

## **Joint Submission for the United Kingdom's Universal Periodic Review in 2017**

### **United Kingdom**

#### **Universal Periodic Review – 22<sup>nd</sup> session 2017-2021**

Submitted by a coalition of the following international human rights, fair trial and jurist organisations:

Center for Constitutional Rights  
Eva Joly Institute  
National Lawyers Guild  
International Association of Democratic Lawyers  
Liberty Victoria  
Courage Foundation  
Centro de Estudios Legales y Sociales (CELS)  
Derechos Humanos en Acción  
Australian Lawyers for Human Rights  
Australian Lawyers Alliance  
Swedish Professors & Doctors for Human Rights (SWEDHR)  
Digital Rights Watch  
Sydney Peace Prize Foundation

Contact details provided at the end of this report.

#### **I: SUMMARY**

1. This joint submission highlights issues about respect for and implementation of United Nations' Human Rights Council special mechanisms, domestic human rights protection, ratification of individual complaint mechanisms under international treaties to which the United Kingdom (UK) is a party, as well as specific human rights concerns regarding the right to liberty, due process, equal treatment, freedom from arbitrary deprivation of liberty and inhuman and degrading treatment, fair trial, privacy and family life, and health.
2. We call upon the UK to commit to the following recommendations:
  - A. Respect and take all necessary measures to ensure the implementation of UN special mechanism findings and recommendations;
  - B. Continuing existing domestic law protections for human rights in the UK, including the Human Rights Act and European Convention on Human Rights;

- C. Ending all cases of arbitrary deprivation of liberty in the UK, including under state detention and other forms of deprivation of liberty, as recognised by the UN;
- D. Ensuring all persons who are deprived of their liberty are afforded the basic protections under UN Minimum Standard on the Treatment of Detainees and against inhuman and degrading treatment;
- E. Ratifying international treaties which provide individuals the right to petition UN committees to ensure better human rights protection for all individuals in the UK.

## **II: HUMAN RIGHTS CONCERNS**

1. In this joint submission we have highlighted the case of Mr Julian Assange because it is a serious case which is emblematic of the general concerns we wish to raise in this submission. Mr Assange, an Australian citizen, is the founder and editor-in-chief of WikiLeaks, a publishing organisation specialising in publishing information of historical, political, diplomatic or ethical significance, with the objective of ensuring the right to information of all citizens. He has been deprived of his liberty in the UK since December 2010 in circumstances the UN Working Group on Arbitrary Detention (WGAD) has determined amounts to arbitrary deprivation of liberty, an unlawful status under international law, in breach of Articles 9 and 10 of the Universal Declaration of Human Rights (UDHR) and Articles 7, 9(1), 9(3), 9(4), 10 and 14 of the International Covenant on Civil and Political Rights (ICCPR).
2. Mr Assange's deprivation of liberty in the UK has been marked as the longest running pre-trial (and indeed, pre-charge) deprivation of liberty in both Sweden and the UK, and raises serious concerns regarding the UK's ability to guarantee equal treatment and the right to a fair trial, protection against inhuman and degrading treatment and arbitrary deprivation of liberty, the right to privacy and family life and the right to health. In addition, Mr Assange's case is emblematic of the trajectory of human rights protection in the UK, with the UK's apparent efforts to cut off access to human rights appeal mechanisms, and demonstrates the importance of access to UN complaint mechanisms for UK citizens and residents.

### **Failure to respect and implement findings and recommendations of UN special mechanisms**

3. The UK has committed to complying with the recommendations of the Special Procedures mechanisms at the UN Human Rights Council. The UK has been a member of the Human Rights Council since it was created in 2006. The UK is signatory to the "pledges and commitments" before the General

Assembly, which includes commitments to respect the decisions issued by the Special Procedures of the Human Rights Council.

4. In its recent bid for membership of the UN Human Rights Council for 2017-2019, the UK emphasised its support for the UN human rights system:

*We will support the independence and the work of the High Commissioner for Human Rights and his Office. We will work in a spirit of openness, consultation and respect for all, on a foundation of cooperation across regional groups. We will encourage dialogue with parliaments and civil society. We will promote the vital role of the independent UN human rights Treaty Monitoring Body system in the protection of human rights globally. We will encourage ratification of UN human rights instruments and their successful implementation by governments.<sup>1</sup>*

5. In its 2012 Universal Periodic Review, recommendations 46 and 47 related to the improvement of the UK's response to and compliance with UN human rights mechanisms decisions and recommendations. Both of these recommendations were accepted by the UK. In its 2014 Universal Periodic Review Mid Term Report, the UK said:

*The UK cooperates fully with Special Procedures of the Human Rights Council, and encourages others to do likewise. Our response rate to communications is already positive, but we are always looking for ways to improve.<sup>2</sup>*

6. The UK's response to the WGAD ruling in relation to Julian Assange in 2016 raises serious concerns about the UK's commitment to the implementation of United Nations human rights findings. This follows the UK's failure to adequately comply with WGAD's ruling in *Abdi v United Kingdom*, the resolution of which continued into this UPR period.<sup>3</sup>
7. In Opinion 54/2015, WGAD Found that Mr Assange was arbitrarily deprived of his liberty by the UK and Sweden in contravention of Articles 9 and 10 of

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<sup>1</sup> See Foreign and Commonwealth Office, 'UN Human Rights Council: United Kingdom 2017-2019 candidate', *Gov.UK*, 9 December 2015 <<https://www.gov.uk/government/publications/un-human-rights-council-united-kingdom-2017-2019-candidate/un-human-rights-council-united-kingdom-2017-2019-candidate>>.

<sup>2</sup> United Nations Universal Periodic Review Mid Term Report of the United Kingdom of Great Britain and Northern Ireland, and the British Overseas Territories, and Crown Dependencies (2014), <<https://www.justice.gov.uk/downloads/human-rights/uk-upr-mid-term-report-2014.pdf>>.

<sup>3</sup> *Abdi v United Kingdom*, Working Group on Arbitrary Detention, Opinion No. 45/2006, U.N. Doc. A/HRC/7/4/Add.1 at 40 (2007). This was ultimately successful appealed to the European Court of Human Rights in 2013: *Hode and Abdi v. the United Kingdom*, Application No. 22341/09.

the UDHR and Articles 7, 9(1), 9(3), 9(4), 10 and 14 of the ICCPR.<sup>4</sup>

8. WGAD determined that the situation of Mr Assange constituted arbitrary deprivation of liberty, that both States had disregarded the asylum afforded by Ecuador, compelling Mr Assange to choose between deprivation of liberty or the risk of losing the protection granted by Ecuador. WGAD also found that there have been grave due process violations. WGAD found that, over the past four years, Mr Assange's circumstances have effectively been of an increasingly serious incarceration amounting to prolonged solitary confinement, seriously compromising his health and family life. WGAD instructed the Governments of the UK and Sweden to assess the situation of Mr Assange to ensure his safety and physical integrity, to facilitate the exercise of his right to freedom of movement in an expedient manner, and to ensure the full enjoyment of rights guaranteed by the international norms on deprivation of liberty as well as to accord him an enforceable right to compensation.<sup>5</sup>
  
9. The UK has stated it has no intention of enforcing WGAD's findings and has taken no steps towards complying with its decision, including refusing to address what WGAD described as a "serious risk" to Mr Assange's health.
  
10. In addition to this non-compliance with WGAD, numerous public officials publicly attacked WGAD, including some *ad hominem* attacks on individual WGAD members and their expertise. Oxford University Professor of Law Liora Lazarus commented that the Assange ruling, despite being correct in law, 'has been met with almost universal ridicule from a line of British officials'.<sup>6</sup> For example:
  - Phillip Hammond, the Foreign Secretary of the United Kingdom attacked the UN expert panel as a group "made up of lay people and not lawyers"<sup>7</sup> and described the ruling as "ridiculous".<sup>8</sup>

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<sup>4</sup> Human Rights Council, 'Opinions adopted by the Working Group on Arbitrary Detention at its seventy-fourth session: Opinion No. 54/2015 concerning Julian Assange (Sweden and the United Kingdom of Great Britain and Northern Ireland)', *Working Group on Arbitrary Detention*, 22 January 2016, UN Doc A/HRC/WGAD/2015, p. 17

<sup>5</sup> Human Rights Council, 'Opinions adopted by the Working Group on Arbitrary Detention at its seventy-fourth session: Opinion No. 54/2015 concerning Julian Assange (Sweden and the United Kingdom of Great Britain and Northern Ireland)', *Working Group on Arbitrary Detention*, 22 January 2016, UN Doc A/HRC/WGAD/2015, para. 100 and 101.

<sup>6</sup> L. Lazarus, 'Is the United Nations Working Group on Arbitrary Detention Decision on Assange 'So Wrong'? *U.K. Const. L. Blog*, 9th Feb 2016, available at <<https://ukconstitutionallaw.org/>>.

<sup>7</sup> 'Julian Assange case: Who is on the UN's expert panel?', *ITV News*, 5 February 2016, <<http://www.itv.com/news/2016-02-05/julian-assange-case-who-is-on-the-uns-expert-panel/>>.

- Prime Minister, David Cameron, described it as a “ridiculous decision”.<sup>9</sup>
- Foreign and Commonwealth Office Minister Hugo Swire called the WGAD findings ‘inaccurate’.<sup>10</sup> On the day the WGAD ruling was made public, Mr Swire went further and tweeted a picture of himself, holding his dog with the hashtag #arbitrarilydetained, clearly aimed at mocking and denigrating the WGAD decision.<sup>11</sup>
- Former Director of Public Prosecutions Ken MacDonald described the decision as ‘ludicrous’.<sup>12</sup>

11. These comments must be seen as an objective attempt to undermine the authority of WGAD. Former WGAD Chair and UN Special Rapporteur on arbitrary detention Professor Mads Andenaes said “rarely do [WGAD decisions] result in such personal attacks as made by UK politicians after the Assange opinion”. He said further that “UK politicians aimed at weakening the authority of the UN body for short-term opportunistic gain,” which would be raised in the Human Rights Council for the “damage done to the UK in the UN and its moral authority in human rights issues”.<sup>13</sup>

12. General Counsel for Human Rights Watch, Dinah PoKempner described the response as “deplorable”, not just because the UK and Sweden made clear “the UNWGAD opinion would have absolutely no effect on their actions. This is not what one expects from democratic governments who usually support the UN mechanisms and international law.”<sup>14</sup>

13. In the past, the UK has welcomed WGAD rulings in relation to other states, regularly calling upon other states to comply with WGAD decisions. For example, Hammond’s predecessor as Foreign Secretary, William Hague, called upon Myanmar to comply with the WGAD rulings: “I urge the Government of Myanmar to heed the call of an independent United Nations

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<sup>8</sup> ‘Julian Assange decision by UN panel ridiculous, says Hammond’, BBC, 5 February 2016, available at <<http://www.bbc.com/news/uk-35504237>>.

<sup>9</sup> ‘David Cameron urges Julian Assange to leave embassy, end ‘sorrysaga’’, RTNews, 10 February 2016, <<https://www.rt.com/uk/332041-assange-cameron-pmqs-yougov/>>.

<sup>10</sup> Foreign and Commonwealth Office and the Rt Hon Hugo Swire MP, ‘UK submits response to UN Working Group on Assange case’, *Gov.UK*, 24 March 2016, <<https://www.gov.uk/government/news/uk-submits-response-to-un-working-group-on-assange-case--2>>.

<sup>11</sup> See tweet from Foreign and Commonwealth Office Minister Hugo Swire on the day the WGAD decision was made public, 5 February 2016, captured here: <<https://twitter.com/wikileaks/status/696128960195911680>>.

<sup>12</sup> L. Lazarus, ‘Is the United Nations Working Group on Arbitrary Detention Decision on Assange ‘So Wrong’?’ *U.K. Const. L. Blog*, 9th Feb 2016, available at <<https://ukconstitutionallaw.org/>>.

<sup>13</sup> Owen Bowcott, ‘Britain ‘sets dangerous precedent’ by defying UN report on Assange’, *Guardian*, 24 February 2016, <<https://www.theguardian.com/media/2016/feb/24/britain-precedent-defy-un-report-julian-assange-politicians>>.

<sup>14</sup> Owen Bowcott, ‘Britain ‘sets dangerous precedent’ by defying UN report on Assange’, *Guardian*, 24 February 2016, <<https://www.theguardian.com/media/2016/feb/24/britain-precedent-defy-un-report-julian-assange-politicians>>.

human rights body to immediately release Daw Aung San Suu Kyi.”<sup>15</sup>

14. The UK reaction to the WGAD ruling on Mr Assange raises serious concern about the UK’s commitment to the implementation of UN human rights findings and the international rule of law. The UK – a permanent member of the Security Council and a member of the Human Rights Council – should not be permitted to exempt itself from complying with UN findings and recommendations, which undermines the UK’s authority to call upon other states to comply with UN findings and decisions. The UK’s refusal to comply with the WGAD decision and its disrespectful statements about WGAD undermines respect for UN human rights mechanisms and gives license to other states to do the same. For example, the UK response to the WGAD Assange ruling has been cited by Maldives and Sri Lanka to justify non-compliance with WGAD decisions and UN commitments to investigate war crimes.<sup>16</sup>

### **Human rights concerns**

15. The prohibition against arbitrary deprivation of liberty, the right to liberty and security of person, right to equal treatment and a speedy trial and the prohibition against inhuman and degrading treatment, the right to privacy and family life, and the right to health are fundamental human rights are protected by international human rights treaties to which the UK is a party, including the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Convention Against Torture (CAT).

### **Right to equal treatment and a fair and speedy trial – Article 14 ICCPR**

#### **Right to liberty and security of person – Article 9 ICCPR**

16. Article 14 of the ICCPR requires that “all persons shall be equal before the courts and tribunals,” that all persons have the right to be “tried without undue delay,” and to “examine, or have examined, the witnesses against him.” These guarantees place on the UK affirmative obligations to fulfil rights, rather than just obligations of non-interference. The Human Rights Committee has found that delays of years between arrest and trial are typically enough to satisfy the definition of “undue delay” under the ICCPR.<sup>17</sup>

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<sup>15</sup> Foreign and Commonwealth Office and The Rt Hon William Hague, ‘Foreign Secretary William Hague welcomes UN statement on detention of Aung San Suu Kyi’, 17 June 2010, <<https://www.gov.uk/government/news/foreign-secretary-welcomes-un-statement-on-aung-san-suu-kyi>>.

<sup>16</sup> Owen Bowcott and David Crouch, ‘Assange supporters condemn UK and Sweden in open letter’, *Guardian*, 1 March 2016, <<https://www.theguardian.com/media/2016/mar/01/julian-assange-wikileaks-supporters-ai-wei-wei-uk-sweden-open-letter>>.

<sup>17</sup> See *J. Leslie v Jamaica*, Communication No. 564/1993, UN doc. GAOR, A/53/40 (vol. II), p. 28, para. 9.3 (29 month delay violated Article 14); *C. Smart v Trinidad and Tobago*, Communication No. 672/199, UN doc. GAOR, A/53/40 (vol. II), p. 149, para. 10.2 (two year delay found to violate).

Discrimination can occur not only by law, but also by the actions of public officials.

17. Article 9, ICCPR guarantee the right to be free from unlawful deprivation of liberty. It is well-settled that holding individuals in uncertain conditions is a deprivation of their liberty.<sup>18</sup> International law contains an absolute prohibition on arbitrary deprivation of liberty and all states have an obligation to take positive steps to end a situation of unlawful and arbitrary deprivation of liberty.
18. Concerns about pre-trial deprivation of liberty have been repeatedly raised against the UK in its UPRs in 2008 and 2012. Ecuador raised specific concerns about the participation of British authorities in arbitrary detention.<sup>19</sup> As set out in the UK's 2012 UPR report, in 2008, the UK accepted recommendation 19 that pre-trial deprivation of liberty should never be excessive and the UK committed to continue to ensure that this is the case, setting out its time limits (including a maximum of 182 days for trials on indictment, which can be extended in some circumstances).<sup>20</sup> These limits were deemed insufficient in numerous civil society UPR submissions.
19. Despite alleged progress reported by the UK in its 2014 Mid Term Report, a 2016 independent report on pre-trial detention raises serious ongoing concerns and advised that action should be taken to reduce the unnecessary use of pre-trial detention:
  - While England and Wales have one of the lowest pre-trial detention populations in Europe, it has one of the highest *per capita* prison populations in the European Union (EU), which not only means that a large number of people are in pre-trial detention at any one time (nearly 12,000);
  - A lot of defendants spend time remanded in custody who should not be deprived of their liberty: nearly one quarter of defendants remanded in custody were either acquitted or the case was dropped, and almost one third of defendants who were remanded in custody and subsequently sentenced received a non-custodial sentence;
  - The failure to provide adequate information in early stages often led to incorrect decisions to hold accused on remand;

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<sup>18</sup> ICCPR Article 14's General Comment 32 recognises the relationship between the guarantee of a speedy trial and deprivation of liberty, requiring a speedy trial "to avoid keeping persons too long in a state of uncertainty about their fate and to ensure that such deprivation of liberty does not last longer than necessary in the circumstances of the specific case, but also to serve the interests of justice."

<sup>19</sup> Human Rights Council, UN Doc A/HRC/WG.6/13/GBR/1 (8 March 2012) Working Group on the Universal Periodic Review, Thirteenth session, Geneva, 21 May–4 June 2012, <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G12/116/92/PDF/G1211692.pdf?OpenElement>>, [65].

<sup>20</sup> Human Rights Council, UN Doc A/HRC/WG.6/13/GBR/1 (8 March 2012) Working Group on the Universal Periodic Review, Thirteenth session, Geneva, 21 May–4 June 2012, <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G12/116/92/PDF/G1211692.pdf?OpenElement>>, [46]-[47].

- Despite the presumption in favour of bail, in practice it was very hard to reduce bail conditions over time.<sup>21</sup>

20. The pre-trial deprivation of liberty of Mr Assange has stretched over almost six years.<sup>22</sup> WGAD was particularly critical of the failure of UK's judicial management of the restrictions Mr Assange was placed under during this period:

*During this prolonged period of house arrest, Mr. Assange had been subjected to various forms of harsh restrictions, including monitoring using an electric tag, an obligation to report to the police every day and a bar on being outside of his place of residence at night. In this regard, the Working Group has no choice but to query what has prohibited the unfolding of judicial management of any kind in a reasonable manner from occurring for such extended period of time.<sup>23</sup>*

21. WGAD found a breach of articles 9 and 14 of ICCPR: Mr. Assange has not been guaranteed the international norms of due process and the guarantees to a fair trial during his detention in isolation in Wandsworth Prison, the 550 days under house arrest, and the continuation of the deprivation of liberty in the Embassy of the Republic of Ecuador in London, UK.<sup>24</sup> WGAD found the deprivation of liberty to be “in breach of the principles of reasonableness, necessity and proportionality”.<sup>25</sup>

22. Further, WGAD found Mr Assange's situation in the Ecuadorian embassy to be an arbitrary deprivation of liberty:

*The factual elements and the totality of the circumstances that have led to this conclusion include the followings: (1) Mr. Assange has been denied the opportunity to provide a statement, which is a fundamental aspect of the audi alteram partem principle, the access*

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<sup>21</sup> Ed Cape and Tom Smith, 'Pre-trial Detention', *Criminal Law and Justice Weekly*, 13 May 2016, <<http://www.criminallawandjustice.co.uk/features/Pre-trial-Detention>>.

<sup>22</sup> Human Rights Council, 'Opinions adopted by the Working Group on Arbitrary Detention at its seventy-fourth session: Opinion No. 54/2015 concerning Julian Assange (Sweden and the United Kingdom of Great Britain and Northern Ireland)', *Working Group on Arbitrary Detention*, 22 January 2016, UN Doc A/HRC/WGAD/2015, para 86.

<sup>23</sup> Human Rights Council, 'Opinions adopted by the Working Group on Arbitrary Detention at its seventy-fourth session: Opinion No. 54/2015 concerning Julian Assange (Sweden and the United Kingdom of Great Britain and Northern Ireland)', *Working Group on Arbitrary Detention*, 22 January 2016, UN Doc A/HRC/WGAD/2015, para 87.

<sup>24</sup> Human Rights Council, 'Opinions adopted by the Working Group on Arbitrary Detention at its seventy-fourth session: Opinion No. 54/2015 concerning Julian Assange (Sweden and the United Kingdom of Great Britain and Northern Ireland)', *Working Group on Arbitrary Detention*, 22 January 2016, UN Doc A/HRC/WGAD/2015, paras 88-90

<sup>25</sup> Human Rights Council, 'Opinions adopted by the Working Group on Arbitrary Detention at its seventy-fourth session: Opinion No. 54/2015 concerning Julian Assange (Sweden and the United Kingdom of Great Britain and Northern Ireland)', *Working Group on Arbitrary Detention*, 22 January 2016, UN Doc A/HRC/WGAD/2015, para 90.



*to exculpatory evidence, and thus the opportunity to defend himself against the allegations; (2) the duration of such detention is ipso facto incompatible with the presumption of innocence. Mr. Assange has been denied the right to contest the continued necessity and proportionality of the arrest warrant in light of the length of this detention, i.e. his confinement in the Ecuadorian Embassy; (3) the indefinite nature of this detention, and the absence of an effective form of judicial review or remedy concerning the prolonged confinement and the highly intrusive surveillance, to which Mr. Assange has been subjected; (4) the Embassy of the Republic of Ecuador in London is not and far less than a house or detention centre equipped for prolonged pre-trial detention and lacks appropriate and necessary medical equipment or facilities. It is valid to assume, after 5 years of deprivation of liberty, Mr. Assange's health could have been deteriorated to a level that anything more than a superficial illness would put his health at a serious risk and he was denied his access to a medical institution for a proper diagnosis, including taking a MRI test; (5) with regard to the legality of the EAW, since the final decision by the Supreme Court of the United Kingdom in Mr. Assange's case, UK domestic law on the determinative issues had been drastically changed, including as a result of perceived abuses raised by Sweden's EAW, so that if requested, Mr. Assange's extradition would not have been permitted by the UK. Nevertheless, the Government of the United Kingdom has stated in relation to Mr. Assange that these changes are "not retrospective" and so may not benefit him. A position is maintained in which his confinement within the Ecuadorian Embassy is likely to continue indefinitely. The corrective UK legislation addressed the court's inability to conduct a proportionality assessment of the Swedish prosecutor's international arrest warrant.*

23. Mr Assange continues to have no available judicial remedies to challenge his pre-charge deprivation of liberty. The UK indicated in 2012 that it would establish a working group to resolve Mr. Assange's situation. However, it has failed to do so, thus depriving Mr Assange and the Ecuadorian authorities of a mechanism through which they could resolve or mitigate violations of Mr. Assange's rights.<sup>26</sup> The normal remedy, of habeas corpus, does not apply because the UK does not consider Mr. Assange to be deprived of his liberty under their authority.<sup>27</sup> This rhetorical stance (and refusal to accept the WGAD ruling) is being used to deny him an effective remedy as concerns his indefinite deprivation of liberty. Such a legal vacuum is wholly incompatible with the rule of law.

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<sup>26</sup> E. Addley, 'Julian Assange has had his human rights violated, says Ecuador foreign minister', *The Guardian*, 17 August 2014, <<http://www.theguardian.com/media/2014/aug/17/julian-assange-human-rights-violated-ecuador>>.

<sup>27</sup> See 'Submission to the Working Group on Arbitrary Detention by Mr Julian Assange', available at <<https://justice4assange.com/IMG/pdf/assange-wgad.pdf>>.

## **Prohibition against torture and cruel, inhuman or degrading treatment or punishment – Article 7 ICCPR**

### **Protection of the right to health – Article 12 ICESCR, Article 25 UDHR**

24. Article 7 of the ICCPR and Article 3 of CAT require that the UK protect all persons from inhuman and degrading treatment. Article 12 of the ICESCR requires that states ensure people the highest attainable standard of physical and mental health.
25. The WGAD found that Mr Assange's circumstances have been effectively prolonged solitary confinement and subjected to an arbitrary deprivation of liberty that is indefinite and sustained, which seriously compromises his health and family life. The severity and indefinite nature of these deprivations constitutes a situation of torture, or at least cruel, inhuman or degrading treatment, in breach of the UK's obligations under CAT. The key elements include:
- A. Prolonged surveillance by the UK authorities, which has impeded his ability to receive visits from his family, his friends and at times even his lawyers.
  - B. The indefinite nature of Mr Assange's deprivation of liberty and the constant risk of being expelled and extradited to the United States, where serious proceedings of a political and national security nature are under way against him, and where he risks being exposed to similar, or worse, treatment than Chelsea Manning.
  - C. The refusal on the part of the UK authorities to allow him temporary access to medical facilities required to diagnose and treat health ailments, causing a progressive deterioration of his health;
  - D. The continuing denial of such access over a period of time in which its harm to his physical and mental health has become cumulatively harsh, increasingly difficult to reverse and potentially life-threatening.
  - E. His confinement within a very small area of space (30m<sup>2</sup>) with no access to direct sunlight or an outside area, which is in breach of the UN Standard Minimum Rules for the Treatment of Prisoners of 17 December 2015, which mandates a minimum of an hour a day access to outside space for exercise, weather permitting.<sup>28</sup>
  - F.
26. The Ecuadorian Embassy (through no fault of its own) is unable to provide Mr. Assange with that required by the United Nations Body of Principles for Detention and Standard Minimum Rules for Prisoners,<sup>29</sup> but the UK refuses to allow Mr Assange these benefits without prejudice to his asylum.

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<sup>28</sup> Article 21(1) of the Standard Minimum Rules for the Treatment of Prisoners, <[https://www.unodc.org/pdf/criminal\\_justice/UN\\_Standard\\_Minimum\\_Rules\\_for\\_the\\_Treatment\\_of\\_Prisoners.pdf](https://www.unodc.org/pdf/criminal_justice/UN_Standard_Minimum_Rules_for_the_Treatment_of_Prisoners.pdf)>.

<sup>29</sup> Principle 24 of the United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, <<http://www.un.org/documents/ga/res/43/a43r173.htm>>;

27. The also UK refuses to protect Mr Assange from such treatment from third countries by refusing to provide assurances as to his onward extradition to the US. Mr. Assange was granted asylum because he faces a real risk of cruel and inhumane treatment. The Special Rapporteur on Torture has found that at a minimum, Mr. Assange's alleged source, Ms. Manning, was subjected to cruel and inhuman treatment in the United States.<sup>30</sup> He found that Ms. Manning had been subjected a prolonged period of isolated confinement with a view to coercing her "into 'cooperation' with the authorities, allegedly for the purpose of persuading [her] to implicate others."<sup>31</sup> The only reasonable inference from this is that Ms. Manning was subjected to such mistreatment in order to obtain evidence against Mr. Assange. It is entirely reasonable to expect that Mr. Assange will suffer similar treatment should he be extradited to the US.
28. As a result, Ecuador is prevented from permitting Mr Assange, who is under its protection, to be extradited to Sweden because this could trigger an onward extradition to the US where he faces persecution for political reasons and risks torture and other inhuman and degrading treatment. Sweden has complied with all US extradition requests since 2000 and has been condemned in UN tribunals for failing to prevent the transfer of persons to countries that subsequently subjected them to torture.<sup>32</sup>

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Article 22 of the Standard Minimum Rules for the Treatment of Prisoners, <[https://www.unodc.org/pdf/criminal\\_justice/UN\\_Standard\\_Minimum\\_Rules\\_for\\_the\\_Treatment\\_of\\_Prisoners.pdf](https://www.unodc.org/pdf/criminal_justice/UN_Standard_Minimum_Rules_for_the_Treatment_of_Prisoners.pdf)>.

<sup>30</sup> "I conclude that the 11 months under conditions of solitary confinement (regardless of the name given to his regime by the prison authorities) constitutes at a minimum cruel, inhuman and degrading treatment in violation of article 16 of the convention against torture. If the effects in regards to pain and suffering inflicted on Manning were more severe, they could constitute torture." E. Pilkington, 'Bradley Manning's treatment was cruel and inhuman, UN torture chief rules', *The Guardian*, 12 March 2012, <<http://www.theguardian.com/world/2012/mar/12/bradley-manning-cruel-inhuman-treatment-un>>; See also Juan E. Méndez, 'Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment', Addendum, 29 February 2012, A/HRC/19/61/Add.4, <[http://image.guardian.co.uk/sys-files/Guardian/documents/2012/03/12/A\\_HRC\\_19\\_61\\_Add.4\\_EFSonly-2.pdf?uni=Article:in%20body%20link](http://image.guardian.co.uk/sys-files/Guardian/documents/2012/03/12/A_HRC_19_61_Add.4_EFSonly-2.pdf?uni=Article:in%20body%20link)>.

<sup>31</sup> E. Pilkington, 'Bradley Manning's treatment was cruel and inhuman, UN torture chief rules', *The Guardian*, 12 March 2012 <<http://www.theguardian.com/world/2012/mar/12/bradley-manning-cruel-inhuman-treatment-un>>; Mr. Assange's central role in the Manning proceedings is also exemplified by the fact that "[i]n the course of making that argument, the government's prosecutors keep mentioning Assange's name. Over and over. So far in the trial, he has been referenced 22 times." Matt Sledge, 'Julian Assange Emerges As Central Figure In Bradley Manning Trial', *Huffington Post*, 19 June 2013 <[http://www.huffingtonpost.com/2013/06/19/julian-assange-bradley-manning-trial\\_n\\_3462502.html](http://www.huffingtonpost.com/2013/06/19/julian-assange-bradley-manning-trial_n_3462502.html)>.

<sup>32</sup> In *Agiza v. Sweden*, Communication No. 233/2003, the UN Committee against Torture found that Sweden had violated Articles 3, 16 and 22 of The Convention against Torture. The following year, in *Mohammed Alzery v. Sweden*, Communication No. 1416/2005, the UN Human Rights Committee found Sweden to have violated Articles 2 and 7 of The International Covenant on Civil and Political Rights.

29. The UK's obligation to protect persons from persecution under the 1951 Refugee Convention prevails over extradition agreements between states. As illustrated in the UK submission to the WGAD investigation of Mr Assange's deprivation of liberty,<sup>33</sup> the UK has wholly failed to consider the well-founded fear and risks that keep Mr Assange deprived of his liberty and ignores repeated communiques from Ecuador which underline their finding that Mr Assange meets the criteria for asylum under the 1951 Convention.<sup>34</sup>
30. In response to its 2012 UPR, the UK rejected the recommendation that it abandon the practice of using diplomatic assurances concerning torture and ill-treatment of persons. In its response, the UK affirmed:

*The UK courts along with the European Court of Human Rights found the use of diplomatic assurances to be an appropriate and legal option in safeguarding the well-being of individuals we deport.*<sup>35</sup>

31. Yet the UK has refused to provide or request this diplomatic assurance in respect of Mr Assange. As set out by the Svea Court of Appeal in Sweden, onward extradition from Sweden to the US would require the consent of the UK – thus the UK could prevent onward extradition by refusing its consent.<sup>36</sup>
32. The refusal of the UK to recognize Mr Assange's asylum and to seek/provide the necessary assurances to protect him from inhuman and degrading treatment breach its obligations under both CAT and the 1951 Convention. The refusal to allow Mr Assange access to medical treatment in a safe and non-discriminatory manner also breaches its obligations under the ICESCR.

### **Concern regarding domestic human rights legal protection**

33. We note with grave concern the current proposals within the UK to repeal domestic human rights protections contained in the *Human Rights Act* and to

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<sup>33</sup> Foreign and Commonwealth Office, 'FOI release: response to WGAD on Julian Assange', 29 March 2016 <<https://www.gov.uk/government/publications/foi-release-response-to-wgad-on-julian-assange>>.

<sup>34</sup> 'Ecuador Grants Asylum to Julian Assange: Declaration by the Government of the Republic of Ecuador on the asylum application of Assange' *AustralianPolitics.com*, 16 August 2012 <<http://australianpolitics.com/2012/08/16/ecuador-grants-asylum-to-julian-assange.html>>; 'Official statement by the government of Ecuador on the Asylum Approval for Julian Assange (translated)' *Hang The Bankers*, 16 August 2012 <<http://www.hangthebankers.com/official-statement-by-the-government-of-ecuador-on-the-asylum-approval-for-julian-assange-translated/>>.

<sup>35</sup> See, United Nations Universal Periodic Review Mid Term Report of the United Kingdom of Great Britain and Northern Ireland, and the British Overseas Territories, and Crown Dependencies (2014), <<https://www.justice.gov.uk/downloads/human-rights/uk-upr-mid-term-report-2014.pdf>>, pp 156-7.

<sup>36</sup> See Article 28 (4) of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States and discussion in *Julian Assange v Director of Public Prosecution Marianne Ny*, (2016) Case no Ö 7130-16, 16 September 2016 <<http://www.svea.se/Pages/173150/Order%20Ö%207130-16.pdf>>.

withdraw from the *European Convention of Human Rights*. Doing so would constitute retrograde steps in the protection of human rights in the UK in breach of the UK's international treaty obligations. A British cross-party parliamentary committee has warned that the proposed bill would undermine the UK's international legal standing and "unravel" the constitution.<sup>37</sup>

### **Ratification of international treaties providing individual complaint mechanisms**

34. The current proposals to repeal domestic human rights protections only increases the impetus for the UK to ratify international treaties providing for individual complaint mechanisms under the treaties to which the UK is a party. This was the subject of numerous recommendations from UPR 2012. In response, the UK stated:

*The UK Government remains to be convinced of the added practical value to people in the United Kingdom of rights of individual petition to the United Nations.*

35. The UK repeated this in its 2014 Mid Term Report.<sup>38</sup> In 2016, the failures of the UK to provide adequate remedy in relation to the human rights concerns listed here only emphasises the importance of international oversight and remedies.
36. The UK has not made a declaration under Article 22 of UNCAT accepting the right of individual petition, nor has it ratified the First Optional Protocol of the ICCPR. These procedures provide victims with an opportunity to raise allegations of specific or systemic violation and would constitute an important additional avenue for individuals and enable the committees to monitor the UK's compliance with its obligations beyond periodic reporting.
37. It is particularly important that the UK ratifies individual complaint mechanisms to address the void which will be created by Brexit: European Court of Justice and European Union remedies will no longer be available and the UK is considering withdrawal from the European Convention of Human Rights and Council of Europe. In these circumstances, UN individual complaint mechanisms will afford an important residual remedy to UK citizens and residents.
38. The UK's acceptance of these individual petitions procedure would send an important message and provide an example to other states. The ratification

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<sup>37</sup> Jim O'Hagan, 'UK to scrap Human Rights Act' *Euronews*, 28 August 2016 <<http://www.euronews.com/2016/08/28/uk-to-scrap-human-rights-act>>.

<sup>38</sup> United Nations Universal Periodic Review Mid Term Report of the United Kingdom of Great Britain and Northern Ireland, and the British Overseas Territories, and Crown Dependencies (2014), <<https://www.justice.gov.uk/downloads/human-rights/uk-upr-mid-term-report-2014.pdf>>, pp 8-9.

of these individual complaints mechanisms would strengthen the rights of individuals in the UK and the roles of the respective committees.

### III: CONCLUSION

39. The selective failure to respect and implement findings and recommendations of UN special mechanisms, particularly in relation to the Working Group on Arbitrary Detention of Julian Assange in 2016, **raises serious concerns** about the UK's commitment to international cooperation and implementation of United Nations human rights findings.
40. Despite alleged progress claimed by the UK in its 2014 Mid Term Report, recent reports on pre-trial detention raise continuing concerns of England and Wales' average length of pre-trial detention recorded as the highest per capita prison rate in the EU. We note Julian Assange has now been deprived of his liberty for almost 6 years, in breach of Article 9 and 14, ICCPR.
41. Over the past four years, Assange's deprivation of liberty increasingly amounts to solitary confinement and arbitrary detention, with no end in sight and no opportunity for judicial review. We submit that treatment of this kind constitutes a situation of torture, or at least cruel, inhuman or degrading treatment in breach of the UK's obligations under the CAT and the ICCPR.
42. We are concerned with the UK's failure to ratify individual complaint mechanisms, particularly considering the proposed repeal of the UK domestic Human Rights Act and withdraw from the European Convention on Human Rights in the wake of Brexit. The lack of remedies for Mr Assange demonstrate the importance of access to UN complaint mechanisms for UK citizens and residents, as well as those involuntarily detained in UK territory.

## ANNEX: COALITION MEMBERS AND CONTACT INFORMATION

Center for Constitutional Rights	<Vwarren@ccrjustice.org>
Eva Joly Institute	<jon.thorisson@icloud.net>
National Lawyers Guild	<lyciaora@gmail.com>
International Association of Democratic Lawyers	<micsavia@hotmail.com>
Liberty Victoria	<Spencer.Zifcak@acu.edu.au>
Courage Foundation	<naomi.colvin@couragefound.org>
Centro de Estudios Legales y Sociales (CELS)	<gchillier@cels.org.ar>
Derechos Humanos en Acción	<productora35mm@gmail.com>
Australian Lawyers for Human Rights	<president@alhr.org.au>
Australian Lawyers Alliance	<republicone@ozemail.com.au>
Swedish Professors & Doctors for Human Rights (SWEDHR)	<fdenoli@gmail.com>
Digital Rights Watch	<tim@digitalrightswatch.org.au>
Sydney Peace Foundation	<peace.foundation@sydney.edu.au>