

Wikileaks rally

By Stephen Blanks, Secretary of NSW Council for Civil Liberties

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On Friday night, Julian Assange announced that he wished to return to Australia.

I suggest that he obtain some careful legal advice before acting on that wish.

It would seem that powerful interests are aligned that will result in Julian Assange facing a multitude of Court proceedings over his activities and those of Wikileaks. Of course, everyone is entitled to their day in Court – even opponents of freedom and justice. But it is important that any legal proceedings are in a jurisdiction where freedom and justice is upheld.

Australia is, compared to other Western democracies, a legal black hole for freedoms, and rights.

Julian Assange would not, in Australia, have any effective means of guaranteeing his right to freedom of speech, the right to a fair trial, or any of the other rights enshrined in the International Covenant of Civil and Political Rights. Australia is a signatory to the covenant, but in important respects, regularly and consistently breaches it. Particularly where national security is concerned, Australia gets it consistently wrong. Australia ordinarily allows national security interests to prevail over basic freedoms, and Julian Assange will find himself without basic rights that he is relying on, for example, in his current UK Court proceedings.

Unlike the US, Australia does not have constitutional protection of free speech. In the US, the right of free speech has been upheld over the competing interest of national security in cases involving disclosure of government secrets. In so far as the activities of Wikileaks are concerned, the First Amendment free speech right should be a powerful protection. There is no equivalent in Australia. The implied right of freedom of political communication does not draw on the available international jurisprudence which is of so much assistance in defining the proper boundaries between free speech and national security interests.

Last year, our politicians refused to pass a Human Rights Act which would provide individuals with effective means of protecting their human rights. In some respects, a Human Rights Act is designed to constrain the actions of politicians. It is not surprising that politicians, as a class, oppose human rights legislation of this kind. Politicians are self-interested in maximizing their own sphere of power.

If Julian Assange were ever involved in Court proceedings in Australia in which national security were an issue, he would find that the right to a fair trial, as guaranteed under Article 14 of the ICCPR is not available in Australia.

ASIO has special status in Australia, not available in truly free countries.

For example, if you arrive in Australia and you are a refugee, but you receive an adverse security assessment from ASIO, you have no real avenue to appeal the assessment. There is the possibility of a Court proceeding – but that is a charade, since ASIO is not required to disclose any of the material on which it relied, so the legality of ASIO's decision making process cannot be properly tested. In the UK, this style of trial has been held to infringe human rights - specifically the right to a fair trial. In Australia, the Courts have given this a big tick, and the Government comfortably hides behind that.

ASIO is put in a position where it is above the law.

Further, if you have no visa because of an adverse security assessment, you are kept in detention for the rest of your life – that is, you are deprived of your fundamental right to liberty. That is also a clear breach of international human rights standards. Detention is an extreme remedy. The High Court has upheld the Australian government's right to legislate to breach human rights in this way.

There are no clear statistics on how many people are being kept in detention and denied the right to a fair trial as a result of this, but I know of more than 30 cases, and the number is probably much higher. Despite extensive publicity about these cases, the government is merely silent in response. Their silence is supported by the opposition. Any statements from government emphasise the primacy of national security consideration in all matters.

The primacy given to national security, at the expense of human rights, in Australia's legal system should make Julian Assange think twice about whether he really wants to come here.

Linked with this is the failure of the Australian government to enforce the laws which do exist that may protect Julian Assange.

The Australian Criminal Code, recently amended to implement recommendations of the Australian Law Reform Commission, criminalises the urging of violence against a person on the grounds of the person's political opinion, where the violence would threaten the peace, order or good government of Australia. Importantly, those laws have extraterritorial operation.

Several high profile commentators in the US have called for the execution of Julian Assange: Mike Huckabee (politician), Bob Beckel (Fox News commentator), Rush Limbaugh (radio host), Jeffrey T. Kuhner (Washington Times), Christian Whiton (Fox

News) and Sarah Palin. Where is the announcement of an AFP investigation into their statements and activities? Where is the request for extradition of these persons to face charges in Australian Courts.

Finally, you should be concerned about the absence of journalist shield laws in Australia. The government made some attempt to bring in weak laws in 2009, but the bill lapsed with the calling of the 2010 election. The operation of Wikileaks from Australia in the absence of strong journalist shield laws, that recognize that the right to publish the truth is fundamentally important to functioning democracy, may be fraught. Andrew Wilkie has introduced a new bill – you may want to wait and see whether parliament is prepared to pass it before deciding to return here.

So, Julian, be careful about what you wish for. Australia, for all of its benefits and wonders, is not a legal paradise. Seek assurance that you will be treated fairly in accordance with human rights standards, that laws protecting your valuable work with Wikileaks will be in place, and the laws designed to protect you will be enforced.

Fundamental human rights and democratic principles are at stake in this matter.

The NSW Council for Civil Liberties is committed to campaigning for respect for rights and liberties. We see this matter as important. Our statement of position is on our website, and I encourage you to get involved with advancing our campaign.

Today happens to be my birthday. What I would like for my birthday is world peace, freedom, human rights and justice. An Australian legal systems which respects Julian Assange's rights in accordance with human rights principles would make a good birthday present for me.