, examine and act on information (...) regarding issues and alleged cases concerning torture or other cruel, inhuman or degrading treatment or punishment". In the light of this unambiguous provision, I would make the following observations:

The case of Mr. Assange 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 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. Where these principles have already been violated, my aim is to identify the factors which may have contributed to these violations and to recommend measures of investigation, redress and rehabilitation to be taken by the responsible States.

- 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.

All of the observations and queries transmitted to your Excellency's Government in my communications of 18 April 2019 (ECU 5/2019) and 28 May 2109 (ECU 10/2019) relate directly to one or several of these areas of concern.

- a) On 5 April 2019, I issued an urgent public statement expressing alarm at reports that Mr. Assange might be expelled imminently from the Embassy of Ecuador in London and announced my intent to personally investigate the case. I further clarified that, in my assessment, if Mr. Assange were to be expelled from the Embassy of Ecuador, he would likely be arrested by British authorities and extradited to the United States, which could expose him to a real risk of serious violations of his human rights, including the prohibition of torture and other cruel, inhuman or degrading treatment or punishment. I therefore urged your Excellency's Government to abstain from expelling Mr. Assange from its Embassy in London, or from otherwise terminating or suspending his political asylum until such time as the full protection of his human rights can be guaranteed.

- b) In the same statement, I announced that I intended to submit a formal request to the Governments of Ecuador and of the United Kingdom to visit Mr. Assange, and to meet with the relevant authorities of both States in order to assess his condition and the risks he faced in light of the universal and absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment. These letters were sent on 8 April 2019 and requested authorization for a visit to Mr. Assange in the Ecuadorian Embassy on 25 April 2019.
- c) My public statement of 5 April 2019 concluded by recalling that any extradition without due process safeguards, including an individual risk assessment and adequate protection measures violates international law, and that the international legal prohibition of ‘refoulement’ towards the risk of torture or ill-treatment is absolute, regardless of considerations of national security, political expediency or any other similar consideration.
- d) Following Mr. Assange’s arrest on 11 April 2019, my communication of 18 April 2019 (ECU 5/2019) to Your Excellency’s Government expressed serious concern at the decision to revoke Mr. Assange’s asylum status and suspend his Ecuadorian citizenship, both without any form of due process of law and to invite British police to enter its Embassy in order to arrest Mr. Assange and to forcibly transfer him to British jurisdiction. This was particularly alarming given that it was foreseeable that Mr. Assange would face potential onward extradition to the United States and, thereby, a risk of serious violations to his human rights, including torture or other cruel, inhuman or degrading treatment or punishment. I underscore that this was precisely the risk which since 2012 had been the justification for Ecuador to provide Mr. Assange with asylum.
- e) After my visit to Mr. Assange in prison on 9 May 2019, my communication of 28 May 2019 (ECU 10/2019) expressed serious concern at his state of health, which showed a pattern of symptoms typically found in persons having been exposed to psychological torture, and detailed the primary factors which appeared to have caused these symptoms, including the treatment and conditions Mr. Assange had been exposed to during his presence at the Ecuadorian Embassy, particularly since March 2018.

In sum, without any doubt, the observations made and the questions raised in my public interventions and formal communications to your Excellency’s Government are directly related to my mandate as defined in Human Rights Council resolution 34/19.

Ecuador’s failure to cooperate with the Special Rapporteur

I also note the view of your Excellency’s Government that my official communications, including my appeal of 5 April 2019 to refrain from terminating Mr. Assange’s asylum, are not binding on Ecuador. In this context, I would recall that

Human Rights Council resolution 34/19 urges States, inter alia:

- a) 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 (...);
- b) To respond favourably 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;
- c) To ensure (...) that no authority or official orders, applies, permits or tolerates any sanction, reprisal, intimidation or other prejudice against any person, group or association, including persons deprived of their liberty, for contacting, seeking to contact or having been in contact with the Special Rapporteur (...);
- d) To ensure proper follow-up to the recommendations and conclusions of the Special Rapporteur;
- e) 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 (...).

I note in this regard that on three occasions since its creation in 2006, from 2007 to 2009, 2011-2013 and a third time from 2016 to 2018 Ecuador was elected as a member of the United Nations Human Rights Council, and that the Council expects member States, and particular its members, to show exemplary conduct and full cooperation with the Council and the OHCHR.

Given that your Excellency's Government has not provided any credible evidence for the existence, on 11 April 2019, of a medical urgency, imminent security threat, or other temporal necessity for the termination of Mr. Assange's asylum, which had been in place since 2012, and given the very serious risks to Mr. Assange's human rights in the event of his extradition to the United States, it does not appear convincing and plausible that it should have been impossible or unreasonable for your Excellency's Government to allow my mandate to conduct an on-site visit to Mr. Assange before expelling him from the Embassy.

Arbitrary confinement of Mr. Assange

I also note the view of your Excellency's Government that Ecuador never forcibly detained Mr. Assange but that, until 11 April 2019, he remained voluntarily at the Ecuadorian Embassy and was free to leave the premises at any time.

I wish to underline that I have never suggested that Ecuador was responsible for preventing Mr. Assange from leaving the Embassy or for otherwise depriving him of his liberty. On the contrary, I highly commend the decision of your Excellency's Government, on 16 August 2012, to grant Mr. Assange asylum and, thereby, to protect him from arrest and subsequent extradition to the United States. In maintaining Mr. Assange's asylum for more than six years, despite considerable inconveniences, costs and international pressure, despite the failure of the United Kingdom and Sweden to grant Mr. Assange safe passage, and despite initial threats by the United Kingdom to forcibly intrude into the Embassy to arrest Mr. Assange, your Excellency's Government demonstrated a courageous and laudable commitment to fundamental principles of international law, including the universal prohibition of torture and other cruel, inhuman or degrading treatment or punishment, and the related principle of non-refoulement.

At the same time, I endorse the finding of the UN 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 on the part of Sweden and the United Kingdom. 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 persons have 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, including serious violations of their human rights. In this respect, the British authorities had made it clear that, should Mr. Assange leave the Embassy, he would be immediately arrested and detained for having violated bail in 2012. This would expose him to the likely risk of being extradited to the USA.

As detailed in my communication of 28 May 2019, I assessed 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 torture or 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. Given that both the United Kingdom and Sweden have a documented history of cooperating with US-sponsored extra-ordinary rendition, arbitrary detention and torture; given also the grossly 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 either 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 reflected in Art. 3 of CAT and Art. 2 and 7 of the ICCPR.

Indeed, since his arrest by the British police on 11 April 2019, Mr. Assange's concerns have been proven right by repeated and continuous violations of his fair trial rights in the British criminal and extradition proceedings conducted against him. This includes, most notably, documented conflicts of interest and overt expression of bias on the part of involved judicial magistrates, a disturbingly disproportionate sanction for his bail violation seven years earlier and, most importantly, the pervasive obstruction of Mr. Assange's right to access to legal counsel and legal documents commensurate with the complexity of the relevant proceedings, thus effectively rendering him unable to properly prepare his defence. Thus, Mr. Assange had been justified in assuming that he could not leave the Ecuadorian Embassy without simultaneously exposing himself to arbitrary judicial proceedings followed by refoulement to the United States. In conclusion, 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 arbitrary deprivation of liberty by Sweden and the United Kingdom, in violation of Art. 9 CCPR.

For the same reasons, assurances given by the United Kingdom to your Excellency's Government that Mr. Assange would not be extradited to a country where he could face the death penalty or torture or ill-treatment, lack the credibility and reliability that would be required to render Mr. Assange's expulsion to the United Kingdom permissible under international law. As this mandate has consistently observed, diplomatic assurances have proven to be incapable of providing the protection required under the peremptory principle of non-refoulement, where there are substantial grounds for believing that, in fact, 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, or of being extradited onward towards such a risk (A/HRC/37/50, para. 48; A/70/303, para. 69).

Treatment and conditions of confinement at the Embassy

I further note the rejection by your Excellency's Government of my findings that, at least from March 2018, the treatment and conditions of confinement which Mr. Assange was subjected to at the Ecuadorian Embassy amounted to psychological torture or other cruel, inhuman or degrading treatment. While it is not the purpose of my mandate to engage in a detailed and comprehensive exercise of fact-finding on each allegation and counter-allegation received, I deem it appropriate to offer the following observations on the substantive responses provided by your Excellency's Government.

a) Special Protocol

I note that your Excellency's Government rejects allegations that Mr. Assange's living conditions at the Embassy were deliberately made difficult and oppressive, with the aim of forcing him to either leave the Embassy voluntarily or to provoke a health condition that would justify his involuntary transfer to a hospital under British jurisdiction, thus triggering his arrest. Instead, your Excellency's Government asserts that

it adapted the facilities, procedures and security devices of the Embassy in order to guarantee, in the best possible way, the safety, well-being and integrity not only of the diplomatic personnel, but also of Mr. Assange and his visitors. According to your Excellency's Government, since 2012, various instructions were issued for that purpose, including, most recently, the "Special Protocol of Visits, Communications and Medical Attention for Mr. Julian Paul Assange" of 16 October 2018 ("Special Protocol").

In essence, the provisions of the "Special Protocol" regulate issues such as visits, communications, medical care, hygiene and the distribution of costs for services used by Mr. Assange. While the procedure to be followed for the authorization of visitors, as well as the amount of information required on their employment situation, their electronic equipment and the purpose of their visit appears to be excessively detailed and needlessly laborious, the protocol does not, in itself, appear to impose restrictions that must be regarded as cruel, inhuman or degrading. However, the "Special Protocol" stresses that failure by Mr. Assange to comply with any of its provisions, including those dealing with issues of mere housekeeping and hygiene, may result in the termination of his diplomatic asylum "in accordance with relevant international instruments".

While I appreciate that the long-term accommodation of Mr. Assange at the Ecuadorian Embassy required the establishment of basic rules regulating his coexistence with the diplomatic staff, I must recall that the prohibition of refolement towards a real risk of torture or ill-treatment is of absolute and non-derogable character, so that there can be no exception or justification for its violation under any circumstances, regardless of the considerations outlined in the "Special Protocol". Further, the prohibition of refolement applies even where, formally, the termination of diplomatic asylum would be authorized under other applicable international instruments. Accordingly, while on 12 March 2019, the Inter-American Commission on Human Rights declined to grant the precautionary measures requested by Mr. Assange to mitigate the "Special Protocol", arguing that the requirements of gravity, urgency and irreparable harm were not met, the Commission did remind Ecuador of its international legal obligation, *erga omnes*, not to deport, return, expel, extradite or otherwise remove Mr. Assange from its jurisdiction to an unsafe third State, where there were reasonable grounds to believe that he may be in danger of being exposed to torture, cruel, inhuman or degrading treatment. The prohibition of torture being of peremptory character, any contradicting provisions of international or national law, including in the "Special Protocol", must be regarded not only as unlawful, but as juridically invalid *ab initio*.

b) Living space

According to the information at my disposal, for most of Mr. Assange's presence at the Embassy, two (not three) rooms were used by him and his staff exclusively and privately, namely an office and a small bedroom with a shower, whereas the toilet, the kitchen and some other spaces were shared with the Embassy staff. I take note of the assurances of your Excellency's Government, further detailed in its responses of 18 June and 28 July 2019 to two communications submitted by the Special Rapporteur on the right to privacy on 18 April 2019 (AL ECU 6/2019) and 9 May 2019 (AL ECU 9/2019),

that the rooms allocated exclusively to Mr. Assange were not equipped with security cameras or any other surveillance devices. Given the circumstances and the options available to the Embassy, this allocation of living space does not, in itself, appear to impose restrictions that could be regarded as cruel, inhuman or degrading. However, according to several first-hand sources, in the course of 2018, a cubicle was built from one-way glass inside the Embassy, which allowed security personnel to physically observe Mr. Assange whenever he moved from one room to another, or to the kitchen, shower or restroom, without Mr. Assange being able to see the guards. Given that this installation was located inside the Embassy, which was already monitored by security cameras and accessible only to diplomatic staff, authorized visitors and Mr. Assange, the use of one-way glass reportedly created an oppressive atmosphere in addition to the 24/7 video and audio surveillance he reportedly was exposed to in the Embassy.

c) Frequency and surveillance of visits

According to your Excellency's Government, apart from the formalities prescribed in the "Special Protocol", no restrictions were imposed on visits to Mr. Assange by lawyers, medical doctors, professional contacts, and private visitors. Thus, in 162 days between November 2018 and 11 April 2019, Mr. Assange is claimed to have received a total of 109 visits, of which 33 were legal visits and 5 medical visits. In addition, a number of "frequent visitors", such as the personal assistant of Mr. Assange, reportedly were allowed to visit him daily during office hours. In my view, this frequency of visits, if corroborated, does not, in itself, appear to impose restrictions that could be regarded as cruel, inhuman or degrading. However, information made available to me suggests that, in the preceding period between 28 March and 31 October 2018, access to social visits had been much more severely restricted, with only a total of 6 visits (other than food delivery, medical, therapeutic, and legal visits) being authorized, which would amount to approximately one social visit per month. I note that the response of your Excellency's Government does not include any statistics regarding this period and does not suggest the existence of particular circumstances requiring such severe restrictions of Mr. Assange's access to social visits.

Moreover, contrary to what your Excellency's Government seems to suggest, I have received consistent and credible reports indicating that, at least from 28 March 2018, Mr. Assange was not allowed to receive visits in his private rooms. Instead, all visits, whether by lawyers, friends, professional contacts, or doctors, including medical examinations, reportedly took place in the Embassy's meeting room, which was equipped with at least three cameras with listening devices.

Mr. Assange's attempts to hold meetings in his private rooms were reportedly prevented by security guards. In 2018, the security cameras were reportedly replaced with high-resolution cameras capable of making legible recordings of documents and audio recordings of conversations, and Mr. Assange was not allowed to use radio or other devices to ensure the privacy of his exchanges with his visitors. Indeed, I note with grave concern that several recordings of Mr. Assange's meetings with private visitors, lawyers

and medical doctors are publicly available and have been reported on in the mass media, thus indicating that such meetings were indeed systematically recorded.

In February 2019, in a serious breach of the doctor-patient confidentiality, the entire medical examination of Mr. Assange by an independent doctor was reportedly monitored by cameras. Moreover, the doctor's confidential medical notes were removed from the meeting room, when she temporarily stepped out, and were later found in a space used by embassy's surveillance staff, where they may have been read and copied. In order to reduce the risk of being overheard, Mr. Assange and his visitors reportedly sought to speak over the noise of a radio to cover their voices. The video and audio surveillance similarly applied to his contacts with his lawyers, thus violating the privileged client-attorney relationship and undermining Mr. Assange's future right to an adequate defence. Extortionists in Spain reportedly even tried to blackmail Wikileaks, demanding the payment of a ransom in return for non-disclosure of hundreds of materials obtained inside the embassy, including images of confidential legal notes from Julian Assange's lawyers, but also of his private life, and allegedly even content of a sexual nature. While it remains to be clarified how the extortionists obtained these recordings, it is clear that they were originally made by security companies contracted by the Government of Ecuador with the technological infrastructure installed throughout the Embassy with its consent and support of the Ecuadorian authorities. In sum, therefore, the existence and public dissemination of such recordings and imagery is a strong indicator that Mr. Assange was, indeed, subject to constant and excessively intrusive surveillance by the Ecuadorian authorities. According to the Special Rapporteur on the right to privacy, the reported pattern of increasingly invasive and prolonged surveillance amounts to a serious violation of the right to privacy (AL ECU 6/2019 and AL ECU 9/2019). Moreover, from the perspective of the prohibition of torture and ill-treatment, in the long run, excessively intrusive surveillance is likely to inflict severe psychological and emotional suffering, such as chronic anxiety and clinical paranoia.

d) Access to the internet and communication

I note that your Excellency's Government acknowledges to have suspended Mr. Assange's internet access, after he had allegedly "interfered in the internal affairs of other States". According to reliable information made available to me, the Ecuadorian Ambassador is said to have informed Mr. Assange that, from 28 March 2018 onwards, he would no longer be authorized to receive social visitors, to access the internet, to use telephones, or to speak publicly. The Embassy then reportedly installed signal jammers preventing Mr. Assange from having any telephone or internet communication with the outside world, imposing a period of isolation which lasted from 28 March 2018 until the implementation of the "Special Protocol" in November 2018. These measures were allegedly taken without any court order or any other form of due process of law, and prevented Mr. Assange from communicating even with family, lawyers or doctors.

Your Excellency's Government suspects that, despite the restrictions imposed on him, Mr. Assange secretly had access to means of communications of his own. Without expressing views as to whether this suspicion is well-founded, I fail to see its legal

relevance for the issues under review. While your Excellency's Government may have a legitimate interest in preventing its Embassy from being used to "interfere with the internal affairs of other States", this neither requires nor justifies the virtually total suppression of electronic and phone communication allegedly imposed on Mr. Assange who, as a recognized diplomatic asylee, continued to benefit from the full spectrum of his human rights. These unnecessary and disproportionate restrictions on Mr. Assange's communications, in conjunction with the almost complete prevention of social visits during a period of more than seven months, his excessively intrusive surveillance, and the constant threat of being expelled from the Embassy and extradited to the United States, exposed him to progressively severe isolation, anxiety, vulnerability and abandonment which, with the passage of time, unquestionably reached the threshold of cruel, inhuman or degrading treatment or even torture.

e) Defamation and harassment

I note the rejection by your Excellency's Government of any suggestion that Mr. Assange was deliberately exposed to harassment and defamation on the part of the Ecuadorian authorities. Instead, your Excellency's Government claims to have taken significant measures in order to ensure the protection of Mr. Assange's health.

To the extent that Mr. Assange's physical ailments resulted from the objective impossibility of providing the requisite medical facilities inside the Embassy, there is no reason to assume any responsibility on the part of the Ecuadorian authorities. I would stress, however, that some of the physical ailments observed during my visit, most notably certain neurological symptoms, as well as the serious psychological sequelae shown by Mr. Assange during our medical examination, resulted from a cumulative pattern of cruel, inhuman or degrading treatment to which your Excellency's Government appears to have contributed decisively, particularly from March 2018. Most notably, various high-level representatives of Ecuador's political leadership, including several Ministers, the Vice-President and even the President himself, have publicly accused Mr. Assange of a wide variety of wrongdoings, ranging from hacking and privacy violations to deliberate political destabilization of States, and from falsifying documents to spreading insults, neglecting personal hygiene and even smearing feces on the Embassy walls. I note with serious concern the frequency and highly publicized manner in which such statements were made at the highest level of State leadership, often in conjunction with strongly debasing language, without any credible evidence being offered in support of these allegations. In my view, the systematic dissemination, since early 2018, by the Ecuadorian political leadership of an unsubstantiated, strongly debasing narrative about Mr. Assange, in an apparent attempt to pre-emptively justify his subsequent expulsion from the Embassy, constitutes a serious and continued attack on Mr. Assange's human dignity and at a minimum, amounts to "degrading treatment" within the meaning of Art. 16 CAT and Art. 7 ICCPR.

In sum, it is my considered opinion that, at least from March 2018, the following primary factors, arising under the responsibility of the Ecuadorian authorities, cumulatively and continuously inflicted severe mental and emotional suffering on

Mr. Assange, thus producing the medical symptoms typically found in victims of psychological torture:

- the systematic, unsubstantiated defamation of Mr. Assange by the Ecuadorian authorities;
- the arbitrary imposition of a regime of near isolation from 28 March to 31 October 2018;
- the needlessly bureaucratic regime introduced by the “Special Protocol” of 16 October 2018,
- the systematic surveillance of all visits, including by lawyers and medical doctors, and of substantial parts of his private life;
- the leaking and public dissemination of video footage and images showing episodes of Mr. Assange’s private life;
- the constant threat of being unlawfully expelled, arrested and extradited to the United States after arbitrary judicial proceedings in the United Kingdom or Sweden.

Ecuador’s decision to terminate Mr. Assange’s asylum

I note the view of your Excellency’s Government that Mr. Assange was not “expelled” from the Embassy, but that the decision of President Moreno to terminate Mr. Assange’s diplomatic asylum on 11 April 2019 was a legitimate and sovereign act of State, which had been taken in line with both national and international law.

Without at this stage conducting a more detailed analysis of the national law of Ecuador, I would point out that, with regard to the right to asylum, the national Constitution provides that *“(t)he rights to asylum and sanctuary are recognized, in accordance with the law and international human rights instruments. Persons who have been granted asylum or sanctuary shall benefit from special protection guaranteeing the full exercise of their rights. The State shall respect and guarantee the principle of non-return, in addition to humanitarian and legal emergency assistance” (article 41)*. Moreover, with regard to Ecuadorian citizens, the Constitution provides that *“(i)n no case shall extradition of an Ecuadorian citizen be granted” (article 79)*, and that the only way for a naturalized citizen to lose his Ecuadorian nationality is by *“express renunciation” (article 8 (5))*. Last but not least, the Constitution makes clear that it is *“the supreme law of the land and prevails over any other legal regulatory framework”* and that *“(t)he standards and acts of public power must be upheld in conformity with the provisions of the Constitution; otherwise, they shall not be legally binding” (article 424)*. Given that Mr. Assange is a naturalized citizen of Ecuador and has not renounced his citizenship, the national Constitution would appear to have prohibited his surrender to the British authorities in absolute terms, rendering the termination of his asylum by your

Excellency's Government juridically invalid already as a matter of national law.

From the perspective of international human rights law, the specific explanations given by your Excellency's Government for terminating Mr. Assange's asylum occasion the following responses:

- a) **According to the Government of Ecuador, the United Kingdom's refusal to grant Mr. Assange safe-passage potentially entailed his indefinite confinement at the Embassy, and Ecuador feared a deterioration of Mr. Assange's health.**

It is difficult to see how a genuine concern for Mr. Assange's health and liberty could justify expelling him from the Ecuadorian Embassy, against his will, without any form of due process, and foreseeably exposing him to a real risk of life-long arbitrary imprisonment in the United States marked by cruel, inhuman or degrading treatment, or even torture.

- b) **According to the Government of Ecuador, diplomatic asylum should not prevent asylum seekers from appearing in court in order to respond to charges brought against them for ordinary offences.**

Throughout the period of his asylum at the Embassy, Mr. Assange had not been formally charged with any criminal offence except a bail violation in the United Kingdom, an administrative offence which was the direct and inevitable consequence of him seeking - and receiving - diplomatic asylum from the Government of Ecuador, and which therefore clearly could not serve as the basis for Ecuador questioning his entitlement to that asylum status. While a preliminary criminal investigation against Mr. Assange had been ongoing in Sweden at the time when your Excellency's Government decided to grant him asylum in August 2012, that investigation had been closed for nearly two years by the time he was expelled from the Embassy, and the United States still had not unsealed their secret indictment against Mr. Assange. It is therefore not clear what "charges" your Excellency's Government is referring to.

- c) **According to the Government of Ecuador, Mr. Assange made political statements, intervened in the internal affairs of States, and disturbed the public peace in violation of the principle of non-intervention, the Caracas Convention on Diplomatic Asylum (1954) and the Havana Convention on Asylum (1928).**

As a matter of fact, the Government of Ecuador has not provided any evidence to support these allegations. Moreover, as a matter of international law, the principle of non-intervention, as well as the Caracas and Havana Conventions establish international obligations exclusively between States and, strictly speaking, cannot be violated by a private

individual. In any case, the dissemination of true information in the public interest constitutes the essence of journalistic activity and, regardless of its political nature, cannot be proscribed as “disturbance of the public peace” or “intervention in the internal affairs of States” without rendering meaningless the right to freedom of expression, and the freedom of the press.

d) **According to the Government of Ecuador, Mr. Assange exhibited reprehensible behaviour and made threats and insulting accusations against the Ecuadorian State and Embassy officials.**

I note with grave concern the claim made by your Excellency’s Government that a particular scene at the 58th minute of the film “Risk” supposedly shows how Mr. Assange used his personal computer to intrude into the Embassy’s computer system and to monitor the Embassy’s security cameras. As any diligent viewer of this scene can see, Mr. Assange is not looking at his own computer, which would have been the laptop visible in a different scene a few minutes earlier, but at a stand-alone desk-top screen placed on the floor. According to separate and independent accounts of several first-hand witnesses, the relevant scene has been recorded in 2012, during the first weeks of Mr. Assange’s presence at the Embassy, and shows him sitting in front of the Embassy’s own security camera monitor in the so-called “bat cave”, where the Embassy’s security set-up had been installed and which, at that time, Mr. Assange was authorized to access freely but not exclusively. The “hacking”-accusation made by the Ecuadorian Government against Mr. Assange thus seems to be based on an obvious misinterpretation of the relevant footage.

Similarly, according to your Excellency’s Government, in a conversation with the Ecuadorian Ambassador in December 2018, Mr. Assange allegedly announced that he was prepared to “push a secret button” in the event of a threat against him. As a consequence, your Excellency’s Government claims to have feared a possible act of violence or terrorism and, in order to neutralize this perceived threat, asked the United Kingdom to enter the Embassy and remove Mr. Assange. First, I note that I have not been provided with a complete and unredacted recording or transcript of the relevant conversation and that the relevant citation provided by your Excellency’s Government constitutes an abridged and translated version of the “threat” allegedly made by Mr. Assange. Moreover, while I acknowledge the right and duty of the Ambassador to take all steps necessary to ensure the safety of the Embassy and its staff, I would point out that Mr. Assange has never been reported to have promoted or engaged in violence, and that his only tool of public impact has been the publication of secret information. I therefore do not find persuasive or plausible that your Excellency’s Government would have genuinely interpreted the

alleged reference by Mr. Assange to a “secret button” as suggesting the existence of an imminent threat of violence or terrorism. Nor do I find credible that, in such a threat scenario, the Government would have waited more than 4 months, from December 2018 to April 2019, before taking action to prevent such a threat by expelling Mr. Assange to British jurisdiction.

Your Excellency’s Government then goes on to list a number of other incidents purportedly proving the unlawful, abusive and disrespectful behavior of Mr. Assange. While I do not believe it to be fruitful or appropriate for my mandate to investigate in detail each of these alleged incidents, I note that, over the course of almost 7 years, merely 22 incidents are reported to have taken place, averaging approximately 3 incidents per year, most of which seem to involve trivial issues of negligible gravity, such as the handling of external visitors and issues of hygiene and housekeeping, whereas none involved a substantiated risk of violence or harm. Moreover, the near complete lack of relevant audio/video recording, photographs, precise transcripts and other supporting evidence strengthens the impression that, as indicated by several first-hand witnesses, the relations between Mr. Assange and Embassy staff was generally respectful and polite. Even if there may have been sporadic or isolated incidents involving verbal disagreements over issues of housekeeping, external visits and surveillance, all of this was to be expected in the difficult circumstances created by Mr. Assange’s prolonged arbitrary confinement in the Embassy, and none of it could justify the termination of Mr. Assange’s asylum, given the foreseeable, irreparable harm that such a step would entail for his fundamental human rights.

- e) **According to the Government of Ecuador, the United States had not made any extradition request for Mr. Assange and, moreover, the United Kingdom had repeatedly assured non-refoulement to any country where Mr. Assange could face the death penalty, torture or ill-treatment.**

By granting Mr. Assange diplomatic asylum, your Excellency’s Government agreed with his assessment that, once in British or Swedish jurisdiction, he would be at risk of extradition to the United States, regardless of the existence of a formal extradition request by the United States. As explained in Section 3 above, British assurances to your Excellency’s Government that Mr. Assange would not be extradited to a country where he could face the death penalty or torture or ill-treatment, lack the credibility and reliability that would be required to render Mr. Assange’s expulsion to the United Kingdom permissible under international law. This concern has proven to be justified by pervasive violations of Mr. Assange’s due process rights by the British judiciary in

the various proceedings conducted against him since his expulsion and arrest on 11 April 2019.

In sum, while there may be situations where diplomatic asylum can be lawfully terminated, the rule of law requires that any such decision be taken in a regular procedure subject to due process of law, including the possibility for the concerned person to submit evidence and to appeal to a judicial authority. Moreover, none of the circumstances raised by your Excellency's Government would seem to have created a situation of such gravity or urgency as to justify or require the termination of Mr. Assange's diplomatic asylum. The prohibition of non-refoulement towards a real risk of torture being absolute, non-derogable and peremptory, it takes precedence over all other considerations, including national security and any conflicting rights or obligations that may arise under national or international law including, most notably, the "Special Protocol" and the Inter-American Conventions on diplomatic asylum. As the Committee against Torture has emphasized, the prohibition of refoulement 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). Thus, while national law may empower the President of Ecuador to terminate asylum, and while some treaties may not require Ecuador to grant asylum or to provide reasons for a denial of asylum, this does not imply that Ecuador can withdraw asylum status, once formally given, without due process of law, nor does it absolve Ecuador from its peremptory duty of non-refoulement irrespective of asylum status and nationality (Art. 3 CAT, Arts 2 and 7 CCPR).

International responsibility of Ecuador

I further note the view of your Excellency's Government that "the attention and facilities provided to Mr. Assange during his stay in the Embassy cannot be classified under any circumstances as acts of torture or ill-treatment, in accordance with the provisions of the United Nations Convention Against Torture".

I acknowledge and commend the principled stance of the previous Government of Ecuador in offering Mr. Assange asylum and, thereby, protection from extradition to the United States and the related risk of serious violations to his human rights, including torture and other cruel, inhuman or degrading treatment or punishment. As accurately determined by the WGAD in its decision of 4 December 2015, in the light of these risks, Mr. Assange's presence in the Ecuadorian Embassy could at no point be regarded as voluntary, but amounted to arbitrary confinement, though admittedly not attributable to Ecuador, but to Sweden and the United Kingdom. I also acknowledge that the initial five years of co-existence between Mr. Assange and the staff at the Ecuadorian Embassy from June 2012 to May 2017 appear to have been marked by respectful and friendly relations.

However, after the election of the current 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. Between March 2018 and April 2019, the progressively severe harassment of Mr. Assange by the

Ecuadorian authorities reportedly culminated in a situation marked: (a) by excessive regulation, restriction and surveillance of Mr. Assange's communications, meetings with external visitors (including lawyers and medical doctors) and his private life; (b) by various degrees of harassment by security guards and certain diplomatic staff; and (c) by the public dissemination of distorted half-truths, defamations and deliberately debasing statements, including by the State leadership. As reported in my letter of 28 May 2019 (ECU 10/2019), this deliberate mistreatment of Mr. Assange by the Ecuadorian authorities inside their Embassy amounted to cruel, inhuman or degrading treatment and has contributed decisively to producing or aggravating the symptoms of psychological torture observed by the medical experts accompanying my visit.

In the meantime, compelling evidence of Mr. Assange's extremely intrusive and oppressive surveillance inside the Ecuadorian Embassy has been leaked to the press and publicly disseminated worldwide. It therefore cannot reasonably be questioned that such surveillance, harassment and defamation occurred, that it amounted to cruel, inhuman or degrading treatment, and that it is legally attributable to Ecuador. The decisive question is what your Excellency's Government will do investigate, prosecute and redress the unjustified harm deliberately inflicted on Mr. Assange, to re-establish the rule of law and guarantee non-recurrence in line with its obligations under international human rights law. Moreover, beyond contributing to Mr. Assange's torture or ill-treatment through deliberate harassment and excessive surveillance in the past, Ecuador has also terminated Mr. Assange's asylum and, therefore, bears responsibility for the future risk of torture or ill-treatment faced by Mr. Assange in relation to his potential extradition to the United States.

Duty to investigate, prosecute and punish

I note the view of your Excellency's Government that, contrary to my observations, Mr. Assange did not suffer torture or other cruel, inhuman or degrading treatment during his presence at the Embassy of Ecuador and that, therefore, it would not be appropriate to undertake any investigations in this respect.

Under articles 4 and 12 of the CAT, Ecuador is obliged to criminalize any act of torture, including any form of attempt, complicity and participation, and to conduct a prompt and impartial investigation wherever there is "reasonable ground" to believe that such an act has been committed within or from its jurisdiction, including its Embassy in London. 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 prosecutorial and judicial authorities (CAT General Comment No. 2, paragraph 26). Depending on the outcome of the investigation, States party 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 articles 2 and 7 of the ICCPR, 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; and Art. 26 and 31, Vienna Convention on the Law of Treaties).

As detailed in my letter of 28 May 2019 (ECU 10/2019), during my visit to Mr. Assange on 9 May 2019, a thorough forensic and psychiatric examination conducted in line with the “Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment” (Istanbul Protocol) showed a clear pattern of symptoms typical for persons having been exposed to psychological torture for a prolonged period of time. Based on a detailed evaluation of the available evidence, I found that, since at least March 2018, the systematic defamation and intimidation of Mr. Assange by the political leadership of Ecuador, and his arbitrary treatment and surveillance at its Embassy have contributed decisively to producing the observed medical effects symptomatic of psychological torture.

These findings by the undersigned mandate holder and two independent medical experts experienced and specialized in the examination of torture victims unquestionably provide “reasonable ground to believe” that Ecuadorian officials have decisively contributed to Mr. Assange’s psychological torture. As a matter of international law, therefore, your Excellency’s Government does not have the discretion to simply refute these findings, but has 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 as restated below:

1. Please provide any additional information and/or comment(s) 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 Ecuador. If no such measures have been taken, please explain how this is compatible with the human rights obligations of Ecuador.
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 Ecuador. If no such measures have been taken, please explain how this is compatible with the human rights obligations of Ecuador.

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 Ecuador, 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 Ecuador.

In the light of the above, I respectfully urge the relevant Ecuadorian authorities to cease disseminating any unjustified news or information, and to refrain from any act that may be prejudicial to Mr. Assange's dignity and integrity, and to his rights to a fair and impartial proceeding in line with the highest standards of human rights law.

I would appreciate receiving a response within 60 days. Passed this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting website. 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