

BRIEFING: JULIAN ASSANGE AND WIKILEAKS

I. EXECUTIVE SUMMARY

1. This briefing provides an update on the situation involving Julian Assange and WikiLeaks in advance of the visit of President Trump in July 2018 in the hope the current impasse can be resolved. WikiLeaks is an award-winning, non-profit publishing organisation, which has published information about wars, human rights abuse and corruption the world over. Mr Assange, editor-in-chief, has been nominated for the Nobel Peace Prize and won numerous awards, such as the *Martha Gellhorn Award for Journalism*, the *Walkley Award for Most Outstanding Contribution to Journalism*, and the *Amnesty International UK Media Award*.
2. The alleged source of many of the documents released by Wikileaks, Chelsea Manning, was granted clemency by President Obama. She is free, but publisher Julian Assange remains inside the embassy because of the ongoing threat of extradition to the US by the Trump administration.
3. UK tax-payers are currently paying **£3.4m per year** for the Metropolitan Police Service (“MPS”) Assange surveillance (“Operation Kudo”), which is listed in London Assembly’s budget documents. Over **£22m** has been expended so far.
4. The UK could resolve this impasse, putting an end to exorbitant public expense, by providing a diplomatic assurance against US extradition, ending significant cost to the MPS. Mr Assange would then leave the embassy and face whatever bail proceedings the Crown Prosecution Service (“CPS”) if it saw fit to pursue the matter.
5. Mr Assange has made clear he is happy to face British justice, but not at the expense of facing American injustice. On 19 June 2018, Mr Assange will have spent 6 years inside the Ecuadorean embassy in London and suffered 7.5 years of restrictions on his liberty without charge. Since 2010, Mr Assange has been requesting an assurance from the UK that he would not be extradited to the US to face prosecution for his publishing activities with WikiLeaks. The UK’s failure to provide this assurance was the reason Mr Assange sought asylum in Ecuador’s embassy in 2012, the reason he was granted 1951 Convention refugee status by Ecuador, and why he remains there today. Recent statements from key figures of the Trump administration make it impossible to deny the grave risk of extradition to the US.
6. UK diplomatic assurances would have significant benefits to the UK, including:
 - 6.1 Putting an end to significant public expenditure to maintain the status quo, including in excess of an estimated **£22 million** in policing costs on surveillance of the Ecuador embassy since 2012;
 - 6.2 Demonstrating the UK’s commitment to free speech and protection of the right to publish in circumstances where the British courts have recognised that WikiLeaks is a media organisation and Mr. Assange is a journalist;
 - 6.3 Resolving a case which the United Nations Working Group on Arbitrary Detention (“WGAD”) has found to constitute unlawful, arbitrary detention under international law in breach of the UK’s international obligations, which has opened to the UK to allegations of hypocrisy at the UN in pressing other states to comply with UN special mechanisms; and
 - 6.4 Ending a longstanding diplomatic issue which has disrupted UK-Ecuador relations for almost 6 years, with knock on effects for other Latin American relationships.

II. WIKILEAKS AND JULIAN ASSANGE – JOURNALISM, FREE SPEECH AND THE PUBLIC INTEREST

7. WikiLeaks has been recognised around the world for their publishing work which has provided evidence of war crimes, corruption and human rights abuse. Their publications, including Trafigura, Collateral Murder, the Afghan and Iraq War logs, Cablegate, the Trans-Pacific Partnership, Hacking Team and Vault7, have won a number of journalism and transparency awards, including the Economist New Media Award and Amnesty International's UK Media Award. Amnesty International credited WikiLeaks with having been a catalyst for pro-democracy movements during the Arab Spring.¹ WikiLeaks publications have been cited in human rights cases before the European Court of Human Rights and in the UK Supreme Court.
8. In 2010, then UK Information Commissioner said that "*WikiLeaks is part of the phenomenon of the online, empowered citizen.*"² In 2011, the UK High Court, referred to Mr. Assange as "*a journalist well known through his operation of Wikileaks*".³ In 2017, the UK Information Tribunal accepted that WikiLeaks is "a media organisation which publishes and comments upon censored or restricted official materials involving war, surveillance or corruption, which are leaked to it in a variety of different circumstances". The tribunal also stated:

'So far as the evidence before us goes, Mr Assange is the only media publisher and free speech advocate in the Western world who is in a situation that a UN body has characterised as arbitrary detention. It is a matter of public controversy how this situation should be understood. The circumstances of his case arguably raise issues about human rights and press freedom, which are the subject of legitimate public debate. Such debate may even help to resolve them, which would itself be a public benefit.'
9. In 2017, the UK Supreme Court decided that WikiLeaks publications, including US diplomatic cables, are admissible as evidence in the courts of this country: *R (Bancoult No.3) v Secretary of State for Foreign and Commonwealth Affairs* [2018] UK SC 3.
10. WikiLeaks publications have caused controversy and have made a remarkable contribution to journalism and to public debate on matters of public interest. The source protection system invented and pioneered by Mr Assange has been embraced by media organisations, including AP, Bloomberg, The New York Times and The Guardian. Their publishing activities are protected by Article 10 of the European Convention on Human Rights ("ECHR") and the constitutional protection of the First Amendment in the US.

III. JULIAN ASSANGE – CURRENT STATUS

11. Mr Assange is now a dual Ecuador-Australian citizen, having been granted citizenship by Ecuador in December 2017, more than five years after being granted asylum inside the embassy.
12. Asylum was granted under the 1951 Refugee Convention and 1954 Caracas Convention in August 2012 owing to his well-founded fear of political persecution if extradited to the US in circumstances where the UK and Sweden refused to provide (or even seek) diplomatic assurances against his extradition to the US. Ecuador requested this assurance from the UK and Sweden before deciding to grant Mr Assange protection: its protection was granted when the then UK government did not do so.
13. Mr Assange will have been confined in the Ecuador embassy in London for **six years** on 19 June 2018. He has been under various forms of restrictions on his liberty, including in prison, since 9 December 2010, that is, for more than **seven and a half years** and **without charge**. Recent reports in The Guardian revealed the CPS

¹ <https://www.theguardian.com/world/2011/may/13/amnesty-international-wikileaks-arab-spring>

² <https://www.theguardian.com/politics/2010/dec/30/wikileaks-freedom-information-ministers-government>

³ [2011] EWHC 2849 (Admin)

advised Sweden not to question Mr. Assange in the UK throughout 2010 until at least 2013, and persuaded Sweden not to drop the case when they moved to do so in 2013.⁴

14. Notwithstanding the decision of the Swedish Prosecutor to drop its preliminary investigation against Mr Assange in May 2017, Mr Assange remains inside the Ecuador embassy in London due to his ongoing concern about the risk of extradition to the US.
15. The UK has refused Ecuador's requests to allow Mr Assange safe passage to seek medical treatment or outside exercise during the six years he has been inside the embassy. This has meant that Mr Assange has not received the basic minimum treatment required by UN standards: an hour outside each day and to receive basic health care. Prominent doctors have appealed to the UK government and the British Medical Association to ensure his right to health care given that his "confinement is dangerous physically and mentally to him and a clear infringement of his human right to healthcare".⁵
16. Although Mr Assange's conditions were already harsh, having no sunlight or outdoor exercise since June 2012, the conditions have deteriorated dramatically since 28 March 2018, when Ecuador imposed conditions that are tantamount to a form of indefinite, solitary confinement, according to the General Counsel of Human Rights Watch.⁶ Since then, Mr. Assange has been prevented from having visitors, as well as from receiving telephone calls and other electronic communications. Mr Assange is only permitted to meet with his lawyers. This situation is clearly untenable.
17. If Mr Assange were to leave the embassy, he will be arrested by the MPS for an alleged breach of bail conditions in connection with seeking asylum. The UK government has not recognised that it has an obligation to recognize that Mr Assange's refugee status prevents the UK extraditing him to the persecuting state, in this case, the United States. A recent challenge to the basis of the warrant to arrest Mr Assange if he leaves the embassy (since Sweden has revoked its warrant and the case is over) failed, which means that – absent an assurance from the UK against extradition to the US – he will be taken into custody pending bail proceedings without any guarantee that he will be protected from US extradition.
18. Mr Assange is happy to face British legal process in respect of the alleged breach of bail – if one takes into consideration just the time he spent in prison and qualifying curfew and electronic monitoring prior to entering the embassy of Ecuador, he has served more time than any possible sentence even if convicted – but not at the risk of being extradited to the US. By virtue of the asylum granted, Ecuador is required to protect Mr Assange from *refoulement* to the US.

IV. UNITED STATES AND THE RISK OF EXTRADITION

19. Public threats towards Mr Assange from high-ranking U.S. security officials have increased under the Trump administration. The grand jury investigating WikiLeaks was commenced in 2010 under the Obama administration and has continued since. This risk of extradition was the reason Mr Assange sought asylum in 2012.
20. Since President Trump came to power, the U.S. Department of Justice has expanded its grand jury against Mr Assange, which commenced in mid 2010, to include his 2017 publications on unlawful spying across the globe by the Central Intelligence Agency (CIA).
21. Examples of the threats from current US administration figures include:

4 <https://www.theguardian.com/media/2018/feb/11/sweden-tried-to-drop-assange-extradition-in-2013-cps-emails-show>

5 <https://www.theguardian.com/commentisfree/2018/jan/24/julian-assange-care-wikileaks-ecuadorian-embassy>

6 <https://twitter.com/DinahPoKempner/status/980623189263966209>



- 21.1 Secretary of State, **Mike Pompeo**, said in 2017 when he was Director of the CIA that WikiLeaks is a “non-State hostile intelligence service” and that Mr Assange should not benefit from First Amendment constitutional protections.⁷
- 21.2 Then FBI Director, **James Comey**, provided the clear indication that the US intends to apprehend Mr Assange in his testimony to the Senate Judiciary Committee in May 2017, stating that Mr Assange “hasn't been apprehended because he's inside the Ecuadorian Embassy in London”;⁸
- 21.3 The US Attorney General, **Jeff Sessions**, said that Mr Assange’s arrest was a “priority”;⁹
- 21.4 Department of Justice sources revealed that they intended to adopt an approach to circumvent First Amendment protections.¹⁰
- 21.5 Adam Schiff the minority leader of the House Intelligence Committee recently stated that ‘Our committee would be willing to interview Julian Assange when he is in U.S. custody, not before.’
22. There are serious concerns about the prospects of Mr Assange receiving a fair trial in the United States. James Goodall, former legal counsel to the New York Times, said that “*What started off as a putative prosecution of Assange has turned into a persecution.*” ACLU Executive Director Anthony Romero has stated that
- “any criminal charges against Mr. Assange in connection with Wikileaks’ publishing operations would be unprecedented and unconstitutional. Indeed, even the prolonged criminal investigation of Wikileaks itself has had a profound chilling effect. The Justice Department should end that investigation”.*
23. There are serious concerns about the treatment Mr Assange would receive if he were extradited to face prosecution in the US. Chelsea Manning, WikiLeaks’ alleged source, was found to have been subjected to cruel, inhuman and degrading treatment during her detention under the Obama administration.¹¹
24. The criminal investigation of WikiLeaks raises serious First Amendment concerns, as many free speech experts and organisations have repeatedly pointed out. For example, George Freeman, former in-house counsel to the New York Times and now executive director of the Media Legal Resource Centre in the US has warned that criminalisation of WikiLeaks will endanger all media organisations:
- The specter of government taking criminal action against the press for publishing accurate and newsworthy information would be frightening, not just for the press, but for the entire citizenry which counts on the media to give it information about what its government is up to.*¹²
25. In granting an assurance against extradition, the UK would be protecting a publisher from extradition to face prosecution for publishing activities.

V. ENDING PUBLIC EXPENDITURE ON THE IMPASSE

26. The refusal of the Cameron and May governments (Theresa May was Home Secretary and acting Prime Minister when Mr Assange sought asylum) to provide an assurance against extradition to the US has caused this impasse: Mr Assange would have accepted extradition to Sweden had the UK insisted on speciality and provided an assurance against onward extradition to the US. Mr Assange sought asylum for this reason and

⁷ These remarks were repeated over a series of high profile interviews and talks given by the then CIA Director in early to mid 2017. See, for example: <https://www.cia.gov/news-information/speeches-testimony/2017-speeches-testimony/pompeo-delivers-remarks-at-csis.html>; <https://web.archive.org/web/20170801140816/https://www.youtube.com/watch?v=a0Fak6Vy6Hs>; <https://www.c-span.org/video/?431113-1/cia-director-says-russia-clearly-meddled-2016-election&start=833>.

⁸ https://archive.org/details/CSPAN_20170510_065800_FBI_Director_Defends_Decision_to_Reveal_Clinton_Email_Probe_Before_Election/start/5820/end/5880

⁹ <http://www.aljazeera.com/news/2017/04/julian-assange-arrest-priority-jeff-sessions-170421023413061.html>

¹⁰ <http://edition.cnn.com/2017/04/20/politics/julian-assange-wikileaks-us-charges/>

¹¹ <https://www.theguardian.com/world/2012/mar/12/bradley-manning-cruel-inhuman-treatment-un>

¹² <https://www.thewrap.com/prosecuting-wikileaks-endangers-reporters-first-amendment-experts-say/>

Ecuador granted asylum after it was clear that the UK and Sweden would not provide an assurance. This case could have been resolved many years ago.

27. The refusal to provide this assurance has come at great public expense. The policing operation of the embassy is expected to have cost an estimated at over **£22 million**. This does not include the cost to the UK of acting as agent to Sweden in pursuing their extradition request that has since been dropped.
28. A freedom of information request by LBC demonstrated that the policing cost between June 2012 and February 2015 amounted to £10 million, or £10,000 per day.¹³ The Mayor of London since reported on 22 March 2018 that policing costs between 2012 and October 2015 (half way through the six year impasse) were £13.2 million.¹⁴
29. The physical police presence at the embassy was removed in October 2015 after growing concern about the public expense (particularly in light of police cuts elsewhere). According to *The Times*, the UK government had also removed the physical presence because of the concern, in light of our complaint to the UN Working Group on Arbitrary Detention, about the impression it gave the UN. The MPS made clear that, in removing the police presence, a “strengthened” covert operation would continue¹⁵. From this point on, the policing budget was classified and beyond the reach of freedom of information laws.
30. Police Commissioner Sir Bernard Hogan-Howe recognised in February 2015 that Operation Kudo was “sucking our resources” at a rate of over £3m/year.¹⁶ When the operation turned covert in October 2015, the Police Commissioner recognised that the savings were “relatively small”.¹⁷ In fact, recent investigations suggest that Operation Kudo has increased over time, not decreased. A recent investigation shows that the surveillance operation named “Operation Kudo”, which is listed in London Assembly documents subsequently increased to **£3.4 million** per year (compared to £3.1 million per year estimated in 2015) although the present budget is not known.

VI. CONCLUSION

31. The UK could resolve this impasse, putting an end to exorbitant public expense, by providing an assurance against US extradition. Such assurances are standard practice. when a person is transferred from one jurisdiction to another for criminal process and when refugees are transferred from the protecting state to a non-persecuting state.
32. Julian Assange and WikiLeaks are recognised in this country by the courts, civil society and in this Parliament (WikiLeaks publications have been cited in these houses) as providing an important public service through its publishing activities. By providing an assurance against US extradition, the UK would take a principled free speech position, protecting a publisher from extradition to face prosecution for protected publishing activities. The criminal prosecution of WikiLeaks is routinely recognised, by civil society, lawyers, journalists and experts, as creating a dangerous precedent for free speech.

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¹³ <http://www.bbc.co.uk/news/uk-31159594>

¹⁴ http://questions.london.gov.uk/QuestionSearch/searchclient/questions/question_298510

¹⁵ http://news.met.police.uk/news/covert-plan-at-ecuadorian-embassy-strengthened-after-removing-dedicated-guards-132799?utm_campaign=send_list&utm_medium=email&utm_source=sendgrid

¹⁶ https://www.bbc.com/news/uk-31356912?ocid=socialflow_twitter

¹⁷ <https://www.standard.co.uk/news/london/met-chief-sir-bernard-hoganhowe-london-at-risk-as-scotland-yard-faces-vast-budget-cuts-a3090246.html>