

# VIPS Plead for Humanitarian Asylum for Julian Assange

**Memorandum for:** The US Embassies of Ecuador and the United Kingdom, and the U.S. State Department

**From:** Veteran Intelligence Professionals for Sanity

**Subject:** Humanitarian Asylum for Julian Assange

For six years, WikiLeaks editor Julian Assange has been effectively imprisoned without charges at Ecuador's London embassy. In that time, two international courts and dozens of respected legal and human rights organizations have decried actions of the UK, US and Swedish governments that confine the journalist in what now amounts to torturous isolation, deprived of space, sunlight, visitors, communication with the outside and necessary medical care.

The catalyst was an arcane effort by the Swedish government to extradite Assange for questioning about claims of sexual improprieties.<sup>1</sup> The UK government subsequently arrested Assange and released him on bail.<sup>2</sup> Ecuador granted Assange asylum at its embassy based on concerns he could be extradited to the US where he would not receive a fair trial and could receive a death sentence.<sup>3</sup> (Former Obama DOJ spokesperson Matthew Miller has acknowledged that US officials intended to arrest Julian Assange but decided against it because of the expected impacts on press freedom.)<sup>4</sup>

The UK government threatens to arrest Assange if he leaves the embassy for "not surrendering at bail" and refuses to rule out extradition to the US.<sup>5</sup> Under a new president, Ecuador has cut off Assange's communications with the outside world.

## **Experts Criticize Treatment of Assange**

In June, 2014, The National Lawyers Guild and 59 human rights and legal organizations petitioned the United Nations to act on violations of Assange's "fundamental human rights." In addition, "33 union, human rights, media and civil society organizations" petitioned the Human Rights Commission in Geneva on behalf of freedom for Assange. Reports submitted by the groups identified "numerous systematic deficiencies in Swedish pre-trial procedures like the routine placement of persons who have not been charged with any crime in indefinite, isolated, or unexplained pre-charge detention."<sup>6</sup>

In February 2016, the UN Office of the High Commissioner for Human Rights (OHCHR) concluded that Assange's situation constitutes "arbitrary detention" and violates both the Universal Declaration on Human Rights and the International

Covenant on Civil and Political Rights.<sup>7</sup> Assange's Swedish lawyer, Per Samuelson, told The Guardian, 4 Feb 2016, "If he is regarded as detained, that means he has served his time, so I see no other option for Sweden but to close the case."<sup>8</sup>

Another year would pass, however, before Sweden dropped its investigation, after finally consenting to interview Assange at the embassy.<sup>9</sup> Recently obtained emails show that Sweden would have dropped the case years earlier but for pressure from UK authorities.<sup>10</sup> In summary, Assange has been confined for six years over allegations that never resulted in charges, much less a criminal conviction.

On July 12, 2018, the Organization of American States' (OAS) Inter-American Court of Human Rights (IACHR) sent out a ruling<sup>11</sup> that was virtually unnoticed by US news media. The IACHR found "it is the duty of nations to allow for the passage of successful asylum seekers from embassies to the mainland territory of the state that has granted an individual asylum."

For Julian Assange, this would mean that, according to the Court's decision, Britain has a legal obligation to allow Julian Assange to exit the Ecuadorian Embassy in London in peace and allow for his safe transit to an airport from which he would be able to fly to Ecuador, the country that has granted Assange asylum and where he now also holds formal citizenship<sup>12</sup>

"[I]t is imperative," the ruling states, "that Assange is allowed to make the safe passage to Ecuador demanded by the Court as his physical and mental health conditions have been described as deteriorating rapidly. If, nevertheless, UK authorities insist on arresting Assange, "the British government will have wantonly failed to uphold Assange's rights as a legitimate receiver of asylum by Ecuador."<sup>13</sup>

The IACHR ruling suggests further that outright abuses occurred when Ecuador removed security assigned for Assange;<sup>14</sup> when the UK rejected Ecuador's request for safe passage of Assange to Ecuador<sup>15</sup>; and when the US obstructed efforts to end Assange's virtual imprisonment.<sup>16</sup>

### **Mistaken Assumptions Underlie Government Policies**

President Trump's Attorney General Jeff Sessions hinted at a crackdown on the press.<sup>17</sup> Secretary of State Mike Pompeo called Wikileaks a "non-state, hostile intelligence service" that is often "abetted by state actors like Russia."<sup>18</sup> Pompeo laments the "hero worship" of NSA whistleblower Edward Snowden and suggests harsh measures would prevent future "leaks" of classified information. But, it is government persecution, not the lack of it, that gives truth-tellers hero status. Also, what truly upsets senior intelligence officials is not (frequently condoned) "leaking" but blowing the whistle on government

wrongdoing.

Harsh measures do not deter individuals with strong moral convictions from whistleblowing. Instead, these motivate potential whistleblowers to find more creative avenues for disclosure. Edward Snowden, for example, was well aware of the US government's brutality toward Thomas Drake, who used "official channels" to express concerns about the legality of NSA surveillance activities. Drake's experience, Snowden says, were his inspiration. "It's fair to say," Snowden said, "if there hadn't been a Thomas Drake, there couldn't have been an Edward Snowden."<sup>19</sup>

Similarly, despite the bullying of Julian Assange, new websites have appeared that draw inspiration from WikiLeaks.<sup>20</sup> Should the US take custody of Assange and prosecute him like Drake, they could find success elusive in the opinion of Harvard Law professor Jack Goldsmith.

"The most relevant law, the Espionage Act, is famously overbroad and thus an uncertain basis for prosecution," observed Goldsmith. "This is one reason the government has never successfully prosecuted a member of the media for soliciting or publishing classified information. Nor has the government ever successfully prosecuted a non-media organization for solicitation or receipt of classified information."<sup>21</sup>

"Failing in the effort would make the United States look even more ineffectual than it does as a result of the leaks," Goldsmith concluded.

A successful prosecution could have worse consequences. With little that distinguishes Wikileaks' activities from those of mainstream news gatherers<sup>22</sup>, a dangerous legal precedent would be established. Journalists employed by major newspapers that also published government secrets, including some of the same secrets published by Wikileaks, could be imprisoned by any administration with animosity toward the press. The impacts of prosecuting Assange would ripple around the world as officials in other governments followed the most powerful nation's example. With no means of holding governments accountable, despotism would proliferate, triggering cascading crises and worldwide disruption.

UN human rights expert Alfred de Zayas observes that "Order depends on the consistent and uniform application of international law."<sup>23</sup>

Governments could simply ignore the court directives on Assange's asylum rights; but that too carries risks, undermining efforts by those countries to support dissidents of their choosing. Potentially, in the future, the diplomatic privileges of UK, US and Ecuadorian diplomats could also come under assault.

## **A Fork in the Road**

Collectively, the governments of Sweden, the UK, the US, Ecuador (recently) and, through its silence, Assange's home country of Australia have imposed six years of suffering on Assange and possibly life-long damage to his health. With their proxies, they pound Assange with threats, ad hominem attacks and misleading statements. He cannot defend himself because the government of Ecuador terminated his access to communications systems. This may have a temporary effect of confusing the public; but as more legal experts and human rights authorities hazard coming to his defense, the public may recognize these assaults as the desperate flailings of governments that lack credible defenses for their actions.

Public dissatisfaction with governments worldwide is currently high, as evidenced by numerous massive street protests, passages of referendums against centralized power, and wide-spread elections of anti-establishment candidates. Any additional erosion of public support risks a tipping point with unforeseeable consequences. Brutality against Julian Assange, particularly as his health declines, can only increase his stature as a journalist, enshrine his popular global status as a martyr for freedom, and effectively undermine support for his persecutors.

The involved governments have arrived at a fork in the road. They can continue the persecution of Assange, risking catastrophe for diminishing returns. Or, they can let Assange proceed to Ecuador, or home to Australia if it provides suitable guarantees,<sup>24</sup> and boost their public standing as self-described supporters of human rights, the rule of law, and a free press.

We the undersigned members of Veteran Intelligence Professionals for Sanity urge all governments to honor the OHCHR and IACHR directives with respect to Julian Assange and other asylum seekers.

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### **Endnotes**

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- <sup>16</sup> Solomon, John. "How Comey Intervened To Kill Wikileaks' Immunity Deal." *The Hill*, 25 Jun 2018.

- <sup>17</sup> Ainsley, Julia Edwards. "Trump administration goes on attack against leakers, journalists." *Reuters*. 4 Aug 2017
- <sup>18</sup> Milman, Oliver. "Trump CIA director blames 'worship of Edward Snowden' for rise in leaks." *The Guardian*, 24 June 2017.
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- <sup>20</sup> Reitman, Rainey. "Will the rise of WikiLeaks competitors make whistleblowing resistant to censorship?" *Electronic Frontier Foundation*. 6 Feb 2011.
- <sup>21</sup> Goldsmith, Jack. "Why the U.S. shouldn't try Julian Assange." *Washington Post*, 11 Feb 2011.
- <sup>22</sup> "Quite simply, our motive is identical to that claimed by the New York Times and The Post – to publish newsworthy content," Assange wrote in a recent op-ed in *The Washington Post*. "Consistent with the U.S. Constitution, we publish material that we can confirm to be true irrespective of whether sources came by that truth legally or have the right to release it to the media. And we strive to mitigate legitimate concerns, for example by using redaction to protect the identities of at-risk intelligence agents" (*CNN*, 21 May 2017).
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