

AMNESTY INTERNATIONAL – PUBLIC STATEMENT

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ECUADOR: HUMAN RIGHTS VIOLATIONS IN CRIMINAL PROCEEDINGS AGAINST OLA BINI

Amnesty International will continue to monitor the criminal proceedings against the human rights defender Ola Bini in Ecuador, after identifying human rights violations and undue interference by the government. The judiciary must ensure that any evidence used against Ola Bini has been obtained legally and in accordance with international law.

ARBITRARY DETENTION AND VIOLATIONS OF DUE PROCESS

Ola Bini is a Swedish human rights defender who has lived in Ecuador since 2013 and works on the development of security and privacy software. He defends the right to privacy and his work has allowed journalists and activists to share information and gather evidence securely, avoiding illegal surveillance.¹

On 11 April this year, Bini was detained by police officers on the basis of a public accusation by the interior minister and a telephone denunciation. On 20 June, a provincial court ordered his release after accepting a petition for habeas corpus. On consideration of international human rights standards, the court recognized the illegal and arbitrary nature of his detention.

Amnesty International has analyzed the case of Ola Bini and believes that the Ecuadorian state failed to comply with its obligations under international law by arbitrarily depriving him of his freedom for 70 days and violating due process and judicial guarantees, and thereby violating his right to personal freedom and prejudicing his right to a fair trial.²

In these circumstances, there is a danger that the attorney in charge of the case will present evidence obtained in violation of due process and judicial guarantees. If so, the Ecuadorian state will be in breach of its obligation under international law to not use evidence obtained in violation of human rights standards.

In addition, the organization believes that the undue use of the criminal justice system against human rights defenders violates international law and could promote an intimidating environment for other people engaged in this kind of work.

UNFOUNDED ACCUSATIONS BY THE AUTHORITIES

Amnesty International notes with concern that senior government authorities have expressed theory of the case and have publicly affirmed the criminal responsibility of Bini without holding a fair trial. This had an influence on his detention and the opening of criminal proceedings against him.

The court's ruling on the petition for habeas corpus recognized that Ola Bini was deprived of his freedom "on the basis of suspicions" and that the criminal proceedings against him were surprisingly opened "on the basis of information provided anonymously and a statement by the minister of the interior on media", without the attorney allocated to the case providing evidence to prove these accusations through an independent, objective and impartial investigation.

Similarly, the press published details of alleged evidence against Bini as well as the attorney's theory of the case, who claimed to have sufficient evidence to convict him, violating the right to the presumption of innocence.

These accusations by the authorities affect the independence of the investigation and necessarily violate due process, given that the investigation against Bini is still underway.

The right to the presumption of innocence must always and in all circumstances be respected, even during the investigation stage and prior to bringing charges against a person.³

¹ The right to privacy is contained in article 12 of the Universal Declaration of Human Rights (UDHR) and article 11 of the American Convention on Human Rights (ACHR).

² The right to personal freedom is recognized by article 3 of the UDHR, article 9.1 of the International Covenant on Civil and Political Rights (ICCPR) and article 7.1 of the ACHR. The prohibition of arbitrary detention is a customary international legal standard as set out in article 9 of the UDHR, article 9.1 of the ICCPR and articles 7.2 and 7.3 of the ACHR. The right to a fair trial, due process and judicial guarantees are recognized in article 11.1 of the UDHR, articles 9 and 14 of the ICCPR, article 8 of the ACHR and the Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment.

³ The right to the presumption of innocence is a customary international legal standard and is enshrined in article 11.1 of the UDHR, article 14.2 of the ICCPR and article 8.2 of the ACHR.

Moreover, it requires the authorities, including the Attorney's Office, the Police and the government to avoid making public statements expressing an opinion as to the guilt of the accused until criminal proceedings have been concluded or if the accused is acquitted. It also means the authorities have a duty to avoid interfering, through the media, in the holding of a fair criminal trial by prejudging its result or attempting to influence it. This should be done in a manner compatible with the right to freedom of expression and the public right to information on judicial proceedings.

CHRONOLOGY AND ADDITIONAL INFORMATION

On the morning of 11 April this year, at a press conference in which she communicated the government's decision to withdraw diplomatic asylum from Julian Assange, the founder of Wikileaks, the then minister of the interior and current minister of government, María Paula Romo, stated:

A key member of Wikileaks and someone close to Julian Assange has been living in Ecuador for some years. We have sufficient evidence that he has been cooperating with attempts to destabilize the government (...) In the next few hours, we will provide this information to the Attorney General's Office, in addition to the identity and location of two Russian hackers who also live in Ecuador. We are not going to allow Ecuador to become a digital piracy centre and we cannot allow illegal activities to take place in the country, either to harm Ecuadorian citizens or those from other countries or any government.⁴

Ola Bini was detained in the afternoon of 11 April at Mariscal Sucre airport in the city of Quito without a warrant and without evidence that he had committed a crime *in flagrante delicto*. Moreover, during the initial period of detention, he was not informed of his rights or given the reasons for his detention in his native language. He was not allowed to communicate, had no access to a lawyer and the Swedish embassy was not notified of his detention.

On 12 April, the Attorney General's Office published a press release on its website and on its Twitter account announcing the detention of a "Swedish citizen, 36, living in Ecuador for the last 5 years, and an expert in the development of security, privacy and cryptography technology" that "could be related to illegal activities in the country".^{5 6}

On 13 April, even though he had been detained for longer than the authorized period of 24 hours, a judge ordered his preventive imprisonment on charges of "attacking the integrity of computer systems", as set out in article 232 of the Organic Integral Criminal Code of Ecuador.

On 16 April, at a public event in Washington D.C., the United States, the President of Ecuador, Lenín Moreno, said Bini had been "discovered hacking government and individual accounts and hacking telephones".⁷

On 29 May, a judge denied bail on the grounds that, as a foreign national, there was a danger Bini would flee the country and that it was impossible to set bail or bond because the attorney had yet to identify the victims of the alleged crime or the damages caused.

On 20 June, on receiving a petition for habeas corpus, the Criminal Chamber of the Pichincha Provincial Court of Justice ordered Bini's release, prohibited him from leaving the country and ordered him to report weekly to the attorney's office dealing with the case for the duration of criminal proceedings against him.

On 27 June, the court argued in its ruling that denial of the application for release on bail submitted on 29 May was illegal because the judge "made up" the grounds for denying bail and that "the charges against him are not included in the grounds for denying bail".⁸

On 1 August, the attorney in charge of the case requested the opening of two previous investigations against Bini on charges of "tax fraud" and "influence peddling".

On 17 August, the press published what was alleged to be a photo of Ola Bini's mobile phone, which, according to the attorney in charge of the case, provided evidence that the accused was guilty of attacking the integrity of computer systems. Ola Bini's lawyers were not notified or given access to the same.

⁴ María Paula Romo denuncia presencia de hackers rusos en Ecuador, Telemazonas Ecuador, 11 de abril de 2019, disponible en <https://www.youtube.com/watch?v=BoxdJHRULEI>

⁵ Press release FGE N° 064-DC-2019, 12 April 2019, <https://www.fiscalia.gob.ec/fiscalia-dirigio-operativo-para-detener-a-ciudadano-extranjero-quien-estaria-relacionado-con-actividades-ilicidas-en-el-pais/>

⁶ @FiscaliaEcuador, 12 April 2019, <https://twitter.com/FiscaliaEcuador/status/1116780051134132225?s=20>

⁷ A Conversation with Lenín Moreno, Inter-American Dialogue, 16 April 2016, <https://www.youtube.com/watch?v=aYuJ5kdE010>

⁸ Article 544 of the Organic Integral Criminal Code permits the denial of bail only in the case of: (1) offences in which the victims are children, people with disabilities or older adults; (2) offences whose maximum custodial sentence is over five years; (3) when persons prosecuted for any reason cause the execution of the bail; (4) offences involving violence against women or members of the nuclear family.