# *An inconvenient dissident: human rights activism in the case of Julian Assange*

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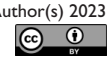

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# An inconvenient dissident: Human rights activism in the case of Julian Assange

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## Abstract

The article is based on investigations by two branches of the United Nations Human Rights Council into the treatment of the whistleblower journalist, Julian Assange – the UN Working Group on Arbitrary Detention and The UN Special Rapporteur on Torture. The UN investigations analysed for this 'Acting Up' article show that Julian Assange is an inconvenient dissident, who has been subjected to persecution by liberal democracies rather than authoritarian regimes. Previous research into whistleblowing has highlighted the courage and risks taken by individual whistleblowers in speaking truth to power however, this case highlights a different facet of speaking truth to power which shows how lawyers, activists and other professionals often refuse to do this because of the professional costs of speaking up for an apparently toxic individual. This article argues that the UN investigations have built a 'counter-archive' of suppressed facts about the case, which challenges the 'collective amnesia' of the public discourse. This case demonstrates that speaking truth to power requires not only individual courage but the active support of inconvenient dissidents, who lack other civil society support.

## Keywords

Activism, Assange, human rights, United Nations Human Rights Council, whistleblowing

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> 'For decades, political dissidents have been welcomed by the West with open arms, because in their fight for human rights they were persecuted by dictatorial regimes. Today, however, Western dissidents themselves are forced to seek asylum elsewhere, such as Edward Snowden in Russia, or recently Julian Assange at the Ecuadorian embassy in London'. (Melzer, 2022: 270).

This article is based on an interview with human rights lawyer, Prof Mads Andenæs, and also draws upon investigations by two branches of the United Nations Human Rights Council into the treatment of the journalist, Julian Assange (Melzer, 2019, 2022; UNWGAD, 2015, 2016). One of the co-authors is also the legal observer for the Haldane Society of Socialist Lawyers at the extradition hearings of Julian Assange. These investigations into the Assange case will be of interest to scholars of whistleblowing activism and human rights activism. Assange is one of the most controversial and influential journalists in history, having pioneered a new form of journalism through his work at WikiLeaks and revealing a vast range of financial, political and military crimes in numerous organisations and countries. The aim of this article is to develop a deeper understanding of the relationship between human rights activism and whistleblower activism. The scholarly literature commonly acknowledges that whistleblowers are frequently subject to forms of retaliation which often attack and otherwise undermine the character of those making public disclosures (Alford, 2002; Kenny, 2019; Munro, 2019), but the difficulties faced by activists and professionals who support whistleblowers has been a neglected area of research.

This article gives voice to those whose work straddles the boundary between academia and human rights activism. This is based primarily on an interview with Professor Mads Andenæs KC, who chaired the UN Working Group on Arbitrary Detention. The interview is then followed by a brief summary of the findings of an investigation into Assange's case by Professor Nils Melzer's, the former UN Special Rapporteur on Torture, which are referred to by Prof Andenæs in his interview.[1,2] The article's second aim is a more modest theoretical contribution which further develops Contu's (2018, 2020) conception of 'intellectual activism' specifically in terms of activist practices of 'building the archive' and 'speaking truth to power'. It develops Contu's (2020) idea of 'building the archive' where prominent human rights lawyers acting under their UN mandate have faced serious difficulties in gaining cooperation from democratic states, as well as coverage and recognition of the facts and the significance of their investigations of the case of journalist Julian Assange.

This paper builds on an emerging tradition in OS publishing which gives a platform to actors representing and supporting activists and whistleblowers countering organisational opacity and secrecy, through publishing interviews with relatively minor editorial input (see Bushnell et al., 2019; Munro, 2018, 2019). As an 'Acting Up' piece this analysis focuses on how the UN investigations have created a 'counter-archive' of Assange's case which otherwise had been widely misrepresented in the media. This article further develops the concept of 'speaking truth to power' (Contu, 2020) in intellectual activism by highlighting difficulties associated with working within highly contentious situations, where truths may be in doubt or disputed. In particular, this article uncovers concerns expressed by human rights lawyers that professionals including academics, lawyers and journalists often do not speak truth to power, given the potential costs to career and reputation. This shows how professional silence and complicity can obstruct those endeavouring to speak truth to power.

The article highlights the difficulty that prominent UN human rights experts have faced when investigating and supporting the human rights of someone who has been subject to smear campaigns and may be regarded as a 'toxic' personality by others within their profession and in the wider public discourse. This article also contributes to the discussion of the role of activism in democracy (Contu, 2018, 2020; Kenny and Bushnell, 2020), highlighting ways in which

democracy is currently under threat, particularly with respect to the undermining of key human rights, such as the right to due process, freedom of expression and the right to know. Both Andenæs and Melzer express concerns with respect to human rights, democracy and journalism in the ongoing prosecution of Assange, and the refusal of states to investigate official concerns raised by UN experts related to torture and due process violations. This study will be of interest to scholars of whistleblowing activism, intellectual activism and human rights activism. This article can itself can be understood as a continuation of the activist human rights practice in building a 'counter archive' and giving voice to human rights activists, and furthermore it opens up future possibilities for investigating the ambivalent role of professionals as being both engaged in civil society as activists speaking truth to power and as being complicit with state and corporate power.

## An interview with Mads Andenæs on the UN investigations into the Assange case

Driver: Thanks very much, Mads, for talking to Iain and me about the case of Assange. Mads, may I start by asking you, firstly, to tell us a little bit about yourself and how you got involved in looking at the case of Assange?[3]

Andenæs: I was the UN President-Rapporteur on Arbitrary Detention and chairing the UN Working Group on Arbitrary Detention, which is one of the so-called 'Special Procedures' under the United Nations Human Rights Council, dealing in this case, then, with arbitrary detention. There are others, like the Special Rapporteur on Torture, a post which Nils Melzer held. These posts under the Special Procedures are referred to as Charter Bodies, as they are established under the UN Charter, and they cover a wide range of human rights issues. The UN Working Group on Arbitrary Detention hears individual complaints, and its opinions have weight as they are the most specialised body with the greatest expertise on detention in the UN system. I and the members were appointed by the UN Human Rights Council, and I reported to the UN General Assembly and the Human Rights Council.

Julian Assange's lawyers approached the UN Working Group on Arbitrary Detention, complaining that he was held in detention and that it was unlawful. We started looking into it, and it took a period of a year and a half to complete the procedure. My term actually ended before the conclusion was out, but the conclusion then was that he was, indeed, held in arbitrary detention.

There were a number of legal issues: for instance, that he had at this stage been sitting for a long period in embassy asylum. The problem with it was, of course, how could he be held to be in arbitrary detention when he, himself, had chosen to seek asylum in this embassy?

And why was it unlawful to put him into detention? In this case, Julian Assange was unlawfully prosecuted by the UK.[4] He was first detained and kept in isolation. He was released on bail, and then sought for breaching his bail conditions. The legal issue was pretty clear because we had case law in the UN Working Group on arbitrary detention regarding individuals in their own home but not being able to walk out into the street without being harassed or being arrested. You might find interesting the case which we based our discussions on, Liu Xia v. China, Working Group on Arbitrary Detention, Opinion No.16/2011.[5] The case concerned Liu Xia, the poet and artist who is married to Liu Xiaobo, the democracy advocate and literary scholar who was awarded the Nobel Peace Prize in 2010. She stayed in her home, but plain-clothes security agents stand in front of the gate to the compound,

warning journalists and visitors away. Liu Xia was not allowed to leave the compound, except for short, approved trips, under police escort. Visitors were barred from her apartment. Liu Xia was prevented from communicating with the outside world on the telephone or via the Internet. Her mobile phone was disconnected. A second replacement phone was also cut off. The Chinese authorities have prevented foreign diplomats from meeting Liu Xia. We could also base our opinion No. 2/2007 (Myanmar), in which the Working Group ruled that the conditions of Aung San Suu Kyi was a clear violation of article 9 of the UN Covenant on Civil and Political Rights.[6] Needless to say, western governments were most supportive of the opinions on Liu Xia and Aung San Suu Kyi. Finally we were guided by the jurisprudence of the ICTY.[7] In its 1996 ruling in the Blaškić case, the ICTY discussed house arrest in international law and national laws; it considered that house arrest constitutes detention and is subject to the same guarantees as detention in a prison facility.

The Working Group considered the different restrictions Assange was subjected to and held that they amounted to detention. Obviously, Assange had not voluntarily sought embassy asylum. He got into the embassy because it was the only way he could avoid being put into unlawful detention by the British authorities. Just the conditions of this detention would qualify as a human rights violation. The UN Working Group held that the isolation in Assange's first term of isolation, before the bail, sufficed. He could expect to be put into isolation in a place like Belmarsh, where he had been in his first period of detention and where he is now.

The measures which he had been through, his first period of detention, was, in itself, unlawful because it was disproportionate. He had been in unlawful detention in that sense, and he was going back to it, so, being in the embassy was then, in itself, an arbitrary detention. This was in fact the only way he could avoid unlawful detention by the UK authorities. The moment he stepped into the street outside the embassy, he would have been apprehended. In the end the UK authorities apprehended him inside the embassy, as you know. He lawfully did what was necessary to avoid being put into Belmarsh or one of these detention institutions.

So, why was it interesting? Why had the lawyers approached this UN Working Group? Well, because it was the only UN body which, within reasonable time, could look into the lawfulness of his detention.

The working group is appointed by the UN Human Rights Council. My background was as a law professor who had knowledge of international law, human rights law, and also a sufficient degree of experience and independence. When we made our decision, it was a complaint then against the UK, who wanted to put Mr Assange in pre-trial detention while they were assessing the extradition request. It was also against Sweden, which was maintaining an extradition request.

The reaction from the UK and from the Swedes was that it was completely inappropriate to make a finding against them. They tried to argue on the law, but those arguments had not succeeded. Now, is it unusual that a country does not accept the findings of the United Nations? Well, it shows how politically important they regarded the Assange case.

Driver: Thanks, Mads. That's an interesting round-up.

Andenæs: The most important UN officer which has taken up the complaints by all of Assange's team, and Assange himself, is Nils Melzer. He is the UN Special Rapporteur on Torture, and he has looked into the process. He has made a series of

findings, and he has also made urgent appeals. Not only findings after assessing the case on its merits, but he has also made so-called 'urgent appeals' where he has clarified the ways in which Julian Assange's health is under threat, first in his embassy asylum and now, later on in a UK prison institution, in Belmarsh.

Driver: One of the things that always, I think, people ask is: is it normal for a UN rapporteur to write, to do the kinds of things that Nils has done, including write a book[8] on a case?

Andenæs: Yes. Nils Melzer has written a book, and he has explained the legal issues, and he has done it in a very clear and convincing way. I have full respect for that. I think it is an important contribution to the public discourse. First of all, looking at his background, he, Nils Melzer, is an independent Swiss law professor, who has held chairs in different places, in different countries. He is a highly independent academic, with a strong interest in international law and human rights law. He's now taking up a post as legal head of the Red Cross, back in Geneva, in Switzerland.

Now, Professor Melzer is, I expect – or that's how I read his book – also struck by the fact that here you have this series of findings by independent international bodies, and the UK authorities are just not in any way acknowledging it. For instance there are references to the UN Working Group in the first-instance extradition judgment, that is the first round, before an English judge, who is then a magistrate. The judge says she's not impressed. She doesn't find the international law conclusions of the working group convincing, and she continues to argue against it. That's what you expect from a magistrate in a not democratic country, a country which has no respect for international or national human rights law.

The fact of the matter is, of course, that the rulings of the Working Group on Arbitrary Detention have been followed up by other UN mechanisms, and still fails to leave any impression on the UK. I think that makes it important to explain the case.

Some of the argument, which was absolutely embarrassingly transparent in that respect, was what the UK minister said at the time, basically: 'We can't be guilty of such abuses for which we are accused, because we are the UK Government'. The Swedish government wasn't that much better, saying basically, 'Lay off. If there's a ruling against us, we'll just disregard it'.

Now, in the UK Supreme Court, earlier on in this case, in the segment prior to the current US extradition request, there was discussion around the case concerning whether the Swedish process was sufficient to trigger the response by the UK authorities which then had occurred, which was to say, 'We are going to extradite Mr Assange to Sweden, under the European Arrest Warrant'. There's a regulation, an EU regulation, which they then gave effect to and where the criteria of that EU Arrest Warrant regulation was complied with. 'No', said Assange's lawyers, and that is the question which then went to the UK Supreme Court. There, the UK Supreme Court split. The majority held that the criteria of the EU extradition regulations were satisfied, whereas a minority of two judges held that they were not.

The two judges who then ruled in Assange's favour were, by the way, the next President of Supreme Court, Justice Brenda Hale, Lady Hale, and Lord Mance, who became the Vice President under Lady Hale. So, then you had two justices dissenting. One was to become the President and one was to become the Vice President, so then it was a very heavy dissent.

The decision of the majority, which allowed them to rule against Mr Assange, was later changed. The majority in fact later adopted the position of the minority. This sounds very technical, but the point is there was a dissent and it was a pretty close-run thing.

Driver: Am I right in thinking, Mads, that at this stage the dissent was about whether or not you needed to have a judicial authority issuing the European arrest warrant, or otherwise?

Andenæs: Exactly as you say, actually, absolutely as you say. In Sweden, there was a prosecutor who had issued the warrant, so the question was whether that was sufficient. The majority said, 'Yes'. The minority said, 'No'.

Munro: I just want to clarify, that basically would mean, under the current British law, Assange wouldn't be in prison right now.

Andenæs: I think that's pretty correct. That's pretty correct. They interpreted the law in a different way from what they did in the next round in the Supreme Court. They felt, obviously, under an enormous pressure, and that's how they resolved it. But what is interesting is that they did interpret the law differently in the next case, where they adopted Lord Mance's position, which had then been supported by Lady Hale.

That was on the UK side. Then Assange's lawyers in Sweden challenged the extradition request itself in Swedish courts, and that, too, ended up in the Swedish Supreme Court. The Swedish Supreme Court then, a bit like the UK Supreme Court, held that they were not going to overturn the extradition request, but again there was a dissent.

Under the Swedish system, they have an official junior judge in the court, who's not a full judge, but a junior judge then wrote an opinion. That judge stated that, in her view the law did not allow for an extradition request, and that whatever the legal grounds had possibly been for the extradition request to begin with, after the years that had gone before it reached a Swedish Supreme Court, the extradition request was disproportionate and should be discontinued.

She was then supported by one Supreme Court Justice, who dissented from the majority. They were more critical than the majority in the UK Supreme Court in saying that the arrest warrant, or the actions of the Swedish prosecutors, had gone too far.

So, the majorities on both the Swedish and the UK side – and a bit stronger on the Swedish side – were critical of what the authorities had done. Then you had the minority in both courts, saying that it was clearly unlawful and should be set aside in Assange's favour. A judge in the Uppsala District Court then said, 'No, you have not made good your claims. This is not sufficient'. So, they {the prosecutors} lost that, and that's, of course, when the US request became clear.

Munro: This may be a little leading, but isn't it a bit of a coincidence that the Swedes decide to drop their case with many months to go, after nine years of preliminary investigation? They refuse to interview him, which they know they can, in fact, do legally. Then they're denied the continuation request by the Uppsala Court. Then, coincidentally, the US extradition request comes at exactly the same time. Nils Melzer does highlight this. He doesn't say, 'It's a conspiracy', but what he does say: 'It's clearly political manipulation of the legal procedure'.

Andenæs: I totally agree. Now, if you're in a United Nations position, you're supposed to review critically and you are supposed to review with the enforcement of human

rights in mind. The UN Working Group stated in its first opinion, that basically you have to take account of Julian Assange's exercise of his human rights in terms of Article 10, freedom of expression, which includes not only freedom of press but the widest sense of freedom of expression, and the rights to information, and the rights to provide information, etc. This argument of whether he was a journalist or not is completely irrelevant to this Article 19 discussion under the International Covenant on Civil and Political Rights.

So, is it too much of a coincidence? Yes, of course, there was this strategy. There's no doubt about it. There was a strategy from the US side to keep it secret. They had a secret legal procedure, which is not unusual in the US system, a grand jury proceeding to have a ruling about the bringing of a prosecution against an individual. It's not unlawful. It's not highly extraordinary, but it was done in a way which kept from the public the fact that there was this proceeding with a grand jury.

That was kept secret until the Swedish case was weakened, so, before they withdrew the Swedish case, they made this public. Shortly after the Swedes had withdrawn their request, the US authorities added another indictment, not only indictment for breaches of secrecy but also for espionage. That's an offence that many in the public discourse had said was going to be used but which had been denied and which, of course, put the case in a completely different light. Another thing which is interesting with that, which is very painful, if you like, is the way that the authorities in Sweden, and the UK who were aware of this and conspired to keep it secret.

Do I think that that Swedish complete process was initiated as part of a conspiracy against Julian Assange? The way the facts are, I think an international body would just have to look at the sequence of different decisions and measures taken against Mr Assange, and somehow take them on face value in this negative sense. That, on face value, the sequencing of this does actually constitute a conspiracy and because, basically, an international body must be sceptical – very sceptical – of national authorities and must then rule against them when you have this kind of sequence of events.

I would, on the balance of probability, think that it wasn't a conspiracy in that sense from the beginning. Now, was it allowed to run for too long? When they made all these decisions in the Swedish system, does that lend credibility? No, it doesn't. It's completely unconvincing.

I think that in the beginning there was this prosecutor who wanted to get this high-profile case in to try the extent of the sexual offences in Swedish law. Then it was allowed to run because there were political interests in this case, which then allowed it to run far beyond what could, on any imaginable grounds as they were stated, be allowed to run. Whatever happens, an international body would have to look at the sequencing of events here. Then, particularly in light of what happened afterwards from the US side. It doesn't have much credibility, the actions on the UK side or on the Swedish side.

Driver: One of the things on the Swedish side that surprises me is that we always think of countries like Sweden as the flag-bearers for human rights, somewhat more sophisticated than the rest of us in terms of upholding democracy and due process. But in Assange's case what has surprised me is, firstly, that they didn't use the opportunity, when Assange was actually in Belmarsh, to seek to interview him and find additional evidence to prosecute their case. Secondly, that at various stages

the women who were the accusers in this case, originally asking for a sexual diseases test, were never actually taken seriously through the rest of the process, in terms of upholding their rights to have a fair trial, not to mention Assange's own rights not to be accused in public without a due process being conducted. We always assume these kinds of things happen in faraway, dictatorial countries where you have no accountability?

Andenæs: Now, lawyers are, to some extent, critical. They form a critical civil society, but lawyers are very much fitting into a structure of authority. The force of law is strong, and the defence of national institutions is also very strong. Norwegian lawyers are strongly nationalistic about Norwegian law, Swedish lawyers about Swedish law, and the UK or English lawyers about English law.

There was not one single university professor or leading independent lawyer who wasn't involved in the Assange case who criticised any element of the Swedish process. Now, that's a pretty nasty indictment of the legal profession, academic profession, civil legal participation and civil society in Sweden.

Let me immediately add that there were two countries to this process. It was Sweden and it was the UK. At the UK side, there has been one professor, Eirik Bjorge, in Bristol. I think he's the only one in the UK which had had one critical word about the UK side of this process.

No, there's another. That's not true. There's a professor in Oxford who then came out very clearly. Liora Lazarus had a very important role because she formulated this in the UK discourse very early on, and she wrote an opinion or an introduction to the working groups, a legal opinion then in the international legal materials[9]. Liora Lazarus was very important.

Then it was Kirsty Brimelow, who was the Chair of the Bar Human Rights Group. They are really at the forefront of the profession in their different ways, Liora Lazarus as a professor, Kirsty Brimelow as a barrister. She's an eminent QC and works in Doughty Street Chambers and at the time she chaired the English Bar's Human Rights Committee. The US human rights lawyer, then the head lawyer of Human Rights Watch, Dinah PoKempner, spoke out against the arbitrary detention and supported the WGAD, and she played an important role, also in the UK. Now, they were the only ones, together with Eirik Bjorge, who said anything. Now, they were very forceful and very good, but the point is there's a huge legal academic profession and people who should be specialists in this field, and they said nothing.

Of course, there'd been voices in Sweden too, but not among professors. Basically, the lawyers shut up. There are two reasons or perhaps three. First of all, many used the reason that, basically, he was toxic because he was accused of sexual offences against women. Then, secondly, I think quite a lot of lawyers who work in this field, work with the big press organisations, newspapers and other press organisations. In this period, gradually, more and more of the press institutions turned against Mr Assange because Mr Assange, I think, had a very convincing argument. You had to get this information out. You could collaborate with press institutions, but you couldn't let a consortium of newspapers and other news media censor what you gave the public, because then they would withhold a lot of information. I think it is pretty obvious that, if Mr Assange had not put all this information out the way he did on different public platforms, but had let it go

through press institutions, organisations, news organisations, the most sensitive and most important information, would not have reached the public.

Basically, there's an element of censorship there which is very, very strong, so that meant that Mr Assange lost a lot of people because they could say, 'Toxic: sexual offence'. Secondly, many of the professionals in the field fell in line with these press and news organisations who had withdrawn their support of Mr Assange for a range of reasons. Just remember that we look at newspapers in our countries, who then have published Mr Assange's information at different stages. Most of them were in favour of war at different stages. Generally, these big newspapers and news organisations can be critical now and then, but generally they are in favour of diplomacy, security policy, the instruments that these people use.

Munro: Can I interrupt, though, because I think this is a perfect opportunity to focus on another aspect of the case, because you hit the nail on the head, I think? That is that I don't think many people realise that he, Assange, is wanted for extradition for working with Chelsea Manning in revealing US war crimes. That's only what they're focusing on. Chelsea Manning was given 35 years' sentence for computer misuse, whereas the US want to give Assange 175 years for essentially the same event. What's your take on this?

Andenæs: You know the UK Government has proposed to reintroduce amnesties for all of those war crimes, so they are putting a statute of limitation on all of it. Basically, all countries want to cover up. Basically, war crimes are something other countries commit.

The whole system will be behind it, the whole national system. That means the legal system, most of these newspapers want to be supportive of the state. There's also an element of competition in this. Assange circumvents what they saw as their natural role in sifting, and assessing, and presenting this information, so it is a very, very complicated picture. This process has gone on, and authorities have been able to do things which they couldn't have done if there had been a stronger and more consistent support of Mr Assange's basic rights here. Now, 'The Guardian', after the espionage indictment has come from the US side have supported Mr Assange, but it's quite measured.

If Mr Assange is brought to the US, if you have the full force of the state against you, as he has, they will manage to keep him in prison for an indeterminate period of time, whatever happened to the legal processes. They would find arguments which would be accepted by highly politicised judicial processes.

I'm not sure if there's any rational way of explaining why Chelsea Manning could be given this pardon {commutation} and there still be public reasons for prosecuting Mr Assange. But here you have the best lawyers that a state can get access to, who are fully supported by police, security services, the foreign policy establishments.

It should be politically impossible, but again back to the UN starting point, it's Article 10 of the European Convention on Human Rights. It's Article 19 of the UN Universal Declaration on Human Rights from 1948 and from the Covenant on Civil and Political Rights of 1967 about freedom of expression, and information and all of that. If there had been stronger civil society involvement, it would have been more difficult for the authorities to keep going on this extradition to the US.

Driver: You started to talk about why nobody in the British legal establishment, or in the Swedish legal establishment, has questioned some of the obvious due process

violations and some of the obvious failings in the way, for example, we don't know of many other cases where the prosecuting state has attempted to potentially plan to murder the defendant on British soil and still the case has continued[10]. We don't know of many other instances where the prosecuting state has tape-recorded privileged legal conversations and the case is allowed to continue[11]. Why do you think neither the UK lawyers nor Swedish lawyers are concerned about these violations?

Andenæs: No, I think it is very difficult to justify. It doesn't leave any good taste, and it's not easy to accept that this is the situation, but it is. I think that one important reason for this is a bit of nationalism. It's a bit like the ministers who said, 'No, this is completely wrong. We're Sweden', or, 'We're the UK, and we don't commit serious human rights violations, and particularly not in relation to freedom of expression'.[12]

So, I think if you are looking at it from a slightly different perspective, there are groups of people in the security establishment in particular, security intelligence community, who coordinate and discuss strategies. The alleged sexual offences in Sweden now have disappeared, of course. I say, 'Of course', because this was the view of many people who looked at it at an early stage. Professor Andrew Ashworth in Oxford wrote an opinion in 2010 for Assange's lawyers, which said that it didn't constitute criminal offences. The only reading of the sexual offences as they were set out in the extradition request, the facts as they were explained in the extradition requests did not comply or fulfil those criteria.

You create an atmosphere which means that it's easy to condemn somebody or just take a step back and say, 'Toxic, not my case, not my course. I won't fight for him, because it's toxic'. Then it's an ingenious plot, isn't it? Then, with what has happened in the period since this extradition request was made, of course, could you have hit a better line than what they used against him? I think, for men – older and younger men – to defend Mr Assange was, in itself, extremely difficult. It became even more difficult in this period because of much of the completely justified criticism you had of behaviour of men against women.

Lawyers act in a context where the power of the state is very important. Here, through the presentation of these people in the security and the intelligence communities, you get this impression that it's such a paramount interest of the state. The lawyers are a bit different. They are state critical, but they are very close to the business interests of the news organisations, who then had let Assange go in this period, although tightening up now. The power of the state is seen to be challenged in such a way and have such strong interests, so many lawyers are scared. The combination of these three, or four, or five factors, however you distinguish and count them, has meant that you have these very, very few people all over Europe. Professor Marchand is an excellent man who has done good work, and then Liora Lazarus, and Eirik Bjorge and Kirsty Brimelow.

My choices were made because the case came in before the UN Working Group on Arbitrary Detention, so I'm not sitting on any high horse here. I never made those choices. I just got into it. I saw the facts. The case was an obvious one, but for people who then had to look into it independently, and then you choose your battles. I, of course, had a clear view and expressed myself in wherever there was a possibility for that, but for other people you could ask, 'Why didn't they do anything?' They didn't do anything, because, again, nothing good could come out of it for them.

Rigorous analysis was difficult. The academic profession, or the legal profession or otherwise, which takes an active part in much civil society discussion, discourse, did very little or, on these points, absolutely nothing, to clear those arguments up.

Munro: One line in Nils Melzer's book is, 'It's not really about Assange'. He says, 'At stake is the future of democracy'. You mentioned earlier about the issues relating to the UK Government currently trying to legalise or declare an amnesty for war crimes. What's happening to the state of human rights and basic democratic institutions in the Western societies like the UK, the US, and so on?

Andenæs: First of all, the minimalist view: not to overestimate anything. This is very much about taking out Mr Assange, isn't it? It's a concerted action to take him out, one way or another. What now seems to be the outcome is that they are going to put him in one of those cellars in the US, for the rest of his life, or a large proportion of his life or, or how long he can survive that, if he actually gets there, if he doesn't commit suicide or die for other reasons.

So, in a way, why does that matter? To some extent, it just sets us back. You have created an incredibly effective way of avoiding somebody or some organisation, avoiding them to get hold of and publicise, effectively, as in WikiLeaks' case, information which goes to the heart of war, of security, and foreign policy.

Of course, that won't stop people trying to do some of the things that Wikileaks did, but to do that at a sophisticated level that WikiLeaks and Mr Assange has done, that may be ruled out because, the moment anybody reaches that level of sophistication, they will now know that they'd be hounded for the rest of their lives which has a chilling effect on the exercise of freedom of expression and the right to provide information.

Anyway, if you were the lawyer who was going to advise a young chap with a lot of resources from enthusiastic other people who had come over some source and they were going to work with it, you would say, 'Very good. You really should do this, but you have to take into consideration the personal consequences, which may be then that they'll execute you in some way'.

The legal process against Mr Assange is, of course, the one thing which is a very clear and strong deterrent. That will not mean that other people will not try, but when you reach a level of sophistication, you get an organisation and you get some funding, then the moment you can become effective the way WikiLeaks became effective, they can get you.

It will have an incredibly deleterious, invidious effect on the right to information. So, taking out Mr Assange is not only about taking out a person. It is to enforce the power of military intelligence and foreign policy establishments. The other thing relating to Mr Assange is, of course, that WikiLeaks published information which may have been unhelpful to people at the centre or to the left of centre in, for instance, US politics: Mrs Clinton. Is that something you can use against a critical organisation publishing information of the kind WikiLeaks published, that they published information about the abuses in the Democratic National Committee? You somehow want them to – organisations like that – only to deal with the information which leads to the results you want, and only in a partisan way.

Just don't rely on the lawyers. These are things you have to do yourself. To conclude on Nils' book, it is written by a first-rate lawyer who has a unique

> experience from the UN system, who then just happened, a bit like myself, to stumble over Julian Assange's case. It was not something he sought out. It came his way and as a consequence of his appointment in the UN, he has taken this further. He has developed it into a very coherent analysis which goes outside the narrow confines of his mandate. That's why he has published a book. He has taken a lot of flak for it. There's no doubt about that. Let me say that everybody in the independent world, outside, who has done something which has not been paid lawyering for Assange, they got their comeuppance.
>
> It's not something you do to promote your career, to put it like that, so he has done this in a way which he very clearly knows comes at a cost, and not something he will benefit from in any way. He has done it and put all of that effort into it, and that's only because he felt he had to. It's not a work of pleasure or enjoyment, because it is deeply, deeply depressing, and also damaging in the sense that you are persecuted as a consequence. So, hats off, all respect to him {Melzer}for doing this incredible work. The other thing is the book is, of course, extremely interesting. It's a good read, isn't it? Who could have known? I follow the case pretty closely, more closely than most, I would say, but there were so many issues. Also, his analysis is, of course, extremely interesting.

We now turn to a brief summary of the findings of Nils Melzer's investigation, which are referred to by Professor Andenæs above.

## The Melzer investigation: Towards a 'counter-archive' of the Assange case

Following the investigation and findings of the UNWGAD, Nils Melzer initiated another formal UN inquiry into the Assange case in his role as UN Special Rapporteur on Torture (Melzer, 2019, 2022). Melzer was invited by the lawyers of Julian Assange to investigate the case. His independent investigation subsequently confirmed that Assange was suffering from the effects of psychological torture and that he had been subject to arbitrary legal treatment and a number of suspected due process violations in the legal process. Melzer (2022: 3) observes that, 'The Assange case is the story of a man who is being persecuted and abused for exposing the dirty secrets of the powerful, including war crimes, torture and corruption. It is the story of deliberate judicial arbitrariness in Western democracies that are otherwise keen to present themselves as exemplary in the area of human rights'. His formal examination concluded that Assange was suffering from post traumatic stress disorder, where all four elements of torture were present – intimidation, isolation, arbitrariness and humiliation – producing a gradual process of dehumanization.[13]

The findings of Melzer's (2019, 2022) investigation can be understood as being a 'counter-archive' of the Assange case.[14] The United Nations Human Rights Council has highlighted the crucial role of archives in human rights activism, where the 'right to truth' can help victims to seek legal remedies and prevent future human rights violations (International Council on Archives Human Rights Working Group, 2016). Melzer (2022: 31) points out that without the courage of whistleblowers most citizens are living in a state of 'collective amnesia'. Discussing Wikileaks' revelations of US war crimes, including the murder of civilians and the use of torture in Iraq, Melzer (2022: 23) observes that, 'Officially, it's the whistleblowers exposing war crimes who are called "traitors to our country,", not the war criminals and their superiors. Officially, it's the journalists publishing evidence for war crimes who are accused of "acting irresponsibly," not

the secretive authorities suppressing such evidence'. Melzer's 'counter-archive' revealed an astonishing number of due process violations in the treatment of Julian Assange by state authorities. Below is a short summary of just a few examples:

- Violation of the 1984 Conventions Against Torture, Articles 1 and 16.
- Violation of the Principle of non-refoulement, Article 3 of the UN Convention against Torture.
- Arbitrary removal of Assange's Ecuadorian citizenship.
- The initial interviews by the Swedish police were neither recorded nor transcribed.
- The interview summaries were later amended by an officer without the participation or agreement of the accusers.
- Details of the case were leaked to the Swedish press in violation of Swedish law.
- Prosector Ny 'falsely claimed that Swedish law prevented her from interviewing Assange in London'. (Melzer, 2022: 169).
- Mitigating evidence in the case was suppressed, where 'the four governments made sure to classify, suppress and even destroy almost all the decisive evidence' (Melzer, 2022: 104).
- An excessive sentence of 50 weeks in prison was given for a minor bail violation by Assange.
- The Ecuadorian embassy went from being a source of political asylum to a de facto prison.
- Assange's privileged legal conversations in the embassy were spied on by US intelligence, 'Everything is recorded documented, spied on: medical examinations, strategy meetings with lawyers, meetings with private visitors'. (Melzer, 2022: 202)
- Melzer's investigating team was subjected to 'soft harassment' by UK officials.
- There was excessive punishment and arbitrary mistreatment of Assange in the extradition hearings – '175 years in prison would be a grotesque sanction for the alleged offences involving neither death nor violence, injury or material harm'. (Melzer, 2022: 84).

Despite his extensive investigations Melzer (2022: 72) remarks that, 'Next to no one has actually bothered to read the official UN documents detailing my findings'. The case was finally dropped by the Swedish prosecutors in 2019 shortly after the Uppsala District Court refused the prosecutor's request for an extension to undertake further interviews after 9 years of preliminary investigation with still no indictment forthcoming. As Melzer (2022: 103) himself explains, 'after nine years of extreme procrastination and arbitrariness . . . the Swedish Prosecution Authority finally admitted to the lack of evidence and dismissed all remaining allegations'..

Melzer highlights that the arbitrary legal treatment and torture of those who reveal state crimes is being normalised by the mass media. He draws on Hannah Arendt's idea of the 'banality of evil' to explain the politics of this case – the 'appeasement of the powerful, denial of responsibility and bureaucratic complicity'. (Melzer, 2022: 250). He expressed concerned that the prosecution of whistleblowers has been ramped up over recent decades where, 'Obama had achieved his goal of consolidating the illegality of whistleblowing. No President in US history has prosecuted as many whistleblowers as Obama, who not only ensured the complete impunity of state sponsored torture, but also prevented any other form of accountability for US war crimes'. (p. 222). Melzer observes that this situation should be seen not only in the cover up of the West's war crimes since 9/11, which continue to this day, but also in the gradual weakening of basic human rights protections in the US and UK.[15]

The UK ruled against the US government's request to extradite Julian Assange on 4th January 2021 on the grounds that such extradition would likely lead to his further torture and eventual death. The US has since appealed and even now, at the time of writing, and following two UN

investigations which have demanded his immediate release, Assange remains in a maximum security prison in Belmarsh.

## Conclusions: Lessons for intellectual activism

The protection of whistleblowers and the journalists who work with them is crucial for adequate democratic oversight. However, one of the key findings remarked upon here following these two UN investigations is the outright rejection of their findings and recommendations by the governments of Sweden, the UK and the US, who are in actuality obliged to comply as members of UN Human Rights Council. Kenny's (2021: 206) account of whistleblower activism has already observed that, 'the legal system can be inherently unfair'. Melzer (2022) draws on Hannah Arendt's conception of the 'banality of evil' to explain the way in which Assange has been dehumanised in the media and political discourse and the legal arbitrariness to which he has been subjected over a period of many years. In this respect, there are important activist lessons to be learned from this case, especially concerning the relationship between human rights activism and whistleblowing.

We can summarise the lessons for intellectual activism identified in the preceding discussion in the following four key points: (i) the ambivalence of professions in both holding power to account in acting as a key pillar of state and corporate power, (ii) the complicity of the professions in the persecution of whistleblowers and those who endeavour to speak truth to power, (iii) the difficulties associated in building a 'counter-archive' as a corrective to our collective amnesia, to support activists and whistleblowers, (iv) the personal costs of speaking out, where Melzer (2022) describes how he started out as a lawyer but increasingly took on the role of a whistleblower himself in attempting to get the findings of his investigation heard– as Andenæs remarked in the above interview, 'He has taken a lot of flak for it. There's no doubt about that'.

We argue that the relationship between whistleblowing and human rights activism can be used to enrich and extend Contu's (2018, 2020) conception of 'intellectual activism'. We can understand the work of the two UN investigations discussed here in terms of Contu's (2020) conception of activism which is practiced by 'building the archive'. This was effected by the two UN investigations where they put elementary facts into the public sphere about the case and explained their significance for both human rights and our basic democratic institutions. These investigations not only built an archive of suppressed facts about the case, they created what might be termed a 'counter-archive', which challenged what Melzer terms the 'collective amnesia' of public discourse about the Assange case.

This article also develops another aspect of Contu's (2020) description of intellectual activism focused on 'speaking truth to power'. But when speaking truth to power one is not only addressing state power, but simultaneously a media system and professional networks that have been primed to undermine or attack any efforts made in support of a given whistleblower or whistleblower journalist. Kenny and Bushnell (2020) have already observed how the media system can silence whistleblowers in certain national contexts. Previous research into whistleblowing has highlighted the courage and risks taken by individual whistleblowers in speaking truth to power (Contu, 2014; Jack, 2004; Mansbach, 2011; Weiskopf and Willmott, 2013), however, this case highlights a different facet of speaking truth to power which shows the complicity of lawyers and other professionals who refuse to support such efforts because of the costs of speaking up for an apparently toxic individual, where the professionals are themselves invested in the institutions of corporate and state power.

Both Andenæs and Melzer comment on the complicity of the legal, academic and journalism professions in the apparatus of power. The above discussion highlights professional complicity in the high level of suspected incidents of judicial misconduct in the case and in the silence of the rest of the

legal profession in light of such misconduct. As Andenæs observes in the above interview, specialists in this field were largely silent on the issues the UN investigations raised. Existing research has highlighted the role of corporate complicity in human rights violations (Wettstein, 2010), and 'norms of complicity' in finance industry (Kenny, 2019), but the present analysis highlights the distinctive role of professional complicity in undermining those who speak truth to power. In this respect, Andenæs comments on the ambivalent role of the legal and academic professions which form a critical part of civil society in holding power to account but is also a key aspect of the apparatus of power itself.

The UN investigations analysed here shows that Julian Assange is an inconvenient dissident, who has been subjected to persecution by liberal democracies rather than authoritarian regimes. This case demonstrates that speaking truth to power may require not only individual courage but active support of inconvenient dissidents, who lack other civil society support. Both Andenæs and Melzer show how the inconvenient dissident requires networks of solidarity and support, which are woefully lacking in contemporary liberal democracies. As Andenæs observes in the interview above, if there had been stronger civil society involvement it would have been more difficult for the authorities to conceal the abuses in the case. Melzer's own investigation concluded that this does not simply concern the case of Julian Assange, but is a part of wider social trends in which are undermining human rights protects and the important work of whistleblowers, where 'At stake is nothing less than the future of democracy'. (Melzer, 2022: 5)

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## Notes

1. The authors had previously discussed this case at activist events they had organised at which Professors Andenæs and Melzer were speakers in support of whistleblowers for the FreetheTruth campaign organised by Driver and Munro. Professor Melzer spoke about the torture of Julian Assange at an event in London on 18.11.2019 (see https://www.youtube.com/watch?app=desktop&v=crjUPYz8FQA). Professor Andenæs spoke at an online event on 5.2.2021 in support of freeing Assange (see https://www.youtube.com/watch?v=SMFd0o5qzJY).
2. Mads Andenæs KC, is a professor of law at Oslo University and was appointed an honorary Queen's Counsel in 2018. He served as chair of the UN Working Group on Arbitrary Detention. The UNWGAD is a group of five independent human rights lawyers appointed by the UN Human Rights Council to investigate cases of arbitrary arrest or detention. For a more comprehensive biography see https://andenas.net/biography.html. Nils Melzer is a professor of law who worked as the United Nations Special Rapporteur on Torture. He holds academic positions as a professor of law at Glasgow University and Geneva. Professor Melzer is currently the Director of International Law, Policy and Humanitarian Diplomacy for the International Committee of the Red Cross.
3. This interview took place on the 14.3.2022.
4. In 2015 the UNWGAD ruled that 'The deprivation of liberty of Mr. Assange is arbitrary and in contravention of articles 9 and 10 of the Universal Declaration of Human Rights and articles 7, 9(1), 9(3), 9(4), 10 and 14 of the International Covenant on Civil and Political Rights'. The UNWGAD has made several statements about the arbitrariness and violations of due process in this case (UNWGAD, 2015, 2016, 2019).
5. Liu Xia v. China, Working Group on Arbitrary Detention, Opinion No. 16/2011, U.N. Doc. A/HRC/WGAD/2011/16 (2011). https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/WGAD/2011/16 or http://hrlibrary.umn.edu/wgad/16-2011.html
6. Aung San Suu Kyi, Opinion No. 2/2007 (Myanmar), https://www.burmalibrary.org/sites/burmalibrary.org/files/obl/docs6/WGAD2007-Opinion_02-2007-Myanmar.pdf

7. International Criminal Tribunal for the former Yugoslavia.
8. Melzer (2022) The Trial of Julian Assange, Verso, London.
9. Lazarus, L. (2016) WGAD & Assange, 26.3.2016, Counsel Magazine, https://ora.ox.ac.uk/objects/uuid:2c9c59ef-dc15-4091-890d-f0c7d5344f0c/download_file?file_format=application%2Fpdf&safe_filename=WGAD%2B%26%2BAssange%2B_%2BCounsel.pdf&type_of_work=Journal+article
10. Zach Dorfman, Sean D. Naylor and Michael Isikoff (2021) Kidnapping, assassination and a London shoot-out: Inside the CIA's secret war plans against WikiLeaks, https://news.yahoo.com/kidnapping-assassination-and-a-london-shoot-out-inside-the-ci-as-secret-war-plans-against-wiki-leaks-090057786.html
11. Bill Goodwin (2020) American friends' spied on Julian Assange in Ecuadorian Embassy, court hears, https://www.computerweekly.com/news/252489898/American-friends-spied-on-Julian-Assange-in-Ecuadorian-Embassy-court-hears
12. The United Nations Association (UK) took issue with the way in which UK government representatives were dismissive of the UNWGAD and the disregard for its commitments as a member of the UNHRC. See https://una.org.uk/news/una-uk-concerned-dimissive-comments-about-un-human-rights-mechanism
13. The investigation was conducted according to the Istanbul Protocol - UN guidelines for investigating torture and mistreatment.
14. This counter-archive includes not only the formal findings of the UN investigations, but also Melzer's (2022) book about the case and the numerous interviews and public speeches that have been given to bring this to the public's attention.
15. Notably, the UK's Overseas Operations Bill and the Covert Human/Intelligence Sources Bill, which essentially legalise war crimes and human rights violations.

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