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Q&A: Wikileaks and freedom of expression

International controversy over the Wikileaks release of US diplomatic cables continues to rage. In recent days, Paypal, Visa and Mastercard have barred their users from donating to Wikileaks, alleging that the site may be engaged in illegal conduct. Amnesty International examines some of the human rights issues at stake.

Would prosecution of Julian Assange for releasing US government documents be a violation of the right to freedom of expression?

The US government has indicated since July 2010 that it is conducting a legal investigation into the actions of Wikileaks and its founder Julian Assange for distributing secret documents. A range of US political figures have called for a criminal prosecution of Julian Assange.

According to Amnesty International, criminal proceedings aimed at punishing a private person for communicating evidence about human rights violations can never be justified. The same is true with respect to information on a wide range of other matters of public interest.

At the very least, a significant number of the documents released by Wikileaks appear to fall into these categories, so any prosecution based in whole or in part on those particular documents, would be incompatible with freedom of expression.

Freedom of expression is an internationally-recognised human right that limits the power of the state to prohibit the receipt and publication of information. The burden is on the state to demonstrate that any restriction is both necessary and proportionate, and does not jeopardize the right to freedom of expression itself.

We are unaware of any legal action having yet been taken against Julian Assange for releasing the documents. As such, Amnesty International is not in a position to comment on any possible case against him specifically, as there are no charges to comment on.

Would interfering with payments to Wikileaks via online donation constitute an infringement on freedom of expression?

In the last few days, Paypal, Visa and Mastercard have removed their users' ability to donate to Wikileaks online, asserting as grounds that Wikileaks engages or may engage in illegal activities. There has been speculation that this restriction was due to US government pressure.

Amnesty International does not have information to confirm or refute that speculation, but emphasizes that governments cannot avoid their obligations to respect the right to freedom of expression by attempting to do indirectly what they would be forbidden from doing directly. Businesses, too, should ensure that their own actions, at minimum, respect human rights.

Would prosecution of employees of the US government who may have provided documents to Wikileaks be a violation of freedom of expression?

US soldier Private Bradley Manning is currently in detention facing charges that include the

leaking of national defence information.

While employees of a government have the right to freedom of expression, they also have duties as an employee, so a government has more scope to impose restrictions on its employees than it would have for private individuals who receive or republish information.

However, Amnesty International would be concerned if a government were to seek to punish a person who, for reasons of conscience, released in a responsible manner information that they reasonably believed to be evidence of human rights violations that the government was attempting to keep secret in order to prevent the public learning the truth about the violations.

Is it legitimate for governments to seek to keep their diplomatic discussions and negotiations confidential when they perceive it to be in their national interest?

Governments can of course in general seek to keep their communications confidential by using technical means or by imposing duties on their employees; it is not, however, legitimate for governments to invoke broad concepts of national security or national interest in justification of concealing evidence of human rights abuses.

Also, once information comes into the hands of private individuals, states cannot rely on sweeping claims of national interest to justify coercive measures aimed at preventing further public disclosure or discussion of the information.

International human rights law allows states to restrict freedom of expression only on specific and narrowly-applied grounds: national security, public order, public health or morals, or protection of the rights and reputations of others. However, even where one of these grounds might apply, states do not have a blank cheque to keep information secret or to punish individuals for publishing it, simply by declaring the information to be "classified" or declaring it necessary to restrict it as a matter of "national security": the state must show that the particular restrictions are necessary and proportionate to the specific threat they claim justifies the restriction.

Is Amnesty International concerned about the potential for harm to individuals as a result of the leaked information?

Amnesty International has consistently called on Wikileaks to make every possible effort to ensure that individuals are not put at increased risk of violence or other human rights abuses as a result of, for instance, being identifiable as sources in the documents.

However, risks of this kind are not the same as the risk of public embarrassment or calls for accountability that public officials could face if documents expose their involvement in human rights abuses or other forms of misconduct.

Do the diplomatic cables being leaked by Wikileaks contain information relevant to human rights?

Some of the Department of State documents released confirm or provide more detail about human rights violations that Amnesty International has publicly raised in the past. For example:

The February 2007 cable discussing US opposition to the possible issuance by German authorities of international arrest warrants for thirteen CIA agents allegedly involved in the Khaled el-Masri rendition and enforced disappearance relates to a number of Amnesty International reports, most recently *Open Secret: Mounting Evidence of Europe's Complicity in Rendition and Secret Detention* (15 November 2010).

The January 2010 cable reporting on a meeting between the President of Yemen and US military corroborated Amnesty International's earlier findings that a US cruise missile appeared to have been used in a 17 December 2009 attack on the community of al-Ma'jalah, in the Abyan area in the south of Yemen. Amnesty International had called on the US government to disclose its involvement in the incident - despite the fact that the Yemeni government claimed that it alone had carried it out.

Previous Wikileaks releases on the Afghanistan and Iraq wars corroborated information that we received from other sources. Amnesty International will continue to appraise and cite information from documents provided by Wikileaks that are relevant to human rights issues, alongside many other sources of information.

Are the attempts to extradite Julian Assange for sexual offences in Sweden, politically motivated?

It has been reported that the charges Julian Assange faces in Sweden are not related to the Wikileaks release. There has been speculation that authorities in Sweden or elsewhere are not handling the case in an ordinary manner, and that the way in which it is being pursued is the result of a more general targeting of Julian Assange for the actions of Wikileaks. As yet, Amnesty International does not have information that would allow us either to confirm or to dispel such speculation.

As in any other criminal case, due process should be followed, and Amnesty International will be monitoring the progress of the case closely.

What is Amnesty International's position on the most recent release of materials by Wikileaks?

Amnesty International welcomes efforts to put information about human rights abuses in the public domain. Wikileaks have publicly announced that they will release thousands of documents gradually over the coming weeks or months, and Amnesty International will carefully study any documents that appear to concern human rights abuses.

While not all of the documents being released by Wikileaks at the moment are relevant to human rights abuses, we would stress that the right to freedom of expression includes the right to receive and impart all kinds of information, subject only to narrowly-defined exceptions.