

January 15, 2004

**President of the Republic of Guatemala
Lic. Oscar Berger
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Guatemala City,
Guatemala
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Dear President Berger,

On behalf of the Lawyers Committee for Human Rights, a US-based non-governmental organization working to promote and protect human rights around the world, I would like to express great concern about the upcoming criminal trial of Mr. Bruce Harris, before the 12th Criminal Court (case *Umaña v. Harris*), scheduled for January 22, 2004. Mr. Harris is being prosecuted for criminal defamation and, if convicted, may be sentenced to five years imprisonment. We believe that this criminal prosecution violates Mr. Harris' right to freedom of expression, a fundamental right protected under international human rights law. We therefore call upon you to ensure respect for Mr. Harris' rights, as required by international law.

Mr. Harris, who is the Director of Latin America Programs of the non-governmental organization Casa Alianza, was charged with criminal defamation in 1997, upon the complaint of Ms. Susana Maria Luarca Saracho de Umaña. The complaint was filed by Ms. Umaña following a press conference given jointly by Casa Alianza (represented by Mr. Harris) and the Guatemalan Solicitor General's office. This press conference was organized to announce the results of an investigation conducted by Casa Alianza and the Solicitor General's office into the trafficking of children through Guatemala. During the conference, Mr. Harris is said to have alleged that Ms. Umaña had used "undue influence" with the government authorities in facilitating international adoptions. Ms. Umaña was among several other lawyers named in criminal accusations related to child trafficking filed after the joint investigation. In 1999, Guatemala's Constitutional Court ruled that only journalists are entitled to freedom of expression and Mr. Harris should be prosecuted in the criminal courts.

Freedom of expression is a basic human right, protected by a variety of international treaties and instruments. Both the *International Covenant on Civil and Political Rights* and the *American Convention on Human Rights*, to which Guatemala is party, guarantee freedom of expression, which is articulated as a right belonging to all people, not just to a particular category such as journalists. In August 2002, then UN High Commissioner for Human Rights, Mary

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Robinson, expressed her concern about the case against Mr. Harris and stated that it was the result of an “overly restrictive interpretation of the right to freedom of expression.”

Restrictions on freedom of expression are permitted where absolutely necessary on specific grounds such as protection of national security or to ensure respect for the rights or reputation of others. The jurisprudence of international courts and treaty monitoring bodies makes clear that such restrictions must be narrowly interpreted. In particular, the measures taken to restrict exercise of freedom of expression must be proportionate. Thus, any penalty for expression that is considered to damage the reputation of others cannot be excessive. Criminal sanctions for defamation may, in themselves, be considered excessive, particularly when such sanctions potentially include several years of imprisonment.

Many countries have abolished or no longer bring criminal charges for defamation, and this has also been recommended by international experts in the field (see the *Principles on Freedom of Expression and Protection of Reputation*, drafted by an expert group under the auspices of the organization Article 19, in July 2000). In addition, the Inter-American Commission on Human Rights has adopted the *Inter-American Declaration of Principles on Freedom of Expression*, which stipulate that “the protection of a person’s reputation should only be guaranteed through civil sanctions in those cases in which the person offended is a public official, a public person or a private person who has voluntarily become involved in matters of public interest.” In this case, Ms. Umaña is a well-known lawyer (in 1997 she was the wife of the President of the Supreme Court) who is involved in the international adoption of children, an issue of great public interest.

In addition, it is particularly important in criminal cases that the truth of the statement made is a defense to the defamation charge. Consistent with the criminal law principle of presumption of innocence, the person bringing a criminal charge of defamation should be required to show the falsity of the impugned statement. Ms. Umaña was among those named in a criminal accusation for child trafficking, and was also subsequently arrested in a separate case related to a stolen child.

The work of Casa Alianza and Bruce Harris in raising global awareness of violations of children’s rights is recognized and highly respected internationally. Mr. Harris is one of the foremost defenders of children’s rights, and it is imperative that he is able to fully exercise his right to freedom of expression in order to continue his crucial work. The importance of ensuring full freedom of expression for human rights defenders is recognized in the 1998 *United Nations Declaration on Human Rights Defenders*, an instrument which emphasizes the need to protect human rights defenders and to promote their activities. Article 6 of the Declaration in particular provides that “everyone has the right freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms.”

We strongly urge you to guarantee that freedom of expression is afforded to all persons in Guatemala, and particularly to those who contribute to peace, democracy and the rule of law

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through their work to promote and protect human rights. The persecution of human rights defenders in Guatemala is a serious problem and must be ended immediately, whether such persecution take the form of physical violence and intimidation, or politically motivated prosecution and imprisonment. The right of Bruce Harris to speak freely about human rights issues and violations must be ensured and his criminal prosecution for exercising this right immediately ended.

Thank you for your consideration of this important matter. The Lawyers Committee will continue to monitor Mr. Harris' case closely and would appreciate any information that you can give in response to our concerns.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Neil Hicks'.

Neil Hicks
Director, Human Rights Defenders Program

Cc. Presidente de la Corte Suprema de Justicia
Lic. Alfonso Carrillo Castillo

Ambassador John Hamilton
United States Embassy to Guatemala

Ms. Hina Jilani
U.N. Special Representative on Human Rights Defenders

Mr. Lionel Maza, Chargé D'Affairs
Embassy of Guatemala to the United States

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