



CYRUS R. VANCE CENTER
FOR INTERNATIONAL JUSTICE

FOR IMMEDIATE RELEASE – March 21, 2023

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**STATEMENT DEPLORING THE PERSECUTION OF LAWYERS REPRESENTING
AWARD-WINNING ANTI-CORRUPTION JOURNALIST JOSÉ RUBÉN ZAMORA IN
GUATEMALA**

The New York City Bar Association¹ (City Bar) denounces the persecution of attorneys Mario Castañeda, Romeo Montoya, Francisco Solórzano Foppa, and Justino Brito Torres for representing award-winning journalist José Rubén Zamora;² and calls upon the Guatemalan authorities to cease intimidation and ensure that lawyers representing Mr. Zamora can carry out their professional duties without fear of retaliation or interference, both now and in the future.

I. Background

In July of 2022, one of Guatemala's leading newspapers, "*elPeriódico*," published several articles alleging corruption in public contracts³ by Guatemalan President Alejandro Giammattei

¹ The New York City Bar Association (City Bar), founded in 1870, is an organization of over 23,000 members in New York City and elsewhere throughout the United States, and in more than 50 countries around the globe. Its members include judges, prosecutors, defense counsel, government lawyers, and public interest/non-governmental organization practitioners, as well as legal academics and attorneys representing nearly every major law firm and corporation in the United States. The City Bar has a long and distinguished history of promoting the rule of law and human rights, including the rights of legal professionals to fulfill their professional obligations. The City Bar's Task Force on the Independence of Lawyers and Judges assisted with this Statement, with support from the Inter-American Affairs Committee and the Cyrus R. Vance Center for International Justice.

² "Award-Winning Anti-Corruption Journalist Asks Inter-American Commission on Human Rights to Free Him From Illegal Imprisonment in Guatemala," New York City Bar Association, Sept. 28, 2022, <https://www.nycbar.org/media-listing/media/detail/award-winning-anti-corruption-journalist-asks-inter-american-commission-on-human-rights-to-free-him-from-illegal-imprisonment-in-guatemala> (all links last accessed on March 17, 2023).

³ Wilfredo Miranda, "El presidente de Guatemala emprende una cruzada para acallar al periodismo que revela la corrupción," *El País*, Aug. 1, 2022, <https://elpais.com/internacional/2022-08-01/el-presidente-de-guatemala-emprende-una-cruzada-para-acallar-al-periodismo-que-revela-la-corrupcion.html>.

and various other public officials.⁴ Three days later, *elPeriódico*'s President, Mr. Zamora, was arrested.⁵

Mr. Zamora was charged with money laundering, conspiracy, influence peddling, and blackmail. The trumped up charges were based on the testimony of Ronal Garcia Navarajo, who claims Mr. Zamora was disguising illegal activities as art purchases.⁶ Prior to providing this testimony, however, Navarajo was attempting to bargain with the Prosecutor's office in order to recover \$4 million (USD) seized in connection with an unrelated 2017 corruption scandal involving Navarajo.⁷

Following his arrest and announcement of the charges, Mr. Zamora's colleagues at the Interamerican Society of Press ("SIP") named him its director as a statement of support.⁸ This organization sent letters to Guatemalan President Alejandro Giammattei, urging that he request the Public Prosecutor's Office to guarantee transparency and due process in the case⁹ because "the government must put an end to legal and judicial harassment, a situation that we continue to observe with the recent accusations against Zamora's lawyers."¹⁰

On September 28, 2022, a team of international *pro bono* lawyers organized by the Cyrus R. Vance Center for International Justice (Vance Center) filed a petition¹¹ before the Inter-American Commission on Human Rights requesting Mr. Zamora's immediate release from

⁴ "Guatemalan Journalist Critical of President Arrested," VOA News, Jul. 30, 2022, <https://www.voanews.com/a/guatemalan-journalist-critical-of-president-arrested-/6680144.html>.

⁵ "Award-Winning Anti-Corruption Journalist Asks Inter-American Commission on Human Rights to Free Him From Illegal Imprisonment in Guatemala," New York City Bar Association, Sept. 28, 2022, <https://www.nycbar.org/media-listing/media/detail/award-winning-anti-corruption-journalist-asks-inter-american-commission-on-human-rights-to-free-him-from-illegal-imprisonment-in-guatemala>.

⁶ "Periodista Jose Rubén Zamora es enviado a juicio; juez ordena investigar a su abogado," Prensa Comunitaria, Dec. 9, 2022, <https://prensacomunitaria.org/2022/12/periodista-jose-ruben-zamora-es-enviado-a-juicio-juez-ordena-investigar-a-su-abogado/>.

⁷ "Fiscalía de Guatemala imputa cuatro delitos a José Rubén Zamora," DW.com (Deutsche Welle), Aug. 9, 2022, <https://www.dw.com/es/fiscal%C3%Ada-de-guatemala-imputa-cuatro-delitos-a-jos%C3%A9-rub%C3%A9n-zamora/a-62750435>.

⁸ Claudia Ramirez, "*SIP nombra a Jose Rubén Zamora como director*," *elPeriodico*, Oct. 31, 2022, <https://elperiodico.com.gt/sociedad/local/2022/10/31/sip-nombra-a-jose-ruben-zamora-como-director-1/>.

⁹ "IAPA Urges Guatemalan President Due Process in José Rubén Zamora Case," Feb. 8, 2023, <https://en.sipiapa.org/notas/1215694-iapa-urges-guatemalan-president-due-process-in-jose-ruben-zamora-case>.

¹⁰ Id.

¹¹ "Award-Winning Anti-Corruption Journalist Asks Inter-American Commission on Human Rights to Free Him From Illegal Imprisonment in Guatemala," New York City Bar Association, Sept. 28, 2022, <https://www.nycbar.org/media-listing/media/detail/award-winning-anti-corruption-journalist-asks-inter-american-commission-on-human-rights-to-free-him-from-illegal-imprisonment-in-guatemala>.

detention. The petition argued that Mr. Zamora's arrest was (i) political persecution; and (ii) an attack on the freedom of the press.¹²

On Thursday, January 19, 2023, the head of Guatemala's Special Prosecutor's Office against Impunity (FECI), Rafael Curruchiche, announced a second case against Mr. Zamora and charged him with conspiracy to obstruct an ongoing 2013 money laundering investigation.¹³ The Prosecutor also charged Mr. Zamora's former attorneys, Mr. Castañeda and Mr. Montoya.¹⁴ Later that day, only Mr. Castañeda was detained. The Guatemalan press declared that these accusations are a direct result of prosecutorial corruption and impunity.¹⁵ Both the Judge¹⁶ and prosecutor¹⁷ are listed on the U.S. State Department's report on "Corrupt and Undemocratic State Actors" and identified as having a history of obstructing investigations into corruption.

On February 17, 2023, Mr. Castañeda was moved to the prison known as Matamoros.^{18, 19} On February 22, 2022—five-days later—Castañeda pled guilty in order to secure his release from detention.

Meanwhile, during a hearing in the first case, Zamora's lawyers, Juan Francisco Solórzano Foppa and Justino Brito Torres, were accused of altering evidence following their attempts to prove Navarizo's testimony was not credible and that evidence gathered against Mr. Zamora was illegally obtained.²⁰

¹² Id.

¹³ Tweet from MP de Guatemala, Jan. 29, 2023, <https://twitter.com/i/status/1616153291393466403>.

¹⁴ J. Román, E. Pitán and R. Barreno, "El MP vincula a Jose Rubén Zamora en nuevo caso por conspiración para la obstrucción de justicia y detiene a uno de sus abogados," Prensa Libre, Jan. 19, 2023, <https://www.prensalibre.com/guatemala/justicia/el-mp-vincula-a-jose-ruben-zamora-en-nuevo-caso-por-conspiracion-para-la-obstruccion-de-justicia-y-detiene-a-uno-de-sus-abogados-breaking/>.

¹⁵ "Acoso legal continúa: Nuevo proceso contra José Rubén Zamora y abogados," elPeriodico, Jan. 19, 2023, <https://elperiodico.com.gt/politica/justicia/2023/01/19/acoso-legal-continua-nuevo-proceso-contrajose-ruben-zamora-y-abogados/>.

¹⁶ "Section 353 Corrupt and Undemocratic Actors Report," United States Department of State, <https://www.state.gov/reports/section-353-corrupt-and-undemocratic-actors-report-2022/>.

¹⁷ Id.

¹⁸ Katerin Chumil, "Corrupción en personal penitenciario empaña la administración en las cárceles," Prensa Libre, Mar. 15, 2021, <https://www.prensalibre.com/guatemala/justicia/corruccion-empana-la-administracion-en-las-carceles/>.

¹⁹ "Mario Castañeda, exabogado de Zamora, trasladado a cárcel de alta peligrosidad," elPeriodico, Feb. 18, 2023, <https://elperiodico.com.gt/noticias/2023/02/18/mario-castaneda-exabogado-de-zamora-trasladado-a-carcel-de-alta-peligrosidad/>.

²⁰ "Periodista Jose Rubén Zamora es enviado a juicio; juez ordena investigar a su abogado," Prensa Comunitaria, Dec. 9, 2022, <https://prensacomunitaria.org/2022/12/periodista-jose-ruben-zamora-es-enviado-a-juicio-juez-ordena-investigar-a-su-abogado/>.

On March 3, 2023, Juan Francisco Solórzano Foppa and Justino Brito Torrez stepped down from their roles as Mr. Zamora's defense attorneys. Their resignation stems from the ongoing criminalization and persecution faced by Mr. Zamora's legal team.²¹ In the resignation letter, it is noted that Mr. Zamora has chosen to pursue self-representation in order to prevent further harm to those involved in his fight for justice and the protection of his human rights.²² Nonetheless, both lawyers have requested the court grant time for Mr. Zamora to designate a new legal representative, ensuring his right to counsel and due process.²³

II. Criminalization of actors combating impunity

The persecution of lawyers in Guatemala weakens the rule of law and confidence in its judicial system. The recent arrests and charges brought against Mr. Zamora's lawyers are examples of this repressive practice, which adversely affects the independence of lawyers who provide legal representation to human rights defenders and journalists who seek justice in corruption cases.

In recent years, repressive investigations and prosecutions have forced more than 30 judges, prosecutors, and others in the legal system to flee into exile²⁴ to avoid baseless prosecutions riddled with irregularities.^{25, 26} This system of repression also extends to human rights defenders and journalists.²⁷

The UN High Commissioner for Human Rights also expressed "deep concern at repeated intimidation, harassment, and reprisals against justice officials and other individuals involved in

²¹ "Cuarto abogado del reconocido periodista J.R Zamora renuncia en Guatemala" QuéPasa, Mar. 3, 2023.

<https://quepasamedia.com/noticias/cuarto-abogado-del-reconocido-periodista-j-r-zamora-renuncia-en-guatemala/>

²² "Foppa no continuará defendiendo al periodista José Rubén Zamora," 13 Noticias, March 19, 2023,

<https://trece Noticias.com/foppa-no-continuara-defendiendo-al-periodista-jose-ruben-zamora/#:~:text=La%20renuncia%20del%20abogado%20Foppa,jurista%20ante%20el%20Organismo%20Judicial.>

²³ Tweet from Mr. Foppa, March 3, 2023.

https://twitter.com/foppaguatemala/status/1631756934792593408?ref_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctwterm%5E1631756934792593408%7Ctwgr%5Ec2cc64c68b9d81e73edf06ca248041e89ed88ced%7Ctwcon%5Es1&ref_url=https%3A%2F%2Ftrece Noticias.com%2Ffoppa-no-continuara-defendiendo-al-periodista-jose-ruben-zamora%2F

²⁴ "Ataques y criminalización a operadores y operadoras de justicia en Guatemala como parte de la estrategia para el desmantelamiento de la lucha contra la corrupción y la impunidad," Jul. 2022, https://www.vancecenter.org/wp-content/uploads/2022/09/UPR_Ciclo4_Informe_completo_criminalizacion_Operadores_Justicia_Guatemala-19.9.2022.pdf; "Criminalization of Justice Operators in Guatemala as a Strategy to Secure Impunity," Vance Center for International Justice, Dec. 2022, <https://www.vancecenter.org/publication/criminalizationguatemala/>.

²⁵ "When the Dominos Fall: Co-optation of the Justice System in Guatemala," Washington Office on Latin America (WOLA), et al., Oct. 6, 2022, <https://www.wola.org/analysis/when-dominos-fall-justice-system-guatemala/>.

²⁶ "Criminalization of Justice Operators in Guatemala as a Strategy to Secure Impunity," Vance Center for International Justice, Dec. 2022, <https://www.vancecenter.org/publication/criminalizationguatemala/>.

²⁷ Id. at p. 55.

efforts to combat impunity for human rights violations or working on anti-corruption cases” in Guatemala.²⁸

III. International Law Framework

International law expressly recognizes the unique role that lawyers play in any society. International law accords lawyers the following protections:

- 1) International Covenant on Civil and Political Rights (“ICCPR”). The ICCPR prohibits harassment of persons practicing law that may result in violations of the rights of their clients, including the rights to due process (Article 14), liberty, security of person and freedom from arbitrary arrest or detention (Article 9), and freedom from torture or other ill-treatment (Article 7).²⁹ To comply with their obligations under the ICCPR, State Parties must refrain from interfering in judicial proceedings and influencing, pressuring, or interfering in any way with the ability of lawyers to counsel and represent their clients.³⁰
- 2) The Human Rights Council of the United Nations (“UNHRC”). The UNHRC mandates that all member States guarantee the independence of lawyers and their ability to perform their functions by taking effective legislative, law enforcement, and other appropriate measures that enable lawyers to fulfill their professional functions without interference, harassment, threats, or intimidation of any kind.³¹
- 3) The United Nations Basic Principles on the Role of Lawyers (“Basic Principles”). The Basic Principles provide that “[l]awyers shall not be identified with their clients or their clients’ causes as a result of discharging their functions,”³² and governments must “ensure that lawyers can perform all of their professional functions without intimidation, hindrance, harassment or improper interference.”³³ The Basic Principles also provide that

²⁸ “Guatemala: UN Human Rights Chief Volker Türk expresses deep concern at persecution of judicial officials,” UN Office of the High Commissioner for Human Rights, Jan. 18, 2023, <https://www.ohchr.org/en/press-releases/2023/01/guatemala-un-human-rights-chief-volker-turk-expresses-deep-concern>.

²⁹ International Covenant on Civil and Political Rights (Dec. 16, 1966), <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>.

³⁰ General comment No. 13: Article 14 (Administration of justice) (1948). Human Rights Committee. at ¶9, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCCPR%2FGEC%2F4721&Lang=en.

³¹ Human Rights Council resolution 35/12 on Independence and impartiality of the judiciary, jurors and assessors, and the independence of lawyers (2017), at p.3(1), https://ap.ohchr.org/documents/dpage_e.aspx?si=A%2FHRC%2FRES%2F35%2F12.

³² United Nations Basic Principles on the Role of Lawyers (7 Sept. 1990), <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-role-lawyers>.

³³ See U.N. Basic Principles on the Role of Lawyers, Principle 16.

governments are to ensure that access to lawyers is provided for all persons within their territory.³⁴

- 4) The Declaration on the Right and Responsibility of Individuals, Groups, and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (“UN Declaration on Human Rights Defenders”). The UN Declaration on Human Rights Defenders requires states to protect human rights defenders, including lawyers, against all forms of violence, threats, retaliation, de facto or de jure discrimination, pressure, or any other arbitrary action related to the legitimate exercise of the rights established in Article 12 of the Declaration.³⁵
- 5) Inter-American Human Rights. The American Convention on Human Rights mandates that Guatemala must respect the independence of lawyers.³⁶ Further, the commitments set forth in the Inter-American Democratic Charter³⁷ and then established by the Inter-American Court of Human Rights and the Inter-American Commission on Human Rights also mandate the independence of the legal profession.³⁸

Accordingly, the criminalization, interference, harassment, threats, and intimidation of lawyers who assist those investigated for their contribution to the fight against corruption and impunity violate these aforementioned international instruments. Such repression hinders their ability to perform the duties of the legal profession and directly threatens the rights of due process and access to justice of all citizens.

IV. The City Bar calls on the Guatemalan Authorities and the international community to guarantee the independence of lawyers

The New York City Bar Association urges Guatemalan authorities to:

- a. Immediately drop all charges against Mr. Zamora’s former lawyers Mario Castañeda and Romeo Montoya; and

³⁴ See U.N. Basic Principles on the Role of Lawyers, Principle 2.

³⁵ General Assembly resolution 53/144 on Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms. Article 15. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N99/770/89/PDF/N9977089.pdf?OpenElement>

³⁶ Organization of American States, American Convention on Human Rights, 22 November 1969. Article 8, <https://www.cidh.oas.org/basicos/english/basic3.american%20convention.htm>

³⁷ Organization of American States, Inter-American Commission on Human Rights, Inter-American Democratic Charter. Article 3, https://www.oas.org/en/democratic-charter/pdf/demcharter_en.pdf

³⁸ “Garantías Para La Independencia De Las Y Los Operadores De Justicia,” Comisión Interamericana de Derechos Humanos, et al., Dec. 5, 2013, <https://www.oas.org/es/cidh/defensores/docs/pdf/operadores-de-justicia-2013.pdf>.

- b. To end all acts of harassment against Mr. Zamora's former lawyers, Mr. Juan Francisco Solórzano Foppa and Mr. Justino Brito Torres.

The New York City Bar Association calls on the international community to:

- a. Take key actions to protect anti-corruption efforts, and coordinate with each other to implement effective legal and financial sanctions against corruption; and
- b. To continue to deny corrupt Guatemalan officials entry into their territories.

Furthermore, the City Bar calls on the UN Special Rapporteur on the Independence of Judges and Lawyers and other relevant Special Procedure mandate holders of the Human Rights Council to address a joint allegation letter to the Government of Guatemala, urging the authorities to renew their commitment to the applicable international framework and ensure in all circumstances that lawyers can carry out their legitimate professional activities without any hindrance or fear of reprisal.