



AMERICAN **BAR** ASSOCIATION

Center for Human Rights



# Guatemala v. José Rubén Zamora

February 2024

# TRIALWATCH FAIRNESS REPORT

A CLOONEY FOUNDATION **FOR** JUSTICE INITIATIVE

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## **ABOUT THE CLOONEY FOUNDATION FOR JUSTICE'S TRIALWATCH INITIATIVE**

The **Clooney Foundation for Justice** (CFJ) advocates for justice through accountability for human rights abuses around the world. **TrialWatch** is an initiative of the Clooney Foundation for Justice. Its mission is to expose injustice, help to free those unjustly detained and promote the rule of law around the world. TrialWatch monitors criminal trials globally against those who are most vulnerable — including journalists, protesters, women, LGBTIQ+ persons and minorities — and advocates for the rights of the unfairly convicted. Over time, TrialWatch will use the data it gathers to publish a Global Justice Index exposing countries' performance and use it to support advocacy for systemic change.

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# EXECUTIVE SUMMARY



## **Camilo Sánchez, who is a member of the TrialWatch Experts Panel, assigned the trial a grade of F:**

José Rubén Zamora Marroquín should never have been prosecuted. The charges of money laundering, influence peddling, and blackmail against him appear to be a pretext for government retaliation, given his critical reporting on corruption as a journalist whose work is protected under international law. The proceedings against Mr. Zamora have been fraught with irregularities and fair trial violations. Moreover, his ongoing detention – 18 months from the time of his arrest to the publication of this report in February 2024 – is arbitrary and an egregious violation of his right to liberty. Mr. Zamora must be released immediately.

**Grade: F**

The criminal proceedings against José Rubén Zamora Marroquín, an award-winning Guatemalan journalist and founder of the newspaper *elPeriódico*, occurred in the context of a systematic, years-long campaign to corrode judicial independence, anti-corruption efforts and press freedom in Guatemala. Mr. Zamora, known for his investigative journalism into government corruption, has been a beneficiary of precautionary measures from the Inter-American Commission for Human Rights (IACHR) for nearly two decades due to the threats he faced as a journalist. On July 29, 2022, authorities conducted a raid on his house and arrested him on charges of money laundering, influence peddling, and blackmail based on a single complaint filed by a former banker who is under investigation for financial crimes. He was prosecuted alongside Samari Gómez, a former anti-corruption prosecutor.

From the outset, the proceedings against Mr. Zamora have been riddled with irregularities and appear to be in retaliation for his work as an investigative journalist reporting on government corruption.

Mr. Zamora has been subject to arbitrary detention for over 18 months. After his arrest, he was ordered to pretrial detention on an extremely vague basis – that he could influence witnesses because he held a senior position in *elPeriódico* – that fails to satisfy international and regional requirements that pretrial detention be a last resort. Mr. Zamora also never received an opportunity for periodic judicial review of his detention, despite his lawyers' request, and despite the fact that the alleged basis for his detention no longer existed when *elPeriódico* dissolved in May 2023. As of the publication of this report in February 2024, Mr. Zamora has remained in detention – reportedly in harsh conditions in solitary confinement – since his arrest.

Mr. Zamora's ability to prepare a defense has been repeatedly hampered, both by the prosecution and by the tribunals hearing his case. His defense lawyers were repeatedly harassed, forcing him to change counsel multiple times (totaling ten lawyers by the end of the trial). Four of his lawyers were prosecuted and pressured into accepting the charges against them; a fifth reported facing intimidation and threats, and left the country. His lawyers faced difficulty accessing critical evidence and documents in a timely manner, further impeding their ability to prepare a defense. Additionally, several of the individuals the defense had proposed as witnesses, as well as over ten staff members of *el Periódico*, were also investigated and/or charged, sending a clear message that anyone who supported Mr. Zamora would themselves be the target of judicial harassment.

At the intermediate and evidentiary stage, the controlling judge rejected crucial witnesses and evidence that the defense wanted to bring to trial to demonstrate that the money at hand had a legal origin and did not result from money laundering. On the other hand, all the prosecution's evidence, including recordings whose legality the defense had repeatedly contested, was admitted. This grossly violated the principle of equality of arms and tipped the scales in favor of the prosecution. The importance of the excluded evidence and witnesses was underscored in the judgment, when the trial court complained that "none of the evidence...corroborated the arguments sustained by...the defense...to justify the licit origin of the money" and that "those people were not offered as witnesses."

At trial, the imbalance was exacerbated by the trial court, which failed to ensure that Mr. Zamora was able to exercise his right to a defense. In particular, the court failed to ensure Mr. Zamora was effectively represented by his state-appointed attorney, as it was clear that the lawyer did not have adequate time to prepare and did not have crucial documents. The prosecution's case also contained major gaps that the trial court overlooked. Critically, the prosecution failed to prove that the money in question was a result of criminal activity – a key element required under the anti-money laundering law. The trial court then convicted Mr. Zamora of money laundering by erroneously reversing the burden of proof, concluding that the defense had not established a legitimate origin of the money. Mr. Zamora was sentenced to six years in prison.

In October 2023, the Appeals Court annulled both his conviction and his acquittals on the influence peddling and blackmail charges, and sent the case back to a trial court for a retrial beginning after the evidentiary stage, meaning the exclusion of witnesses and documents would remain in place. Following appeals in cassation, proceedings are now before the Criminal Chamber of the Supreme Court. Mr. Zamora has remained in pretrial detention awaiting his retrial, which appears unlikely to move forward until the appeals are resolved.

The pretrial and trial violations in the proceedings against Mr. Zamora, detailed in this report, rendered his trial fundamentally unfair. As a baseline matter, Mr. Zamora should never have been prosecuted in the first place. His prolonged detention and prosecution appear to be calculated as punishment for his work investigating and reporting corruption – an impermissible abuse of the criminal justice system.

Mr. Zamora should be immediately released. A retrial ordered by the Appellate Court, if based on the flawed decisions at the ‘intermediate stage,’ is also likely to be unfair and should not be pursued. Additionally, the Guatemalan authorities should cease the criminalization of journalists and anti-corruption judicial actors.

# BACKGROUND INFORMATION



## A. POLITICAL & LEGAL CONTEXT

Guatemala is a multiparty constitutional republic.<sup>1</sup> In Freedom House’s 2023 Freedom in the World report, Guatemala was rated “partly free” with a score of 49 out of 100; the report noted that “crime and corruption severely impact the functioning of government” and that there was a “worsening climate of intimidation and attacks against judges, prosecutors, civil society, and the media.”<sup>2</sup> Reporters Without Borders (RSF) ranked Guatemala 127 out of 180 countries in their 2023 Press Freedom Index, which measures comparative levels of press freedom around the world.<sup>3</sup> It found that while Guatemala’s constitution guarantees freedom of the press, “this right is constantly violated by government officials and politicians” and that “journalists and media outlets who investigate or criticize corruption and human rights violations face harassment campaigns and criminal prosecution.”<sup>4</sup>

### CICIG

For 12 years, Guatemala hosted a United Nations-backed anti-corruption commission, the *Comisión Internacional contra la Impunidad en Guatemala* (the International Commission Against Impunity in Guatemala, or CICIG). CICIG was largely considered a successful initiative, with the Inter-American Commission for Human Rights (IACHR) recognizing “its transcendental role in the fight against corruption in Guatemala.”<sup>5</sup>

The end of Guatemala’s 36-year internal conflict left a power vacuum that allowed criminal groups to control economic, military, and political institutions. In 2006, the government requested assistance from the UN to “establish an initiative that would assist local institutions investigating, prosecuting, and ultimately dismantling powerful, post-conflict criminal networks.”<sup>6</sup> The UN and the government of Guatemala signed an agreement to establish CICIG in order “to support, strengthen and assist institutions of the State of Guatemala responsible for investigating and prosecuting crimes allegedly committed in connection with the activities of illegal security forces and clandestine security

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<sup>1</sup> US State Department, “2022 Country Reports on Human Rights Practices: Guatemala”, 2023. Available at <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/guatemala>.

<sup>2</sup> Freedom House, “Freedom in the World Report 2023: Guatemala”, 2023. Available at <https://freedomhouse.org/country/guatemala/freedom-world/2023>.

<sup>3</sup> Reporters Without Borders, “2023 Press Freedom Index: Guatemala”, 2023. Available at <https://rsf.org/en/country/guatemala>.

<sup>4</sup> Id.

<sup>5</sup> IACHR, “IACHR expresses its concern over Guatemala’s decision to not renew the mandate of the CICIG”, September 4, 2018. Available at [https://www.oas.org/en/iachr/media\\_center/PReleases/2018/196.asp](https://www.oas.org/en/iachr/media_center/PReleases/2018/196.asp); also, see, Washington Office on Latin America (WOLA), “CICIG’s Legacy Fighting Corruption in Guatemala”, August 2019. Available at <https://www.wola.org/analysis/cicigs-legacy-fighting-corruption-guatemala/>.

<sup>6</sup> Id.



organizations...”<sup>7</sup> Specifically, its mandate allowed CICIG to “collect, evaluate and classify information,” “promote criminal prosecutions by filing criminal complaints”, to act as a complementary prosecutor (*querellante adhesivo*) and to make public policy recommendations to eradicate criminal groups.<sup>8</sup>

One of CICIG’s first initiatives was to help the government create the *Fiscalía Especial Contra la Impunidad* (the Special Prosecutor’s Unit Against Impunity, or FECI). Situated within the *Ministerio Publico* (Public Ministry, equivalent to the Public Prosecutor’s Office), FECI served as CICIG’s prosecutorial partner, as CICIG’s mandate did not grant it direct prosecutorial powers.<sup>9</sup> The relationship between CICIG and FECI was designed so that Guatemala’s institutions retained autonomy, with CICIG supporting the national institutions.<sup>10</sup>

CICIG and FECI’s work was widely seen as successful.<sup>11</sup> According to estimates from the International Crisis Group, CICIG investigations “contribut[ed] to a net reduction of more than 4,500 homicides between 2007 and 2017,”<sup>12</sup> and over the 12 years they worked together, CICIG and FECI dismantled approximately 60 criminal networks.<sup>13</sup> The commission also helped modernize the Guatemalan judicial system by introducing new investigative techniques and helping to create “special courts in the capital where judges [could] be protected from organized crime.”<sup>14</sup>

CICIG enjoyed widespread domestic support, earning legitimacy through its willingness to investigate politicians of multiple political parties without demonstrating an “ideological preference.”<sup>15</sup> A 2017 poll found that CICIG was Guatemala’s most trusted institution with over 70 percent approving of its work.<sup>16</sup> However, the effectiveness of CICIG also led to increasing pushback from sectors within and outside the government.

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<sup>7</sup> CICIG, “Agreement between the United Nations and the State of Guatemala on the establishment of an International Commission Against Impunity in Guatemala”, December 1, 2006. Available at [http://www.cicig.org/uploads/documents/mandato/cicig\\_acuerdo\\_en.pdf](http://www.cicig.org/uploads/documents/mandato/cicig_acuerdo_en.pdf).

<sup>8</sup> Id.; CICIG, “Mandate”. Available at <https://www.cicig.org/history/index.php?page=mandate>.

<sup>9</sup> Council on Foreign Relations, “Lessons from Guatemala’s Commission Against Impunity”, June 2017. Available at <https://www.cfr.org/report/lessons-guatemalas-commission-against-impunity>.

<sup>10</sup> WOLA, “CICIG’s Legacy Fighting Corruption in Guatemala”, August 2019.

<sup>11</sup> IACHR, “IACHR expresses its concern over Guatemala’s decision to not renew the mandate of the CICIG”, September 4, 2018.

<sup>12</sup> International Crisis Group, “Curtain Falls on Guatemala’s International Commission against Impunity”, September 3, 2019. Available at <https://www.crisisgroup.org/latin-america-caribbean/central-america/guatemala/curtain-falls-guatemalas-international-commission-against-impunity>.

<sup>13</sup> Open Society Justice Initiative, “International Prosecutors Fought Corruption in Guatemala, Now They’ve Been Ordered Out”, January 10, 2019. Available at <https://www.justiceinitiative.org/voices/international-prosecutors-fought-corruption-guatemala-now-they-ve-been-ordered-out>.

<sup>14</sup> WOLA, “CICIG’s Legacy Fighting Corruption in Guatemala”, August 2019.

<sup>15</sup> Latin American Public Opinion Project, “What does the Public Report on Corruption, the CICIG, the Public Ministry, and the Constitutional Court in Guatemala?”, August 31, 2017. Available at <https://www.vanderbilt.edu/lapop/insights/ITB029en.pdf>.

<sup>16</sup> New York Times, “Guatemala’s Corrupt Officials Train Their Sights on the Press”, August 2022. Available at <https://www.nytimes.com/2022/08/09/opinion/guatemalas-corrupt-officials-train-their-sights-on-the-press.html>.

## Early Backlash against CICIG

Since their creation, CICIG and FECI faced pushback from domestic actors. As explained by the Open Society Justice Initiative, “any institution designed to take down powerful criminal networks was destined to spark a backlash.”<sup>17</sup> Powerful business interests invested in maintaining the economic status quo as well as groups aligned with members of the military accused of war crimes during the civil war “sought to undermine the anti-corruption agenda through smear campaigns, lobbying, and legislation aimed at protecting corrupt officials and influential individuals from prosecution, among other strategies,” according to the Washington Office on Latin America (WOLA).<sup>18</sup>

The *Fundación contra el Terrorismo* (the Foundation Against Terrorism, or FCT) is one such group that has actively opposed CICIG. Founded in 2012 by Ricardo Mendez Ruíz, FCT is a far-right self-described civil society organization,<sup>19</sup> which claims to promote the rule of law and the “historical truth of Guatemala.”<sup>20</sup> However, others have described the organization’s mission as protecting military personnel accused of human rights violations and/or corruption.<sup>21</sup> (Mr. Mendez Ruíz’s father was reportedly implicated in the murders of hundreds during the civil war and was under CICIG investigation prior to his death).<sup>22</sup>

As reported in the IACHR’s 2022 Annual Report, FCT has played a key role “in the criminalization strategy against justice operators” through filing criminal complaints, requesting impeachment, and orchestrating intimidation and harassment campaigns, including on social media.<sup>23</sup> FCT has filed “complaints against 24 former members of the FECI, three attorneys from the former [CICIG], six judges and two former attorney generals.”<sup>24</sup> In 2021, the U.S. Department of State designated three members of FCT, including founder Mr. Mendez Ruíz, on the Engel List of corrupt and undemocratic actors for their “attempts to delay or obstruct criminal proceedings against former military officials...and harassment against governmental and nongovernmental corruption investigators.”<sup>25</sup>

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<sup>17</sup> Open Society Justice Initiative, “International Prosecutors Fought Corruption in Guatemala, Now They’ve Been Ordered Out”, January 10, 2019.

<sup>18</sup> WOLA, “CICIG’s Legacy Fighting Corruption in Guatemala”; See, also, WOLA, “The Army’s Role in the Anti-CICIG Backlash is a Severe Setback for Guatemala’s Civil-Military Relations”, September 2018. Available at <https://www.wola.org/analysis/guatemala-army-cicig-backlash/>.

<sup>19</sup> Many groups dispute claims that FCT is a civil society organization.

<sup>20</sup> Fundación contra el Terrorismo, “About”. Available at <https://fctguatemala.wordpress.com/about/>.

<sup>21</sup> Foreign Policy, “The Field of Battle is the Courts of Justice”, April 6, 2016. Available at <https://foreignpolicy.com/2016/04/05/guatemala-civil-war-rios-montt-united-nations/>; See, also American Bar Association Center for Human Rights, “Online Hate Speech Against Human Rights Defenders in Guatemala”, May 2019. Available at [https://www.americanbar.org/content/dam/aba/administrative/human\\_rights/invisible-threats-guatemala-may-2019.pdf](https://www.americanbar.org/content/dam/aba/administrative/human_rights/invisible-threats-guatemala-may-2019.pdf).

<sup>22</sup> Id.

<sup>23</sup> IACHR, Annual Report 2022: Chapter IV.B - Guatemala, para. 43. Available at [10-IA2022\\_Cap\\_4B\\_GU\\_EN.pdf](https://www.oas.org/en/iachr/annual_report/2022/Cap_4B_GU_EN.pdf) (oas.org)

<sup>24</sup> Id., para. 44.

<sup>25</sup> U.S. Department of State, “Section 353 Corrupt and Undemocratic Actors Report”, 2021. Available at <https://www.state.gov/wp-content/uploads/2021/07/Congressional-Report-Section-353-Names.pdf>.

In its early years, CICIG was largely successful despite legal and financial attacks. However, beginning in 2017, a confluence of events including “investigations into illicit campaign financing that implicated both the political and business elite, a resistant Guatemalan Congress, and the withdrawal of strong U.S. support during the Trump Administration”, according to WOLA, halted a decade of progress.<sup>26</sup> Perhaps the final straw for CICIG was when then-President Jimmy Morales and his family were investigated for significant acts of corruption, including allegations that he received \$1 million in illegal campaign donations.<sup>27</sup> After CICIG lead prosecutor Ivan Velasquez and Attorney General Thelma Aldana announced they would seek to strip the President of immunity from prosecution, President Morales stopped all cooperation with CICIG.<sup>28</sup> In 2018, President Morales replaced Attorney General Aldana with María Consuelo Porras, who began to implement an anti-CICIG and anti-FECI agenda.<sup>29</sup>

According to the IACHR, since 2017, “the government...relentlessly acted to weaken and discredit the CICIG and prevent it from fulfilling its mandate.”<sup>30</sup> For example, from 2017 to 2019, the government “withdrew almost two-thirds of the police officers originally assigned to protect CICIG,” which “affected the security of the commission and its personnel, both national and international.”<sup>31</sup> The Guatemalan government also reportedly lobbied elements in the U.S. government to reduce U.S. backing for CICIG.<sup>32</sup>

In August 2017, President Morales expelled Ivan Velasquez, the Colombian prosecutor in charge of CICIG, and refused him reentry to Guatemala.<sup>33</sup> When Guatemala’s Constitutional Court declared the expulsion invalid, President Morales refused to comply with the decision and “responded by seeking the removal of Constitutional Court justices.”<sup>34</sup> In 2018, President Morales announced that he would not renew CICIG’s

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<sup>26</sup> WOLA, “CICIG’s Legacy Fighting Corruption in Guatemala”, August 2019.

<sup>27</sup> International Crisis Group, “Curtain Falls on Guatemala’s International Commission against Impunity”. September 3, 2019.

<sup>28</sup> New York Times, “Showdown in Guatemala Over Investigation of President”, August 2017. Available at <https://www.nytimes.com/2017/08/28/world/americas/guatemala-corruption-morales.html>.

<sup>29</sup> Amnesty International, “Guatemala: Red Alert for Threats to Justice and Human Rights”, July 9, 2019. Available at <https://www.amnesty.org/en/latest/press-release/2019/07/guatemala-alerta-roja-amenazas-justicia-derechos-humanos/>.

<sup>30</sup> Organization of American States, “IACHR Expresses Concern over Measures that May Hamper the Fight Against Impunity and Corruption in Guatemala”, January 10, 2019. Available at [https://www.oas.org/en/iachr/media\\_center/PReleases/2019/007.asp](https://www.oas.org/en/iachr/media_center/PReleases/2019/007.asp).

<sup>31</sup> Insight Crime, “Guatemala President Uses Interior Ministry to Weaken Anti-Graft Body”, July 2018. Available at <https://insightcrime.org/news/analysis/guatemala-president-uses-interior-ministry-weaken-anti-graft-body/>.

<sup>32</sup> International Crisis Group, “Curtain Falls on Guatemala’s International Commission against Impunity”, September 3, 2019.

<sup>33</sup> Open Society Justice Initiative, “International Prosecutors Fought Corruption in Guatemala, Now They’ve Been Ordered Out”, January 10, 2019.

<sup>34</sup> Id.

mandate, and the commission disbanded in September 2019. His decision to expel CICIG was denounced by the UN and the IACHR.<sup>35</sup>

## Post-2019 Crackdown

Since the end of CICIG's mandate in 2019, the Guatemalan government has increasingly retaliated against ex-CICIG and FECI prosecutors and other justice officials involved in anti-corruption cases. Although FECI remained after the dissolution of CICIG, it reportedly no longer functioned as an anti-corruption body and instead targeted anti-corruption actors.<sup>36</sup>

The criminalization of justice officials accelerated after President Alejandro Giammettei was elected in 2020. According to multiple sources, including the Open Society Justice Initiative, those who crossed powerful elites have been targeted with "bogus lawsuits, arbitrary firings, and/or physical threats." This included a wide crackdown within the Public Ministry itself, where FECI investigations "were hindered" and its chief, Juan Francisco Sandoval Alfaro, was fired.<sup>37</sup>

Mr. Sandoval had led FECI for over three years when he was abruptly fired by Attorney General Porras in July 2021.<sup>38</sup> He was replaced by Rafael Curruchiche, who had previously been accused of protecting corrupt officials.<sup>39</sup> Prior to his firing, Mr. Sandoval had been the target of an FCT campaign to remove him from FECI. Fearing for his safety, Mr. Sandoval fled the country hours after being fired. He was granted asylum by the United States government in 2023.<sup>40</sup>

In its 2022 Annual Report, the IACHR warned of "an intensification of judicial persecution [and] criminalization" aimed at "intimidating and removing from office justice operators

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<sup>35</sup> United Nations, "UN Chief 'Strongly Rejects' Guatemala Decision to Expel Anti-Corruption Body", January 8, 2019. Available at <https://news.un.org/en/story/2019/01/1029962>; Organization of American States, "IACHR Expresses Concern over Measures that May Hamper the Fight Against Impunity and Corruption in Guatemala", January 10, 2019.

<sup>36</sup> Amnesty International, "Guatemala: Red Alert for Threats to Justice and Human Rights". July 9, 2019.

<sup>37</sup> Vance Center for International Justice, Criminalization of Justice Operators in Guatemala as a strategy to secure impunity, December 2022. Available at [ENG-Criminalization-of-Justice-Operators-in-Guatemala-as-strategy-to-secure-impunity.pdf](https://www.vancecenter.org/ENG-Criminalization-of-Justice-Operators-in-Guatemala-as-strategy-to-secure-impunity.pdf) (vancecenter.org); The New Yorker, "The Exile of Guatemala's Anti-Corruption Efforts", April 2022. Available at <https://www.newyorker.com/news/dispatch/the-exile-of-guatemalas-anti-corruption-efforts>. See, also Open Society Justice Initiative, <https://www.justiceinitiative.org/voices/international-prosecutors-fought-corruption-guatemala-now-they-ve-been-ordered-out>.

<sup>38</sup> WOLA, "Assault on Guatemala's Justice System Intensifies with Expulsion of Anti-Corruption Prosecutor", August 2021. Available at <https://www.wola.org/analysis/ousting-anti-corruption-prosecutor-guatemala/>.

<sup>39</sup> Reuters, "Guatemala Taps Controversial Prosecutor to Replace Fired Graft-Fighter", August 3, 2021. Available at <https://www.reuters.com/world/americas/guatemala-taps-controversial-prosecutor-replace-fired-graft-fighter-2021-08-04/>.

<sup>40</sup> Associated Press, "Ex-Guatemala Anti-Corruption Prosecutor Granted Asylum in US", September 14, 2023. Available at <https://apnews.com/article/guatemala-prosecutor-corruption-sandoval-92c0f640f1dc575142b8edd5e9366836>.

responsible for investigating and prosecuting cases related to the internal armed conflict...and to high-impact or large-scale acts of corruption, aimed at favoring power structures and groups interested in ensuring impunity.”<sup>41</sup> For example, in 2022, Judge Miguel Angel Galvez was detained based on a criminal complaint filed by FCT, allegedly for “having ordered the provisional imprisonment of persons implicated in corruption cases, exceeding the terms established by law.”<sup>42</sup> Mr. Galvez was released but ultimately left Guatemala for exile a few months later, in fear for his life.

As of 2022, at least 25 other anti-corruption officials have been forced into exile, while others who have stayed have faced criminal proceedings.<sup>43</sup> For example, in 2022, former FECCI prosecutor Virginia Laparra was convicted of “abuse of authority” and sentenced to four years in prison.<sup>44</sup> Her prosecution was widely condemned; the ABA President issued a statement detailing the ABA’s concerns about her detention and the violation of her due process rights,<sup>45</sup> and Amnesty International found her detention to be “solely due to her human rights work [at] FECCI.”<sup>46</sup>

In addition to firing officials tied to anti-corruption work, Attorney General Porras appears to have utilized employment transfers to undermine anti-corruption work, reassigning FECCI prosecutors to “less sensitive areas of work.”<sup>47</sup>

In May 2022, the U.S. State Department included Attorney General Porras on the Engel List of corrupt and undemocratic actors, and denied her entry into the United States.<sup>48</sup> On the same day, President Giammattei appointed Attorney General Porras to a second four-year term, through 2026.<sup>49</sup> To date, dozens of Guatemalan officials, including the current

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<sup>41</sup> IACHR, Annual Report 2022: Chapter IV.B - Guatemala, para. 8.

<sup>42</sup> WOLA, “The State of Guatemala Must Comply with the Resolution of the IACHR Court and Cease the Persecution Against Judge Miguel Angel Galvez”, November 2022. Available at [ps://www.wola.org/2022/11/state-guatemala-comply-resolution-iachr-court-cease-persecution-judge-miguel-angel-galvez/](https://www.wola.org/2022/11/state-guatemala-comply-resolution-iachr-court-cease-persecution-judge-miguel-angel-galvez/).

<sup>43</sup> Freedom House, “Freedom in World Report 2023: Guatemala”. 2023.

<sup>44</sup> Amnesty International, “Guatemala: Prisoner of Conscience Virginia Laparra jailed one year ago”, February 2023. Available at <https://amnesty.ca/human-rights-news/guatemala-virginia-laparra-jailed-one-year-ago/>.

<sup>45</sup> The Center for Human Rights at the American Bar Association monitored the trial of Virginia Laparra. In November 2022, the ABA President issued a statement, available at <https://www.americanbar.org/news/abanews/aba-news-archives/2022/11/aba-president-statement-re-guatemalan-lawyer/>

<sup>46</sup> Amnesty International, “Guatemala: Release of prisoner of conscience Virginia Laparra is a triumph against injustice,” January 3, 2024. Available at <https://amnesty.ca/human-rights-news/guatemala-release-of-prisoner-of-conscience-virginia-laparra-is-a-triumph-against-injustice/>.

<sup>47</sup> Human Rights Watch, “Guatemala: Attorney General Arbitrarily Fires Prosecutors”, July 2022. Available at <https://www.hrw.org/news/2022/07/14/guatemala-attorney-general-arbitrarily-fires-prosecutors>.

<sup>48</sup> US State Department, “Designation of Attorney General Maria Consuelo Porras Argueta de Porres for Involvement in Significant Corruption and Consideration of Additional Designations”, May 16, 2022. Available at <https://www.state.gov/designation-of-attorney-general-maria-consuelo-porras-argueta-de-porres-for-involvement-in-significant-corruption-and-consideration-of-additional-designations/>.

<sup>49</sup> GT News, “Dr. María Consuelo Porras Argueta Was the First Woman In Latin America To Be Re-elected as Attorney General”, June 7, 2023. Available at <https://news.gob.gt/dr-maria-consuelo-porras-argueta-was-the-first-woman-in-latin-america-to-be-re-elected-as-attorney-general/>.

head of FECl, Rafael Curruchiche, have been added to the Engel and other sanctions lists for similar behaviors.<sup>50</sup>

## Freedom of Expression

In parallel, the Guatemalan government has increasingly repressed freedom of expression, including through “increasing criminalization of journalists who investigate matters of public interest,” according to the IACHR.<sup>51</sup> After President Giammattei took office in 2020, Guatemala fell 11 spots in the RSF World Press Freedom Index, going from 116 out of 180 in 2020 to 127 out of 180 in 2023.<sup>52</sup> Journalists who investigate corruption and other human rights concerns have increasingly been the subject of smear campaigns, harassment, and frivolous lawsuits, many of them filed by FCT. In addition to defamation lawsuits, a wide range of provisions have been used against journalists. For example, journalists have been accused of “committing psychological violence against women” under an anti-femicide law when writing about corrupt actions reportedly committed by female politicians.<sup>53</sup>

These lawsuits have prevented some journalists from publishing and left others ensnared in the criminal justice system. According to the New York Times, “as of July 2022 at least five Guatemalan journalists have gone into exile in the wake of criminal charges, while others are in Guatemala facing similar charges.”<sup>54</sup> By July 2023, at least 20 Guatemalan journalists were in exile abroad, according to a journalist in exile at a Committee to Protect Journalists press conference.<sup>55</sup> Analysis conducted by RSF found that, as of 2023, nearly two dozen journalists had “left the country after receiving threats or being criminally charged for coverage that exposed powerful figures.”<sup>56</sup> RSF reported that the journalists that remain often choose to self-censor or leave columns and articles unsigned due to fear of retaliation.<sup>57</sup> Many journalists have also chosen not to report on any topic that might be deemed controversial by the government or its supporters.

The Giammattei administration and its supporters also sought to cut off foreign funding for journalists. A law passed in 2021 “regulate[s] NGOs in the country and allows the government to deregister any non-governmental organization that has violated the public

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<sup>50</sup> US State Department, “Designation of Attorney General Maria Consuelo Porras Argueta de Porres for Involvement in Significant Corruption and Consideration of Additional Designations”, May 16, 2022.

<sup>51</sup> IACHR, Annual Report 2022: Chapter IV.B - Guatemala, para. 148.

<sup>52</sup> Reporters Without Borders, “World Press Freedom Index: Guatemala”, 2023.

<sup>53</sup> Reporters Without Borders, “RSF and 9 Other Organizations Call on Guatemalan authorities: ‘no press freedom, no democracy’”, May 17, 2023. Available at <https://rsf.org/en/rsf-and-9-other-organizations-call-guatemalan-authorities-no-press-freedom-no-democracy>.

<sup>54</sup> New York Times, “Guatemala’s Corrupt Officials Train Their Sights on the Press”, August 2022.

<sup>55</sup> Committee to Protect Journalists, Press Conference on Guatemala’s Criminalization of Journalists, July 26, 2023. Available at [Recording: CPJ's press conference on Guatemala's criminalization of journalists - YouTube](https://www.cptj.org/press-conference-on-guatemala-s-criminalization-of-journalists).

<sup>56</sup> Reporters Without Borders, “RSF and 9 Other Organizations Call on Guatemalan authorities: ‘no press freedom, no democracy’”, May 17, 2023.

<sup>57</sup> Id.

order and requires organizations to disclose all foreign funding.”<sup>58</sup> This law is particularly harmful to independent journalism because the Guatemalan government had already made securing advertising funding through domestic channels very difficult. As far back as the Molina Administration in 2013, the Guatemalan government facilitated advertising boycotts of independent media outlets through its government advertising hub, *Secretaria de Comunicacion Social del la Presidencia de la Republica*.<sup>59</sup> This boycott strategy “encouraged private companies to stop advertising in select newspapers” and caused many to withdraw their ads.<sup>60</sup> The government was able to effectively “exploit government advertising budgets or subsidies to ensure favorable news coverage and deter critical reporting.”<sup>61</sup> The subsequent drop in advertising revenue exerted tremendous financial pressures on independent media outlets, and many were forced to close their doors. *ElPeriódico*, whose “investigative journalism played a key role in the 2015 ‘Guatemalan Spring’ that led to the arrest of President Molina, his vice president, and more than 80 other officials,” was one of the media outlets targeted in the government boycott.<sup>62</sup> Citing a lack of funds, *elPeriódico* cut 80% of its staff in November 2022; it shut down completely in May 2023.<sup>63</sup>

## 2023 Elections

Although Guatemala’s elections have been considered generally free and fair by international observers, the 2023 elections were plagued by judicial harassment and intimidation of electoral officials and opposition candidates.

In run-up to the first round of voting in June 2023, multiple candidates who campaigned on anti-corruption platforms were disqualified “for seemingly minor campaign violations in an apparent attempt to favor the governing party,” according to the United States Institute of Peace (USIP).<sup>64</sup> In response, nearly 25% of Guatemalans submitted blank ballots in

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<sup>58</sup> Reuters Institute, “Meet the Journalists Defying a Widening Crackdown on Press Freedom in Guatemala”, May 25, 2023. Available at <https://reutersinstitute.politics.ox.ac.uk/news/meet-journalists-defying-widening-crackdown-press-freedom-guatemala>

<sup>59</sup> Sociedad Interamericana de Prensa, “Further pressure being put on Guatemala’s *elPeriódico*”, January 22, 2014. Available at <https://en.sipiapa.org/notas/1153057-further-pressure-being-put-on-guatemalas-elperiodico>.

<sup>60</sup> Global Investigative Journalism Network, “Usar el financiamiento de los medios como una herramienta de posesion y control”, August 18, 2021. Available at <https://gijn.org/2021/08/18/espanol-financiamiento-control-medios/>.

<sup>61</sup> Id.

<sup>62</sup> Id.

<sup>63</sup> AlJazeera, “Guatemala’s *elPeriodico* Shutting Due to Government Persecution”, May 12, 2023. Available at <https://www.aljazeera.com/news/2023/5/12/guatemalas-elperiodico-shutting-due-to-government-persecution>.

<sup>64</sup> United States Institute of Peace, “Will Voters or the Courts Choose Guatemala’s Next President?”, August 2, 2023. Available at <https://www.usip.org/publications/2023/08/will-voters-or-courts-choose-guatemalas-next-president>; See, also Washington Post, “Guatemala Court Suspends Anti-Corruption Party Before Presidential Election”, July 13, 2023. Available at <https://www.washingtonpost.com/world/2023/07/13/guatemala-semilla-arevalo-anti-corrupton/>; Associated Press, “Guatemala’s top court ends candidacy of leading presidential hopeful 1 month before vote”, May 23, 2023. Available at <https://apnews.com/article/guatemala-elections-carlos-pineda-df6ee50218f10b5fc8398a7531ea2d39>; Human Rights, Watch, “Guatemala: End Arbitrary Exclusion of

protest.<sup>65</sup> Center-left candidate Bernardo Arévalo and his party, *Movimiento Semilla* (“Seed Movement”), shocked the country and election observers with a second-place finish behind Sandra Torres, a former first lady seen as an ally to President Giammattei.<sup>66</sup> Mr. Arévalo had run on an anti-corruption campaign and promised “to bring back reformist judges and prosecutors who have fled the country in recent years.”<sup>67</sup>

In July 2023, on the same day the Supreme Electoral Tribunal certified the election results from the first round of voting, FECEI Prosecutor Curruchiche announced that Mr. Arévalo’s party was suspended from running because of an alleged violation of election laws in 2019.<sup>68</sup> Mr. Curruchiche claimed that “it was a coincidence that he announced it on the same day the Supreme Electoral Tribunal certified the election results.”<sup>69</sup> The offices of the Supreme Electoral Tribunal were also raided by authorities.<sup>70</sup> After international criticism and domestic protests, the Constitutional Court granted an injunction against the order to suspend Mr. Arévalo’s party.<sup>71</sup>

On August 20, 2023, Mr. Arévalo won a run-off against Ms. Torres in a resounding victory.<sup>72</sup> In the following months, however, the Public Ministry attempted to “to undercut the general election results,” according to the UN High Commissioner for Human Rights,<sup>73</sup> including by attempting to remove President-elect Mr. Arévalo’s immunity. The General Secretariat of the Organization of American States (OAS) condemned the actions of the Public Ministry as an “attempted coup”.<sup>74</sup>

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Candidates”, March 31, 2023. Available at <https://www.hrw.org/news/2023/03/31/guatemala-end-arbitrary-exclusion-candidates>.

<sup>65</sup> Id.

<sup>66</sup> Associated Press, “Guatemalans to choose between political veteran, surprise outsider in presidential runoff,” August 17, 2023. Available at <https://apnews.com/article/guatemala-election-sandra-torres-bernardo-arevalo-dca3bfbc017860e46ea53d6493cc5a0>; Associated Press, “Guatemala’s Corruption is Thrust into International Spotlight by the Government’s Election Meddling”, July 14, 2023. Available at <https://news.yahoo.com/guatemalas-struggle-corruption-thrust-international-040354250.html>.

<sup>67</sup> Washington Post, “Guatemala Court Suspends Anti-Corruption Party Before Presidential Election”, July 13, 2023.

<sup>68</sup> Id.

<sup>69</sup> Associated Press, “Guatemala’s Corruption is Thrust into International Spotlight by the Government’s Election Meddling”, July 14, 2023.

<sup>70</sup> Id.

<sup>71</sup> Reuters, “Guatemala Top Court Reverses Ban on Anti-Graft Presidential Candidate”, July 2023. Available at <https://www.reuters.com/world/americas/guatemala-prosecutors-raid-electoral-court-probe-into-anti-graft-party-2023-07-13/>.

<sup>72</sup> Reuters, “Anti-graft crusader wins Guatemala presidency by landslide”, August 21, 2023. Available at <https://www.reuters.com/world/americas/guatemalans-vote-president-many-hope-renewal-democracy-2023-08-20/>.

<sup>73</sup> UN Office of the High Commissioner for Human Rights, “Guatemala: UN Human Rights Chief deplors persistent attempts to undermine outcome of elections”, December 9, 2023. Available at <https://www.ohchr.org/en/press-releases/2023/12/guatemala-un-human-rights-chief-deplors-persistent-attempts-undermine>.

<sup>74</sup> Organization of American States, “OAS General Secretariat Condemns Coup Attempt in Guatemala”, December 8, 2023. Available at [https://www.oas.org/en/media\\_center/press\\_release.asp?sCodigo=E-084/23](https://www.oas.org/en/media_center/press_release.asp?sCodigo=E-084/23).



On January 14, 2024, when Mr. Arévalo was scheduled to take office, his inauguration was delayed for nine hours as conservative members of Congress “refused to take the procedural steps necessary to allow the event to move forward.”<sup>75</sup> He was finally sworn in shortly after midnight.<sup>76</sup>

## B. CASE HISTORY

José Rubén Zamora Marroquín is an award-winning Guatemalan journalist and founding director of the now-shuttered Guatemalan newspaper *elPeriódico*. Mr. Zamora has extensively reported on human rights violations and corruption in Guatemala, including allegations involving President Alejandro Giammattei and Attorney General María Consuelo Porras. His work has garnered multiple international awards, including the María Moors Cabot Award from Columbia University, the International Press Freedom Award, and the International Press Institute’s World Press Freedom Hero Award.

*ElPeriódico* was a prominent daily newspaper founded by Mr. Zamora in 1996. For years, *elPeriódico* conducted in-depth investigations into government corruption.<sup>77</sup> In the days immediately preceding Mr. Zamora’s arrest, *elPeriódico* reported on several cases of alleged corruption among President Giammattei’s close allies.<sup>78</sup> Aldea Global S.A. is the company that owned *elPeriódico*.

Mr. Zamora’s work made him and the newspaper targets: he and his newsroom were “subjected to threats, kidnappings, and bombings” and assassination attempts.<sup>79</sup> Since 2003, Mr. Zamora has been a beneficiary of IACHR precautionary measures; the IACHR considered “that there was an imminent risk to his life and personal integrity as a consequence of a series of physical assaults and threats he received in the exercise of his profession, and due to the context of violence against the press in Guatemala.”<sup>80</sup>

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<sup>75</sup> Foreign Policy, “Guatemala’s Arévalo Beats the Odds”, January 15, 2024. Available at <https://foreignpolicy.com/2024/01/19/guatemala-arevalo-president-inauguration-lead-movement-anti-corruption/>.

<sup>76</sup> El Faro, “Arévalo assumes the presidency of Guatemala in a tense day that summarizes its challenges”, January 15, 2024. Available at <https://elfaro.net/es/202401/centroamerica/27208/arevalo-asume-la-presidencia-de-guatemala-en-una-jornada-tensa-que-resume-sus-desafios>.

<sup>77</sup> New York Times, “A Newspaper’s Closing Deals a Blow to a Nation’s Democracy”, May 16, 2023. Available at <https://www.nytimes.com/2023/05/16/world/americas/elperiodico-guatemala-newspaper.html>.

<sup>78</sup> Reporters Without Borders, “Call for the release of *elPeriódico* editor, held in appalling conditions”, August 10, 2023. Available at <https://rsf.org/en/node/93761>.

<sup>79</sup> Committee to Protect Journalists, “‘To Persecute Any Critical Voice’: Jailed Guatemalan Journalist Zamora’s Son on His Father’s Arrest”, October 12, 2022. Available at <https://cpj.org/2022/10/to-persecute-any-critical-voice-jailed-guatemalan-journalist-zamoras-son-on-his-fathers-arrest/>; See, also, <https://ijnet.org/en/story/under-fire-guatemala-independent-media-forges-ahead>.

<sup>80</sup> IACHR, Annual Report 2022: Chapter IV.B - Guatemala, para. 153.

*elPeriódico* has also faced commercial boycotts for decades: Since its founding in 1996, it has been subject to soft censorship through a government advertising boycott.<sup>81</sup> This escalated into commercial boycotts due to government pressure, which caused private advertising revenues to drop. The IACHR reported that “the pressure and persecution against the directors of *elPeriódico* severely damaged its financial situation.”<sup>82</sup> Because of these financial challenges, Mr. Zamora often had to give personal loans to Aldea Global S.A. to fund *elPeriódico*’s operations. Additionally, Mr. Zamora testified that many individuals wanted to support *elPeriódico*’s work, but that those who made public donations to *elPeriodico* were subjected to violent threats or lost business contracts; for example, one donor discovered dynamite planted in his house.<sup>83</sup> As a result, Mr. Zamora and Aldea Global S.A. had to find different ways to accept donations in a manner that protected the identity of the donors. These methods included clients buying advertisements in *elPeriódico* in advance but not placing ads so that they would not be connected with the newspaper, as well as accepting donations through a foundation in the US.<sup>84</sup>

Additionally, *elPeriódico* and Mr. Zamora faced an enormous number of lawsuits, with “195 spurious lawsuits” pending at one point.<sup>85</sup>

In this case, Mr. Zamora was prosecuted on the following criminal charges:

1. **Money laundering** under Article 2 of the Anti-Money and Asset Laundering Law,<sup>86</sup> which carries a sentence of six to twenty years of imprisonment;<sup>87</sup>
2. **Influence peddling** under Article 449 Bis of the Criminal Code, which carries a sentence of two to six years of imprisonment;<sup>88</sup>

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<sup>81</sup> WAN-IFRA, *Soft Censorship, Hard Impact: A Global Review*, 2014. Available at <https://www.cima.ned.org/wp-content/uploads/2014/06/Soft-Censorship-Hard-Impact.pdf>.

<sup>82</sup> IACHR, *Annual Report 2022: Chapter IV.B - Guatemala*, para. 156.

<sup>83</sup> Monitor’s Notes, May 3, 2023.

<sup>84</sup> *Id.*

<sup>85</sup> Committee to Protect Journalists, “To persecute any critical voice: Jailed Guatemalan journalist Zamora’s son on his father’s arrest”, October 12, 2022.

<sup>86</sup> Anti-Money and Asset Laundering Law, Article 2. [Regarding the crime of money and other asset laundering. Money or asset laundering is the crime committed by those who themselves, or through intermediaries: a) Invest, convert, transfer or undertake any financial transactions with goods or money, with prior knowledge, or because of their responsibilities, employment, office or profession, should know that the goods or money are the product of or originate from the commission of a crime. b) Acquire, possess, administer, have or use assets or money with the knowledge, or because of their responsibilities, employment, office or profession, should know that the assets or money are the product of or originate from the commission of a crime. c) Hide or obstruct in the determination of the true nature, the origin, the whereabouts, the destiny, the movement or the ownership of assets or money, or the relative rights to such assets or money, with the knowledge that same are the product of or originate from the commission of a crime].

<sup>87</sup> Anti-Money and Asset Laundering Law, Article 4. [The individual responsible for committing the crime of money or asset laundering is subject to a non-commutable prison term of from six to twenty years, and additionally a fine equal to the value of the assets, instruments or products resulting from the crime...].

<sup>88</sup> Guatemalan Congressional Decree No.13-2012, Article 35, Criminal Code, Article 449 [Influence peddling. This crime is committed by the person who, by himself/her or through a third party or acting as an intermediary, influences an officer or public employee, taking advantage of his hierarchical position,

3. **Blackmail** under Article 262 of the Criminal Code, which carries a sentence of three to eight years of imprisonment.<sup>89</sup>

The criminal proceedings against Mr. Zamora originated from a complaint made by a single individual on the evening of July 26, 2022. Ronald Giovanni García Navarajo alleged that Mr. Zamora “was trying to force [him] to launder money” by receiving cash from Mr. Zamora and writing Mr. Zamora a check. Mr. García Navarajo stated that he thought Mr. Zamora obtained money “by blackmail[ing]” people through “confidential information” he obtained from the former head of FECI, Juan Francisco Sandoval Alfaro. He also alleged that FECI Assistant Prosecutor Samari Carolina Gómez Díaz was involved.<sup>90</sup>

Mr. García Navarajo is a former banker<sup>91</sup> under multiple investigations for money laundering, embezzlement, and other alleged crimes in Guatemala.<sup>92</sup> He was arrested in 2018 after evading an arrest warrant for a year and a half.<sup>93</sup> These investigations, which were initially carried out by CICIG, involved companies called “ARCA” and “Villas de Elgin.” After CICIG was expelled in 2019, Mr. García Navarajo was released to house arrest and had on-and-off discussions with FECI about becoming a cooperating witness. At the time, under Mr. Sandoval, one of the cases against Mr. García Navarajo (which involved ARCA, a company created by Bantrab Bank) was being handled by FECI Assistant Prosecutor Samari Gómez. (NB: Ms. Gómez was prosecuted alongside Mr. Zamora in the case at hand for allegedly disclosing confidential information in her role as

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friendship or any other personal ties, to obtain an undue benefit, for himself or for a third party, in a matter in which said officer or public employee has knowledge or must decide, whether or not there is detriment to the assets of the State or of a third party. If the officer or public employee that has knowledge, should have knowledge or makes the decision is an officer or employee of justice administration, double the penalty will be imposed].

<sup>89</sup> Guatemalan Congressional Decree No. 17-73, Criminal Code, Article 262. [The crime of blackmail is committed by anyone who demands money, reward or effects from another person through direct or concealed threats of accusations against his honor or reputation, or threatening to disclose secrets harmful to that person, his family or the entity he manages or in which he has an interest].

<sup>90</sup> Public Ministry, Complaint of Ronald Navarajo, Special Prosecutor's Office against Impunity (FECI), Agency 9, MP001-2022-36636, July 26, 2022. [Complaint filed by Ronald Navarajo against José Rubén Zamora Marroquin. The complaint contains photographs of messages between him and Zamora].

<sup>91</sup> Navarajo was a general manager at Bantrab Bank, which was under investigation by FECI.

<sup>92</sup> Plaza Pública, “Quien es Garcia Navarajo y por que es protagonista en el proceso contra Jose Ruben Zamora y Samari Gómez” [Who is Garcia Navarajo and why is he a protagonist in the process against Jose Ruben Zamora and Samari Gómez?], August 9, 2022, Available at <https://www.plazapublica.com.gt/content/quien-es-garcia-navarajo-y-por-que-es-protagonista-en-el-proceso-contra-jose-ruben-zamora-y>; See, also, Monitor's Notes, May 2, 2023; Perspectiva, “Capturan a Ronald Giovanni Garcia Navarajo, exdirectivo del Bantrab” [Ronald Giovanni Garcia Navarajo, former Bantrab executive, captured], July 2, 2018. Available at <https://www.perspectiva.gt/noticias/capturan-a-ronald-giovanni-garcia-navarajo-exdirectivo-del-bantrab/>; See, also Prensa Libre, “Ronald Garcia Navarajo, el ascenso y caída de un banquero con influencia política” [Ronald Garcia Navarajo, the rise and fall of a politically influential banker], August 16, 2022. Available at <https://www.prensalibre.com/pl-plus/queatemala/politica/ronald-garcia-navarajo-el-ascenso-y-caida-de-un-banquero-con-influencia-politica/>.

<sup>93</sup> Prensa Libre, “Ronald García Navarajo, the missing piece in the Arca case, and how he was captured in 2018”, February 7, 2018. Available at <https://www.prensalibre.com/queatemala/justicia/caso-bantrab-ministerio-publico-confirma-captura-de-ronald-garcia-navarajo/>.

assistant prosecutor. She was acquitted by the trial court in June 2023, and her acquittal was appealed). However, Mr. García Navarajo and the FECl office never came to a formal agreement.

According to testimony at trial, Mr. García Navarajo had known Mr. Zamora for many years, first in Mr. García Navarajo's role as a banker with Bantrab Bank (which advertised with *elPeriódico* from 2009-2022), and then as a source of information for *elPeriódico's* reporting beginning in 2013.<sup>94</sup> At trial, Mr. Zamora testified that he had seen Mr. García Navarajo as a friend and had even sent his lawyers to assist him when the banker was arrested and detained in relation to his involvement in alleged financial crime.<sup>95</sup> Mr. Zamora also testified that Mr. García Navarajo had offered to assist Mr. Zamora in his efforts to protect donors' anonymity by issuing checks when Mr. Zamora received small cash donations.<sup>96</sup>

It was uncontested at trial that on July 28, 2022, Mr. Zamora sent a messenger to deliver 300,000 QZ in cash to an agent of Mr. García Navarajo. In return, Mr. García Navarajo's agent gave the messenger from *elPeriódico* a check from a company called "Nijo S.A." dated July 28, 2022, for 265,486.72 QZ.<sup>97</sup> (The difference in amount was due to 12% VAT and 1% Press Stamp Tax). The messenger gave Mr. García Navarajo's agent an invoice and cash receipt addressed to "Instrumental Audio y Más," the company Mr. Zamora thought would issue the check.<sup>98</sup> The invoice for "Instrumental Audio y Más" was subsequently cancelled because the check was issued by "Nijo S.A." The messenger attempted but could not deposit the check into one of *elPeriódico's* accounts because the check was drawn against an inactive account.

Also on July 28, Mr. García Navarajo delivered to FECl the cash he received from Mr. Zamora.<sup>99</sup> He also delivered a copy of the check his agent had tendered to Mr. Zamora in exchange for the cash.<sup>100</sup>

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<sup>94</sup> Monitor's Notes, May 2, 2023.

<sup>95</sup> Id.

<sup>96</sup> Id.

<sup>97</sup> At trial, Mr. Zamora testified that he understood from Mr. Navarajo that he would receive a check from "Instrumental Audio and More," and that he did not know the company "Nijo S.A."

<sup>98</sup> Invoices and cash receipts were issued by *elPeriódico's* financial manager, Flora Silva.

<sup>99</sup> Public Ministry, Prosecutor's Office Against Impunity (FECl), Agency 9, MP001-2022-36636, July 28, 2022. Ocular inspection and documentation through photography, packaging and evidence collection of Q300 thousand; paper bag marked "CASA CASA"; 1 sheet of paper containing photocopy of check issued by Banco Industrial S.A. in the name of NIJO S.A.

<sup>100</sup> Ministerial Act of July 28, 2022. Prosecutor's Office Against Impunity (FECl), Agency 9 MP001-2022-36636. Statement by Ronald García Navarajo, who explained the origin of the photocopy of a check issued by the company NIJO S.A. The amount (265,486.72 QZ) corresponded to 300,000 QZ in cash minus taxes.

On July 29, Mr. García Navarrijo delivered a USB device containing the following files to the authorities:<sup>101</sup> 1. Video taken by Mr. García Navarrijo of the office where the exchange of cash for the check took place; 2. Photographs of the money Mr. Zamora’s messenger had tendered; 3. An audio recording of a call between Mr. Zamora and Mr. García Navarrijo, in which they discussed exchanging cash for a check as a favor; 4. An audio recording of a call between Mr. Zamora and Mr. García Navarrijo, where they agreed on where and when the exchange would occur; 5. An audio recording of a call between Mr. Zamora and Mr. García Navarrijo, where Mr. Zamora told Mr. García Navarrijo that the bank account associated with the check was inactive (during this call Mr. Zamora also said that Mr. Sandoval told him to tell Mr. García Navarrijo that Mr. Curruchiche wanted to resume one of the investigations into Mr. García Navarrijo);<sup>102</sup> and 6. A list of the contents on the USB.

## Arrest

On Friday, July 29, 2022, at approximately 3 pm, dozens of armed agents from Guatemala’s National Civil Police (PNC), accompanied by a prosecutor assigned to the Special Prosecutor’s Unit against Impunity (FECI), conducted a raid on Mr. Zamora’s residence.<sup>103</sup> According to news reports, agents “climbed down from Zamora’s roof onto an interior patio instead of ringing the doorbell, despite having obtained a search warrant from [a judge] to enter through the front door.”<sup>104</sup> Mr. Zamora and his family members, including two grandchildren aged nine and thirteen, were held inside for hours.<sup>105</sup>

On the same day, authorities raided *elPeriódico*’s central offices “where they detained eight employees for 16 hours and prevented them from contacting anyone,” according to

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<sup>101</sup> Public Ministry, Ministerial Act of July 29, 2022. Prosecutor’s Office Against Impunity (FECI), MP001-2022-36636. [Ronald García Navarrijo delivered to the Prosecutor’s Office a white USB with a blue cover (ADATA UV240/16GB)].

<sup>102</sup> The dates of these calls were not clearly identified on the recordings. On August 2, Mr. García Navarrijo gave a statement to FECI authorities saying that two of the calls took place on July 28 at 1:13pm and at 6pm.

<sup>103</sup> Agencia Ocote, “Capturan a José Rubén Zamora, Presidente de ElPeriódico” [José Rubén Zamora, President of ElPeriódico, captured], July 30, 2022. Available at <https://www.agenciaocote.com/blog/2022/07/30/captura-jose-ruben-zamora-elperiodico/>.

<sup>104</sup> El Faro, “The Case against Journalist José Rubén Zamora Was Built in 72 Hours”, August 17, 2022. Available at <https://elfaro.net/en/202208/centroamerica/26331/The-Case-against-Journalist-Jos%C3%A9-Rub%C3%A9n-Zamora-Was-Built-in-72-Hours.htm>.

<sup>105</sup> NPR, “Renowned journalist arrested in Guatemala’s political crackdown”, July 31, 2022. Available at <https://www.npr.org/2022/07/31/1114796501/renowned-journalist-arrested-in-guatemalas-political-crackdown>.

news reports.<sup>106</sup> The police stayed in *el Periódico*'s newsroom through the night, until 9 AM on Saturday morning, July 30.<sup>107</sup>

The authorities also arrested FECCI Assistant Prosecutor Samari Gómez at her office at FECCI headquarters.<sup>108</sup>

At 7:54 pm that same day, the chief of FECCI, Mr. Curruchiche, stated in a video posted on Twitter that a judge at the Seventh Criminal Court of First Instance (Judge Fredy Raul Orellana Letona, who was later placed on the US State Department's list of corrupt actors in 2023<sup>109</sup>) had authorized the arrest of José Rubén Zamora Marroquín for the crimes of money laundering, blackmail, influence peddling and conspiracy to launder money, and the arrest of Ms. Gómez for the crime of revealing confidential information.<sup>110</sup>

At approximately 11:30 pm, hours after authorities first entered Mr. Zamora's house, the police took him from his residence in handcuffs to the "Torre de Tribunales," where he was detained.

On July 30, at 10:40 am, Mr. Zamora was brought before the judge on duty, Judge Rosemary López. The twelve hours that lapsed before Mr. Zamora was brought before a judge was twice the limit established in the Guatemalan Constitution (six hours).<sup>111</sup> Judge Lopez informed Mr. Zamora that he was being detained on allegations of money

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<sup>106</sup> Id.; See, also, *El Periódico*, Twitter Post, "Decenas de fiscales y policías dentro de ambos lugares. Frente a la vivienda de Zamora se apostó un vehículo Hi Lux sin placas y la patrulla FEP069. En las oficinas centrales prohibieron la comunicación a los trabajadores. 2/2" [Dozens of prosecutors and police inside both places. In front of Zamora's house, a Hi Lux vehicle without license plates and patrol car FEP069 were stationed. In the central offices they prohibited communication to the workers], July 29, 2022. Available at [https://twitter.com/el\\_Periodico/status/1553152015773188098](https://twitter.com/el_Periodico/status/1553152015773188098); Soy 502, "Allanan oficinas de El Periódico y de su presidente José Rubén Zamora" [Offices of El Periódico and its president José Rubén Zamora raided], July 29, 2022. Available at <https://www.soy502.com/articulo/allanan-oficinas-elperiidico-jose-ruben-zamora-100931>.

<sup>107</sup> El País, "El presidente de Guatemala emprende una cruzada para acallar al periodismo que revela la corrupción" [Guatemala's president launches crusade to silence journalists who expose corruption], August 1, 2022. Available at <https://elpais.com/internacional/2022-08-01/el-presidente-de-guatemala-emprende-una-cruzada-para-acallar-al-periodismo-que-revela-la-corrupcion.html>.

<sup>108</sup> New York Times, "In Widening Crackdown, Renowned Journalist Arrested in Guatemala", July 30, 2022. Available at <https://www.nytimes.com/2022/07/30/world/americas/guatemala-journalist-zamora-arrest.html>.

<sup>109</sup> US Embassy, Section 353 Corrupt and Undemocratic Actors Report, 2023. Available at <https://sv.usembassy.gov/section-353-corrupt-and-undemocratic-actors-report-2023/>.

<sup>110</sup> No-Ficción, Twitter Post, "El fiscal Curruchiche del MP Brinda declaraciones a la población, explica que la investigación fue iniciada tras una denuncia" [Prosecutor Curruchiche of the Public Ministry gives statements to the population, explains that the investigation was initiated following a complaint], July 29, 2022. Available at [https://twitter.com/noficciongts/status/1553203611034861569?ref\\_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctwterm%5E1553203611034861569%7Ctwgr%5E9f35da910c269875f05a2cd6fadc14d9d9abe64a%7Ctwcon%5Es1\\_&ref\\_url=https%3A%2F%2Fwww.no-ficcion.com%2Fproject%2Fjose-ruben-zamora-capturado](https://twitter.com/noficciongts/status/1553203611034861569?ref_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctwterm%5E1553203611034861569%7Ctwgr%5E9f35da910c269875f05a2cd6fadc14d9d9abe64a%7Ctwcon%5Es1_&ref_url=https%3A%2F%2Fwww.no-ficcion.com%2Fproject%2Fjose-ruben-zamora-capturado).

<sup>111</sup> Political Constitution of the Republic of Guatemala, Article 6. [Legal Detention: ... Detainees shall be placed at the disposal of the competent judicial authority within a period not exceeding six hours and may not be subject to any other authority].

laundering, blackmail, and influence peddling, among other offenses. She set August 1 for his first statement hearing (a hearing where the accused is informed of the reasons for their arrest and a judge decides whether further investigation and preventative measures are warranted), and sent him to pretrial detention in the Mariscal Zavala jail.<sup>112</sup> Notably, the hearing was set for 48 hours after Mr. Zamora's first appearance before the judge, exceeding the 24-hour limit established in the Constitution.<sup>113</sup>

On July 31, Mr. García Navarrijo delivered the cash receipt his agent had received from Mr. Zamora's messenger and the invoice issued by Aldea Global S.A. to FECCI prosecutors.<sup>114</sup>

On August 1, Mr. Zamora was scheduled to be transported to the "Torres de Tribunales" for his first statement hearing. However, according to news reports, the hearing was postponed because Judge Orellana had not received the case file and because the vehicle meant to transport Mr. Zamora from the Mariscal Zabala prison to the hearing "broke down."<sup>115</sup> The hearing was postponed to August 3.

Also on August 1, the bank accounts of Aldea Global S.A were frozen at the request of FECCI.<sup>116</sup> *El Periódico* published a statement announcing the seizure of its accounts, stating: "This action is very strange to us in view of the statements made by Prosecutor Curruchiche that the persecution of our president, José Rubén Zamora Marroquin, is only in his capacity as a businessman and not as a journalist."<sup>117</sup>

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<sup>112</sup> Prensa Libre, "José Rubén Zamora es enviado a prisión provisional al Mariscal Zavala y el lunes será la audiencia de primera declaración" [José Rubén Zamora is remanded in custody at Mariscal Zavala and first statement hearing on Monday], July 30, 2022. Available at <https://www.prensalibre.com/guatemala/justicia/jose-ruben-zamora-es-enviado-a-prision-provisional-al-mariscal-zavala-y-el-lunes-sera-la-audiencia-de-primer-declaracion-breaking/>.

<sup>113</sup> Constitution of the Republic of Guatemala, Article 9. [Interrogation of detainees or prisoners: The judicial authorities are the only ones competent to interrogate detainees or prisoners. This diligence must be carried out within a period not exceeding twenty-four hours. The extrajudicial interrogation has no evidentiary value, in accordance with the criminal procedure law Art. 87...If the accused has been apprehended, the judge of first instance or the justice of the peace, as the case may be, shall be notified immediately so that he may testify in his presence within twenty-four hours of his apprehension. The judge shall provide the necessary means so that a defense counsel may be present at the hearing].

<sup>114</sup> Public Ministry, Ministerial Act of July 31, 2022, Special Prosecutor against Impunity (FECCI), Agency 9, MP001-2022-36636. [Navarrijo delivered a cash receipt (No. 120752) and an invoice (Series 0E67D34B 1457537723), both issued on July 29 by Aldea Global S.A.]

<sup>115</sup> El País, "Suspendida la primera audiencia de juicio del periodista José Rubén Zamora en Guatemala" [First trial hearing of journalist José Rubén Zamora suspended in Guatemala], August 1, 2022 Available at [https://elpais.com/internacional/2022-08-02/suspendida-la-primer-audiencia-de-juicio-del-periodista-jose-ruben-zamora-en-guatemala.html?ssm=whatsapp?event\\_log=oklogin](https://elpais.com/internacional/2022-08-02/suspendida-la-primer-audiencia-de-juicio-del-periodista-jose-ruben-zamora-en-guatemala.html?ssm=whatsapp?event_log=oklogin).

<sup>116</sup> Id.

<sup>117</sup> El Periódico, Twitter Post, "el Periódico hace de conocimiento de la opinión pública que las cuentas bancarias fueron embargadas a solicitud de la FECCI, con la única intención de paralizar las finanzas dicho medio de comunicación, evitando poder cumplir con sus obligaciones laborales como contractuales" [el Periódico informs the public that the bank accounts were seized at the request of the FECCI, with the sole intention of paralyzing the finances of the media, preventing it from fulfilling its labor and contractual obligations]. Available at [https://twitter.com/el\\_periodico/status/1554148563654950920?s=48&t=9HFzX0SFxAtoQv3QLqAFew](https://twitter.com/el_periodico/status/1554148563654950920?s=48&t=9HFzX0SFxAtoQv3QLqAFew).

On August 2, one of Mr. Zamora's lawyers, Mario Castañeda, reported to journalists that he could not access the case file.<sup>118</sup>

Also on August 2, Mr. García Navarajo delivered a CD to the FECl office containing several additional audio recordings that he had made:<sup>119</sup>

1. A call between Mr. Zamora and Mr. Sandoval on February 15, 2021, recorded while Mr. Navarajo was at Mr. Zamora's house. Mr. García Navarajo had asked Mr. Zamora to call Mr. Sandoval and tell him that he [García Navarajo] had met Ms. Gómez to discuss potential collaboration with FECl. (In the recordings, becoming a cooperating witness was called a 'process of effective collaboration.')

Mr. Sandoval replied that he did not know anything about the meeting between Mr. García Navarajo and Ms. Gómez, that Ms. Gómez did not tell him anything about it, but that it seemed reasonable for Mr. García Navarajo to begin the process of becoming a cooperating witness.<sup>120</sup> (This call occurred before Mr. Sandoval was fired from FECl and went into exile in July 2021).

2. A meeting between Mr. Zamora, Mr. García Navarajo, Mario Castañeda and Romeo Montoya García (two of *elPeriodico's* lawyers, who initially represented Mr. Zamora after he was arrested), and Flora Silva (the financial manager of *elPeriódico*), in August 2021, in which they discussed what to do with a check for 250,000 QZ from the ARCA company to *elPeriódico*. (As discussed above, ARCA was a subsidiary of Bantrab Bank, where Mr. García Navarajo worked, which was the subject of one of the investigations implicating Mr. García Navarajo). In the recording, Mr. García Navarajo is heard multiple times discussing how the check (which was presumably for advance advertising) would be justified in Aldea Global S.A.'s accounting. (At trial, Mr. Zamora testified that the check was handed over to FECl during the investigation into ARCA);<sup>121</sup>

3. A call between Mr. Sandoval and Mr. Zamora on September 6, 2021, recorded while Mr. García Navarajo was at Mr. Zamora's house. Mr. García Navarajo said he had asked Mr. Zamora to call the now-former FECl Prosecutor Sandoval in the hope that Mr. Sandoval could in turn ask Ms. Gómez to delay the process of Mr. García Navarajo's cooperation as a witness until it was clear who would be the head of FECl, because Mr. García Navarajo was afraid that what he had already shared would be used against him by the new administration. The audio reflects Mr. Zamora calling Mr. Sandoval to relay the message, who agrees to try to talk to Ms. Gómez.

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<sup>118</sup> El País, "Suspendida la primera audiencia de juicio del periodista José Rubén Zamora en Guatemala", August 1, 2022.

<sup>119</sup> Public Ministry, Declaration: Ronald Garcia Navarajo, Special Prosecutor's Office against Impunity (FECl), Agency 9, MP001-2022-36636, August 2, 2022. Statement by Ronald Garcia Navarajo detailing that he delivered a CD containing four audio files.

<sup>120</sup> Monitor's Notes, August 8, 2023.

<sup>121</sup> Monitor's Notes, May 3, 2023.



4. A meeting between Ms. Gómez, Mr. García Navarajo, and his lawyer on January 11, 2022, at FECI offices, where they discussed the process of “effective collaboration.” Mr. García Navarajo proposed the issues that he preferred to collaborate on and the benefits he expected to receive. Ms. Gómez explained what FECI expected from the collaboration.

## First Statement Hearing<sup>122</sup>

At 2 pm on August 3, after Mr. Zamora had been in detention for over four days (exceeding the 24-hour limit established in the Constitution by three days), his first statement hearing began before Judge Orellana at the Seventh Court of First Criminal Instance, Drug Trafficking and Environmental Crimes in Guatemala City.

Former FECI Assistant Prosecutor Samari Gómez was also present for the first statement hearing as her case was being prosecuted together with Mr. Zamora’s. As discussed above, she was arrested on the same day as Mr. Zamora and was under investigation for allegedly revealing confidential information, in large part on the basis of Mr. García Navarajo’s complaint and the audio recording he had made of conversations between Mr. Zamora and Mr. Sandoval.

FECI Prosecutor Cinthia Monterroso presented evidence gathered during the searches of Mr. Zamora’s home and *elPeriódico*’s offices. The prosecution also presented the evidence it had received from Mr. García Navarajo the day before, on August 2.<sup>123</sup> Specifically, the prosecution argued that the recording of the conversation regarding the ARCA check demonstrated that Mr. Zamora’s lawyers (Mario Castañeda and Romeo Montoya García, who were also present for the recorded conversation) and Flora Silva Flores, the financial manager of Aldea Global S.A., may have been involved in the commission of other crimes alongside Mr. Zamora. (The prosecutor elaborated on this theory on August 8, arguing that the recording of the meeting showed that they were planning to fabricate documents to shield Mr. Zamora from the ARCA investigation, because he had received a check from Mr. García Navarajo issued by “ARCA”).<sup>124</sup> Mr. Zamora testified at trial that he cooperated with FECI, turned over the check, and was never charged in that case).<sup>125</sup>

The prosecutor then revealed that she had filed a request to open an investigation into Mr. Zamora’s lawyers that morning at 8 am in relation to the conversation about the ARCA

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<sup>122</sup> In the Guatemalan system, the first statement hearing is meant to inform the accused of the reasons for their arrest, to ‘link the accused to the process’ (after which, the judge issues an order indicating that the accused is accused of a crime and subject to criminal proceedings), and to decide whether pre-trial detention or substitute measures are necessary.

<sup>123</sup> Monitor’s Notes, August 3, 2022. Livestream of hearing available at: <https://www.youtube.com/watch?v=yVPJOleJZtA&t=12s>.

<sup>124</sup> Monitor’s Notes, August 8, 2022.

<sup>125</sup> Monitor’s Notes, May 5, 2023.

check because Attorney General Porras “considered it important.” She asked Judge Orellana to rule on whether this created a potential conflict of interest that would prevent Mr. Zamora’s lawyers from representing him at the then-ongoing hearing.<sup>126</sup> Instead of resolving the prosecution’s request, Judge Orellana gave Mr. Zamora five minutes to discuss with his lawyers and decide if, “despite the existence of these serious accusations against the lawyers Mr. Castañeda and Mr. Montoya,” he wanted them to continue representing them.<sup>127</sup> At this point in the hearing, the judge asked the guards to remove the handcuffs from Mr. Zamora.

Five minutes later, Judge Orellana asked Mr. Zamora if he had decided to continue with Mr. Castañeda and Mr. Montoya, “despite the possible or alleged serious facts against them.” Mr. Zamora responded that he would look for new attorneys. The judge concluded that the hearing should be rescheduled since Mr. Zamora was “voluntarily” changing lawyers. The prosecutor then asked if a one-day postponement would be enough so as to not delay the first statement hearing for the other defendant, Ms. Samari Gómez. The judge indicated that this request seemed reasonable. However, Mr. Zamora objected to this due to the lack of time it afforded him to find new counsel, and the first statement hearing was rescheduled to August 8.<sup>128</sup> The judge did not comment on this de facto extension of Mr. Zamora’s detention pending the first statement hearing. Ms. Gómez requested that her first statement hearing be held that day, notwithstanding the postponement of Mr. Zamora’s case. However, Judge Orellana did not respond to her request.<sup>129</sup>

On August 8, the rescheduled first statement hearing for Mr. Zamora and Ms. Gómez began. Mr. Zamora was represented by a new lawyer, Christian Ulate, a former legal coordinator of the CICIG. The *Fundación contra el Terrorismo* (FCT) also participated in proceedings as the ‘*querellante adhesivo*’ (adhesive plaintiff).<sup>130</sup>

The prosecutor requested that the court lift the freeze on some of *elPeriódico*’s bank accounts because she found those accounts to contain only minimal balances. The judge granted this request.

Next, the prosecutor requested that Mr. Zamora be linked to the crime of money laundering under Articles 2 and 6 of the Anti-Money and Asset Laundering Law based on a phone call between Mr. Zamora and Mr. García Navarrijo on July 19, 2022, which, as

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<sup>126</sup> Id.; República, “José Rubén Zamora en primera audiencia este miércoles 3 de Agosto” [José Rubén Zamora at first hearing this Wednesday, August 3], August 3, 2022. Available at <https://republica.gt/seguridad-y-justicia/jose-ruben-zamora-en-primera-audiencia-este-miercoles-3-de-agosto-20228315240>.

<sup>127</sup> Monitor’s Notes, August 3, 2022.

<sup>128</sup> Id.

<sup>129</sup> Id.

<sup>130</sup> In the Guatemalan system, the adhesive plaintiff functions as a private prosecutor and collaborates with or assists the prosecutor with the investigation (Guatemala Criminal Procedure Code, Article 116). This is the same role that CICIG had formerly played alongside FECl in corruption cases.

reported by Mr. García Navarajo, involved Mr. Zamora asking for the ‘favor’ of exchanging cash for a check (NB: This call was not recorded). Specifically, the prosecutor alleged that, according to Mr. García Navarajo’s complaint, Mr. Zamora had asked Mr. García Navarajo to exchange 300,000 QZ in cash for a check from a company that Mr. García Navarajo controlled, and she said Mr. Zamora intended to deposit the check into Aldea Global S.A.’s account or his personal account. She also referenced documentary evidence of this transaction—such as the check Mr. García Navarajo’s agent had given Mr. Zamora’s messenger and the invoice from Aldea Global S.A. The prosecutor did not, however, present evidence as to why she believed the 300,000 QZ – the cash that Mr. Zamora allegedly tried to launder – came from an illegal source. Instead, she speculated, “Why not bank this money? Why not incorporate it into Aldea Global’s company accounts? The Public Ministry has the answer: because it comes from an illegal act. There is no other answer.”<sup>131</sup> The prosecutor also requested that Mr. Zamora be linked to the offense of conspiracy to commit money laundering with Flora Silva Flores, the financial manager of Aldea Global S.A., because she was in charge of issuing invoices and cash receipts.

The prosecutor next requested that Mr. Zamora be linked to the offense of influence peddling under Article 449 BIS of the Criminal Code.<sup>132</sup> She alleged that Mr. Zamora sought to use his relationship with former FECCI prosecutor Sandoval in order to influence Ms. Gómez, to get Ms. Gómez to make decisions that would be beneficial (or at least appear beneficial) to Mr. García Navarajo in the investigations against him (with the implication that this allowed Mr. Zamora to extract favors from Mr. García Navarajo – see ‘blackmail’ charge below). The prosecutor, however, did not specify how Mr. Zamora supposedly influenced a public servant.

Last, the prosecutor requested that Mr. Zamora be linked to the offense of blackmail under Article 262 of the Criminal Code for allegedly asking Mr. García Navarajo for illegal favors (i.e. to launder money by exchanging the cash into a check) and for information on public officials, in exchange for refraining from publishing incriminating facts about Mr. García Navarajo and his family. Without citing evidence, she alleged that Mr. Zamora had “free access” to the files in the investigations against Mr. García Navarajo and could thus have obtained incriminating information. However, she did not detail what the alleged “covert threat against the honor and prestige” of Mr. García Navarajo was supposed to have been.<sup>133</sup>

The prosecutor then played the audio clips Mr. García Navarajo had submitted to FECCI and argued that they supported the facts and offenses alleged.

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<sup>131</sup> Monitor’s Notes, August 8, 2022.

<sup>132</sup> Id.

<sup>133</sup> Id.

Defense counsel informed the court that some of the prosecution's evidence displayed during the hearing had not been shared with the defense. The judge ordered the prosecution to share the evidence with defense counsel.<sup>134</sup>

The hearing continued on August 9. Defense counsel argued that the arrest of Mr. Zamora violated the Constitution and the Guatemalan Criminal Procedure Code. First, he noted that the arrest was based predominantly on Mr. García Navarajo's complaint and argued that the prosecution lacked any evidence (direct or indirect) of the criminal nature of the acts imputed to Mr. Zamora. Specifically, he asserted that the prosecution had erroneously reversed the burden of proof regarding the allegedly illicit origin of the confiscated money, which is a structural element of the crime of money laundering: "...there is not a single piece of evidence, only Mr. Ronald García Navarajo's statement...the law does not establish that [the prosecution] does not have to present evidence of the illicit origin of that money; [the prosecution] does have to present it...I have not seen a single proof that says that this money comes from blackmail." He also noted that the audio recordings played by the prosecution do not show Mr. Zamora blackmailing Mr. García Navarajo.<sup>135</sup>

With respect to the influence peddling charge, he noted that the prosecution had not presented any proof that Mr. Sandoval and Ms. Gómez were, in fact, communicating. (Although in the September 6, 2021 recording Mr. Sandoval appeared to agree to get in touch with Ms. Gómez, the prosecution did not present evidence that they had communicated. At trial, Ms. Gómez testified that she did not communicate with Mr. Sandoval after he left FECCI).

Second, he argued that the prosecution had violated Article 309 of the Criminal Procedure Code<sup>136</sup> because it had not verified facts alleged by Mr. García Navarajo after receiving the complaint on July 22 (but before effectuating the arrest on July 29).

Third, he argued that Mr. García Navarajo's recordings of phone calls between Mr. Zamora and third parties violated Mr. Zamora's right to privacy, protected under Article 24 of the Constitution. He argued that Mr. García Navarajo's "investigative actions" after filing a complaint – specifically, recording Mr. Zamora, editing the recordings, and receiving the cash – were illegal and beyond the authority of a private individual after informing the authorities of a possible criminal act. He emphasized that the prosecution had not determined when or how these recordings were made, thus leaving the context of the recordings unknown. He also noted that the prosecutor's office hid or made unavailable

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<sup>134</sup> Monitor's Notes, August 8, 2022; Livestream of first statement hearing available at [https://www.facebook.com/TN23NOTICIAS/videos/audiencia-de-primera-declaraci%C3%B3n-de-jos%C3%A9-rub%C3%A9n-zamora/541690487734569/?locale=ms\\_MY](https://www.facebook.com/TN23NOTICIAS/videos/audiencia-de-primera-declaraci%C3%B3n-de-jos%C3%A9-rub%C3%A9n-zamora/541690487734569/?locale=ms_MY).

<sup>135</sup> Monitor's Notes, August 9, 2022.

<sup>136</sup> Guatemalan Criminal Procedure Code, Article 309. [In the investigation of the truth, the MP must exercise all pertinent and useful diligence to determine the existence of the facts, with all the important circumstances for the criminal law].

significant evidence, such as the bank tags on the confiscated money (which, the defense said, would have demonstrated the money came from a bank and not from an illegal source). In conclusion, he pointed out that the prosecution's circumstantial evidence was insufficient to show his client commissioned the alleged acts, let alone his client's participation in any of them.<sup>137</sup>

Judge Orellana concluded there was "reasonable suspicion" that Mr. Zamora had been involved in the alleged crimes and ordered the prosecution to proceed to the investigatory phase, 'linking' Mr. Zamora to the alleged crimes.

The judge further ordered Mr. Zamora to remain in pretrial detention during the investigation. Judge Orellana reasoned that Mr. Zamora held "a high position in the commercial entity Aldea Global S.A.... that indeed there are workers or employees who have already given a preliminary statement ... [that] since he has employees whom he can give orders [to], instructions and who in this case have a duty to obey... [and that] during the course of the investigation, these people can be summoned again to testify, expand their statement or provide clues or elements that contribute to clarifying the truth... This judiciary considers that there is a danger of hindering the discovery of the truth at this time that it has not yet been possible to dispel."<sup>138</sup>

Ms. Gómez was 'linked' to the crime of disclosure of confidential information and also ordered to remain in pretrial detention.<sup>139</sup>

On August 12, Mr. Zamora's defense counsel appealed the detention order, requesting the following alternative measures be imposed instead of detention: 1. House arrest; 2. Obligation to appear every 15 days; 3. Prohibition from leaving the city where he resides; 4. Prohibition from entering the workplace of Aldea Global, S.A. (*elPeridióco*); 5. Prohibition from communicating with the complainant, witnesses identified in the file, employees of Aldea Global, S.A., and any others the court deemed appropriate.<sup>140</sup>

On September 1, the Appellate Court rejected Mr. Zamora's appeal, stating that they agreed with Judge Orellana's rationale: "Likewise, those of us who judge in this instance believe that there is a latent danger of obstruction to the investigation of the truth on the part of the accused, as the trial judge asserts, because the accused holds a hierarchically superior position in ...Aldea Global, S. A."<sup>141</sup>

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<sup>137</sup> Monitor's Notes, August 9, 2022.

<sup>138</sup> Id.

<sup>139</sup> Id.

<sup>140</sup> Defense Appeal of Preventative Detention of Jose Ruben Zamora, August 12, 2022.

<sup>141</sup> Third Chamber of the Court of Criminal Appeals, Criminal, Drug Trafficking and Environmental Crimes, Appeal 423-2022 (01079-2022-00280r1), August 25, 2022.

Meanwhile, on August 19, police detained Flora Silva, *elPeriodico*'s financial manager, on charges of conspiracy to launder money based on the cash-for-check exchange.<sup>142</sup>

On September 1, 2022, Mr. García Navarajo gave additional statements to FECl prosecutors.<sup>143</sup> First, he stated that he and Mr. Zamora met twice to discuss his potential 'effective collaboration' (beyond the two meetings he had previously recorded, specifically, what FECl wanted from Mr. García Navarajo and what Mr. García Navarajo wanted from FECl); Second, Mr. García Navarajo stated that he had recently received a text message containing a photo of his family leaving a restaurant from an unknown sender. He said he felt threatened and that he was being intimidated into not collaborating with FECl in the case against Mr. Zamora. He also said he deleted the text message. Mr. García Navarajo also delivered devices he said he used to make the recordings of Mr. Zamora - an iPad (without a SIM card) and an iPhone (also without a SIM card) - to FECl.

On October 25, 2022, during the investigation period, Mr. Zamora's defense counsel submitted to FECl a contract for the sale of a painting that he owned, titled "Paisaje de Los Grandes Encuentros" by Guatemalan artist Elmar Rojas, for 300,000 QZ to demonstrate the legal origin of the confiscated money.<sup>144</sup> The signed contract was between Mr. Zamora and Orlando Alejandro Álvarez Zamora, the sole administrator and legal representative of the company WCG, S.A., owned by a businessman named Alejandro José Girón Lainfiesta - no relation to José Rubén Zamora - who was the painting's buyer. The contract was dated July 25, 2022 and stipulated that the payment was to be made in three installments.<sup>145</sup> The contract stated that the painting's authenticity had been confirmed by a gallery in 2003.

On October 28 and 29, Mr. Girón Lainfiesta gave statements to FECl prosecutors, stating that he had purchased the work of art in question and that the art was "paid for in this manner [in cash installments], which was agreed upon from the beginning."<sup>146</sup> He further testified that the invoice for the purchase "would be made out in the name of [his] company WCG."

On November 3, Mr. Álvarez Zamora gave a statement affirming that he was the legal representative of WCG, that he had signed the contract, written and cashed two checks

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<sup>142</sup> Committee to Protect Journalists, "Guatemalan police detain *elPeriodico* financial manager for alleged money laundering", August 23, 2022. Available at <https://cpj.org/2022/08/guatemalan-police-detain-elperiodico-financial-manager-for-alleged-money-laundering/>; See, also Ministry of Public, Press Communication, August 19, 2022. Available at <https://twitter.com/MPguatemala/status/1560851747341586432?s=20&t=bbRoddGSzYZxPXyum-PyVg>.

<sup>143</sup> Public Ministry, Declaration: Ronald Garcia Navarajo, Special Prosecutor's Office against Impunity, Agency 9, MP001-2022-36636, September 1, 2022.

<sup>144</sup> Public Ministry, Declaration: Alejandro Jose Girón Lainfiesta, Special Prosecutor's Office against Impunity, Indictment, MP001-2022-36636, Criminal Case 01079-2022-280.

<sup>145</sup> "Contrato Privado de Promesa de Compraventa de Obra de Arte" [Private Contract of Promise of Sale of a Work of Art], July 25, 2022.

<sup>146</sup> Public Ministry, Declaration: Alejandro Jose Girón Lainfiesta, Special Prosecutor's Office against Impunity, Indictment, MP001-2022-36636, Criminal Case 01079-2022-280, October 28, 2022.

(for 40,000 QZ and 200,000 QZ) and delivered payment at the direction of Mr. Girón Lainfiesta. He declared that he had signed the contract on July 25 “at the time of the delivery of the first payment” and that “the contract was signed by Mr. Zamora.”<sup>147</sup> He also told prosecutors that he withdrew the cash from Industrial Bank and pointed out that both bundles of money had bank seals on them.<sup>148</sup> Both men also noted that Juan Carlos Marroquín Godoy, Mr. Zamora’s cousin, had helped set up the transaction and was the intermediary between the parties, including by receiving and delivering the payments.

On November 9, FECCI Prosecutor Cinthia Monterroso formally filed charges against Mr. Zamora and Ms. Gómez.<sup>149</sup> Consistent with the prosecution’s recitation in the first statement hearing, the prosecution charged Mr. Zamora with money laundering, blackmail and influence peddling.

The prosecutor charged Ms. Gómez with “disclosure of reserved or confidential information,” alleging that Ms. Gómez, in her capacity as an Assistant Prosecutor with FECCI, “continued to inform [Sandoval] about the investigation files...by providing information consisting of advances or incidences of processes in which García Navarrijo is accused.” The prosecution further alleged that “this information [about the investigations into García Navarrijo] was used [by Mr. Zamora] to blackmail García Navarrijo” into committing money laundering and “force him to accept conditions that were detrimental to him procedurally.”<sup>150</sup> Notably, the prosecutor’s filing did not say *what* Ms. Gómez was alleged to have revealed.

### **Intermediate Stage Hearing<sup>151</sup>**

On December 8, 2022, the intermediate stage hearing in Mr. Zamora’s case began. Mr. Zamora was represented by two new lawyers – Juan Francisco Solórzano Foppa and Justino Brito Torres. (Mr. Zamora’s previous lawyer, Mr. Ulate, had left the country and Mr. Zamora’s defense team after facing what he later said had been intimidation,

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<sup>147</sup> Public Ministry, Declaration: Orlando Alejandro Alvar Zamora, Special Prosecutor’s Office against Impunity, Indictment, MP001-2022-36636, Criminal Case 01079-2022-280.

<sup>148</sup> *Id.*

<sup>149</sup> Public Ministry, Indictment, Special Prosecutor’s Office against Impunity (FECCI), MP001-2022-36636, Criminal Case 01079-2022-280, November 9, 2022. NB: According to Article 332 of the Criminal Procedure Code, the indictment must contain, among other requirements, a “clear, precise, and circumstantial [concrete] link between the punishable act attributed to the person under investigation and its legal qualification” and a “precise expression of the applicable legal precepts”.

<sup>150</sup> *Id.*

<sup>151</sup> In the Guatemalan system, once the indictment is filed, there is an intermediate-stage hearing for “debate preparation.” Guatemalan Criminal Procedure Code, Articles 346-353. The purpose of the intermediate-stage hearing is for the judge controlling the investigation (“controlling judge”) to evaluate whether or not, after the investigation, there are sufficient grounds to bring the accused to trial. See De Mata Vela, José Francisco, “Criminal Procedure Reform in Guatemala: From the inquisitorial system (written trial) to the accusatory system (oral trial)”, December 12, 2007. Available at <http://hdl.handle.net/10803/5238>.

“smears”, and harassment).<sup>152</sup> Two prosecutors from FECl, which is part of the Public Ministry led by Attorney General Porras, were present at the hearing. FCT participated as the ‘*querellante adhesivo*’, represented by lawyer Raul Amilcar Falla, who also served as the lawyer for Mr. García Navarajo, the complainant. Last, a lawyer from the Procuraduría General de la Nación (PGN), a separate institution that represents the interest of the state, was also present.<sup>153</sup>

The hearing began with defense counsel asserting that the indictment had technical flaws. Defense counsel also requested that the judge schedule a hearing to review the detention order immediately after the intermediate stage hearing. Judge Orellana rejected the defense counsel’s technical challenge to the indictment but did not address the request to review Mr. Zamora’s detention.<sup>154</sup>

Next, the prosecution presented the facts on which the charges of money laundering, influence peddling, and blackmail were allegedly based. As in the first statement hearing, the FECl prosecutor did not present evidence that the cash Mr. Zamora had sought to exchange for a check had an illegal origin (a required element of the crime of money laundering under Guatemalan law). Instead, the prosecution again relied on inference, stating, “According to the complainant, it is possible that it comes from the blackmail that, as he [Navarajo] understands, is constantly carried out to different companies and individuals.”<sup>155</sup> From there, the prosecution narrated a set of events that they characterized as criminal. According to the prosecution, Mr. Zamora called Mr. García Navarajo “to propose that he execute actions destined to commit the crime of money laundering and other assets ... in such manner, to prevent the determination of the true origin of the cash he had in his possession.” The transaction (the exchange of cash provided by Mr. Zamora for a check from Mr. García Navarajo) was “so that he (Zamora) could deposit it in an account of the company called Aldea Global and be able to use it promptly and without any trace, without arousing suspicion of the illicit origin of the money.”<sup>156</sup>

The conversations between Mr. Zamora and Flora Silva (in which she informed him that the check could not be deposited) were described by the prosecution as a continuation “of his criminal actions”; the call from Mr. Zamora to Mr. García Navarajo where he thanked him and informed him that the check had been drawn on an inactive account was

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<sup>152</sup> Committee to Protect Journalists, “Tipping the Scales: Journalists’ lawyers face retaliation around the globe”, October 12, 2023. Available at <https://cpj.org/2023/10/tipping-the-scales-journalists-lawyers-face-retaliation-around-the-globe/>.

<sup>153</sup> In criminal cases where the public administration, the administration of justice or the national economy may be affected, the State may assign a lawyer to represent the State as a victim. Constitution of Guatemala, Article 252. This is a separate function from the Public Ministry, which is responsible for enforcing compliance with the law through exercising criminal action. Constitution of Guatemala, Article 251.

<sup>154</sup> Monitor’s Notes, December 8, 2022.

<sup>155</sup> Id.

<sup>156</sup> Id.



described by the prosecution as evidence "of his criminal actions" and "that the accused had control of the criminal situation...". The prosecutor closed this narration by stating that "these actions constitute the crime of money laundering." The prosecution then concluded, "It has been demonstrated that the origin or licit ownership of the money has not been proven, and it has not been demonstrated that it comes from a licit source; if this were so, it is neither logical nor congruent that someone would be willing to lose practically 13% of the cash in taxes to simulate a commercial transaction for the sale of advertising, as in this case occurred."<sup>157</sup>

The prosecution then addressed evidence presented to their office by the defense during the investigative phase, which sought to demonstrate the origin of the cash at issue in the transaction – namely, the contract for the sale of a work of art at the value of 300,000 QZ, and the statements of several witnesses: Mr. Girón Lainfiesta, the businessman who bought the painting; Mr. Álvarez Zamora, the legal representative of Mr. Girón Lainfiesta's company, who signed the contract; and Mr. Marroquín Godoy, Mr. Zamora's cousin who set up the transaction. The prosecution argued that the contract should not be considered legally valid because a) it did "not meet any of the requirements established in the Notary Code and in the Code of Civil and Commercial Procedures" (without mention of which requirements were supposedly not met), b) the contract was "altered" because defense lawyer Brito Torres wrote on the top of the contract the file number of this criminal case, and c) that the contract was revoked for non-compliance because the contract stated that the first installment would be 50,000 QZ, but only 40,000 QZ was paid.<sup>158</sup> The prosecutor further argued that the contract "present[ed] serious inconsistencies," because the contract listed Mr. Álvarez Zamora as the buyer, but Mr. Girón Lainfiesta stated he bought the painting through his company's legal representative. The prosecutor also questioned why the contract was presented three months after the arrest and why the buyer had not required Mr. Zamora to provide receipts for the payments. The prosecutor further argued that the creator of the painting was not alive, and so could not testify to who gave or sold the art to Mr. Zamora in the first place [NB: The painter's daughter later gave a statement that the painting had been gifted to Mr. Zamora<sup>159</sup>]; that the gallery certifying the authenticity of this painting was closed; that Mr. Girón Lainfiesta's company did not purchase art as one of its purposes; and that there was no "certainty" that the cash seized was the same money sent to the defendant by Mr. Girón Lainfiesta.<sup>160</sup>

The prosecution then requested that investigations be opened against Mr. Girón Lainfiesta and Mr. Álvarez Zamora, both of whom the defense had planned to offer as witnesses, arguing, "Experience and logic tell us that this was simply done to obstruct the investigation of the Public Ministry, to make and create, to manufacture evidence that,

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<sup>157</sup> Id.

<sup>158</sup> Id.; Public Ministry, Indictment, MP001-2022-36636, Criminal Case 01079-2022-280, November 9, 2022.

<sup>159</sup> Public Ministry, Declaration: Elmar Rojas, Special Prosecutor's Office against Impunity, Indictment, MP001-2022-62975, March 3, 2023.

<sup>160</sup> Monitor's Notes, December 8, 2022.

even if true, do not even support, or even connect, a possible legality of the money that confiscated by the Public Ministry.”<sup>161</sup> (Facing the possibility of arrest and imprisonment, Mr. Girón Lainfiesta and Mr. Álvarez Zamora later accepted charges of obstruction of justice and were sentenced on April 27, 2023, to one year and six months, and one year, respectively. Their sentences were commuted with payment.)<sup>162</sup>

The prosecutor further argued that the contract was unreliable because it “did not even cover the amount of what was confiscated by the Public Ministry” (i.e. only 240,000 QZ was delivered but Mr. Zamora had given Mr. García Navarajo 300,000 QZ). The prosecution then requested that the financial records of Mr. Girón Lainfiesta’s company be investigated.

The prosecution also requested investigations be opened against Mr. Zamora’s defense counsel – Mr. Solórzano Foppa and Mr. Brito Torres – for obstruction of justice, saying they had orchestrated “an attempt...to surprise not only the investigating body, but also the judiciary.”<sup>163</sup>

Judge Orellana granted all the prosecution’s requests to open investigations.

The prosecution then addressed the influence peddling charge by referencing the audio recording made by Mr. García Navarajo on September 6, 2021, which had been played at the first statement hearing, arguing that it demonstrated a relationship of influence between Mr. Zamora and Mr. Sandoval. (As described above, the audio recording was of a phone call from Mr. Zamora to Mr. Sandoval at Mr. García Navarajo’s request, to relay Mr. García Navarajo’s request that Mr. Sandoval ask Ms. Gómez to delay the process of Mr. García Navarajo’s ‘effective collaboration’ until it was clear who would be the new head of FECI. At trial, Ms. Gómez testified that she did not communicate with Mr. Sandoval after he left FECI).

With respect to the blackmail charge, the prosecution stated that they had a witness statement from Sergio Aníbal Hernández Lemus (the former president of Bantrab Bank, who was charged in 2016 with misusing funds),<sup>164</sup> saying that in 2007, a negative story was published in *eI Periódico* about him because he had refused to pay a bribe. This, the prosecution argued, was a pattern that Mr. Zamora repeated with Mr. García Navarajo: “He [Navarajo] was afraid of being discredited in the media, since that was the way in which Mr. Zamora acted.”<sup>165</sup> The prosecution also stated that they had two other

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<sup>161</sup> Id.

<sup>162</sup> TN23, “Alejandro Girón Lainfiesta and Orlando Álvarez Zamora are under the Acceptance of Charges Law”, April 27, 2023. Available at <https://www.tn23.tv/alejandro-giron-lainfiesta-y-orlando-alvarez-zamora-se-acogen-a-la-ley-de-aceptacion-de-cargos/>. NB: The Special Procedure for Acceptance of Charges allows a person convicted of certain offenses to “commute” their sentence by paying a fine.

<sup>163</sup> Monitor’s Notes, December 8, 2022.

<sup>164</sup> S&P Global, “Former Bantrab chairman charged with misusing funds”, November 4, 2016. Available at <https://www.spglobal.com/marketintelligence/en/news-insights/trending/muymwlzxb4yuwheoofahra2>.

<sup>165</sup> Monitor’s Notes, December 8, 2022, pg. 22.

statements from David Moisés Ostrowiak Harari and Luis Enrique Hernández Azmitia agreeing with Mr. García Navarrijo's characterization of Mr. Zamora.<sup>166</sup>

Mr. Zamora's counsel raised several objections to the prosecution's presentation:

1. The evidence presented by the prosecution to support the charge of influence peddling (i.e. the audio recording made by Mr. García Navarrijo in September 2021 of a phone call from Mr. Zamora to Mr. Sandoval) was illegally obtained. It breached the "constitutional principle of the protection of third-party communications" because Mr. García Navarrijo was a third party who recorded others having a conversation without their knowledge.
2. With respect to the prosecutor's charge of money laundering, simulating commercial transactions – which the prosecution accused Mr. Zamora of doing - is not a crime; the money laundering law requires demonstrating that the money came from an illegal source, which the prosecution failed to do. Defense counsel then proceeded to explain that the testimonies of Mr. Girón Lainfiesta and Mr. Álvarez Zamora, as well as bank documents, demonstrated that the money came from a legitimate source – namely, the sale of the painting. He explained that Mr. Zamora had to sell a painting in order to pay his employees' salaries for the month. He questioned how Mr. Zamora could have fabricated the sale (as the prosecution alleged), pointing out that the two withdrawals from WCG's account with Industrial Bank, which were documented in a financial statement from the bank, took place on July 25 and July 27– days before Mr. Zamora's arrest on July 29. He noted that journalists like Mr. Zamora had been forced to protect their sources of information and financing, which is not a crime.
3. The charge of blackmail was illogical because the only person to benefit from the conversations with Mr. Sandoval was Mr. García Navarrijo, who had sought to be an effective collaborator.

Defense counsel further noted that the bank seals on the confiscated money were missing, despite a video played by the prosecution showing the money with bank seals. He argued that the missing tags were "extremely relevant evidence" that would have "shown that the money [was] from a legal transaction from a legal source," i.e. a bank. He questioned what happened in the handling of the evidence that resulted in the bank seals disappearing and requested the judge to order an investigation into the missing bank seals.<sup>167</sup> Judge Orellana did not do so.

Judge Orellana concluded that the painting sale transaction did not demonstrate the lawful origin of the 300,000 QZ and that Mr. Zamora had cheated Mr. Girón Lainfiesta because nobody knew where the work of art was, and nobody delivered it to Mr. Girón

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<sup>166</sup> Id.

<sup>167</sup> Id.

Lainfiesta. (NB: Mr. Zamora's family later declared that the painting had been delivered).<sup>168</sup> He concluded that since the confiscated money was in the amount of 300,000 QZ but only 240,000 QZ had been paid to Mr. Zamora in the art sale, "then the money seized cannot be the product of that negotiation."<sup>169</sup>

He concluded that "the investigation presented by the prosecution has serious grounds to go to trial" and accepted the indictment against Mr. Zamora. Judge Orellana concluded the hearing without addressing or scheduling defense counsel's request for a hearing to review Mr. Zamora's detention.

Ms. Gómez's intermediate stage hearing, scheduled for December 12, was postponed because she did not have a lawyer; her lawyer resigned after the Guatemalan Bar Association initiated an investigation against him "for breach of ethics."<sup>170</sup> At the rescheduled hearing on December 19, Judge Orellana ordered the case against Ms. Gómez to proceed. Her request for substitute preventative measures was denied.

### **"Offering of Evidence" Hearing<sup>171</sup>**

Mr. Zamora's "offering of evidence" hearing, initially scheduled for December 13, was rescheduled to December 22. Mr. Zamora's defense lawyer requested that the following witnesses and documentary evidence, among others, be admitted at trial:<sup>172</sup>

- The three witnesses who were involved in the art sale: Mr. Girón Lainfiesta, the businessman who bought the painting; Mr. Álvarez Zamora, the legal representative of Mr. Girón Lainfiesta's company who signed the contract to acquire the painting; and Mr. Marroquín Godoy, Mr. Zamora's cousin who set up the transaction between Mr. Zamora and Mr. Girón Lainfiesta.
- The contract between Mr. Zamora and Mr. Álvarez Zamora, dated July 25, 2022, for the purchase of a painting that Mr. Zamora owned, for 300,000 QZ.
- Bank statements dated August 31, September 2, 3 and 30, 2022, where the Industrial Bank provided information on the financial status of a) Mr. Girón

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<sup>168</sup> As relayed by the Cyrus R. Vance Center for International Justice on September 21, 2023.

<sup>169</sup> Monitor's Notes, December 8, 2022.

<sup>170</sup> La Hora, "Samari Gómez: Están tratando de criminalizar que haya perdido mi abogado", December 12, 2022. Available at <https://lahora.gt/nacionales/diego/2022/12/12/samari-gomez-estan-tratando-de-criminalizar-que-haya-perdido-mi-abogado/>; Republica, "Judge reschedules intermediate hearing of former FECL prosecutor Samari Gómez," December 12, 2022. Available at <https://republica.gt/seguridad-y-justicia/juez-reprograma-audiencia-intermedia-de-exauxiliar-fiscal-de-la-feci-samari-gomez--2022121213450>.

<sup>171</sup> Although the "offering of evidence hearing" is technically considered a part of the trial stage, this hearing is still overseen by the "controlling judge." At the evidentiary hearing, parties offer to the controlling judge "the list of witnesses, experts and interpreters, indicating their names, profession, place to receive summons and notifications, and shall indicate the facts about which they will be examined during the debate [trial]." Criminal Procedure Code, Article 347.

<sup>172</sup> Foppa and Associates, 01079-2022-280. Expediente MP001-2022-36636, Documento Ofrecimiento Penal.

Lainfiesta; b) Mr. Zamora; c) the company Aldea Global S. A.; d) the company WCG S.A. (Mr. Girón Lainfiesta's company); and e) cash withdrawal transactions from WCG S.A. between July 15 and 28, 2022.<sup>173</sup>

Defense counsel had explained at the December 8 hearing that this evidence would be used at trial to demonstrate that the confiscated money had a legitimate origin – that is, that Mr. Zamora had received the cash by selling a painting, and that the cash had been withdrawn from WCG's account with Industrial Bank – thus rebutting one of the key elements of the offense of money laundering (“money is the product of or originates from the commission of a crime”).

Under Article 350 of the Guatemalan Criminal Code, the controlling judge is authorized to reject evidence “when it is illegitimate, manifestly irrelevant, useless or repetitive.” However, although the evidence offered by Mr. Zamora's defense was directly related to legally-relevant facts in the indictment, complied with procedural requirements, and concerned one of the structural elements of the crime of money laundering (and would thus be legitimately subject to debate at trial), Judge Orellana rejected most of the defense's proposed evidence at the request of the prosecution.

The prosecution asked that the testimony of Mr. Girón Lainfiesta, Mr. Álvarez Zamora and Mr. Marroquín Godoy be excluded for “irrelevance,” arguing that the transaction involving the work of art could not have been legitimate because otherwise Mr. Zamora would have deposited the money directly. (“If it was a legitimate transaction...why didn't he simply go to the bank to directly deposit that money to the accounts of Aldea Global S.A.? Why carry out all that simulation of transactions through other companies that even generated him more expenses that, in theory, if it had been a legitimate negotiation, would not have had to be generated.”)<sup>174</sup>

With respect to documentary evidence, the prosecutor objected to the contract for the sale of the painting, arguing that it “did not meet the legal requirements for it to enter legal life,” per her objection in the intermediate hearing. She also objected to the documentation related to the financial, banking and accounting situation of WCG. S.A., saying they “do not change the facts for which Mr. Zamora was accused of and do not change the money seized.”<sup>175</sup>

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<sup>173</sup> Industrial Bank, BI-21858, September 02, 2022 [letter containing information on the financial products of Aldea Global S.A., José Rubén Zamora Marroquín, Flora Emilza Silva Flores and Niko S.A.]; Industrial Bank, BI-22558, September 30, 2022 [letter containing cash withdrawal transactions from WCG S.A. equal or greater than Q.160 .000.00 between July 15 and July 28, 2022 - registry of 58 persons and mercantile entities]; Industrial Bank, BI-23280. November 03, 2022 [letter with information on WCG S.A.'s financial products].

<sup>174</sup> Monitor's Notes, December 22, 2022.

<sup>175</sup> Id.

The controlling judge rejected the three witnesses proposed by the defense, stating that the defense's theory that the confiscated money was from an art sale was "different from the version [of events] that was used as a defense strategy in the first statement hearing" (Mr. Zamora had initially stated that the money came from "honest businessmen" whose identity he felt he should protect, and that the businessmen had withdrawn money from the bank and given him cash<sup>176</sup>), and that the "two different, contrary versions...cannot be true by logic." The judge also complained that these witnesses had never been brought before him, and that "no one has even brought a photo or a video to this judiciary to indicate "Look, Judge, there is the photo of the painting! Nobody brought anything." (According to the rules of Criminal Procedure, it would have been irregular for the defense to present witnesses to the controlling judge before the intermediate stage. The defense had in fact presented the witnesses to the prosecution during the investigative stage). Last, the judge cited as a reason for rejecting the three witnesses that the amount the defense alleged Zamora received from Mr. Girón Lainfiesta (240,000 QZ) in the sale was less than the 300,000 QZ seized: "The figures do not fit; there is no congruence. It is 300,000 QZ in cash, not a different amount. Therefore, the testimonial evidence 1, 2, and 3 offered by the defense are not accepted."<sup>177</sup>

Judge Orellana also rejected the documentary evidence and bank statements offered by the defense related to WCG S. A., on the basis that the documents "basically refers to the same thing, to the thesis of the purchase and sale of a work of art."<sup>178</sup>

Although defense counsel immediately asked for reconsideration of the decision to reject their witnesses and documentary evidence, Judge Orellana denied all of the witnesses proposed by the defense, as well as seven out of the 16 documents and three out of the five pieces of material evidence proposed by the defense (authorizing only bank statements related to Aldea Global, Mr. Zamora, and Ms. Silva that were also submitted by the prosecution).<sup>179</sup>

On the other hand, Judge Orellana accepted all the evidence proposed by the prosecution, rejecting only one document. The prosecution's evidence included 13 witnesses, 19 expert reports and 123 documents.<sup>180</sup> Notably, Judge Orellana authorized the testimony of Davis Moisés and Luis Enrique Hernández, whose testimony the defense had objected to as irrelevant because they had nothing to do with the events connected to these proceedings. (At the December 8 hearing, the prosecution had stated that these two witnesses "said that Zamora had approached them for money in exchange for not discrediting them"<sup>181</sup>). Judge Orellana ruled that their testimony be admitted because "the

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<sup>176</sup> Monitor's Notes, August 8, 2022.

<sup>177</sup> Monitor's Notes, December 22, 2022.

<sup>178</sup> Id.

<sup>179</sup> Foppa & Associates, Criminal Offering Document, MP001-2022-36636, File 01079-2022-280; Monitor's Notes, December 22, 2022.

<sup>180</sup> Monitor's Notes, December 22, 2022.

<sup>181</sup> Monitor's Notes, December 8, 2022.

prosecution intends to prove a mechanism of media pressure that has allowed him to sustain the company of Aldea Global S.A.”<sup>182</sup>

Judge Orellana again declined to review the order for Mr. Zamora’s pretrial detention.

In Ms. Gómez’s case, whose evidentiary hearing also occurred on December 22, Judge Orellana rejected key defense evidence, including Mr. García Navarrijo’s ‘effective collaboration’ file.<sup>183</sup>

On January 19, 2023, head FECCI Prosecutor Curruchiche announced that his office was opening a second investigation into Mr. Zamora for alleged “obstruction of justice” in a 2013 money laundering investigation.<sup>184</sup>

On February 28, 2023, Mr. Zamora was charged with “obstruction of justice” in this second case.<sup>185</sup> Also on February 28, at the request of FECCI Prosecutor Monterroso, a judge ordered the investigation of nine journalists at *elPeriódico* to “find out whether [they] were maliciously pursuing prosecutors, judges and other members of Guatemala’s justice system.”<sup>186</sup>

On March 3, prior to the oral and debate hearings, defense lawyers Solórzano Foppa and Brito Torres resigned from Mr. Zamora’s defense team, citing the criminal proceedings against them (based on the allegation that they had obstructed justice by presenting the art sale contract). On April 20, they were arrested and sent to pre-trial detention.<sup>187</sup>

### **Trial: Oral and Public Debate Hearings<sup>188</sup>**

On May 2, 2023, the oral and public debate hearings of Mr. Zamora and Ms. Gómez’s trial began at the Eighth Criminal Sentencing Court, Drug Trafficking and Environmental Crimes (trial court), in Guatemala City. Hearings were held over the course of the next

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<sup>182</sup> Monitor’s Notes, December 22, 2022.

<sup>183</sup> Id.

<sup>184</sup> @MPguatemala, Twitter Post, January 19, 2023. Available at <https://twitter.com/MPguatemala/status/1616153291393466403>.

<sup>185</sup> Prensa Libre, “Jose Rubén Zamora: Judge suspends trial hearing in case of alleged conspiracy to obstruct justice”, December 13, 2023. Available at <https://www.prensalibre.com/guatemala/justicia/jose-ruben-zamora-juez-suspende-audiencia-de-inicio-de-juicio-en-caso-de-supuesta-conspiracion-para-la-obstruccion-de-la-justicia-breaking/>.

<sup>186</sup> Associated Press, “Judge orders investigation of Guatemalan journalists”, February 28, 2023. Available at <https://apnews.com/article/guatemala-newspaper-el-periodico-journalists-6b8531d50f294ed8bee7d16409f561fb>.

<sup>187</sup> Prensa Libre, “Capturan a Juan Francisco Solórzano Foppa y Justino Brito Torres señalados de supuesta obstaculización a la acción penal”, April 20, 2023. Available at <https://www.prensalibre.com/guatemala/justicia/capturan-a-juan-francisco-solorzano-foppa-y-justino-brito-torres-senalados-de-supuesta-obstaculizacion-a-la-accion-penal-breaking/>.

<sup>188</sup> The “oral and debate hearings” are similar to what most jurisdictions would consider the “trial” stage. Criminal Procedure Code, Articles 354-367. For simplicity, this report will refer to the “oral and debate hearings” simply as the “trial” phase.

month, on May 2-4, 8-9, 10-11, 18-19, 22-23, and 30-31. Mr. Zamora was represented by new lawyers – Patricia Guillermo de Chea and Ricardo Sergio Szejner – who had joined his defense team several weeks earlier. The court consisted of a three-judge panel.

On May 2, the hearing began with opening presentations from the different parties. In Raul Falla’s statement on behalf of FCT, he repeatedly referred to Mr. Zamora as “lavadora” (money launderer); Mr. Zamora asked the court to require Mr. Falla not to use such words and the court agreed.

Ms. Gómez’s lawyer presented several motions, including a motion to exclude all the audio recordings from evidence. In reply, the prosecution replied that “this was a topic discussed in previous instances,” and quoted a decision of the Court of Zaragoza in Spain.<sup>189</sup> (NB: This is discussed further in the Equality of Arms section). The court decided to resolve the motions when it delivered its verdict at the end of trial.

Next, Ms. Gómez presented her testimony. She explained that Mr. García Navarajo first approached FECl about potential collaboration on September 30, 2020. After Mr. Sandoval left FECl, she and her boss, Chief Prosecutor Heidi Maricruz Samayoa, met with the new head of FECl, Mr. Curruchiche, in September 2021 to brief him on Mr. García Navarajo’s collaboration process. Mr. Curruchiche authorized the process to continue and she continued to update him. Notably, she stated that she did not communicate with Mr. Sandoval after he left FECl and went into exile. She noted that she never made arrangements with Mr. García Navarajo directly and only communicated with his lawyers. She also observed that from the beginning, Mr. García Navarajo “wanted to manipulate the effective collaboration process at his whim.” She noted that she had no authority to make any decisions in the proceedings involving Mr. García Navarajo, as she received instructions from Maricruz Samayoa and Mr. Curruchiche. She also stated that she had never provided information to others on any investigations she oversaw as an assistant prosecutor.<sup>190</sup>

On May 3, the focus was on the charges against Mr. Zamora. Mr. Zamora gave his testimony.<sup>191</sup> He explained the background to his relationship with the complainant: Mr. García Navarajo worked at Bantrab Bank, which advertised with *elPeriódico* from 2009 to 2020. According to Mr. Zamora, Mr. García Navarajo became a source for the newspaper in 2013 because he had “a lot of information about a lot of people in Guatemala.” He further testified that after Mr. García Navarajo came under investigation for financial crimes, he requested Mr. Zamora to connect him with CICIG because he wanted to provide information about alleged corrupt activities of several Bantrab executives and former President Jimmy Morales in exchange for amnesty in his own proceedings. He also asked Mr. Zamora to connect him with Mr. Sandoval, who was head of FECl at the

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<sup>189</sup> Monitor’s Notes, May 2, 2023.

<sup>190</sup> Id.

<sup>191</sup> Monitor’s Notes, May 3, 2023.



time. Mr. Zamora testified that after the Giammattei administration came into place (with new leadership at FECl), Mr. García Navarajo told him that the new head of FECl offered Mr. García Navarajo money “in exchange for him declaring or speaking against some people.”<sup>192</sup>

In his testimony, Mr. Zamora noted that “in all the recordings, it is clear that he [García Navarajo] is the one who looks for me, calls me, all to get me to do him favors.” He also stated that Mr. García Navarajo had recorded him without the authorization of the prosecutor’s office. He testified that on both February 15, 2021 and September 6, 2021, Mr. García Navarajo had visited his house and asked him to call Mr. Sandoval “because he [Navarajo] wanted advice from Sandoval.”<sup>193</sup>

He further noted that he did not know Ms. Gómez and had never had contact with her except once when she came to his house with someone from CICIG to take a statement from him. (In cross-examination, Mr. Zamora explained that he met Ms. Gómez in the context of an investigation into ARCA. Because Mr. Zamora had received a check from ARCA from Mr. Garcia Navarajo – the check discussed in the audio recording of Mr. Zamora, Ms. Silva, Mr. García Navarajo, and *elPeriódico*’s lawyers – Ms. Gómez and a CICIG employee came to his house to take his statement. He testified that he handed the check over to CICIG/FECl. He also noted that he was not charged in that investigation).

Mr. Zamora next addressed the money laundering charge. He explained that *elPeriódico* relied on advertising sales to sustain operations financially. However, it was becoming progressively more difficult for people to financially support *elPeriódico* publicly; one supporter had dynamite placed in his house, and another lost business contracts because of his association with *elPeriódico*. Mr. Zamora explained that he was able to receive grants from a foundation in Washington D.C. and that other people donated smaller amounts of money. He said that since Mr. García Navarajo “knew about the situation of *elPeriódico*... he told him [Zamora] that when he needed to, he [García Navarajo] could do him the favor of banking those small donations made by businessmen who did not want to make them publicly.”<sup>194</sup>

The prosecution then cross-examined Mr. Zamora. Notably, the prosecution focused on asking Mr. Zamora questions about the art sale contract, including who gave him the money, what date the contract was signed, and whether it was before or after he was in detention – despite the contract being excluded from evidence at the intermediate stage. On several occasions, defense counsel attempted to object to the prosecution’s questions but was unsuccessful because the defense did not object with the appropriate techniques, such as by failing to raise an appropriate basis for the objection, according to the presiding judge. (“Look, counsel, the technique is that if you say objection, you have to say why you

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<sup>192</sup> Id.

<sup>193</sup> Id.

<sup>194</sup> Id.

object to the question.... No objection sustained.”) At one point during the questioning, when defense counsel did not object, Mr. Zamora asked the presiding judge if he should answer the prosecution’s questions, “because he understands that the interrogation would be based on the facts of the accusation,” and that he had not mentioned the painting because the controlling judge at the intermediate stage had not allowed the contract to be admitted into evidence at trial. The judge responded, “It all depends on what you answer. If you answer, they keep asking you questions.” The judge then allowed the prosecution to continue asking about the sale of the artwork.<sup>195</sup>

Next, Mr. Falla of FCT asked Mr. Zamora several questions that were also outside the scope of the charges (such as whether Mr. Zamora knew that Mr. Girón Lainfiesta had accepted charges of obstruction of justice in connection with the art sale contract). Again, defense counsel did not object. In response to questioning from defense counsel, Mr. Zamora testified that he did not know what he was being arrested for or what the charges were until he was brought before the court the morning after his arrest. He testified that Mr. García Navarajo had wanted Guatemalan authorities to relocate him to the United States and release some of the money that they had seized, in exchange for collaboration. He further testified that he had never threatened Mr. García Navarajo and that he did not have any information on the criminal proceedings against Mr. García Navarajo (that he was alleged to have used to blackmail him), other than what Mr. García Navarajo had told him when he had sought his help in contacting Mr. Sandoval. In response to questioning from Ms. Gómez’s lawyer, Mr. Zamora testified that he called Mr. Sandoval in response to multiple requests from Mr. García Navarajo, and that Mr. García Navarajo had constantly asked Mr. Zamora to introduce him to Mr. Sandoval (in order to become a collaborator). He said that he had never authorized Mr. García Navarajo to record the calls.<sup>196</sup>

The day concluded with testimony from an expert witness for the prosecution, who confirmed that he had counted 300,000 QZ in cash on October 5, 2022. He testified that the money was in a bag and that he did not remember if the money was bound in bank tags. He stated that he received only the money to count.<sup>197</sup>

On May 4, five witnesses for the prosecution testified. First, a former driver for *elPeriódico* testified that on July 28, 2022, he was summoned by Mr. Zamora to his house, in order to transport money. The driver brought the cash to a designated location where he handed it to a messenger from Aldea Global S.A. He testified that “part of the money had tags from the Industrial Bank” and the other part had other rubber bands on them. He explained that he had moved money before at Mr. Zamora’s request but that “they never did anything secretly.”<sup>198</sup>

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<sup>195</sup> Id.

<sup>196</sup> Id.

<sup>197</sup> Id.

<sup>198</sup> Monitor’s Notes, May 4, 2023.

Second, an accountant for Aldea Global S.A. testified. He explained that the company often received donations, and that donation checks were deposited into Aldea Global's accounts. He stated that on July 27, his boss Flora Silva told him there would be 300,000 QZ as an advance payment for advertising in *elPeriódico*. On July 29, he asked Ms. Silva where the money was when he saw it had not come in yet. Then, the offices were raided. He stated that the invoice for the money was cancelled. He further explained that it was typical for clients to buy advertising in advance but not actually use it out of fear of retaliation if they were connected with the newspaper, and that Aldea Global would issue a receipt or an invoice to the client.

Third, Sergio Aníbal Hernández Lemus, the ex-director of Bantrab Bank and ex-manager of ARCA, testified that *elPeriódico* once published a story alleging corruption by Bantrab in 2007, which had hurt the bank financially. He also stated that the bank bought advertising "distributed among various media" organizations, and that they were "forced to pay for advertising so as not to be the subject of more headlines of this nature." However, when the lawyer for the PGN asked the witness, "Was there any suggestion from *elPeriódico* to the directors of Bantrab that they buy advertising in exchange for not publishing negative things against the bank?", he answered, "No."<sup>199</sup>

Fourth, Luis Enrique Hernández Asmita, a former legislator and politician, testified that he had been the subject of articles published in *elPeriódico*. He alleged that Mr. Zamora had told him, "If you don't want to appear in *elPeriódico*, you must donate money to me," and that five more negative articles appeared after he said no. The witness stated he had a document with him; the prosecution asked the court to allow the document to be entered as evidence. Mr. Zamora's defense counsel told the court that she had not seen the document. Although the court allowed her to read the document, defense counsel was unable to question the witness clearly, and the prosecution's objections to her questions were successful. The presiding judge then told defense counsel to obtain and review the documents that they needed from the prosecution.<sup>200</sup>

Fifth, Ms. Silva, the former financial manager of Aldea Global S.A., testified. She explained that Aldea Global S.A. relied on two income streams: advertising and subscriptions. She stated that Mr. Zamora also often made contributions to the company, either as loans or for capitalization. She noted that the company's accounts were always in the "red" and that the deficit varied from 4-5 million QZ a year. She stated that on July 27, 2022, Mr. Zamora told her that Instrumental Audio y Más would purchase advance advertising. The prosecution continued to question the witness about the company's practice of selling advance advertising between 2020 and 2021; the presiding judge eventually asked the prosecution to stop asking about unrelated matters. In response to

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<sup>199</sup> Id.

<sup>200</sup> Id.

questioning from Mr. Zamora's counsel, Ms. Silva stated that all the accounting carried out in Aldea Global S.A. was legal and complied with tax regulations.<sup>201</sup>

On May 8, 2023, the trial resumed with the presentation of more prosecution witnesses. First, a former employee of Aldea Global S.A., whose main role was as a messenger, described the events of July 28, 2022, which corresponded with the testimony of the former Aldea Global S.A. driver who testified on May 5. He and the driver (who carried the cash) went to an address in a business building and went to an office where a man handed him a check. In return, he gave the man an invoice and a receipt, which he had received from Ms. Silva and another employee of Aldea Global S.A. Ms. Silva told him to deposit the check in Aldea Global's account at Industrial Bank. When he tried to deposit the check, a bank representative explained that the account from which the check had been drawn was inactive. In response to questioning by defense counsel, he stated that the cash that was handed over had bank tapes/bands around them, and that they were white and blue and had a seal.<sup>202</sup>

Second, a police officer testified that he had surveilled the building where the Aldea Global S.A. employees conducted the exchange at the request of the prosecution.

Third, the person who received the money (on behalf of Mr. García Navarajo) testified that he met the Aldea Global employees and received the money from them as a favor to Mr. García Navarajo, whom he had known for ten years. He also stated that he counted the money up to 100,000 QZ before he stopped. In response to questioning from Ms. Gómez's lawyers, he stated that the 200QZ bills were encircled with bank tags with seals. He also stated, in response to Mr. Zamora's question, that he did not take the bank tags off the bills.<sup>203</sup>

Fourth, the head of the credit and collections department at Aldea Global testified about the company's process for advance purchase of advertising and issuing invoices or cash receipts. The prosecution questioned her about the invoice and receipt that was issued for the July 28 exchange.<sup>204</sup>

Fifth, a cashier from Industrial Bank was called. The witness stated that she did not know anything about the facts being investigated and only knew that she was working on the day in question because the prosecutor showed her a surveillance video.<sup>205</sup>

When court resumed after the midday break, one of Mr. Zamora's lawyers (Mr. Szejner) requested to leave the hearing early, citing medical reasons. The hearing resumed with the prosecution seeking admission of documentary evidence, some of which was read

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<sup>201</sup> Id.

<sup>202</sup> Monitor's Notes, May 8, 2023.

<sup>203</sup> Id.

<sup>204</sup> Id.

<sup>205</sup> Id.

out loud. At several points, defense counsel Ms. Guillermo de Chea asked the presiding judge if she could make observations about the documents; the judge rebuked the lawyer (“Lawyer, you know the law – true?”), saying the lawyer needed to object. When Mr. Zamora attempted to state that a document was not relevant to the case, the judge replied, “No, she [your lawyer] already protested. Coordinate with your lawyers. I can’t give everyone the floor.”<sup>206</sup>

On May 9, 2022, Ms. Guillermo de Chea informed the court that Mr. Szejner would no longer be part of Mr. Zamora’s defense team, explaining that he had been diagnosed with cardiac arrhythmia, and that his doctor recommended that he avoid strong emotions.<sup>207</sup>

Later on May 9, the prosecution called an expert witness (Martiza Marlene Perez) who was an analyst at the criminal analysis collection center at the National Civil Police. The prosecution sought to use this witness to authenticate the recordings of the phone calls between Mr. García Navarrijo and Mr. Zamora on July 28. Ms. Gomez’s defense counsel, through cross-examination, sought to show that the audio files had been modified between the date of the recordings and when they were analyzed by the prosecution.

Specifically, the prosecution asked the witness to testify about two reports: 1. Extractions from an iPad (extracted on September 28, 2022, totaling 3711 pages), including audio recordings of conversations between Mr. García Navarrijo and Mr. Zamora that were created on July 28, 2022; 2. An analysis of the extractions, made on October 12, 2022.<sup>208</sup>

Ms. Gómez’s lawyer cross-examined the witness, asking if the expert received the iPad with a court order to perform the extraction. The witness acknowledged that the extraction request came from the prosecutor’s office directly without authorization from a judge, as was the usual procedure.<sup>209</sup> Moreover, the witness acknowledged that the recording was created on July 28, but the files were modified on August 29 (this was displayed on a screen in court), and that she only received the device to analyze on September 4. (The witness was unable to explain the modification).

Next, an analyst testified to authenticate evidence extracted from Flora Silva’s phone.

On May 11, the prosecution presented several expert witnesses who had prepared various analytical reports and forensic reports, as well as photos and videos, and had them admitted into evidence. Notably, one expert witness (Rosa Isabel Martinez Perez) testified about a “timeline analysis” report that drew conclusions about the criminality of the events at hand based on an examination of various sources of information provided by the prosecution. This report included the art sale contract and concluded that it could

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<sup>206</sup> Id.

<sup>207</sup> Monitor’s Notes, May 9, 2023.

<sup>208</sup> Id.

<sup>209</sup> Criminal Procedure Code, Article 225, 231.

not have been the origin of the cash. (NB: The contract itself was not allowed as evidence during the trial as Judge Orellana had excluded it from defense counsel's proffered list of evidence). Ms. Guillermo de Chea and Mr. Zamora did not appear to be familiar with the report. When the defense lawyer attempted to cross-examine the witness, the judge repeatedly admonished her to "be guided by the techniques for questioning" and did not allow the witness to answer most of the defense's questions. Mr. Zamora also attempted to question the witness, but the judge did not allow the questions.<sup>210</sup>

At the end of the hearing, Mr. Zamora asked to address the court. He thanked his lawyer Ms. Guillermo de Chea for her services but said he could not pay her fees. He then asked the court to assign a public defender from the Institute of Public Criminal Defense (IDPP).<sup>211</sup> The court adjourned the trial until May 18.

On May 16, the FCT tweeted from its official Twitter account that it planned to file a complaint against the Director of the IDPP and Fidencia Orozco García, who had apparently been assigned as Mr. Zamora's public defender, for "the obvious influence peddling in [his] designation".<sup>212</sup>

On May 17, the IDPP appeared to have assigned Sandra Eugenia Morales García to be Mr. Zamora's defense lawyer, replacing Ms. Orozco García (based on the fact that the next day the court expected Ms. Morales García to appear).<sup>213</sup>

On May 18, the trial resumed. Another public defender, Joel Ivan Reyes, appeared in court to represent Mr. Zamora. This appeared to have been a surprise to both Mr. Zamora and the court; when the presiding judge began the hearing by verifying the parties, she noted Sandra Eugenia Morales García for the defense; at this point, Mr. Reyes introduced himself as the lawyer assigned to Mr. Zamora's case. When Mr. Zamora asked the court if Ms. Orozco García could return as counsel, the presiding judge replied that the assignment of a public defender was the decision of the IDPP and that the court did not have any power to make that decision because the IDPP was an independent institution.<sup>214</sup> Mr. Zamora asked Mr. Reyes to request a postponement, but he declined.

The prosecution called Mr. García Navarrijo, the complainant, as a witness. In response to questions from the prosecution, Mr. García Navarrijo testified that he has known Mr. Zamora since 2008 when he worked at Bantrab Bank. He stated that he decided to purchase 800,000 QZ in advertising annually from *elPeriódico* after the newspaper

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<sup>210</sup> Monitor's Notes, May 11, 2023. [Zamora: When you say that large amounts of money were handled, are you referring to a specific document and what are you referring to? Judge: Don't answer. She made a report, but it is not that she is aware of it. The question is imperative, rephrase it].

<sup>211</sup> Id.

<sup>212</sup> Ricardo Mendez Ruiz, Twitter Post, May 16, 2023. Available at [https://twitter.com/rmendezruiz/status/1658512405381496833?s=48&t=Z-fsd5WDjFpQOS6LX\\_caOA](https://twitter.com/rmendezruiz/status/1658512405381496833?s=48&t=Z-fsd5WDjFpQOS6LX_caOA).

<sup>213</sup> Monitor's Notes, May 22, 2023. On May 22, the presiding judge referenced the IDPP decision in court.

<sup>214</sup> Monitor's Notes, May 18, 2023.

published articles alleging irregularities at his bank. The prosecution requested authorization from the court to show the witness the relevant article from *elPeriódico*. The presiding judge asked Mr. Zamora's attorney if he was familiar with the document. When he answered no, the judge described the document and explained that the prosecution had already delivered it to the previous defense attorney. Mr. García Navarajo reviewed the document and confirmed that it was a publication about the bank. He stated that the article contained false, inaccurate information, and that the bank lost many clients because of the publication. Mr. García Navarajo admitted to being investigated for illicit association, money laundering and embezzlement. He was arrested in 2018 and detained for over a year.<sup>215</sup> He testified that after he was released, Mr. Zamora told him to begin the process to be an 'effective collaborator' with FECl. According to Mr. García Navarajo, the effective collaboration never went ahead because he was required to hand over evidence that he did not have. He said that Mr. Zamora helped connect him to former FECl prosecutor Mr. Sandoval for the collaboration process, and he alleged (without specifics) that Mr. Sandoval continued to interfere after his dismissal from FECl. The prosecutor showed Mr. García Navarajo a copy of the complaint he filed. Mr. García Navarajo said that Mr. Zamora asked him to launder 100,000 QZ through the bank, and then gave him 300,000 QZ. Mr. García Navarajo continued that he did not do so and instead filed a complaint and handed the money over to the prosecutor's office. The prosecutor then showed Mr. García Navarajo a check for 300,000 QZ. Mr. García Navarajo continued speaking about the transaction and how he received the cash he was supposed to help Mr. Zamora exchange for a check.<sup>216</sup>

Notably, Mr. Zamora's counsel did not object to multiple leading questions asked by the prosecution, nor did the defense object when Mr. García Navarajo spoke about subjects beyond the prosecution's questions. When defense counsel attempted to cross-examine Mr. García Navarajo, the prosecution objected to nearly all of the defense's questions, and the presiding judge accepted some of the prosecution's objections. Mr. García Navarajo stated under cross-examination that the inaccurate information *elPeriódico* published about Bantrab Bank generated panic among its clients, and that he felt that it was "blackmail" to buy advertising from the newspaper. Mr. Zamora also attempted to question Mr. García Navarajo about the effective collaboration process, but the presiding judge did not allow Mr. García Navarajo to answer Mr. Zamora's questions "because they did not respect the interrogation techniques." According to the monitoring notes, the presiding judge then limited the questioning.<sup>217</sup>

The prosecution next called David Moises Ostrowiak, a businessman. The witness testified that he worked in the private sector, that *elPeriódico* published negative articles

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<sup>215</sup> Id.; See, also, Prensa Libre, "Ronald García Navarajo, the missing piece in the Arca case, and how he was captured in 2018", February 7, 2018. Available at [https://www.prensalibre.com/guatemala/justicia/caso-bantrab-ministerio-publico-confirma-captura-de-ronald-garcia-navarajo/#google\\_vignette](https://www.prensalibre.com/guatemala/justicia/caso-bantrab-ministerio-publico-confirma-captura-de-ronald-garcia-navarajo/#google_vignette).

<sup>216</sup> Monitor's Notes, May 18, 2023.

<sup>217</sup> Id.

about him that affected him financially, and that “they” asked him for money to stop the negative articles. However, he did not say who specifically asked him for money. Mr. Zamora’s attorney objected to several questions by the prosecution, which the judge accepted. Defense counsel did not attempt to cross-examine the witness, saying that the witness brought nothing relevant to this case.<sup>218</sup>

On May 19, the prosecution incorporated documents - 142 documents in total. When the presiding judge asked defense counsel to incorporate documentary evidence, Mr. Zamora’s attorney replied that he still did not have the materials. The presiding judge requested that defense counsel provide the documents at the next hearing.<sup>219</sup>

On May 22, Ms. Gómez’s former supervisor testified as part of her defense. She testified that Ms. Gómez did not have the authority to make decisions about Mr. García Navarrijo’s potential effective collaboration process with FECI. Next, two experts who had prepared reports on the authenticity of the confiscated check and a handwriting expert testified for the prosecution. After this testimony, several audio recordings were played in court.<sup>220</sup>

On May 23, the prosecution continued playing audio recordings. Next, the presiding judge asked Mr. Zamora’s defense counsel to incorporate documentary evidence. The lawyer replied that “it had not been possible to obtain this evidence because he had not had contact with the previous defense attorneys.” He then declined to offer any documentary evidence. The presiding judge next moved onto material evidence, with the prosecution offering several devices, CDs, and USBs containing the audio recordings previously played in the trial, and a laptop. Mr. Zamora’s defense did not incorporate any material evidence.<sup>221</sup>

The presiding judge ordered the trial to continue to the next phase, in which the parties may request to submit new evidence. The prosecution asked to introduce several convictions, including the conviction of Juan Carlos Marroquín Godoy (the cousin who had set up the art sale transaction and who the defense had submitted as a witness in the intermediate phase). Mr. Zamora’s defense attorney requested that the daughter of the artist who painted the painting be called as a witness to demonstrate that Mr. Zamora was the lawful owner of the painting. (NB: On March 3, the painter’s daughter had given a statement to the prosecutor’s office in proceedings against Mr. Lainfiesta, saying that her father had gifted this painting to Mr. Zamora).<sup>222</sup> The court denied all requests to enter new evidence on the basis that the requested evidence did not arise from the debate at trial, as required by Article 381 of the Criminal Procedure Code. Both parties appealed the denial, but the court also denied the appeals.

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<sup>218</sup> Id.

<sup>219</sup> Monitor’s Notes, May 19, 2023.

<sup>220</sup> Monitor’s Notes, May 22, 2023.

<sup>221</sup> Monitor’s Notes, May 23, 2023.

<sup>222</sup> Public Ministry, Declaration: Elmar Rojas, Special Prosecutor’s Office against Impunity, Indictment, MP001-2022-62975, March 3, 2023.



On May 30, the hearing began with a brief summary by the presiding judge, who noted that Mr. Zamora's counsel waived entering any documentary or material evidence. The prosecution then delivered closing remarks, as follows:<sup>223</sup>

Regarding Samari Gómez: Ms. Monterroso argued that Ms. Gómez had provided confidential information to Mr. Sandoval about Mr. García Navarajo's effective collaboration process; that Mr. Sandoval had passed that information to Mr. Zamora; and that Mr. Zamora then used that information to blackmail Mr. García Navarajo. She alleged that Ms. Gómez was "loyal" to Mr. Sandoval after he left FECl, and that she had delayed Mr. García Navarajo's collaboration process at the request of Mr. Sandoval. Ms. Monterroso cited an aggravating factor of "abuse of authority" and asked the court to impose a penalty of 8 years imprisonment and a fine of 50,000 QZ.

Regarding José Rubén Zamora:

1. Money Laundering:

Ms. Monterroso began by summarizing the events in question, beginning with Mr. Zamora allegedly asking Mr. García Navarajo on July 19, 2022 for cash and to "support him in preventing the origin of the money from being known," according to Mr. García Navarajo's statement. On July 28, Mr. Zamora requested Mr. García Navarajo to "support him by generating suitable documentation to simulate a transaction for 300,000 QZ." When an employee of Aldea Global then transferred the money from Mr. Zamora to an associate of Mr. García Navarajo's at an office, the money was seized. Cameras on the building recorded the employee entering with the money in a paper bag. On the instructions of *elPeriodico's* financial manager, the employee also took documents, an invoice issued to a company called Instrumental Audio y Mas and receipts.<sup>224</sup> Mr. García Navarajo generated a check for 265,000 QZ from a company called "Nijo S.A." that an employee of Aldea Global S.A. attempted to deposit in one of the company's accounts. When the check could not be deposited, Mr. Zamora called Mr. García Navarajo to let him know the check was drawn from an inactive account (Mr. García Navarajo also recorded this call).

Ms. Monterroso argued that the cash (the 300,000 QZ) was not taken to a bank and was instead taken to another place "with the only purpose of hiding it through a fictitious transaction". She argued that Mr. Zamora instructed Flora Silva, the financial manager, to "generate documents to support a fictitious transaction". She stated that after the cash and check exchange, Mr. García Navarajo told Mr. Zamora that the invoice had to be addressed to "Nijo S.A." (the first invoice was addressed to

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<sup>223</sup> Monitor's Notes, May 30, 2023.

<sup>224</sup> Id.

Instrumental Audio y Más, as Mr. García Navarajo and Mr. Zamora had initially agreed) and that the new documents were received the following day at the same office. She argued that this showed the exchange “was not for the payment of a legitimate transaction but to hide funds.”

With respect to the illicit origin of funds, an essential element of the crime of money laundering, the prosecutor asserted that “the origin of the money can be demonstrated through logical inferences.” She stated that the economic situation of Aldea Global S.A. was “precarious” and noted that Mr. Zamora lent money to Aldea Global despite not having income outside of his position as president. She also noted that Aldea Global S.A. was supported by advertising sales and the advance purchase of advertising that was not used for many years (NB. The defense had explained that companies or individuals would purchase advertising to support *el Periódico* but not place any ads so as not to be publicly connected to the newspaper because of threats and intimidation). Ms. Monterroso argued that this was indicative of blackmail, as relayed in the testimony of Hernandez Asmita and Ostrowiak: *“This would explain a modus operandi. It would explain unjustified income. Money laundering in the entity Aldea Global S.A., where money has entered without justification, money that is used for the diary of its operations... known as a “facade”, that is to say, it is a legal activity on the documents, but in reality, is used to launder capital... All these indications must be analyzed together, which leads to the conclusion that the money seized from José Rubén Zamora, is also a product of criminal activities because, as shown in the trial, José Rubén Zamora, had the habit of requesting money so as not to discredit people publicly.”* She concluded, *“It is reasonable to infer that the Q300,000 were of illicit origin, because the licit does not need fictitious support to accredit the origin, only the illicit money needs this.”*

Last, she stated that two aggravating factors were present – “premeditation” and “abuse of authority” (because Mr. Zamora allegedly “took advantage of his position as president” of the company) - and asked the court to impose a penalty of 20 years’ imprisonment.

## 2. Influence Peddling

Ms. Monterroso argued that audio recordings of Mr. Zamora and Mr. Sandoval, and of Ms. Gómez, Mr. García Navarajo and his attorney, showed that Mr. Sandoval “provided Mr. Zamora with information that Mr. Sandoval obtained from Samari,” and that this constituted the crime of influence peddling.

Ms. Monterroso identified the following alleged aggravating factors: (a) publicly disgracing the Attorney General (allegedly by stating in a phone call with Mr. Sandoval that she would not remain in her post); (b) “abuse of authority” (because Mr. Zamora allegedly took advantage of his “activity as a journalist to obtain privileged

information”); and (c) “lowering authority” (*menos precio de autoridad*) of Attorney General Porras and the head of FECCI, Curruchiche. She requested the court to double the penalty and impose 12 years of imprisonment.

### 3. Blackmail

Ms. Monterroso stated that Mr. Zamora asked Mr. García Navarrijo for “favors that could be crimes” and for information about people in public life under the threat of discrediting Mr. García Navarrijo’s honor. She argued that the testimonies of Asmita and Ostrowiak demonstrated there was a mechanism by which Mr. Zamora would publish harmful information, “which could be avoided for a price.” She also argued that Mr. Zamora had “information on the cases involving Navarrijo” and that Mr. García Navarrijo was therefore “in the hands of Mr. Zamora.” She alleged that Mr. García Navarrijo helped Mr. Zamora “for fear of manipulation of the [case]file.” She requested the court to impose a sentence of eight years imprisonment for this charge due to aggravating factors of the “use of public media” and “disregard for authority.”

In total, the prosecution asked the court to impose a penalty of 40 years in prison.

The lawyers for the adhesive plaintiff and the State of Guatemala (PGN) also gave closing arguments that adhered to the prosecution’s conclusions. The PGN also asked for a hearing for reparations for the State of Guatemala to be held if the court handed down a conviction.

Next, Ms. Gómez’s lawyer gave closing remarks. He emphasized that the prosecution never established *what* Ms. Gómez allegedly disclosed: the indictment stated that the disclosure of confidential information consisted of “advances and incidences,” but that at no point in the entire process did the prosecution specify what the “advances and incidences” connected to the ARCA case and others were supposed to be. He also pointed out that the prosecution never produced evidence that Ms. Gómez had communicated with Mr. Sandoval after he left FECCI. Additionally, he noted irregularities in the audio recordings made by Mr. García Navarrijo that the prosecution presented as evidence against both Mr. Zamora and Ms. Gómez. He pointed out that the analyst from the National Police testified she received the devices on September 5, 2022, but that the metadata of an iPad presented as evidence showed that an extraction or modification was made on August 29, 2022 – before the device was taken to the National Police. He further noted that the forensic analysis was made on copies of the audio recordings: Mr. García Navarrijo made the recordings, uploaded them to a computer, and then redownloaded them onto another device that was given to the prosecutor’s office. The recordings that were sent to the National Police for analysis were on CDs and a USB (a third copy). Moreover, the lawyer pointed out that there was no way to know if recordings

presented as evidence had been edited, and that without the original recordings, the recordings should not be given probative value.<sup>225</sup>

On May 31, Mr. Zamora's defense counsel gave his closing remarks:<sup>226</sup>

After reviewing the prosecution's case file, he found four witness declarations that were not offered as evidence (Mr. Girón Lainfiesta, Mr. Álvarez Zamora, Mr. Marroquín Godoy and the painter's daughter). He argued that these testimonies would have demonstrated the origin of the funds (specifically, Mr. Girón Lainfiesta gave statements to the prosecution that he bought a piece of art from Mr. Zamora), but the prosecution did not present these statements or introduce the witnesses to testify at trial. He noted that Article 108 of the Criminal Procedure Code requires the prosecution to present to the court evidence favorable to the defendant. "What is happening is that the prosecution does not want to see the origin of the money, but the prosecution knows the origin of that money...All this was not shown in this trial because the defense did not have this in its possession [whereas] the prosecution had it and refused to provide" these four statements at trial.

He questioned what happened to the bank bands on the money that had been seized.

He noted his concern that copies of the audio recordings were taken to the police for analysis instead of the National Institute of Forensic Sciences (INACIF, the institution that by law supports the Public Ministry on scientific matters). In order for the National Police to perform this analysis instead of INACIF, the lawyer stated that the prosecution was required to obtain court authorization; however, the prosecution never produced such an order.

Mr. Zamora's lawyer also argued that Mr. Zamora's right to privacy was violated when Mr. García Navarrijo recorded Mr. Zamora from February 2021 to July 2022, without any authorization, including at Mr. Zamora's home. Defense counsel concluded that the audio recordings violated Mr. Zamora's right against self-incrimination, his right to enjoy privacy at his residence, and his right to privacy in his communications.

With respect to the charge of blackmail, he said that the witnesses the prosecution offered to demonstrate the alleged crime of blackmail contributed nothing to the trial. Sergio Hernández spoke of some publications from 2007, which were not related to the facts alleged in this trial. Mr. Asmita could not prove that Mr. Zamora or *elPeriodico* demanded money in exchange for not publishing something. Mr. Ostrowiak likewise did not provide any evidence of blackmail.

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<sup>225</sup> Id.

<sup>226</sup> Monitor's Notes, May 31, 2023.

He concluded that the prosecution had not proven the facts alleged in the indictment and that the evidence submitted by the prosecution was not obtained legally, nor did it demonstrate Mr. Zamora's alleged participation in the charged crimes. He ended by saying, "We are concerned that at some point, there was a plan to bring my client to an illegal act."

After defense counsel finished delivering remarks, the presiding judge closed the hearing and adjourned the trial until June 14 for a ruling.

## Judgment

On June 14, the presiding judge opened the hearing and declared the oral and debate period of the trial to be concluded. However, because the defendants had not had the opportunity to make closing remarks at the last hearing, the presiding judge granted the floor first to Ms. Gómez and then to Mr. Zamora so that they could "exercise their right to the last word." The court prohibited them from reading notes during their interventions.<sup>227</sup>

In Ms. Gómez's remarks, she asked the court to find her innocent because the prosecution had not proven she had committed the crime of disclosure of information and that it was actually Mr. García Navarajo who had disclosed information and committed a crime.<sup>228</sup>

When it was Mr. Zamora's turn to speak, he asked the court to allow him to read from his notes as he was not a lawyer. They initially allowed him to do so. Mr. Zamora read from his notes and stated that his rights had been violated from the first hearings, including at the intermediate stage when the controlling judge rejected evidence his team wished to present at trial. He said that Mr. García Navarajo's recording of him was illegal because he intended to provoke a crime. At this moment, the prosecutor asked the judge to tell Mr. Zamora not to refer to anything that was not proven in the oral and public debate. The judge agreed to the prosecutor's request and told Mr. Zamora he had five minutes to finish his intervention. He also prohibited Mr. Zamora from continuing to read his notes. Mr. Zamora concluded with a few more points. The monitor noted that he had only been able to read eight pages of the 19-page handwritten document he had prepared.<sup>229</sup>

After a short recess, the judges gave their verdicts:

- Ms. Gómez was declared innocent of disclosing information, and the court ordered her to be immediately released.

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<sup>227</sup> Monitor's Notes, June 14, 2023.

<sup>228</sup> Id.

<sup>229</sup> Id.

- Mr. Zamora was acquitted of the charges of blackmail and influence peddling. The presiding judge stated that the prosecution had failed to prove these two charges against Mr. Zamora.
- Mr. Zamora was convicted of money laundering and sentenced to six years in prison. A judge stated that the prosecution had proven the charge of money laundering because the audio recordings of the telephone conversations established that Mr. Zamora had the intention of committing money laundering, and that Mr. Zamora had “failed to prove the lawful origin of the 300,000 QZ” and that evidence was not provided to demonstrate a work of art was sold, which was “apparently where the money came from.”<sup>230</sup>

In the written judgment, the court found that Mr. Zamora had, through an intermediary, delivered 300,000 QZ in cash “whose licit origin was not determined” to Mr. García Navarrijo on July 28, 2022.<sup>231</sup> The court stated that the intention of this action was to simulate the purchase and sale of advertising: in addition to the cash, a fictitious invoice and cash receipt bearing the name Aldea Global S.A. would be delivered to Mr. García Navarrijo in exchange for a check that would be deposited into the company’s accounts “in a manner intended to give the appearance of legality to the commercial transaction.”<sup>232</sup> The court concluded that this transaction was meant to facilitate “enter[ing]...money into the national banking system”<sup>233</sup> so that Mr. Zamora could “use that money in a prompt manner and without any trace, with the purpose of hiding and impeding the determination of the true nature and origin of the aforementioned money...”<sup>234</sup> The court further stated that if the money had been “licit, [it] would not need to be exchanged” for a check.<sup>235</sup> The court further noted that Mr. Zamora communicated with Flora Silva to change the name of the recipient on the cash receipt and invoice, and with Mr. García Navarrijo to tell him that the account associated with the check was inactive. The court concluded that these actions showed “that Zamora Marroquín effectively had under his control the actions committed against the national economy and the stability of the financial system”<sup>236</sup> and that he committed “actions to elaborate documents with the purpose of justifying an

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<sup>230</sup> Id.

<sup>231</sup> Judgment, Eighth Criminal Sentencing Court, Court, Drug Trafficking and Environmental Crimes, C01079-2022-00280, June 14, 2023, pgs. 333-338.

<sup>232</sup> Id., pgs. 334 [“ Han quedado acreditada acciones que tenían como finalidad realizar una transacción bancaria, por la cual se entregaría un dinero en efectivo, cuyo origen licito no estaba determinado a cambio de un cheque de un banco, para poderlo depositar a nombre de una entidad, puesto que se acredita que José RUBEN Zamora Marroquín, pretendía que Ronald Giovanni Navarrijo le recibiera la cantidad de trescientos mil quetzales en efectivo, (Q300.000.00) y le extendiera un cheque del sistema bancario, para que a su vez pudiera depositarlo a una cuenta de la empresa Aldea Global Sociedad anónima de la cual Zamora Marroquín era Administrador Único y Representante Legal y poder disponer de ese dinero de una manera pronta y sin dejar rastro, con la finalidad de ocultar e impedir la determinación de la verdadera naturaleza y origen del dinero antes mencionado....”] and 338.

<sup>233</sup> Id.

<sup>234</sup> Id.

<sup>235</sup> Id., pg. 338.

<sup>236</sup> Id., pg. 346.

apparent commercial transaction, which would support the money of undetermined origin..."<sup>237</sup>

On June 21, 2023, the IACHR and its Special Rapporteur for Freedom of Expression “expressed their grave concern” over the prison sentence handed to Mr. Zamora.<sup>238</sup> It reiterated the Rapporteur’s previous request (made in September 2022)<sup>239</sup> for an on-site visit to verify Mr. Zamora’s situation.

## Appeals

In July 2023, the parties filed appeals:

The Public Ministry filed two appeals (an appeal on formal grounds and a special appeal) requesting that the Appeals Court annul Mr. Zamora’s sentence and refer the case back to the trial court for a new debate and a new sentence, with different judges.<sup>240</sup>

Mr. Zamora’s defense counsel filed two appeals:

1. A special appeal on procedural grounds against the decisions made by the controlling judge in the evidentiary hearing, alleging a violation of the right to defense, based on: a) Preventing the defense from presenting exculpatory evidence in favor of the accused during the trial. b) The judge's authorization of the use of what they argued was illegal evidence against Mr. Zamora, specifically recordings of telephone conversations, made without authorization in Mr. Zamora’s home. The appeal asked for proceedings through the ‘offering of evidence’ hearing to be annulled so that the defense could present relevant evidence at trial.<sup>241</sup>
2. An appeal on the merits against the trial court for erroneous application of the law and violation of the principle of legality. The brief argued that the court erred in considering that Mr. Zamora’s behavior met the legal requirements to be classified as money laundering: The court never established the illicit origin of the 300,000 QZ; the court never mentioned the predicate offense, which is a structural element in the criminalization of money laundering; the court did not

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<sup>237</sup> Id., pg. 451.

<sup>238</sup> Organization of American States, “IACHR and RFOE Express Concern Over the Conviction of José Rubén Zamora in Guatemala”, June 21, 2023. Available at [https://www.oas.org/en/IACHR/jsForm/?File=/en/iachr/media\\_center/PReleases/2023/131.asp](https://www.oas.org/en/IACHR/jsForm/?File=/en/iachr/media_center/PReleases/2023/131.asp).

<sup>239</sup> Organization of American States, “State of Guatemala must fully and effectively guarantee the right to freedom of expression and freedom of the press”, September 2, 2022. Available at <https://www.oas.org/en/iachr/expression/showarticle.asp?IID=1&artID=1251>.

<sup>240</sup> Public Ministry, Special Prosecutor’s Office against Impunity (FECI), Appeal, MP001-2022-36636, July 10, 2023,; Public Ministry, Special Prosecutor’s Office against Impunity, Special Appeal, MP001-2022-36636, July 4, 2023.

<sup>241</sup> IDPP, Special Appeal, No. 02709-2022-00280, July 5, 2023.

establish that Mr. Zamora knew that the money came from an illicit source, nor that Mr. Zamora had a duty to know of the illicit origin of this money. In summary, the defense argued that the court convicted Mr. Zamora of money laundering without demonstrating the necessary evidence to do so. The appeal asked for Mr. Zamora' to be acquitted and immediately released.<sup>242</sup>

The PGN, representing the State of Guatemala, also filed two appeals:

1. A special appeal on grounds of form and substance, alleging that the court did not properly assess the evidence presented by the prosecutor, specifically with regards to blackmail and influence peddling. The PGN requested the partial annulment of the sentence and requested that the Appeals Court order the trial court to issue a “substitute sentence” that convicted Mr. Zamora of blackmail and influence peddling. The PGN also asked that Ms. Gómez’s acquittal be overturned, and that she be convicted of the crime of disclosure.<sup>243</sup>
2. An appeal for the judgment to be annulled, and for the case to be remanded to the Eighth Criminal Sentencing Court (trial court). The PGN argued that the trial court disregarded the interests of the state by failing to provide reasons for not imposing the payment of dignified reparation on Mr. Zamora, as requested in the final arguments of the trial by the PGN. The PGN requested as reparation a donation of 64,000 QZ to charities of the State’s choosing.<sup>244</sup>

On October 10, 2023, the Second Court of Appeals issued a decision based on the PGN’s special appeal.<sup>245</sup> It annulled the entire sentence: Mr. Zamora’s conviction for money laundering and his acquittals on the charges of blackmail and influence peddling. It also annulled the acquittal of Ms. Gómez. The Appeals Court ordered the case remanded to a new trial court, the Ninth Criminal Sentencing Court, for a new “debate” – that is, for a retrial beginning with the oral and debate stage of the proceedings. (This meant that Judge Orellana’s decisions in the proceedings through the evidentiary hearing would remain in place). The Appeals Court declined to consider Mr. Zamora’s appeals and the prosecutor’s appeals.

Following the decision of the Appeals Court, multiple parties filed appeals in cassation.<sup>246</sup> Separately, FCT filed a recusal request alleging that the independence of the judges on the Ninth Criminal Sentencing Court was compromised.<sup>247</sup>

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<sup>242</sup> IDPP, Appeal on the Merits, No. 02709-2022-00280, July 9, 2023.

<sup>243</sup> PGN, Special Appeal, No. 01079-2022-00280, July 7, 2023.

<sup>244</sup> PGN, Appeal for Formal Annulment, No. 01079-2022-00280, July 7, 2023.

<sup>245</sup> Second Court of Appeals, Drug Trafficking and Environmental Crimes, No. 01079-2022-00280, Special Appeal 307-2023, October 20, 2023.

<sup>246</sup> Exchange with Vance Center for International Justice, January 30, 2024.

<sup>247</sup> FCT, Recusacion, 01079-2022-00280 (59-2023), November 8, 2023.



The retrial ordered by the Appeals Court is pending awaiting a cassation decision by the Criminal Chamber of the Supreme Court. In the meantime, Mr. Zamora has remained in detention as of the publication of this report in February 2024.

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The criminal proceedings against Mr. Zamora and other staff and journalists at *elPeriódico* greatly impacted the operations of the newspaper. The Public Ministry froze *elPeriódico*'s bank accounts on August 1, 2022.<sup>248</sup> Although it later lifted the freeze on some accounts that had minimal balances, it maintained the freeze on other accounts.<sup>249</sup> On November 30, 2022, *elPeriódico* shut down the print edition of the paper and laid off 80% of its staff. On May 15, 2023, *elPeriódico* closed its online edition and ceased operations.<sup>250</sup>

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<sup>248</sup> U.S. Embassy in Guatemala, "Guatemala 2022 Human Rights Report", March 21, 2023. Available at <https://gt.usembassy.gov/guatemala-2022-human-rights-report/>.

<sup>249</sup> Monitor's Notes, August 8, 2022.

<sup>250</sup> Al Jazeera, "Guatemala's elPeriodico shutting due to government 'persecution'", May 12, 2023. Available at <https://www.aljazeera.com/news/2023/5/12/guatemalas-elperiodico-shutting-due-to-government-persecution>.

# METHODOLOGY



## A. THE MONITORING PHASE

As part of the Clooney Foundation for Justice’s TrialWatch initiative, the ABA Center for Human Rights deployed three monitors to proceedings before the Seventh Court of First Criminal Instance, Drug Trafficking and Environmental Crimes and before the Eighth Criminal Sentencing Court, Drug Trafficking and Environmental Crimes in Guatemala City. The monitors were fluent in Spanish and able to understand the proceedings. The Center observed the hearings on August 3, 8 and 9, 2022 via video feed and audio recordings. Monitors were deployed in-person to the hearings on December 8 and 22, 2022; May 2-4, 8-9, 10-11, 18-19, 22-23, and 30-31; and June 14, 2023.

## B. THE ASSESSMENT PHASE

Staff at the ABA Center for Human Rights reviewed notes taken by the trial monitors; transcripts of the hearings; court documents including the indictment, the decision from the Court of Appeals upholding the order of detention, the judgment, appeals filed by the various parties, and the decision from the Second Court of Appeals, Drug Trafficking and Environmental Crimes; documents from the prosecutor’s case file, including witness statements; documents from the defense case file, including filings and evidence lists; and documents relevant to criminal proceedings against Mr. Zamora’s lawyers. Based on this review, staff at the ABA Center for Human Rights prepared this report, consisting of a summary of the case history, an analysis of the case, and a description of the political and legal context in Guatemala.

TrialWatch Expert Camilo Sánchez reviewed the analysis prepared by staff at the ABA Center for Human Rights and evaluated the trial’s fairness. He also had before him the monitors’ notes and the judgment.

# ANALYSIS



## A. APPLICABLE LAW

This report draws upon the International Covenant on Civil and Political Rights (ICCPR); jurisprudence from the United Nations Human Rights Committee, tasked with monitoring implementation of the ICCPR; the American Convention on Human Rights (ACHR); jurisprudence from the Inter-American Court of Human Rights (I/A Court H.R.), tasked with interpreting and enforcing the American Convention; reports and jurisprudence from the Inter-American Commission on Human Rights (IACHR), tasked with monitoring the human rights situation in the Americas, including compliance with the American Convention; and reports issued by various UN Special Procedures. This report also draws upon the jurisprudence of the European Court of Human Rights (ECtHR), which the Human Rights Committee has deemed relevant for interpreting provisions of the ICCPR.<sup>251</sup> Guatemala acceded to the ICCPR in 1992 and the American Convention in 1978. Lastly, the report draws upon relevant provisions in the Guatemalan Penal Code, the Guatemalan Criminal Procedure Code, and the Anti-Money and Asset Laundering Law.

## B. INVESTIGATIVE AND PRETRIAL VIOLATIONS

### Arbitrary Arrest

Under Article 9(1) of the ICCPR, "everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention." The United Nations Human Rights Committee has stated that an arrest "may be authorized by domestic law and nonetheless be arbitrary," emphasizing that the concept of "arbitrariness" must be "broadly interpreted to include elements of inappropriateness, injustice, lack of predictability and due process of law, as well as elements of reasonableness, necessity and proportionality."<sup>252</sup>

Article 7(1) of the ACHR similarly guarantees the "right to personal liberty and security," while Article 7(3) stipulates that "[n]o one may be subjected to arbitrary arrest or imprisonment." The Inter-American Court of Human Rights has also established that no

<sup>251</sup> For example, when interpreting the provisions of the ICCPR through its General Comments, the Human Rights Committee has relied on decisions made by the ECtHR. See, e.g., Human Rights Committee, General Comment No. 37, U.N. Doc. CCPR/C/GC/37, July 23, 2020, fns. 15, 18, 28, 52, 61, 65, 73-75, 99, 118, 122, 132; Human Rights Committee, General Comment No. 36, U.N. Doc. CCPR/C/GC/36, September 3, 2019, fns. 5, 6, 32, 64, 86, 88, 92, 104, 126-129, 136, 164, 215, 217.

<sup>252</sup> Human Rights Committee, General Comment No. 35, U.N. Doc. CCPR/C/GC/35, December 16, para. 12.

one may be arrested “for reasons and by methods which, although classified as legal, could be deemed to be incompatible” with fundamental human rights because “they are unreasonable, unforeseeable or lacking in proportionality.”<sup>253</sup> In *Chaparro Alvarez and Lapo Iniguez vs. Ecuador*, the Court stated that reasonable suspicion for an arrest “must be based on specific facts, expressed in words; that is not mere conjectures or abstract intuitions.”<sup>254</sup> The Court concluded that States “should not detain someone to investigate him.” Additionally, having judicial authorization does not preclude an arrest from being arbitrary; in *Gallardo Rodriguez v. Mexico*, the Inter-American Commission on Human Rights found the detention of a general to be arbitrary and an abuse of power, even though the detention was “pursuant to a judicial warrant, issued by a competent Military Tribunal” because the arrest warrant did not “detail or substantiat[e] the facts alleged.” The IACHR concluded that the general had been “the victim of disrespect for his personal liberty, through acts that appear to conform with the law.”<sup>255</sup>

In the case at hand, Mr. Zamora’s arrest was allegedly undertaken pursuant to an arrest warrant issued by Judge Orellana of the Seventh Court of First Criminal Instance. However, the arrest warrant was apparently never shared with defense counsel (the ABA was also unable to obtain a copy of the alleged arrest warrant). Additionally, the arrest warrant was never shown to Mr. Zamora or his family while the arrest was carried out.<sup>256</sup> This appears to be corroborated in the prosecutor’s office’s own document detailing the events of the search which, notably, did not mention that the arrest warrant was shown to Mr. Zamora.<sup>257</sup>

Even if there was a valid arrest warrant, the basis of his arrest as detailed by the prosecution in the first statement hearing lacked the necessary element of “reasonableness” and was based instead on conjecture. The prosecution’s basis for Mr. Zamora’s arrest was a single complaint filed by Mr. García Navarajo on July 26, alleging that Mr. Zamora was blackmailing Mr. García Navarajo into laundering money that he assumed to be from an illicit source.

None of Mr. García Navarajo’s assertions were verified by the prosecution before the arrest was carried out. Even at the first statement hearing, the prosecutor relied on

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<sup>253</sup> I/A Ct. of H.R., *Gangaram Panday v. Suriname*, Merits, Reparations and Costs, Judgment of January 21, 1994, Series C. No. 16, para. 47 [The Court held that the failure to present reasons for the detention or a charge amounted to arbitrary detention and a violation of the right to liberty].

<sup>254</sup> I/A Ct. of H.R., *Case of Chaparro Alvarez and Lapo Iniguez v. Ecuador*, Preliminary Objections, Merits, Reparations, and Costs, Judgment of November 21, 2007, Series C. No. 170, para. 103.

<sup>255</sup> IACHR, *Gallardo Rodriguez v. Mexico*, 11.430, Report 43/96, October 15, 1996, para. 64-71, 115.

<sup>256</sup> As relayed by the Vance Center for International Justice, September 7, 2023.

<sup>257</sup> Ministerial Act of July 29, 2022, Special Prosecutor against Impunity (FECI), Agency 9, MP001-2022-36636. Search of a Property. [“At 21:50, the investigating agent of the National Civilian Police, Bayron Giancarlo Castaneda Mendez, proceeds to notify and enforce an arrest warrant issued by the Controller Court of this case. The police officer gives [Zamora] his identification document, which he receives, and gives him prudential time to get ready; he is also told that if he takes any medication, he can take it... also he is informed that he will be put at the disposition of the competent judge. He is given a moment of privacy with his family. With the consent of the capturing agent, he is given a prudential moment to speak with his defense attorneys present here. The proceedings are concluded...”].

conjecture to allege the money came from an illicit source, an underlying element of money laundering (“Why not bank this money? Because it comes from an illegal act. There is no other answer”<sup>258</sup>); the prosecution did not detail any facts indicating the money was illegitimate. With respect to the other charges, the prosecutor alleged blackmail without any details and asserted that Mr. Zamora “influenced” Ms. Gomez through Sandoval without specifying how he had done so.

Moreover, it appears that the prosecution conducted investigatory activities only after arresting Mr. Zamora – that is, he was detained in order to be investigated. At the first statement hearing, most of the evidence presented by the prosecutor was obtained *during* or *after* Mr. Zamora’s arrest and the raids on his house and *el Periódico*’s facilities on July 29. This included Aldea Global S.A.’s financial information, which was gathered during the raid; a cash receipt and invoice delivered by Navarijo on July 31; and audio recordings delivered by Navarijo on August 2. Notably, none of the evidence was relevant to the question of whether the money came from an illicit source.

Thus, as Mr. Zamora’s arrest on charges of money laundering, blackmail and influence peddling was based on “mere conjectures”, and because the prosecution appeared to have arrested him *in order to* investigate, Mr. Zamora was subject to arbitrary arrest in violation of his rights under Article 9(1) of the ICCPR and Article 7(3) of the ACHR.

## **Right to be Brought Promptly Before a Judge for Review of Detention**

Article 9(3) of the ICCPR stipulates that “[a]nyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power...” The requirement that an arrested or detained individual be brought before a judge “applies even before formal charges have been asserted, so long as the person is arrested or detained on suspicion of criminal activity.”<sup>259</sup> The purpose of this right is to bring the detained “under judicial control,”<sup>260</sup> meaning a judge “must decide whether the individual should be released or remanded in custody for additional investigation or to await trial.”<sup>261</sup> The judge must order release if there is no lawful basis for continuing the detention.

The Human Rights Committee has stated that “promptly” means that “delays should not exceed a few days,” and has stated that any delay over 48 hours must be “absolutely exceptional.”<sup>262</sup> In *Borisenko v. Hungary*, the Human Rights Committee held that the

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<sup>258</sup> Monitor’s Notes, August 8, 2022.

<sup>259</sup> Human Rights Committee, General Comment No. 35, U.N. Doc. CCPR/C/GC/35, December 16, 2014, para. 32.

<sup>260</sup> *Id.*

<sup>261</sup> *Id.*, para. 36.

<sup>262</sup> *Id.*, para. 33.

accused's unexplained detention for three days prior to presentation before a judicial officer violated Article 9(3) of the ICCPR.<sup>263</sup>

Article 7(5) of the ACHR uses parallel language with respect to a detained person's right to be brought promptly before a judge or officer exercising judicial power. The Inter-American Commission on Human Rights has suggested that "a delay of more than two or three days in bringing a detainee before a judicial authority will generally not be considered reasonable."<sup>264</sup>

Mr. Zamora was not brought before a judge who had authority to order his release or to remand him into custody until August 8, approximately 10 days after his arrest on July 29. Although he was presented to a judge of First Instance on July 30, the day after his arrest, this judge did not review or resolve any issues of substance. (In the Guatemalan system, any person detained must be presented to a judge within 6 hours to inform the individual of the reasons for the arrest<sup>265</sup> and set a date for the first statement hearing, which must occur within 24 hours).<sup>266</sup> Mr. Zamora's first statement hearing was set for August 1, which already exceeded the domestic limit of 24 hours. However, the hearing did not take place on August 1 and was postponed until August 3 because, according to news reports, the controlling judge had not received the case file and because the vehicle meant to transport Mr. Zamora to the hearing "broke down."<sup>267</sup>

The hearing on August 3 was rescheduled a second time for reasons outside of Mr. Zamora's control. The prosecutor opened investigations into Mr. Zamora's lawyers on the morning of August 3. At the beginning of the hearing, the prosecutor raised the investigations as a possible "conflict of interest"; the controlling judge appeared to agree with the prosecution that this created a "conflict of interest" and implicitly pressured Mr. Zamora to change counsel, asking Mr. Zamora if he still wanted to continue with his lawyers "despite the existence of...serious allegations against" them. The controlling judge then rescheduled the hearing to August 8 without considering the issue of detention.<sup>268</sup> As a result, Mr. Zamora remained in custody without judicial review for 10 days – far exceeding the limit allowed under the ICCPR and the ACHR.

Further, according to the Human Rights Committee, those deciding upon detention must be "independent, objective and impartial in relation to the issues dealt with."<sup>269</sup> In Mr.

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<sup>263</sup> Human Rights Committee, Rostislav Borisenko v. Hungary, U.N. Doc. CCPR/C/76/D/852/1999, October 14, 2002, para. 7.4.

<sup>264</sup> Inter-American Commission on Human Rights, Report on Terrorism and Human Rights, OEA/Ser.L/V/II.116, Doc. 5 rev. 1 corr., October 22, 2002, para. 123.

<sup>265</sup> Constitution of Guatemala, Article 6.

<sup>266</sup> Constitution of Guatemala, Article 9; Criminal Procedure Code of Guatemala, Article 87.

<sup>267</sup> El País, "Suspendida la primera audiencia de juicio del periodista José Rubén Zamora en Guatemala" [First trial hearing of journalist José Rubén Zamora suspended in Guatemala], August 1, 2022. Available at [https://elpais.com/internacional/2022-08-02/suspendida-la-primera-audiencia-de-juicio-del-periodista-jose-ruben-zamora-en-guatemala.html?ssm=whatsapp?event\\_log=oklogin](https://elpais.com/internacional/2022-08-02/suspendida-la-primera-audiencia-de-juicio-del-periodista-jose-ruben-zamora-en-guatemala.html?ssm=whatsapp?event_log=oklogin).

<sup>268</sup> Monitor's Notes, August 3, 2022.

<sup>269</sup> Id.

Zamora's case, Judge Orellana cannot be considered an independent and impartial judicial authority, as described in the section "Right to an Independent and Impartial Tribunal".

## Arbitrary Detention

Under Article 9(1) of the ICCPR, "[e]veryone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention." The Human Rights Committee has noted that the concept of "arbitrariness" must be "interpreted broadly, to include elements of inappropriateness, injustice, lack of predictability and due process of law as well as elements of reasonableness, necessity and proportionality."<sup>270</sup> Not only should pretrial detention be the exception and as short as possible, but detention must also be lawful (in accordance with domestic law) and "reasonable and necessary taking into account all the circumstances, for such purposes as to prevent flight, interference with evidence, or the recurrence of crime."<sup>271</sup>

In evaluating the reasonableness and necessity of pretrial detention, courts must undertake an "individualized determination" of the accused's particular circumstances.<sup>272</sup> Vague pronouncements fail to meet this standard. Courts must also provide reasons for foregoing alternatives such as bail or monitoring devices.<sup>273</sup> In *Eligio Cedeño v. Bolivarian Republic of Venezuela*, for example, the court imposed pretrial detention due to the risk of flight, citing the fact that the defendant had significant financial resources and owned an airplane. Even then, the Human Rights Committee concluded that this reasoning relied on "mere assumption" as to why the defendant's pretrial detention was necessary and reasonable.<sup>274</sup> As such, the Human Rights Committee found that Article 9 had been violated.

Article 7(3) of the ACHR provides that "no one shall be subject to arbitrary arrest or imprisonment." Case law from the Inter-American Court of Human Rights and the Inter-American Commission has delineated key principles that govern the lawfulness of pretrial detention. First, just as the Human Rights Committee stated, pretrial detention should be an exceptional measure, only imposed in situations where there is reasonable suspicion that the defendant will flee or interfere with the proceedings. The default rule is pretrial release.<sup>275</sup> Second, pretrial detention must be proportional.<sup>276</sup> Third, pretrial detention

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<sup>270</sup> Human Rights Committee, General Comment No. 35, U.N. Doc. CCPR/C/GC/35, December 16, 2014, para. 12.

<sup>271</sup> *Id.*, para. 38.

<sup>272</sup> *Id.*

<sup>273</sup> *Id.*

<sup>274</sup> Human Rights Committee, *Eligio Cedeno v. Bolivarian Republic of Venezuela*, U.N. Doc. CCPR/C/106/D/1940/2010, December 4, 2012, para. 7.10.

<sup>275</sup> I/A Ct. H.R., *Tibi v. Ecuador*, Series C. No. 114, September 7, 2004, para. 106; IACHR, *Jorge A. Gimenez v. Argentina*, Case No. 11.245, March 1, 1996, para. 84.

<sup>276</sup> I/A Ct. H.R., *Barreto Leiva v. Venezuela*, Series C No. 206, November 17, 2009, para. 122.

must be necessary; the State must employ the least restrictive measures to ensure that the accused appears at proceedings.<sup>277</sup>

Mr. Zamora has been detained since his arrest on July 29, 2022 – approximately 18 months from his arrest to the publication of this report. His ongoing detention is not reasonable, necessary, or proportional.

Judge Orellana ordered preventative detention without making an “individualized determination” as to why pretrial detention was “reasonable and necessary”.<sup>278</sup> Although preventing interference with evidence or avoiding efforts to influence potential witnesses may be permissible purposes for imposing pretrial detention, Judge Orellana’s reasoning – that Mr. Zamora was in a hierarchically senior position to potential witnesses and could thus hinder the investigation – is exceptionally vague and based on “mere assumptions” based solely on Mr. Zamora’s position as the president of *elPeriódico*. The judge did not substantiate his concerns nor did he cite any specific indicator that Mr. Zamora had attempted or would attempt to influence any witness, let alone how Mr. Zamora could have done so. The judge also did not address why substitute measures such as house arrest were insufficient, thus failing to demonstrate that pretrial detention was “necessary”.<sup>279</sup> This also contravened domestic law, which states that “liberty should be restricted only to the extent absolutely necessary to ensure the presence of the accused in the proceedings.”<sup>280</sup>

The Appeals Court likewise failed to make an individualized determination or demonstrate why detention was “reasonable and necessary.” As defense counsel noted in their appeal of the detention order, the alleged risk of obstruction of evidence (the only reason cited by Judge Orellana) could have been ameliorated by a prohibition on communication between Mr. Zamora and any potential witnesses.<sup>281</sup> However, in rejecting the appeal, the Appeals Court failed to address defense arguments proposing house arrest as an alternative measure and provided no reasons for denying this alternative, as required by the Human Rights Committee.

As such, Mr. Zamora was subjected to arbitrary detention in violation of his rights under Article 9(1) of the ICCPR and Article 7(3) of the ACHR.

In May 2023, *elPeriódico* shut down its operations, thus completely removing the alleged reason for Mr. Zamora’s pretrial detention (that he was in a “hierarchically superior position” and had “employees [to] whom he can give orders”). Nevertheless, he remained detained throughout the trial proceedings.

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<sup>277</sup> I/A Ct. H.R., *Palamara Iribarne v. Chile*, Series C No. 135, November 22, 2005, paras. 198, 206.

<sup>278</sup> Monitor’s Notes, August 9, 2022.

<sup>279</sup> *Id.*

<sup>280</sup> Criminal Procedure Code, Article 259.

<sup>281</sup> Defense Appeal of Preventative Detention of Jose Ruben Zamora, August 12, 2022.



Mr. Zamora has remained detained even after the Second Court of Appeals annulled his conviction for money laundering in October 2023, which returned him to the status of an accused person. Again, the original reason for the order of pretrial detention was no longer applicable: all the evidence in the case had been gathered and submitted (indeed, the retrial was to consider no new evidence), and there were no longer any employees at *elPeriódico*. Other factors that could possibly justify continued detention (flight risk, risk of reoccurrence of crime) have never been articulated or alleged before or by any judicial body.

As of the publication of this report, Mr. Zamora remains subjected to arbitrary detention.

Furthermore, Mr. Zamora's prolonged detention jeopardizes his right to the presumption of innocence. When individuals are incarcerated "beyond the limits strictly necessary to ensure" the fulfillment of detention objectives, the presumption of innocence can be violated.<sup>282</sup> As stated by the IACHR, "the guarantee of the presumption of innocence becomes increasingly empty and ultimately a mockery when pretrial imprisonment is prolonged unreasonably, since presumption notwithstanding, the severe penalty of deprivation of liberty which is legally reserved for those who have been convicted, is being visited upon someone who is, until and if convicted by the courts, innocent."<sup>283</sup> By the publication of this report, Mr. Zamora will have spent 18 months in detention, far beyond "the limits strictly necessary to ensure" the fulfillment of detention objects. This likely violates his right to be presumed innocent.

## Right to Judicial Review of Detention

Due to the gravity of deprivation of liberty, Article 9(4) of the ICCPR mandates that a detained individual "be entitled to take proceedings before a court, in order that the court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful." This provision requires continuous review of the legitimacy of custody, described by the Human Rights Committee as "periodic" review over the course of the time that a defendant is held in pretrial detention.<sup>284</sup>

Article 7(6) of the ACHR mirrors Article 9(4) of the ICCPR in setting forth the state's obligation to undertake scrupulous review of pretrial detention. Courts are duty bound to engage in such "rigorous[] examin[ation]" on a regular basis so as to ensure that pretrial

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<sup>282</sup> I/A Ct. H.R., *Barreto Leiva v. Venezuela*, November 17, 2009, Series C No. 206, para. 121; I/A Ct. H.R., *Bayarri v. Argentina*, October 30, 2008, Series C No. 187, para. 69.

<sup>283</sup> IACHR, Report No. 12/96, Case 11.245, March 1, 1996, para. 80.

<sup>284</sup> Human Rights Committee, General Comment No. 35, U.N. Doc. CCPR/C/GC/35, December 16, 2014, paras. 12, 38. See, also, Office of the High Commissioner for Human Rights, United Nations Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment, December 9, 1998, Principles 11, 32, 39.

detention remains necessary.<sup>285</sup> In *Yvon Neptune v. Haiti*, for example, the Inter-American Court of Human Rights found that the judge's failure to assess whether the purpose of pretrial detention continued to be valid violated the right to judicial review.<sup>286</sup>

Mr. Zamora's counsel sought – but did not receive – a “periodic” review of his pretrial detention. On December 8, 2022, at the beginning of the intermediate stage hearing, Mr. Zamora's lawyer asked Judge Orellana for a hearing to review the order of pretrial detention immediately after the hearing.<sup>287</sup> However, Judge Orellana ended the hearing without addressing the request to review pretrial detention, leaving Mr. Zamora in detention.<sup>288</sup>

The December 22, 2022 evidentiary hearing also ended without a review of the order of pretrial detention, despite Judge Orellana possessing the authority to revoke or modify measures of preventative detention *ex officio* at any time, in line with Article 276 of the Criminal Procedure Code.<sup>289</sup>

Mr. Zamora never received judicial review of his detention even when circumstances changed so that the stated reason for preventative detention (that he could potentially obstruct the investigation by influencing witnesses at Aldea Global S.A., because he held a hierarchically superior position) was no longer applicable, in part or in whole. Relevant changes that should have prompted a review include the end of the investigatory period when all the evidence to be heard at trial was submitted at the evidentiary hearing, and even more clearly, when *el Periódico* closed in May 2023, leaving no employees (and no witnesses) whom Mr. Zamora could possibly influence by virtue of his role as their employer.

Since the Appeals Court annulled Mr. Zamora's conviction and ordered a new debate at the Ninth Criminal Sentencing Court (returning him to the status of an accused person), there has still been no substantive judicial review of his continued detention.

In sum, Mr. Zamora's right to “periodic” review of pretrial detention under Article 9(4) of the ICCPR and Article 7(6) of the ACHR has been violated.

## **Right to be Free of Cruel, Inhuman or Degrading Treatment**

The prohibition on cruel, inhuman or degrading treatment or punishment enshrined in Article 7 of the ICCPR is a fundamental component of human rights law. The aim of Article

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<sup>285</sup> I/A Ct. H.R., Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador, Preliminary Objections, Merits, Reparations, and Costs, Judgment of November 21, 2007, Series C No. 170, paras. 107, 117; IACHR, Case of Jorge, José, and Dante Peirano Basso v. Uruguay, Case No. 12.553, August 6, 2009, para. 104.

<sup>286</sup> I/A Ct. H.R., Case of Yvon Neptune v. Haiti, Merits, Reparations, and Costs, Judgment of May 6, 2008, Series C No. 180, paras. 108, 110-111.

<sup>287</sup> Monitor's Notes, December 8, 2022.

<sup>288</sup> *Id.*

<sup>289</sup> Criminal Procedure Code, Article 276. [Nature of decisions. The order that imposes a coercive measure or rejects it is revocable or reformable, even *ex officio*].

7 is to “protect both the dignity and the physical and mental integrity of the individual.”<sup>290</sup> The Human Rights Committee has found violations in cases involving small cells, lack of natural light, poor sleeping conditions, the deprivation of food/water, and limitations on bathroom access.<sup>291</sup> Further, Article 10 of the ICCPR - which requires that detainees “be treated with humanity” - “imposes on States parties a positive obligation towards persons who are particularly vulnerable because of their status as persons deprived of liberty, and complements for them the ban on torture or other cruel, inhuman or degrading treatment or punishment contained in article 7 of the Covenant.”<sup>292</sup>

The ACHR likewise enshrines the right to humane treatment in Article 5, including “the right to have [one’s] physical, mental, and moral integrity respected” under Article 5(1).<sup>293</sup> Article 5(2) also prohibits “cruel, inhuman and degrading treatment,” and requires that “[a]ll persons deprived of their liberty...be treated with respect for the inherent dignity of the human person.”<sup>294</sup>

The Inter-American Court of Human Rights has repeatedly found a violation of Article 5 when detainees have been held in conditions of isolation, with a lack of natural light, in solitary confinement, or with unnecessary restrictions to visitation.<sup>295</sup>

In the present case, the conditions of Mr. Zamora’s detention in Mariscal Zavala – as widely reported – amount to a violation of Article 7 of the ICCPR and Article 5 of the ACHR. From the time of his arrest on July 29, 2022 through the drafting of this report in January 2024, Mr. Zamora was held in solitary confinement within the facility for 23 hours a day in a cell with no windows.<sup>296</sup> He had access to natural sunlight for only one hour a day when he was permitted into an exercise yard.<sup>297</sup> He reported having limited access to water and food.<sup>298</sup> According to Mr. Zamora’s testimony at trial, the cell in which he was held was “infested with chiggers and bedbugs that didn’t let [him] sleep for 10

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<sup>290</sup> Human Rights Committee, General Comment No. 20, March 10, 1992, paras. 2, 5.

<sup>291</sup> Human Rights Committee, *Sannikov v. Belarus*, U.N. Doc. CCPR/C/122/D/2212/2012, April 6, 2018, paras. 2.9, 6.2; Human Rights Committee, *Barkovsky v. Belarus*, U.N. Doc. CCPR/C/123/D/2247/2013, July 13, 2018, para. 6.2; Human Rights Committee, *Xavier Evans v. Trinidad and Tobago*, U.N. Doc. CCPR/C/77/D/908/2000, May 5, 2003, paras. 2.3, 6.4.

<sup>292</sup> Human Rights Committee, General Comment 21, U.N. Doc. HRI/GEN/1/Rev.1, April 10, 1992, para. 3.

<sup>293</sup> ACHR, Article 5(1).

<sup>294</sup> *Id.*, Article 5(2).

<sup>295</sup> See, e.g., *Case of García Asto and Ramírez Rojas*, para. 221; *Case of Raxcacó Reyes*, para. 95; *Case of Fermín Ramírez*, Judgment, Series C No. 126, June 20, 2005, para. 118; I/A Ct. H.R., *Case of Tibi*, Preliminary Objections, Merits, Reparations and Costs, September 7, 2004, paras. 146-149.

<sup>296</sup> Mr. Zamora’s detention conditions reportedly improved in mid/late January, when he was moved to a cell with windows, according to CPJ and the Cyrus R. Vance Center for International Justice.

<sup>297</sup> The Guardian, “Outrage in Guatemala as crusading journalist given six-year prison term”, June 14, 2023. Available at <https://www.theguardian.com/world/2023/jun/14/guatemala-convict-journalist-prison-jose-ruben-zamora>; See, also, NBC News, “Son of renowned Guatemalan journalist still fights for his father’s freedom a year after imprisonment”, July 10, 2023. Available at <https://www.nbcnews.com/news/latino/son-renowned-guatemalan-journalist-still-fights-fathers-freedom-year-i-rcna93361>.

<sup>298</sup> Committee to Protect Journalists, “CPJ, international journalists, call on Guatemalan president to release journalist José Rubén Zamora”, December 20, 2022. Available at <https://cpj.org/2022/12/cpj-joins-open-letter-to-guatemalan-president-calling-for-release-of-journalist-jose-ruben-zamora/>.

days.”<sup>299</sup> Additionally, Mr. Zamora (and Ms. Gomez) were reportedly allowed only two visitors on visitation days (Tuesdays and Saturdays), whereas other prisoners were allowed more visitors on each day – a restriction that was never explained.<sup>300</sup>

In *Juvenile Reeducation Institute v. Paraguay*, where children were held in a juvenile detention facility, the Inter-American Court of Human Rights found that “the mere threat of conduct prohibited by Article 5 of the American Convention, when sufficiently real and imminent, can itself be in conflict with that article. In other words, creating a threatening situation or threatening an individual with torture may, in some circumstances, constitute inhumane treatment”. It thus found a violation of Article 5.<sup>301</sup> In *Loayza-Tamayo v. Peru*, the Court also found that “intimidation with threats of further violence” constituted a form of cruel, inhuman or degrading treatment in terms of Article 5(2).

At trial, Mr. Zamora testified about an incident where “40 to 50” people worked on construction around his cell from 7pm to 7am. The next night, they banged on the walls of his cell and verbally threatened him. He testified that he was so scared that he grabbed a broom to defend himself in case the workers breached his cell. Mr. Zamora further told the monitor that he was unable to sleep until close to 3am, and that he had to get up minutes later to be taken to his hearing (on trial days, he was woken at 3am to prepare to be taken to court).<sup>302</sup>

The physical conditions of Mr. Zamora’s detention as well as the threats he was subject to in detention violated his right to be free of cruel, inhuman and degrading treatment under Article 10 of the ICCPR and Article 5 of the ACHR.

## **Right to Adequate Time and Facilities to Prepare a Defense**

Article 14(3)(b) of the ICCPR guarantees that anyone charged with a criminal offense should have the following minimum guarantees: “to have adequate time and facilities for the preparation of his defense and to communicate with counsel of his own choosing.”<sup>303</sup>

Article 8(2)(c) of the American Convention entitles an accused to “adequate time and means for the preparation of his defense.” Under Article 8(2)(c), defendants must be

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<sup>299</sup> Monitor’s Notes, May 3, 2023.

<sup>300</sup> Email exchange with the Cyrus R. Vance Center for International Justice, January 25, 2024. See, also, Committee to Protect Journalists, “Guatemala journalist José Rubén Zamora marks 1 year in prison”, July 27, 2023 [which describes “arbitrary shifts in rules around visitation”]. Available at <https://cpj.org/thetorch/2023/07/guatemala-journalist-jose-ruben-zamora-marks-1-year-in-prison/#:~:text=His%20sentencing%20followed%20grossly%20irregular,shifts%20in%20rules%20around%20visitation.>

<sup>301</sup> I/A Ct. H.R., Case of the “Juvenile Reeducation Institute” v. Paraguay. Judgment of Preliminary Objections, Merits, Reparations and Costs. September 2, 2004. Series C No. 112, para. 4.

<sup>302</sup> Monitor’s Notes, May 3, 2023 [Mr. Zamora’s testimony at trial]; Monitor’s Notes, June 14, 2023, where Mr. Zamora informed the monitor that “they had tried to kill him” several times while he was in detention.

<sup>303</sup> ICCPR, Article 14(3)(b).

provided access to “the record of the case and the evidence gathered against [them].”<sup>304</sup> As stated by the Inter-American Court of Human Rights, the State must “guarantee the intervention of the accused in the analysis of the evidence.”<sup>305</sup> For example, in *Castillo Petruzzi v. Peru*, the Inter-American Court found a violation of a defendant’s rights where the case file was only made available to the defense one day before the delivery of the judgment.<sup>306</sup>

The Human Rights Committee has explained that “adequate facilities” includes “access to documents and other evidence,” including “all materials that the prosecution plans to offer in court against the accused.”<sup>307</sup> The Committee has defined “exculpatory materials” not only as evidence demonstrating an accused’s innocence but also as evidence that “could assist the defense.”<sup>308</sup> Restricted disclosure is justified in limited circumstances, such as where necessary for national security or public safety.

What counts as “adequate time” depends on the circumstances of each case, including the complexity of the case and the procedural stage.<sup>309</sup> This right applies at all stages of the proceedings, including before and during trial.

In the case at hand, Mr. Zamora’s lawyers faced difficulties early in the proceedings in accessing the case file and materials in a timely manner. This had the effect of hindering their ability to mount a defense.

- August 2, 2022 – The day after the originally scheduled first statement hearing, Mr. Castañeda (Mr. Zamora’s first lawyer) told reporters that he still had not been able to access the judicial file of the case. He noted that it would be “impossible to exercise a defense without knowing” the file.<sup>310</sup>
- August 8, 2022 – At the first statement hearing, in which the controlling judge makes the crucial decision as to whether there is enough evidence to ‘link the accused to the process’, Mr. Ulate (Mr. Zamora’s third lawyer) told the court that some of the prosecution’s evidence displayed in the hearing had not been shared with the defense. The court ordered the prosecution to share the file, but the first statement hearing continued the next morning on August 9 – which meant the defense did not have any time to review the prosecution’s file ahead

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<sup>304</sup> I/A Ct. H.R., *Barreto Leiva v. Venezuela*, Series C No. 206, November 17, 2009, para. 54. See, also, *id.* at paras. 49-57.

<sup>305</sup> *Id.*

<sup>306</sup> I/A Ct. H.R., *Castillo Petruzzi v. Peru*, Judgment, May 30, 1999.

<sup>307</sup> Human Rights Committee, General Comment No. 32, U.N. Doc. CCPR/C/GC/35, August 23, 2007, para. 33.

<sup>308</sup> *Id.*

<sup>309</sup> Human Rights Committee, Human Rights Committee, General Comment No. 32, U.N. Doc. CCPR/C/GC/35, August 23, 2007, para. 32; *Hibbert v. Jamaica*, Communication No. 293/1988, U.N. Doc. CCPR/C/45/D/293/1988 (1992); *Desmond Williams v. Jamaica*, Communication No. 561/1993, U.N. Doc. CCPR/C/59/D/561/1993 (1997).

<sup>310</sup> *El País*, “Suspendida la primera audiencia de juicio del periodista Jose Ruben Zamora in Guatemala” [First trial hearing of journalist Jose Ruben Zamora in Guatemala adjourned], August 1, 2022.

of an important hearing in which 1) Mr. Zamora was ‘linked to the process’ and 2) the judge imposed pre-trial detention.<sup>311</sup>

Even more egregiously, several of Mr. Zamora’s successive lawyers asserted that the prosecution refused to share exculpatory materials with the defense throughout proceedings – specifically, bank tags that the defense alleged would have demonstrated the money’s origin. The failure to provide this evidence was never remedied.

- August 9, 2022 – On day 2 of the first statement hearing, Mr. Ulate asserted that the prosecutor’s office hid or made unavailable significant evidence, including the bank tags on the confiscated cash which he argued would have demonstrated the money came from a bank and not from an illegal source.<sup>312</sup>
- December 8, 2022 – At the intermediate stage hearing, Mr. Solórzano Foppa (Mr. Zamora’s fourth lawyer) asserted that the bank tags had disappeared while the money was in the prosecution’s possession and that no one knew what happened to them. In video submitted into evidence by the prosecution showing the confiscation of the money, the money was shown with bank tags. Defense counsel argued that the missing tags were “extremely relevant evidence” and requested the judge to order an investigation into the missing bank tags. The judge did not do so.<sup>313</sup>

## Right to be Tried by an Independent and Impartial Court

Article 14(1) of the ICCPR recognizes the right of accused persons to a “fair and public hearing by a competent, independent and impartial tribunal established by law.”<sup>314</sup> This is an “absolute right that is not subject to any exception.”<sup>315</sup> The requirement for independence includes “actual independence of the judiciary from political interference by the executive branch [...]”<sup>316</sup> The impartiality guarantee encompasses both a right to a tribunal that *is* impartial – that judges are not “influenced by personal bias or prejudice, nor harbour preconceptions about the particular case before them, nor act in ways that improperly promote the interests of one of the parties to the detriment of the other” – and a right to a tribunal that also *appears* to be impartial to a reasonable observer.<sup>317</sup>

Article 8(1) of the ACHR provides a similar guarantee to “a hearing...by a competent, independent, and impartial tribunal...in the substantiation of any accusation of a criminal nature against him.”<sup>318</sup> The Inter-American Court has established that “impartiality means

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<sup>311</sup> Monitor’s Notes, August 8, 2022.

<sup>312</sup> Monitor’s Notes, August 9, 2022.

<sup>313</sup> Monitor’s Notes, December 8, 2022.

<sup>314</sup> ICCPR, Article 14(1).

<sup>315</sup> Human Rights Committee, General Comment No. 32, U.N. Doc. CCPR/C/GC/32, August 23, 2007, para. 18.

<sup>316</sup> *Id.*

<sup>317</sup> *Id.*, para. 21.

<sup>318</sup> ACHR, Article 8(1).

that the judge, who intervenes in a particular matter, must come up with the facts of the case without any type of bias, subjectively speaking, and ...offer... sufficient guarantees of an objective nature” in which “the judge in question offered sufficient elements of conviction to exclude any legitimate misgivings or well-grounded suspicion of partiality regarding his or her person.”<sup>319</sup>

There are serious concerns that Judge Fredy Orellana, the judge who allegedly issued the arrest warrant against Mr. Zamora and oversaw the preliminary and intermediate proceedings as well as the evidentiary hearing, was neither independent nor impartial.

At a country-wide level, multiple UN Special Rapporteurs on the Independence of Judges and Lawyers have expressed concern over a number of actions by Guatemalan authorities “that are part of the weakening of the rule of law and judicial independence in Guatemala.”<sup>320</sup> The IACHR has similarly expressed concern over “violations of judicial independence.”<sup>321</sup> In its 2022 Country Report on Human Rights Practices, the U.S. Department of State noted that “threats against independent judges” included stripping judges who had presided over corruption cases of immunity, exposing them to retaliatory prosecution.<sup>322</sup> Over two dozen judges and prosecutors, including Judge Miguel Gálvez and Judge Erika Aifán, prominent judges known for their work on anti-corruption, have been forced into exile after facing physical threats and criminalization in retaliation for their anti-corruption work.<sup>323</sup> Freedom House reported that “the judiciary is hobbled by corruption” and that “judges who demonstrate independence have been targeted with politically motivated lawsuits.”<sup>324</sup> Additionally, the 2019 selection process for judges was riddled with irregularities, with “widespread reports of corruption in proceedings to select high court judges”<sup>325</sup> and “observers not[ing] that qualified judges were excluded from the

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<sup>319</sup> I/A Ct. H.R., Barreto Leiva v. Venezuela, Merits, Reparations and Costs, Judgment of November 17, 2009, Series C No. 206, para. 98; also, see, I/A Ct. H.R. Apitz Barbera et al. V. Venezuela. Preliminary Objection, Merits, Reparations and Costs, Judgment of August 5, 2008. Series C No. 182, para. 56.

<sup>320</sup> UN Office of the High Commissioner for Human Rights, “Guatemala: UN expert deeply concerned by Congress refusal to reappoint top judge”, April 19, 2021. Available at <https://www.ohchr.org/en/press-releases/2021/04/guatemala-un-expert-deeply-concerned-congress-refusal-reappoint-top-judge>; Also, see, UN Office of the High Commissioner for Human Rights, “Guatemala: UN expert condemns targeting of prosecutor and judge”, November 25, 2022. Available at <https://www.ohchr.org/en/press-releases/2022/11/guatemala-un-expert-condemns-targeting-prosecutor-and-judge#:~:text=The%20UN%20Special%20Rapporteur%20on,of%20the%20country's%20judges%20and>.

<sup>321</sup> Organization of American States, “IACHR Expresses Concern Over New Violations of Judicial Independence in Guatemala”, February 22, 2022. Available at [https://www.oas.org/en/IACHR/jsForm/?File=/en/iachr/media\\_center/PReleases/2022/037.asp](https://www.oas.org/en/IACHR/jsForm/?File=/en/iachr/media_center/PReleases/2022/037.asp).

<sup>322</sup> US State Department, “2022 Country Reports on Human Rights Practices: Guatemala”, 2023.

<sup>323</sup> Reuters, “Guatemalan Anti-Graft Judge Resigns, Blasts Manipulation of Justice”, November 15, 2022. Available at <https://www.reuters.com/world/americas/guatemalan-anti-graft-judge-resigns-blasts-manipulation-justice-2022-11-16/>; See, also The New Yorker, “The Exile of Guatemala’s Anti-Corruption Efforts”, April 2022.

<sup>324</sup> Freedom House, Freedom in the World 2022: Guatemala, 2022.

<sup>325</sup> American Bar Association, Foreclosing Judicial Review of Allegations of Corruption in Selection of Judges, October 11, 2021. Available at [https://www.americanbar.org/groups/human\\_rights/reports/guatemalan-constitutional-court-foreclosing-judicial-review/](https://www.americanbar.org/groups/human_rights/reports/guatemalan-constitutional-court-foreclosing-judicial-review/).

process without cause.”<sup>326</sup> In this context, there could be reasonable concerns that the judges presiding over the trial might have felt under significant pressure to convict as Mr. Zamora is well-known for his work reporting on the Giammattei administration’s corruption.

This report need not, however, reach a conclusion regarding the judges who presided over the trial phase, as there are several case-specific factors that further indicate that Judge Fredy Orellana would not have been understood by a reasonable observer to be an impartial arbiter. First, his decisions at the first statement hearing, the intermediate stage hearing, and the evidentiary hearing<sup>327</sup> appeared to “improperly promote the interests” of the prosecution to the detriment of the accused.

For example:

1) During the first statement hearing, Judge Orellana ordered the case against Mr. Zamora to proceed without addressing defense counsel’s arguments that the prosecution had presented no evidence of criminality. Judge Orellana reversed the burden of proof and accepted the prosecution’s assertions that the chain of events (which the defense did not contest) carried criminal connotations without giving any basis for the alleged criminality of these actions. Judge Orellana’s “analysis” was limited to reading out selections of witness statements, describing the material evidence put forth by the prosecutor, and stating that the evidence and witness statements were “closely related or closely consistent with the facts that...the [prosecutor] attributes to those currently accused.”<sup>328</sup> Based solely on this - and without explaining how criminality could be inferred from the facts - Judge Orellana concluded “that there is a reasonable suspicion, there is a well-founded suspicion [that] crimes could have been committed and possibly, perhaps, the accused could have been involved” and ordered proceedings to move forward.<sup>329</sup>

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<sup>326</sup> WOLA, “Behind the Fight to Hijack Guatemala’s Justice System”, July 10, 2020. Available at <https://www.wola.org/analysis/behind-the-fight-to-hijack-guatemalas-justice-system/>.

<sup>327</sup> Although the evidentiary hearing is technically part of the trial phase, this report examines this hearing as part of the “pretrial” proceedings because the hearing took place under the control of Judge Orellana, before the case reached the trial court at the “oral and debate” stage of trial.

<sup>328</sup> Monitor’s Notes, August 8, 2022 [“...there is another indication, a photograph of the screen of a cell phone which is consistent and related to the facts that were intimidated against the defendant... So I reiterate up to now, the evidence presented by the MP and which I have allowed myself to read in its leading part, are closely related or closely consistent with the facts that, as a theoretical and conceptual framework, the Public Ministry attributes to those currently accused. The analysis of the evidence then continues. There are other indications, the statement of Mr. Jorge Gonzalo Barrio Sánchez is also congruent, related and coincides with the facts that the Public Prosecutor’s Office intimidated to Mr. José Rubén Zamora Marroquín. Next evidence...statement made by Mr. Oliveros...This evidence also coincides with the facts that the Public Prosecutor’s Office attributes to Mr. José Rubén Zamora Marroquín. Therefore, these four different indications, each one of them that I have allowed myself to read in its relevant part, coincide in essence, they are congruent, they are closely related, they are connected with the facts that the Public Prosecutor’s Office sustains the thesis that Mr. José Rubén Zamora Marroquín may have committed...”].

<sup>329</sup> Monitor’s Notes, August 9, 2022.



2) In the “offering of evidence” hearing, Judge Orellana rejected all of the witnesses and key documentary evidence that the defense proposed without sufficient explanation, leaving Mr. Zamora with no evidence to support his defense at trial. On the other hand, Judge Orellana accepted nearly all of the prosecution’s proffered evidence, including audio recordings that the defense alleged to be illegally-obtained. As described below in the “Equality of Arms” section, an observer could have had reasonable doubts about whether Judge Orellana was in fact motivated to reach an outcome that favored the prosecution.

Second, Judge Orellana made statements during proceedings that appeared biased against Mr. Zamora. At the hearing to offer evidence on December 22, for example, Judge Orellana called defense counsel’s arguments a lie, saying it “sound[ed] like Goebbel’s theory. Lie, lie, and lie, until the lie looks like the truth.”<sup>330</sup>

Third, Judge Orellana appears to have a friendly pre-existing relationship with FCT, the adhesive plaintiff (whose lawyer also represented Mr. Navarijo) in the case against Mr. Zamora. A photo from 2021 circulated on media outlets shows Judge Orellana posing on a gun range with a lawyer and member of FCT.<sup>331</sup> Judge Orellana’s relationship with FCT – a key private party in the case – undermines the appearance of impartiality, as required by the ICCPR.

Notably, the United States designated Judge Orellana a corrupt actor on its 2023 list.<sup>332</sup>

Cumulatively, these factors strongly indicate that Mr. Zamora’s right to be tried by an independent and impartial tribunal – at minimum at the preliminary and intermediate stages – was violated.

## **C. VIOLATIONS AT TRIAL**

### **Equality of Arms**

Article 14(1) of the ICPPR states: “All persons shall be equal before the courts and tribunals.” The Human Rights Committee has explained that this right encompasses equality of arms, which “means that the same procedural rights are to be provided to all the parties unless distinctions are based on law and can be justified on objective and reasonable grounds, not entailing actual disadvantage or other unfairness to the defendant.”<sup>333</sup> The principle of equality of arms protected by Article 14(1) of the ICCPR

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<sup>330</sup> Monitor’s Notes, December 22, 2022.

<sup>331</sup> Crónica, “Juez que dio orden de captura contra Zamora vinculado a Fundación el Terrorismo” [Judge who issued an arrest warrant against Zamora linked to the Foundation against Terrorism], July 30, 2022. Available at <https://cronica.com.gt/juez-que-dio-orden-de-captura-contra-zamora-vinculado-a-fundacion-contra-el-terrorismo/>; See, also No Ficción, “Who is Judge Fredy Orellana”, July 19, 2023. Available at <https://www.no-ficcion.com/projects/juez-fredy-orellana>.

<sup>332</sup> US Department of State, “Section 353 Corrupt and Undemocratic Actors Report: 2023”, 2023,

<sup>333</sup> Human Rights Committee, General Comment No. 32, U.N. Doc. CCPR/C/GC/32, August 23, 2007, para 13.

requires “that each side be given the opportunity to contest all the arguments and evidence adduced by the other party.”<sup>334</sup> The defense must have a real opportunity to prepare and present its case in a manner commensurate to opportunities granted to the prosecution.

Article 8 of the ACHR also provides for the right to a fair trial, “with due guarantees” (Article 8(1)). In an Advisory Opinion, the Inter-American Court stated that for “the due process of law” to exist, “a defendant must be able to exercise his rights and defend his interests effectively and in full procedural equality with other defendants. It is important to recall that the judicial process is a means to ensure, insofar as possible, an equitable resolution of a difference. The body of procedures, of diverse character and generally grouped under the heading of the due process, is all calculated to serve that end...To accomplish its objectives, the judicial process must recognize and correct any real disadvantages that those brought before the bar might have, thus observing the principle of equality before the law and the courts.”<sup>335</sup>

### **Right to Call and Examine Witnesses: Intermediate Stage and Evidentiary Hearings**

The Human Rights Committee has found violations of Article 14(1) where courts have inexplicably denied requests to summon witnesses.<sup>336</sup> Additionally, as an application of the equality of arms principle, Article 14(3)(e) of the ICCPR enshrines the right of defendants in criminal cases “to obtain the attendance and examination of witnesses on [their] behalf under the same conditions as witnesses against [them].” In the words of the UN Human Rights Committee, this provision “is important for ensuring an effective defense by the accused and their counsel and thus guarantees the accused the same legal powers of compelling the attendance of witnesses and of examining or cross-examining any witnesses as are available to the prosecution.”<sup>337</sup> While Article 14(3)(e) does not establish an absolute right to call and examine witnesses, it does include the right to call witnesses who are relevant,<sup>338</sup> if proposed in a timely manner in compliance with procedural requirements.<sup>339</sup>

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<sup>334</sup> Human Rights Committee, General Comment No. 32, U.N. Doc. CCPR/C/GC/32, August 23, 2007, para 13.

<sup>335</sup> I/A Ct. H.R., *The Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law*, Advisory Opinion OC-16/99 of October 1, 1999. Series A No. 16. This Advisory Opinion is the result of a consultation submitted by Mexico to the Inter-American Court on the issue of minimum judicial guarantees and the requirement of due process.

<sup>336</sup> See Human Rights Committee, *Evrezov et al. v. Belarus*, U.N. Doc. CCPR/C/112/D/1999/2010, November 24, 2014, para 8.9; U.N. Human Rights Committee, *Khomidova v. Tajikistan*, U.N. Doc. CCPR/C/81/D/1117/2002, July 29, 2004, para 6.5.

<sup>337</sup> Human Rights Committee, General Comment No. 32, U.N. Doc. CCPR/C/GC/32, August 23, 2007, para 39.

<sup>338</sup> Human Rights Committee, *Saidov v. Tajikistan*, U.N. Doc. CCPR/C/122/D/2680/2015, September 20, 2018, para. 9.6.

<sup>339</sup> Human Rights Committee, *Johnson v. Spain*, U.N. Doc. CCPR/C/86/D/1102/2002, March 27, 2006, para 6.5; Human Rights Committee, General Comment No. 32, U.N. Doc. CCPR/C/GC/32, August 23, 2007, para. 39.

In *Allarberdiev v. Uzbekistan*, in which the Committee considered a case where the accused had been charged and convicted of drug-related offenses, defense counsel had requested to call witnesses involved with the investigation as well as individuals who had allegedly planted drugs on the accused.<sup>340</sup> The court rejected these witnesses, deeming the proposed testimony irrelevant, even though these witnesses were key to establishing the defense theory that the case was fabricated.<sup>341</sup> The Committee found a breach of Article 14(3)(e).

Article 8(3)(f) of the ACHR also provides for “the right of the defense to examine witnesses present in the court and to obtain the appearance, as witnesses, of experts or other persons who may throw light on the facts.”

In the case at hand, Judge Orellana, the controlling judge overseeing the intermediate stage and evidentiary hearings, made multiple decisions that left Mr. Zamora at a distinct disadvantage at trial, undermining the principle of “equality of arms”: the judge denied all of the witnesses proposed by the defense, seven out of 16 documents, and three out of the five pieces of material evidence proposed by the defense.<sup>342</sup>

Despite their obvious relevance to the case at hand, Judge Orellana rejected all the witnesses proposed by Mr. Zamora’s counsel. Under Article 350 of the Criminal Code, the controlling judge is authorized to reject evidence *only* “when it is illegitimate, manifestly irrelevant, useless or repetitive”;<sup>343</sup> at this stage, the judge is not authorized to evaluate the evidence.

Defense counsel explained that the testimony of three proposed witnesses (Mr. Girón Lainfiesta, Mr. Álvarez Zamora, and Mr. Marroquín Godoy) would be used at trial to show that the money had a legitimate origin, rebutting one of the key elements of the offense of money laundering (“money is the product of or originates from the commission of a crime”). However, Judge Orellana rejected these witnesses on the reasoning that the defense’s theory about the art sale was “different from the version that was used as a defense strategy in the first statement hearing” (that is, that Mr. Zamora had received the money from businessmen) and that the “two different, contrary versions...cannot be true by logic.”<sup>344</sup>

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<sup>340</sup> Human Rights Committee, *Sirozhiddin Allaberdiev v. Uzbekistan*, U.N. Doc. CCPR/C/119/D/2555/2015, May 18, 2017, para. 3.5.

<sup>341</sup> *Id.*, para 8.7-8.9.

<sup>342</sup> Monitor’s Notes, December 22, 2022.

<sup>343</sup> Criminal Code of Guatemala, Article 350 (Resolution and setting of the hearing). The court shall resolve, in a single order, the issues raised:

(1) Admit the evidence offered or reject it when it is illegitimate, manifestly irrelevant, useless or repetitive, arranging the necessary measures for its reception in the debate, where appropriate; If necessary, it shall indicate the means of evidence to be incorporated into the debate for its reading].

<sup>344</sup> Monitor’s Notes, December 22, 2022.

Notably, Judge Orellana rejected the proposed witnesses based on *an evaluation of the value of their testimony* – a role that should have been reserved for the trial court at the oral and debate stage. (Defense counsel raised this issue when appealing the controlling judge’s decision to reject evidence, saying “... *it is striking that in order to reject the three witnesses you are making reference to the principles of sufficient reason, third excluded party... you cannot evaluate evidence, Judge, that is completely illegal at this stage of the process... ‘If those witnesses could be lying’; ‘If those witnesses could be false’; ‘If the document was created by them’ - Well, that will be up to a sentencing (trial) court to decide, not for you .... you do not have that power*”).<sup>345</sup> The witnesses proposed by the defense were clearly not “manifestly irrelevant” as their testimony would have rebutted the prosecution’s theory that the confiscated money had an illicit origin.

With respect to documentary and material evidence, the controlling judge rejected the evidence offered by the defense on the basis that the documents “basically refer[] to the same thing, to the thesis of the purchase and sale of a work of art.”<sup>346</sup> The prosecutor had objected to the contract for the sale of art – arguing that it “did not meet the legal requirements for it to enter legal life” – and the documents related to the financial, banking and accounting situation of Aldea Global S.A., saying they “do not distort the facts for which Mr. Zamora was accused of and do not distort the money seized.”<sup>347</sup> Defense counsel had argued that the contract was necessary to help establish the lawful origin of the money. The only documents Judge Orellana accepted were identity documents that did not have substantive importance.

As in *Allarberdiev v. Uzbekistan*, the rejection of key witnesses and documents was a violation of Mr. Zamora’s rights to call and examine witnesses under Article 14(3)(e).

On the other hand, the judge accepted all the evidence proposed by the prosecution, except one document. The prosecution’s evidence included 13 witnesses, 19 expert reports and 123 documents.<sup>348</sup>

The prosecution’s documentary evidence admitted by Judge Orellana included the audio recordings that Mr. Garcia Navarajo made. Multiple sets of Mr. Zamora’s lawyers objected during the preliminary hearings to the inclusion of the recordings on the basis that they were illegally obtained.

At the first statement hearing, defense counsel Ulate argued that the recordings were made in violation of the right to privacy of communications under Article 24 of the Constitution because Mr. Zamora had never consented to being recorded. Specifically, Mr. Ulate noted that the recordings from February 15, 2021 and September 6, 2021 were

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<sup>345</sup> Id.

<sup>346</sup> Id.

<sup>347</sup> Id.

<sup>348</sup> Monitor’s Notes, December 22, 2022.

calls between Mr. Zamora and Mr. Sandoval, and that Mr. Navarajo did not have the right as a third party to record their conversations. He further noted that Mr. García Navarajo violated Mr. Zamora's right to privacy when he recorded Mr. Zamora in his residence without his consent.

Judge Orellana did not respond to defense counsel's arguments – including that Mr. García Navarajo had recorded conversations that he was not part of – but instead cited decisions of the Supreme Court of Spain to conclude that Mr. García Navarajo was not recording conversations “of another” person, but that Mr. García Navarajo was recording conversations that he had “with another” person, which he concluded was allowed.<sup>349</sup>

In the intermediate phase hearing on December 8, defense lawyer Solórzano Foppa again raised an objection to the recordings, arguing that they were illegally obtained and thus could not be admitted as evidence. Judge Orellana refused to consider defense counsel's arguments, responding only that “this aspect was already resolved” and that “Guatemalan law [was] being applied.”<sup>350</sup> He concluded that nothing proved that the recordings were illegal. As a result, the audio recordings were entered into evidence by the prosecution and utilized at trial. (At trial, Mr. Zamora's state-appointed lawyer also spoke at length about the alleged illegality of the recordings in his closing arguments).

As a result of these decisions, Judge Orellana put Zamora at an enormous evidentiary disadvantage; in the debate at trial, the defense was left without any evidence to support their theory of the origin of the confiscated money,<sup>351</sup> significantly impeding the defense's ability to “defend [Zamora's] interests effectively and in full procedural equality”.

The trial court saw only evidence presented by the prosecution and the adhesive plaintiff, FCT. This had a substantial impact on the outcome of the proceedings. Indeed, in the judgment, the trial court specifically noted the lack of evidence to support the defense's theory on the legitimate origins of the money:

*“The court observes that, despite having exhausted all the phases of evidence, none of the evidence in the debate corroborates the arguments sustained by the accused in his defense and by the defense attorney in his conclusions... **In that sense, there was an attempt to justify the licit origin of the money in an alleged sale of a work of art. However, not even its existence was accredited, to whom it was sold, for what price... Reference was only made to the fact that it was sold to a person named Giron Lainfiesta through an intermediary, another person named Marroquín Girón - people who were not offered as***

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<sup>349</sup> Monitor's Notes, August 9, 2022.

<sup>350</sup> Monitor's Notes, December 8, 2022.

<sup>351</sup> Defense counsel noted this at the December 22 hearing when appealing the controlling judge's decision: “*I conclude by insisting that this resolution caused a grievance because it violated the right to defense too much. It is preventing the defense from having a theory of the case...*”. Monitor's Notes, December 22, 2022.

*witnesses either. It was mentioned that of the Q 300 thousand, Q240 thousand came from that sale, and that there are checks that prove it. However, those checks were not provided as evidence either. The defense attorney said that there are four pieces of evidence in the prosecution's office that supposedly accredit these issues, but the attorney himself explained that he did not offer them. Therefore, they were not presented in the debate either...*<sup>352</sup>

## Right to Call and Examine Witnesses: Trial Stage

Violations of Article 14(3)(e) of the ICCPR can also occur where the court excessively curtails defense questioning of prosecution witnesses. In *Larranaga v. The Philippines*, for example, the UN Human Rights Committee ruled that the presiding court violated Article 14(3)(e) not only by refusing to call proposed defense witnesses without adequate justification but also by cutting short the defense's cross-examination of a key prosecution witness.<sup>353</sup>

During the trial, the presiding judge restricted the defense's cross-examination questions multiple times, saying that questions were not in the "correct technical form". For example, on May 11, Mr. Zamora's lawyer Ms. Guillermo de Chea attempted to cross-examine a prosecution expert who had prepared a "timeline analysis" of the events in question, which concluded in part that the contract for the painting could not explain the source of the seized cash. The judge repeatedly interrupted the questioning to reprimand her for not asking questions correctly.<sup>354</sup> Mr. Zamora also attempted to ask the witness a question, but the judge told the witness not to answer it.<sup>355</sup> This resulted in the defense not being able to adequately question the witness.

More egregiously, cross-examination of Mr. García Navarajo, the complainant and primary witness for the prosecution, was limited by the court. On May 18, Mr. Zamora attempted to cross-examine Navarajo himself after his newly-appointed public defender, who was not very familiar with the case, failed to rigorously cross-examine Mr. Navarajo. The presiding judge allowed Mr. Zamora only one minute to consult with his attorney on the

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<sup>352</sup> Id., pg. 354.

<sup>353</sup> Human Rights Committee, U.N. Doc. CCPR/C/87/D/1421/2005, September 14, 2006.

<sup>354</sup> Monitor's Notes, May 11, 2023. [Ms. Chea: There was never talk of money laundering... I just want to see if what you have determined in your report is correct or perhaps a misperception of my client. Judge: She can't tell you if it's a bad perception. Ask the whole question. What is your question. Ms. Chea: The question is that if you reason the content of this front part, the next part already talked about money laundering, so it's important to rectify it, expand it or just clarify it. Judge: So, what is the question? ...Judge: Ask the question, attorney, I am not going to talk to you...you have to reformulate it but please, adapt your interrogation to what the CPP says... Ms. Chea: I want to know if it is ratified and if the witness is saying something different from reality. Judge: Do not answer... ]

<sup>355</sup> Monitor's Notes, May 11, 2023. [Mr. Zamora: I would like to ask a couple of questions. Judge: Yes, ask them following the law (legal procedure), otherwise I am going to tell you no. Mr. Zamora: When you say that large amounts of money were handled, are you referring to a specific document and what are you referring to? Judge: "Don't answer. She (the witness) made a report. The question is imperative. Rephrase it.]

techniques for cross-examination. Mr. Zamora attempted to ask several questions, but the judge cut him off and did not allow Mr. García Navarrijo to answer Mr. Zamora's questions "because they did not respect the interrogation techniques." According to the monitoring notes, the presiding judge then ended the defense questioning of Mr. García Navarrijo.<sup>356</sup>

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In summary, these issues – the denial of relevant and extremely important defense witnesses and documentary evidence; the admission of almost all prosecution evidence, including recordings whose legality the defense had vehemently contested; and the restriction of defense cross-examination of prosecution witnesses – amount to a violation of Mr. Zamora's right to equality of arms under Article 14(1) of the ICCPR and Article 8(1) of the ACHR. Mr. Zamora never had an equal opportunity to prepare and present his case; Judge Orellana's decision to deny all key defense witnesses and documentary evidence left Mr. Zamora at an "actual disadvantage" at the crucial oral and debate stage of trial. Moreover, the court's curtailment of defense questioning at trial denied the defense a meaningful opportunity to contest the prosecution's evidence, further undermining Mr. Zamora's right to equality of arms.

### **Right to Competent and Effective Defense Counsel / Right to Adequate Time and Facilities**

Article 14(3)(d) of the ICCPR enshrines the right of anyone facing criminal charges "...to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right, and to have legal assistance assigned to him, in any case where the interests of justice so require...". In order for the right to defense to be meaningful, defense counsel must be granted "adequate time and facilities" to prepare a defense, as provided for in Article 14(3)(b). This right applies at all stages of the proceedings, including during trial. Defendants have the right to adequate time to prepare after significant events such as when they are given access to the case file, after the discovery of new evidence, and/or following changes in defendant's defense attorney. What counts as "adequate time" depends on the circumstances of each case, including the complexity of the case and the procedural stage.<sup>357</sup> In *Smith v. Jamaica*, for example, the Human Rights Committee found a violation of Article 14(3)(b) in a capital case where a newly-appointed lawyer had only four hours to confer with the defendant and prepare for trial.<sup>358</sup>

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<sup>356</sup> Monitor's Notes, May 18, 2023.

<sup>357</sup> Human Rights Committee, General Comment No. 32, U.N. Doc. CCPR/C/GC/35, August 23, 2007, para. 32; *Hibbert v. Jamaica*, Communication No. 293/1988, U.N. Doc. CCPR/C/45/D/293/1988 (1992); *Desmond Williams v. Jamaica*, Communication No. 561/1993, U.N. Doc. CCPR/C/59/D/561/1993 (1997).

<sup>358</sup> Human Rights Committee, *Smith v. Jamaica*, Communication No. 282/1988, U.N. Doc. CCPR/C/47/D/282/1988, May 12, 1993, para. 10.4.

Parallel guarantees are provided for in the ACHR, which secures “the right of the accused to defend himself personally or to be assisted by legal counsel of his own choosing, and to communicate freely and privately with his counsel” (Article 8(d)) and “adequate time and means for the preparation of his defense” (Article 8(c)).

While the onus is on the defense to request an adjournment, courts have a duty to grant reasonable requests for adjournments that provide adequate time for the accused and counsel to prepare a defense.<sup>359</sup> The Human Rights Committee further commented that “A State party is not to be held responsible for the conduct of a defense lawyer, unless it was, or should have been, manifest to the judge that the lawyer’s behaviour was incompatible with the interests of justice.”<sup>360</sup>

When defense counsel is assigned, the State has increased responsibility, provided that “it was manifest to the judge that the lawyer’s behaviour was incompatible with the interests of justice.”<sup>361</sup> In *Chan v. Guyana*, the Human Rights Committee stated that the “right...to have legal assistance assigned [to the complainant] entitled him to effective legal representation, including adequate time and facilities for the preparation of his defence.”<sup>362</sup> It further stated that the conduct of a defense lawyer may be attributed to a State party, if it was manifest to the judge that such conduct was incompatible with the interests of justice.<sup>363</sup>

The Inter-American Commission on Human Rights has stated this principle even more strongly, framing State responsibility in positive terms. In *Lackey et. al. v. United States*, the Inter-American Commission stated that “the national authorities have an obligation to intervene if a failure by defense counsel to provide effective representation is manifest or sufficiently brought to their attention. That obligation is all the greater when the legal representation is provided by the state.”<sup>364</sup>

It should have been clear to the trial court that multiple sets of Mr. Zamora’s counsel (including his final state-appointed lawyer) did not have adequate time or the appropriate materials to prepare a competent defense – and that it had a negative impact on Mr. Zamora’s right to effective counsel. The court, however, did not intervene.

First, multiple incidents made it apparent that Mr. Zamora’s defense lawyers at the start of the trial, Ms. Guillermo de Chea and Mr. Szejner, did not have access to the full case

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<sup>359</sup> Human Rights Committee, Human Rights Committee, General Comment No. 32, U.N. Doc. CCPR/C/GC/35, August 23, 2007, para. 32.

<sup>360</sup> Id.

<sup>361</sup> Id., para. 38.

<sup>362</sup> Human Rights Committee, *Chan v. Guyana*, U.N. Doc. CCPR/C/85/D/913/2000, Communication No. 913/2000, 2006, para. 6.2.

<sup>363</sup> Id.

<sup>364</sup> IACHR, *Clarence Allen Lackey et. al. v. United States*, Report No. 52/13, July 15, 2013, para. 202.



file and were not adequately prepared for trial. The court demonstrated its awareness that defense counsel was unprepared (even ordering Ms. Guillermo de Chea, on the third day of trial, to obtain documents from the prosecution) but continued the proceedings anyways.

- On May 2, Ms. Guillermo de Chea noted in her opening remarks that she had only recently become counsel to Mr. Zamora but had not requested a postponement of the trial “because they respected the court’s agenda.”<sup>365</sup>
- On May 3, during his testimony, Mr. Zamora emphasized that due to circumstances beyond his control, his current legal team had not yet received complete access to the case file. He added that he had sent a message to his lawyers, requesting them to ask for a postponement of the start of trial so that they could have a few days to review the materials.<sup>366</sup> They did not do so.
- On May 4, during a witness's examination, the prosecutor presented a document as evidence. Ms. Guillermo de Chea expressed her lack of familiarity with this document. The presiding judge, to assist with cross-examination, permitted her a brief one-minute review of the document. Later, Ms. Guillermo de Chea explained that she had only received “a little bit of the evidence, what could be recovered after so many changes of lawyers that abruptly left.”<sup>367</sup> The court ordered the defense counsel to obtain the necessary documents from the prosecution, but the trial continued without a postponement for the defense counsel to receive and read the documents.
- On May 8, the presiding judge acknowledged the defense's unfamiliarity with documents the prosecution was presenting, responding to a question by saying, “...We have been presenting the documents gradually because you are not familiar with them.”<sup>368</sup>
- On May 11, during the testimony of an expert witness, it became apparent that neither Mr. Zamora nor his lawyers were aware of the “timeline evidence analysis” report she was presenting, which concluded that the art sale contract could not explain the source of the funds. Ms. Guillermo de Chea requested to see the report.<sup>369</sup> Ms. Chea was also unable to cross-examine the witness because the presiding judge repeatedly interrupted her to admonish Ms. Chea for not asking questions in the formal technique.

Second, Mr. Zamora’s public defender – who replaced Ms. Guillermo de Chea and Mr. Szejner in the middle of trial – very clearly did not have adequate time to prepare for trial as he appears to have been assigned to the case within a day of appearing at court. Moreover, he never met with Mr. Zamora before appearing as his counsel.

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<sup>365</sup> Monitor’s Notes, May 2, 2023.

<sup>366</sup> Monitor’s Notes, May 3, 2023.

<sup>367</sup> Monitor’s Notes, May 4, 2023.

<sup>368</sup> Monitor’s notes May 8, 2023.

<sup>369</sup> May 11, 2023.

On May 18, when the trial resumed following a one-week adjournment, the presiding judge began the hearing by verifying the parties, noting Sandra Eugenia Morales García as counsel for Mr. Zamora. At that moment, public defender Joel Ivan Reyes introduced himself to the court as Mr. Zamora's assigned counsel. This appeared to surprise Mr. Zamora and the court, suggesting that the switch in assigned counsel happened so close to the hearing that the paperwork had not even been submitted to the court.<sup>370</sup> Mr. Zamora informed the court that he had not been notified that Mr. Reyes had been assigned as his public defender and asked the court to request the IDPP to assign Fidencia Orozco, a public defender already familiar with his case and with whom Mr. Zamora had previously met.<sup>371</sup> However, the presiding judge said it could not interfere in the IDPP's decisions and ordered the proceedings to continue. The trial thus resumed without Mr. Zamora ever having had the opportunity to confer confidentially with his new lawyer. Mr. Zamora later told the press that he had asked Mr. Reyes to request a postponement but that Mr. Reyes had refused.<sup>372</sup> The last-minute assignment of Mr. Reyes as defense counsel and his failure to request an adjournment was clearly against the interests of his client, Mr. Zamora. This was a highly crucial stage of the proceedings. In addition to being in the middle of the oral and debate phase of the trial, May 18 was the day Mr. García Navarajo, the complainant and main prosecution witness, was scheduled to testify. The monitor observed that Mr. Reyes could not conduct a rigorous cross-examination of Mr. García Navarajo as he did not have all the necessary documents.

According to the Human Rights Committee and the Inter-American Commission, authorities have a duty to ensure the accused is effectively represented when counsel is appointed.<sup>373</sup> As with the first set of lawyers, it should have been apparent to the court that Mr. Reyes was unprepared for trial and that he should have asked for a postponement.

- On May 19, during Mr. García Navarajo's testimony about a specific document, the presiding judge asked Mr. Reyes if he was familiar with it. Mr. Reyes said he was not.
- Also on May 19, when the presiding judge asked Mr. Reyes to incorporate documentary evidence, Mr. Reyes replied that he still did not have the documents.

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<sup>370</sup> Monitor's Notes, May 18, 2023.

<sup>371</sup> NB: Within one week, the IDPP assigned three different public defenders to Mr. Zamora's case. Initially, Fidencia Orozco was assigned and had the opportunity to meet with Mr. Zamora. However, without any prior notification to Mr. Zamora, Orozco was replaced by Sandra Garcia, with whom Mr. Zamora had no contact. Finally, just before the trial resumed, Joel Ivan Reyes was assigned as the new public defender.

<sup>372</sup> El Faro, "La recta final del juicio: un Zamora deteriorado, un decimo abogado Defensor y nuevas acusaciones" [The final stretch of the trial: a deteriorated Zamora, a tenth defense lawyer and new accusations], May 23, 2023. Available at <https://elfaro.net/es/202305/centroamerica/26853/la-recta-final-del-juicio-un-zamora-deteriorado-un-decimo-abogado-defensor-y-nuevas-acusaciones>.

<sup>373</sup> Human Rights Committee, *Kelly v. Jamaica*, U.N. Doc. CCPR/C/41/D/253/1987, April 8, 1991, para. 5.10 ["...measures must be taken to ensure that counsel, once assigned, provides effective representation in the interests of justice"]; IACHR., *Clarence Allen Lackey et. al. v. United States*, Report No. 52/13, July 15, 2013, para. 202.

- On May 23, Mr. Reyes again declined to offer any documentary evidence, saying that he had not been able to obtain the evidence from Mr. Zamora's previous defense attorneys.

In this case, it should have been "manifestly" clear to the court that both sets of defense lawyers did not have adequate time and materials to represent their client's interests, as described above. The court repeatedly ignored clear signs that defense counsel's conduct was "incompatible with the interests of justice." Although jurisprudence is less clear on whether the conduct of the privately-retained lawyers is attributable to the state, the court's failure to address Mr. Zamora's government-appointed lawyer's lack of preparedness (which was also exacerbated by the previous lawyers' behavior), violated Mr. Zamora's rights under the ICCPR and ACHR.

### **Presumption of Innocence / Burden of Proof**

Article 14(2) of the ICCPR provides that "[e]veryone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law." The presumption of innocence is fundamental to the protection of human rights and, for criminal convictions, requires that the prosecution prove guilt beyond a reasonable doubt.<sup>374</sup> As such, the prosecution carries the burden of substantiating the charge.<sup>375</sup>

Article 8(2) of the American Convention similarly protects the right to be presumed innocent. As detailed by the Inter-American Court of Human Rights, "in criminal proceedings, the State bears the burden of proof. The accused is not obligated to affirmatively prove his innocence or to provide exculpatory evidence."<sup>376</sup>

Mr. Zamora was convicted of money laundering under Article 2 of the Anti-Money and Asset Laundering Law. Key required elements of the charge are that the money is "the product of or originate[d] from the commission of a crime", and that the person committing the act knew or should know that the money had an illicit origin. Thus, under international standards, the prosecution had the burden to prove both that the money in question was a result of criminal activity, and that Mr. Zamora knew or should have known that.

The burden should not have been on the defense to prove the licit origin of the money. However, as described in the Case History, the prosecution never provided evidence that proved beyond a reasonable doubt that the money originated from a crime. Instead, the prosecution relied on a theory based on inferences built off Mr. García Navarrijo's testimony.

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<sup>374</sup> Human Rights Committee, General Comment No. 32, U.N. Doc. CCPR/C/GC/32, August 23, 2007, para. 30.

<sup>375</sup> *Id.*

<sup>376</sup> I/A Ct. H.R., *Zegarra Marín v. Peru*, Series C No. 331, February 15, 2017, Non-official Brief. Available at <http://www.corteidh.or.cr/cf/Jurisprudencia2/overview.cfm?doc=1786&lang=en>.

Although the prosecution did not prove that the money came from illicit sources, the trial court concluded that the money was illicit on the basis that the defense did not establish a legitimate origin of the money – an erroneous reversal of the burden of proof. In the convicting judgment, the court concluded the money was illicit based on the following reasons:

1. The absence of evidence establishing a legitimate origin of the money. The court stated that “***none of the evidence ...corroborated the arguments sustained by the accused in his defense and by the defense attorney in his conclusions... [when they] tried to justify the licit origin of the money.***”<sup>377</sup> In reality, the defense was denied the opportunity to present evidence at trial that the money had originated from the sale of a work of art because this evidence was barred by Judge Orellana at the “offering of evidence” hearing in the intermediate stage.
2. The assumption that issuing a check in exchange for cash could have no purpose besides hiding the origin of the money (“...it can be reasonably inferred that the intention was effectively to exchange the cash for a check, with the purpose of hiding the origin of the money, which if it was licit, there would be no logical reason to pretend to exchange it”).<sup>378</sup>
3. The preparation of invoices and receipts in the name of entities that had no commercial relationships, in order to give the appearance of legality to a non-existent commercial transaction, had the purpose of hiding the illicit origin of the money. The judgment did not mention what “illicit act” or criminal activity that cash was supposed to have resulted from. (Mr. Zamora had previously testified that such ‘simulated transactions’ were needed to conceal the identity of donors.)

With respect to the second element, the court then employed circular reasoning to infer that Mr. Zamora “knew” the money had an illicit origin, writing that “*the knowledge of the illicit origin of the money sent and exchanged for the check, can be inferred, because there was no evidence that allows to reasonably establish its origin or provenance, nor the reasons why that money was not directly deposited in any account in the name of the defendant, also because the delivery of the check in exchange for the cash could not have had any other purpose than to hide the origin of the money in order to deposit it and introduce it into the financial system.*”<sup>379</sup> Again, the court did not connect Mr. Zamora to a specific illicit activity or discuss how Zamora knew or should have known that the money came from an illicit source.

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<sup>377</sup> Judgment, Eighth Criminal Sentencing Court, Court, Drug Trafficking and Environmental Crimes, C01079-2022-00280, June 14, 2023, pg. 354.

<sup>378</sup> Id., pg. 334.

<sup>379</sup> Id., pg. 361.

## D. OTHER VIOLATIONS

### Abuse of Process

Multiple aspects of the proceedings against Mr. Zamora strongly suggest that his prosecution was based on improper motives – namely, that it was initiated as retaliation for his work as an investigative journalist and his role as the Executive Director of *elPeriódico*, which was Guatemala’s most influential independent newspaper.<sup>380</sup>

The Human Rights Committee has repeatedly held that the ICCPR proscribes improperly motivated prosecutions,<sup>381</sup> establishing – for example – that detention on the basis of human rights work violates the right to liberty protected by Article 9(1). As it has yet to delineate clear criteria for assessing such situations, the jurisprudence of the European Court of Human Rights (ECtHR) is instructive in assessing whether improper motives are driving legal proceedings. Article 18 of the European Convention on Human Rights states that “[t]he restrictions permitted under this Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed.” The ECtHR has found that circumstantial evidence may be probative when evaluating whether an ulterior or improper motive for prosecution exists. This includes, inter alia, the political context and timing of the proceedings, seemingly selective targeting of a specific individual, how the proceedings were conducted, and whether the ultimate decision was well-reasoned and based on law.<sup>382</sup>

The prosecution and detention of Mr. Zamora bear the hallmarks of retaliation.

With respect to the timing, Mr. Zamora was arrested days after *elPeriódico* published investigatory pieces on President Giammattei.<sup>383</sup> This occurred in a political context in

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<sup>380</sup> Centro Por la Justicia y el Derecho Internacional, “International Organizations Reject the Criminalization of Prominent Journalist José Rubén Zamora and Strongly Denounce the Persecution of Critical Voices in Guatemala”, August 3, 2022. Available at <https://cejil.org/en/press-releases/international-organizations-reject-the-criminalization-of-prominent-journalist-jose-ruben-zamora-and-strongly-denounce-the-persecution-of-critical-voices-in-guatemala/>.

<sup>381</sup> Human Rights Committee, *Khadzhiyev and Muradova v. Turkmenistan*, U.N. Doc. CCPR/C/122/D/2252/2013, April 6, 2018, para. 7.7. See, also, Human Rights Committee, *Melnikov v. Belarus*, U.N. Doc. CCPR/C/120/D/2147/2012, September 4, 2017, para. 8.8; Human Rights Committee, *Nasheed v. Maldives*, U.N. Doc. CCPR/C/122/D/2851/2016, April 4, 2018, paras. 2.19, 8.7.

<sup>382</sup> See European Court of Human Rights, *Selahattin Demirtaş v. Turkey (no. 2)*, App. No. 14305/17, December 22, 2020, para. 429; European Court of Human Rights, *Merabishvili v. Georgia*, App. No. 72508/13, 2017, November 28, 2017, paras. 320-322; European Court of Human Rights, *Nastase v. Romania*, App. No. 80563/12, December 11, 2014, para. 107; European Court of Human Rights, *Rasul Jafarov v. Azerbaijan*, App. No. 69981/14, March 17, 2016, paras. 159-161; European Court of Human Rights, *Mammadli v. Azerbaijan*, App. No. 47145/14, April 19, 2018, para. 103; European Court of Human Rights (Grand Chamber), *Navalny v. Russia*, App. No. 29580/12, November 15, 2018, para. 171. Also, see, European Court of Human Rights, “Guide on Article 18 of the European Convention of Human Rights, Limitations on Use of Restrictions and Rights,” Aug. 31, 2018, para. 57.

<sup>383</sup> *Le Monde*, “Guatemala Arrests Journalist in New Authoritarian Turn”, August 17, 2022. Available at <https://www.lemonde.fr/en/international/article/2022/08/17/guatemala-arrests->

which the Giammattei administration and the Public Ministry – with support from FCT – have increasingly targeted justice officials who have prosecuted or presided over corruption cases. In 2022, the same year as Mr. Zamora’s arrest, Attorney General Porras moved to strip Judge Erika Aifán of her judicial immunity (“which is typically a prelude to being arrested”)<sup>384</sup> at the same time that FCT filed a criminal complaint. Later that year, former FECI prosecutor Virginia Laparra was convicted of “abuse of authority”. Mr. Zamora’s prosecution fits this pattern of the Public Ministry targeting individuals involved in anti-corruption efforts.

Mr. Zamora also appears to have been specifically targeted for his long history of reporting on corruption. Since its founding, *elPeriódico* has reported and exposed acts of high-level corruption involving several public officials, including former President Giammattei and Attorney General Porras. Mr. Zamora and his newspaper had previously been the subject of many lawsuits and a long harassment campaign – his prosecution under charges of money laundering, blackmail and influence peddling could be seen as the culmination of a long campaign against his work.<sup>385</sup>

Next, regarding the conduct of the proceedings – the case was characterized by due process violations and apparent bias in the decisions of judicial authorities. From the start, the proceedings were riddled with irregularities: the defense alleged they were never shown an arrest warrant (throwing into doubt the existence of a legal arrest warrant); judicial review of Mr. Zamora’s detention was delayed; potentially exculpatory evidence (the bank tags on the confiscated cash) disappeared. In the intermediate stage and offering of evidence hearings, the controlling judge’s decisions to exclude key defense witnesses and documentary evidence – without sufficient basis, as analyzed above – and to accept prosecution evidence that the defense alleged had been unlawfully obtained smacked of bias.

Additionally, anyone who attempted to support Mr. Zamora in the proceedings was themselves criminalized. Three witnesses who would have testified on behalf of Mr. Zamora were investigated and charged, leaving Mr. Zamora without any witnesses to testify on his behalf at trial. Four of his lawyers were also investigated and charged in relation to this case; three of them were even arrested and detained for a significant number of days (discussed further below). All seven of these individuals accepted the charges against them to avoid further penalties and imprisonment.

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[journalist-taking-new-authoritarian-turn\\_5993823\\_4.html](https://www.rsf.org/en/node/93761). See, also Reporters without Borders, <https://rsf.org/en/node/93761>.

<sup>384</sup> The New Yorker, “The Exile of Guatemala’s Anti-Corruption Efforts”, April 29, 2022.

<sup>385</sup> See, e.g., Monitor’s Notes, May 3, 2023 [Mr. Zamora’s testimony at trial]; Committee to Protect Journalists, “Guatemala: The imprisonment of José Rubén Zamora is an attack on the press and a bellwether for democracy”, July 26, 2023. Available at <https://cpj.org/2023/07/guatemala-the-imprisonment-of-jose-ruben-zamora-is-an-attack-on-the-press-and-a-bellwether-for-democracy/>; International Center for Journalists, “Jailed for Reporting: Guatemalan Authorities Target Leading Journalist”. August 24, 2022. Available at <https://www.icfj.org/calendar/jailed-reporting-guatemalan-authorities-target-leading-journalist>.

Another indicator that Mr. Zamora was being targeted is the disproportionate application of pre-trial detention and the lack of periodic review of detention (discussed above). From his arrest on July 29, 2022 through mid/late January 2024, Mr. Zamora was held in solitary confinement in poor, unsanitary conditions. The detention order has not been reviewed since the Appeals Court upheld Judge Orellana's decision on August 16, 2022. At the time, neither court considered why an alternative custodial measure (house arrest) could not have been applied. The ongoing detention suggests that State authorities intended to punish Mr. Zamora for his anti-corruption reporting.

Last, the trial court's decision to convict Mr. Zamora of money laundering appears to have reversed the burden of proof. That is, the court found Mr. Zamora guilty despite the prosecution never proving that the money at the center of the case was illicitly obtained, or even specifying from what illicit activity the money was alleged to have been obtained. Instead, the decision emphasized that the defense had not demonstrated a legitimate origin of the money.

Based on the criteria articulated by the ECtHR, there are strong grounds to conclude that the proceedings against Mr. Zamora were initiated in retaliation for his long-standing work to expose government corruption, and thus constituted an abuse of process.

## **Harassment of Counsel**

Under the United Nations Basic Principles on the role of lawyers, governments have a duty to ensure that lawyers are able to perform their professional functions "without intimidation, hindrance, harassment or improper interference," and that lawyers "shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics."<sup>386</sup> The Basic Principles further affirm that lawyers, like other citizens, have the right to "freedom of expression, belief, association and assembly."<sup>387</sup> A robust and independent legal profession is a cornerstone for the maintenance of the rule of law and respect for human rights in a democratic society, as lawyers play a key role in protecting individuals' access to justice and redress, and to ensuring due process and fair trial rights.

Before the trial had even begun, four of Mr. Zamora's lawyers were subject to criminalization. A fifth reported being harassed and surveilled. The charges against the four lawyers stemmed directly from their representation of Mr. Zamora:

(1) Mario Eduardo Castañeda and (2) Romeo Montoya García –

During Mr. Zamora's first statement hearing on August 3, 2022, the prosecutor announced that she had opened investigations into Mr. Zamora's lawyers for "possible occurrence of other crimes" on the basis of the audio recording in which Mr. García

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<sup>386</sup>UN Basic Principles on the Role of Lawyers, September 17, 1990, Principle 16.

<sup>387</sup> Id., Principle 23. See, also, ICCPR, Articles 18, 19, 21, 22.

Navarrijo, Mr. Castañeda, Mr. Montoya García, Ms. Silva, and Mr. Zamora can be heard. Following implicit pressure from Judge Orellana about an alleged “conflict of interest,” they resigned from Mr. Zamora’s defense that day, forcing Mr. Zamora to scramble to find a new lawyer before the rescheduled hearing on August 8. The prosecution went on to charge the two lawyers with “obstruction of justice.”

On January 19, arrest warrants were reportedly issued. Mr. Castañeda was arrested and detained that same day.<sup>388</sup> On February 17, Mr. Castañeda was transferred to a maximum-security prison the news media has called “highly dangerous.”<sup>389</sup> According to news reports, this transfer appeared calculated to put pressure on him, as he was now being held in a facility with individuals he had convicted as a prosecutor.<sup>390</sup> Mr. Castañeda accepted the charge against him on February 21.<sup>391</sup> He was sentenced to three years imprisonment, which was commuted with payment. On April 25, Mr. Montoya García turned himself in and accepted the charge against him. He was sentenced to six years imprisonment, which was reduced to three, and then commuted with payment.<sup>392</sup>

(3) Christian Ulate – Mr. Zamora’s third lawyer reported being followed and subject to intimidation when he took up Mr. Zamora’s case.<sup>393</sup> He soon left Guatemala.

(4) Juan Francisco Solórzano Foppa and (5) Justino Brito Torres –

In October 2022, Mr. Solórzano Foppa and Mr. Brito Torres took over Mr. Zamora’s defense after Mr. Ulate left Guatemala. At Mr. Zamora’s intermediate stage hearing on December 8, 2022, the prosecutor’s office requested Judge Orellana to open investigations against Mr. Solórzano Foppa and Mr. Brito Torres for allegedly obstructing justice because they presented the art sale contract to the prosecutor’s office as evidence.<sup>394</sup> Judge Orellana ordered it.

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<sup>388</sup> Prensa Libre, “El MP vincula a Jose Ruben Zamora en Nuevo Case por conspiración para la obstrucción de justicia y detiene a uno de sus abogados” [The MP links Jose Rubén Zamora in a new case for conspiracy to obstruct justice and detains one of his lawyers], January 19, 2023. Available at <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/>.

<sup>389</sup> Crónica, “Tras traslado a carcel de alta peligrosidad, abogado Castaneda acepta cargos en su contra” [After transfer to a highly dangerous prison, lawyer Castañeda accepts charges against him], February 21, 2023. Available at <https://cronica.com.gt/tras-traslado-a-carcel-de-alta-peligrosidad-abogado-castaneda-acepta-cargos-en-su-contra/>.

<sup>390</sup> Id.

<sup>391</sup> Id.

<sup>392</sup> República, “Condenan a Romeo Montoya García, exabogado de José Rubén Zamora” [Romeo Montoya García, former lawyer of José Rubén Zamora, is sentenced], April 25, 2023. Available at <https://republica.gt/seguridad-y-justicia/condenan-a-romeo-montoya-garcia-exabogado-de-jose-ruben-zamora-202342512560>.

<sup>393</sup> Committee to Protect Journalists, “Tipping the Scales: Journalists’ Lawyers Face Retaliation Around the Globe”, October 12, 2023.

<sup>394</sup> Monitor’s Notes, December 8, 2022.



Mr. Solórzano Foppa and Mr. Brito Torres went to the prosecutor's office three times, offering to collaborate with the investigation. They also requested copies of the investigation files. However, the prosecutors never took their testimony and also never shared the files with the two lawyers.<sup>395</sup>

Citing the ongoing proceedings against them, Mr. Solórzano Foppa and Mr. Brito Torres resigned from Mr. Zamora's defense on March 3, 2023.<sup>396</sup>

Because of the prosecution's lack of response, the two lawyers requested a court hearing.<sup>397</sup> During the hearing, which occurred on March 21, a judge took control of the investigation (from the prosecution). The judge also agreed to their request to assist each other as defense attorneys and granted them access to their files.<sup>398</sup>

On April 20, despite their ongoing cooperation in the proceedings against them, Mr. Solórzano Foppa and Mr. Brito Torres were arrested.<sup>399</sup> At the first statement hearing on April 27, they were both charged with "unfaithful patronage" for assisting each other in their cases (even though the judge had authorized this at the prior hearing) and "obstruction of justice" for submitting the art sale contract while acting as counsel to Mr. Zamora. They were ordered to preventative detention in Mariscal Zavala prison, the same facility where Mr. Zamora has been held. The two lawyers shared a cell.

On May 20, after the prosecutor's office requested their transfer to another facility in order to separate the two, Mr. Brito Torres was moved to the Preventative Center for Men of Zone 18, a large facility with detainees accused of serious crimes. He was subjected to threats and extortion in the new facility.<sup>400</sup>

On June 9, Mr. Solórzano Foppa and Mr. Brito Torres accepted the charges against them.<sup>401</sup> Mr. Solórzano Foppa had announced that he would accept the charges because

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<sup>395</sup> Interview with a Guatemalan lawyer knowledgeable about Brito Torrez and Solórzano Foppa's cases, May 26, 2023.

<sup>396</sup> Qué Pasa Media, "Cuarto abogado del reconocido periodista J.R. Zamora renuncia en Guatemala" [Fourth lawyer of renowned journalist JR Zamora resigns in Guatemala], March 3, 2023. Available at <https://quepasamedia.com/noticias/cuarto-abogado-del-reconocido-periodista-j-r-zamora-renuncia-en-guatemala/>.

<sup>397</sup> Briefs requesting jurisdictional control and discrepancy hearings, Brito Torrez and Solórzano Foppa, March 16, 2023.

<sup>398</sup> Audio and transcript of the hearing, April 27, 2023.

<sup>399</sup> Prensa Libre, "Capturan a Juan Francisco Solórzano Foppa y Justino Brito Torres señalados de supuesta obstaculización a la acción penal" [Juan Francisco Solórzano Foppa and Justino Brito Torres arrested for allegedly obstructing the prosecution of a crime], April 20, 2023.

<sup>400</sup> Interview with a Guatemalan lawyer knowledgeable about Brito Torrez and Solórzano Foppa's cases, May 26, 2023.

<sup>401</sup> Diario La Hora, "Para este día, se tiene programada la audiencia de aceptación de cargos de los abogados Juan Francisco Solórzano #Foppa y Justino Brito", Twitter, Available at <https://twitter.com/lahoragt/status/1667193264758218752>.

“he did not have access to the evidence to defend himself” and did not expect a fair trial.<sup>402</sup> Mr. Solórzano Foppa and Mr. Brito Torres were sentenced to two years of imprisonment, commutable with a payment of 5 QZ per day.<sup>403</sup>

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The criminalization of four of Mr. Zamora’s lawyers in the early stages of trial (and the intimidation of a fifth) sent a chilling message of the consequences of representing Mr. Zamora. After Mr. Solórzano Foppa and Mr. Brito Torres resigned, Mr. Zamora’s family reported difficulty finding new lawyers to represent him at trial, hampering his ability to mount a defense.<sup>404</sup>

Even public defenders assigned to Mr. Zamora by the Institute of Public Criminal Defense (IDPP) were not immune to the threat of criminalization.<sup>405</sup> After Fidencia Orozco García was apparently assigned to Mr. Zamora’s case (after Mr. Zamora asked to be assigned a public defender), the FCT threatened to file a complaint against the director of the IDPP and Ms. Orozco García, prompting IDPP to remove her from Mr. Zamora’s case.<sup>406</sup>

Ms. Gómez also lost her first lawyer, Armando Mendoza, because the Court of Honor of the Guatemalan Bar Association and Notaries (CANG) opened an investigation into him for “lack of ethics,” shortly after he took on her case.<sup>407</sup>

The foregoing examples demonstrate a clear pattern of state harassment and criminalization of Mr. Zamora’s defense team. Guatemalan authorities failed to uphold their duty to protect lawyers from harassment and intimidation, as required under the UN Basic Principles. Even worse, all signs indicate that the prosecutor’s office deliberately targeted Mr. Zamora’s lawyers with criminalization in order to force defense counsel off his case.

Because of the continuous criminalization and harassment of his lawyers, Mr. Zamora had to seek new lawyers multiple times throughout the criminal proceedings against him.

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<sup>402</sup> Prensa Comunitaria, “Foppa es el tercer abogado de Jose Rubén Zamora que aceptará cargos” [Foppa is the third lawyer of Jose Rubén Zamora who will accept charges], June 2, 2023. Available at <https://prensacomunitaria.org/2023/06/foppa-es-el-tercer-abogado-de-jose-ruben-zamora-que-aceptara-cargos/>.

<sup>403</sup> Summary record of the sentence issued on June 9, 2023 by the Seventh Pluripersonal Court of First Criminal Instance for Drug Trafficking and Environmental Crimes of Guatemala City, against attorneys Brito Torrez and Solorzano Foppa.

<sup>404</sup> Email exchange with the Cyrus R. Vance Center for International Justice, January 25, 2024.

<sup>405</sup> La Hora, “Samari Gómez: Estaán tratando de criminalizar que haya perdido mi abogado” [Samari Gómez: “They are trying to criminalize the fact that I have lost my lawyer”], December 12, 2022. Available at <https://lahora.gt/nacionales/diego/2022/12/12/samari-gomez-estan-tratando-de-criminalizar-que-haya-perdido-mi-abogado/>.

<sup>406</sup> Twitter Post, Ricardo Mendez Ruiz, “Ante el evidente tráfico...un abogado de la Defensa Pública Penal?”, May 16, 2023. Available at [https://twitter.com/rmendezruiz/status/1658512405381496833?s=48&t=Z-fsd5WDjFpQOS6LX\\_caOA](https://twitter.com/rmendezruiz/status/1658512405381496833?s=48&t=Z-fsd5WDjFpQOS6LX_caOA).

<sup>407</sup> La Hora, “Samari Gómez: Están tratando de criminalizar que haya perdido mi abogado”, December 12, 2022.

This made it difficult for him to prepare a thorough and rigorous defense, as each successive team had to (often very quickly) familiarize themselves with the voluminous case file. As described above, several of his lawyers did not have access to all the documents in the prosecution's case file because of the turnover in counsel.

The punitive actions taken against Mr. Zamora's lawyers had a chilling effect beyond Mr. Zamora's ability to retain counsel. The message from Guatemalan authorities was clear – lawyers who represent journalists and anti-corruption actors may become targets themselves.

# CONCLUSION



## Professor Camilo Sánchez concludes:

The criminal case against José Rubén Zamora Marroquín, a prominent Guatemalan journalist and founder of the newspaper *elPeriódico*, set in a complex legal and political landscape, underscores the ongoing struggles in Guatemala for press freedom, judicial independence, and anti-corruption initiatives. Mr. Zamora, known for his investigative journalism into government corruption, faced multiple legal charges in a case initiated by a complaint from Ronald Giovanni García Navarizo, a former banker under investigation for financial crimes. The charges against Mr. Zamora included money laundering, influence peddling, and blackmail. These charges align with a broader pattern of governmental retaliation against journalists, human rights activists, and anti-corruption advocates since the conclusion of the International Commission against Impunity in Guatemala (CICIG), a trend that intensified under President Alejandro Giammattei's administration.

Government pressure, including advertising boycotts, significantly impacted *elPeriódico*, leading to financial strains and frozen bank accounts. These combined pressures, exacerbated by Zamora's legal battles, culminated in the cessation of the newspaper's print and online operations, dealing a harsh blow to independent journalism in Guatemala.

The extensive evidence outlined in this report underscores that the pre-trial proceedings against Mr. Zamora markedly deviated from established principles of justice, fairness, and due process. The detailed reconstruction of the proceedings reveals that from the start, the prosecution did not present a solid case against Mr. Zamora. There was a notable absence of thorough investigation prior to his arrest and subsequent detention, indicating that the legal proceedings were intended to harass and pressure, rather than a genuine pursuit of justice.

From an international human rights perspective, Mr. Zamora's arrest and detention were arbitrary, lacking solid evidence, and carried out without the necessary investigative groundwork. This approach implies that the arrest and detention were strategically employed to exert undue pressure on Mr. Zamora. The prosecution's inability to build a case based on concrete evidence suggests that their strategy was less focused on proving guilt in a court of law and more on using the judicial process as a tool for intimidation and coercion.

This coercive strategy is further evidenced by the numerous obstacles faced by Mr. Zamora's defense team. In addition to difficulties accessing critical evidence, four of his lawyers were prosecuted, detained, and pressured into accepting the charges against

them. This affected Mr. Zamora's right to a fair defense and further indicates a deliberate attempt by the prosecution to weaken his ability to mount a defense.

Moreover, the inhumane conditions of Mr. Zamora's detention — prolonged solitary confinement, limited access to natural light, and unsuitable physical conditions — along with evidence of threats to his mental health, seem calculated to undermine his mental integrity and resilience. This approach not only violates fundamental human rights but also represents a strategic manipulation of the detention environment to exert undue pressure on the accused.

The violations in the preliminary and investigation stages were left unaddressed and were further exacerbated in the subsequent proceedings, particularly under the oversight of Judge Orellana during the intermediate phase. Judge Orellana's outright rejection of all defense witnesses, despite their evident relevance, was a blatant miscarriage of justice, disregarding the principle of equality of arms. His decision, based on a subjective assessment of the value of their testimony, undermined the defense's strategy to establish the lawful origin of the funds and challenge the money laundering charges. The judge's further rejection of key documentary evidence proposed by the defense, contrasted with the near-total acceptance of the prosecution's evidence, including controversially obtained audio recordings, resulted in a significant imbalance, tipping the scales in favor of the prosecution.

This imbalance was glaringly apparent in the trial court's judgment, which relied predominantly on the prosecution's narrative, effectively sidelining the defense's theory due to the lack of supporting evidence - evidence that had been excluded by Judge Orellana. The oral and debate stage of the trial further added to the imbalance. The presiding judge severely restricted the defense's cross-examination, particularly of the primary witness for the prosecution. This limitation, which included dismissals of questions not posed in "correct technical form" and abrupt termination of the defense's questioning, significantly hindered Mr. Zamora's right to a fair trial.

Compounding these issues was Mr. Zamora's inadequate legal representation. Throughout the trial, it was evident that his lawyers, including the final state-appointed attorney, lacked adequate time and access to essential materials to mount a robust defense. This deficiency was manifest in their limited familiarity with key documents and ineffective cross-examination techniques. The court's failure to recognize and address these deficiencies further underscores the trial's unfairness.

Consequently, Mr. Zamora's trial was marred by fundamental injustices, from the illegal shift in the burden of proof - as exemplified by the trial court's erroneous conclusion that Mr. Zamora failed to prove the legality of the funds - to the overall denial of a fair trial. His immediate release and the dismissal of all charges are warranted. Should a retrial occur, it must strictly adhere to international standards, ensuring a different panel of judges who

are demonstrably impartial and independent, free from any external pressures or influences.

### **Recommendations to the Guatemalan State:**

1. Order the immediate release and dismissal of all charges against Mr. Zamora, acknowledging that the initial prosecution was unfounded and should not have occurred. However, if a retrial occurs, it must be conducted with strict adherence to international standards of due process and freedom of expression. Any retrial should include a comprehensive re-examination of all pre-trial and trial procedures to rectify previous violations. Prosecution should never be used as a means of reprisal or intimidation.

2. Provide Mr. Zamora with appropriate remedies and reparations for the violations he has endured.

3. Investigate the actions of judicial actors involved in the Zamora case to identify and address any potential violations of legal and ethical standards.

4. Implement measures to safeguard the judiciary from political pressures to help guarantee that judicial decisions are based on legal merit.

5. Develop clear and accountable procedures for reviewing and overseeing judicial decisions, especially in sensitive or high-profile cases. The State must establish or fortify mechanisms for monitoring and addressing legal irregularities, particularly those involving human rights violations.

6. Ensure the protection of press freedom and end criminalization of journalists who exercise their rights to expression protected under international and regional human rights law.

7. Actively engage with international and regional human rights bodies, especially the Inter-American Commission on Human Rights (IACHR)'s Special Rapporteurship on Freedom of Expression and the United Nations Working Group on Arbitrary Detention. Facilitate the visit of the Special Rapporteur and implement recommendations from the relevant human rights bodies.

# ANNEX



## GRADING METHODOLOGY

Experts should assign a grade of A, B, C, D, or F to the trial reflecting their view of whether and the extent to which the trial complied with relevant international human rights law, taking into account, *inter alia*:

- The severity of the violation(s) that occurred;
- Whether the violation(s) affected the outcome of the trial;
- Whether the charges were brought in whole or in part for improper motives, including political motives, economic motives, or discrimination, such as on the basis of “race, color, sex, language, religion, political or another opinion, national or social origin, property, birth or another status,”<sup>408</sup> and retaliation for human rights advocacy (even if the defendant was ultimately acquitted);
- The extent of the harm related to the charges (including but not limited to whether the defendant was unjustly convicted and if so, the sentence imposed; whether the defendant was kept in unjustified pretrial detention, even if the defendant was ultimately acquitted at trial; whether the defendant was mistreated in connection with the charges or trial; and/or the extent to which the defendant’s reputation was harmed by virtue of the bringing of charges); and
- The compatibility of the law and procedure pursuant to which the defendant was prosecuted with international human rights law.

### Grading Levels

- A: A trial that, based on the monitoring, appeared to comply with international standards.
- B: A trial that appeared to generally comply with relevant human rights standards excepting minor violations, and where the violation(s) had no effect on the outcome and did not result in significant harm.
- C: A trial that did not meet international standards, but where the violation(s) had no effect on the outcome and did not result in significant harm.
- D: A trial characterized by one or more violations of international standards that affected the outcome and/or resulted in significant harm.
- F: A trial that entailed a gross violation of international standards that affected the outcome and/or resulted in significant harm.

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<sup>408</sup> ICCPR, Article 26.