STATEMENT ON THE CRIMINALIZATION AND SENTENCING OF VIRGINIA LAPARRA AND OTHER ANTI-CORRUPTION PROSECUTORS AND JUDGES IN GUATEMALA

Traducción al español disponible aquí

The New York City Bar Association denounces the continued persecution and criminalization of Virginia Laparra and other anti-corruption prosecutors and judges in Guatemala. The City Bar calls on Guatemalan authorities, pursuant to international law, to immediately release Virginia Laparra from prison, dismiss the unwarranted and unlawful criminal proceedings against her, and ensure that any disciplinary action taken against her and other justice operators who handle corruption cases be lawfully based and include all the protections of due process.

The New York City Bar Association has released previous statements denouncing the continued persecution of justice operators in Guatemala and calling on Guatemalan authorities to cease the criminalization of and attacks on lawyers, judges, prosecutors, and former prosecutors who have fought corruption in Guatemala. Unfortunately, the attacks, harassment, and arrests have continued to escalate. The pervasive harassment and criminalization of those lawyers, prosecutors, and judges who fulfill their professional obligations in anti-corruption cases or who otherwise denounce corruption weaken the rule of law and create an environment of impunity.1

I. THE ARREST AND SENTENCING OF VIRGINIA LAPARRA ARE PART OF THE SYSTEMIC PERSECUTION OF JUSTICE OPERATORS IN GUATEMALA

Virginia Laparra is the former head of the Special Prosecutor’s Office against Impunity (FECI) in Quetzaltenango, Guatemala. In 2017 and 2018, Laparra filed several administrative complaints before the Judicial Disciplinary Board against Judge Lesther Castellanos, in charge of the High-Risk Court of Quetzaltenango. One of the complaints referred to the leaking of


About the Association
The mission of the New York City Bar Association, which was founded in 1870 and has over 23,000 members, is to equip and mobilize a diverse legal profession to practice with excellence, promote reform of the law, and uphold the rule of law and access to justice in support of a fair society and the public interest in our community, our nation, and throughout the world.
information from a case under seal to a lawyer. As a result of this complaint, in May 2018 the Judicial Disciplinary Board sanctioned Judge Castellanos for having leaked confidential information and suspended him from his duties for five days without pay. In retaliation, Judge Castellanos filed a criminal complaint against Laparra for alleged crimes of false testimony, usurpation of powers and abuse of authority, arguing that she lacked the authority to file the administrative complaint against him. Laparra was arrested in February 2022 and charged with “continuous abuse of authority committed against the public administration.” The trial judge ruled that Laparra could only be tried for abuse of authority and not for the other crimes alleged in the complaint. On December 16, 2022, Laparra was convicted and sentenced to four years in prison for the crime of abuse of authority. Another criminal complaint, arising from the same facts, has been filed against Laparra in Quetzaltenango. Laparra has remained imprisoned since her arrest in February 2022.

Laparra’s detention, conviction and sentencing take place in a context of arbitrary persecution against former prosecutors of FECI and members of the International Commission Against Impunity in Guatemala (CICIG), especially women, as well as against judges who have overseen cases of corruption and human rights violations.

II. THE CHARGE AGAINST MS. LAPARRA FAILS TO MEET THE INTERNATIONAL LEGAL STANDARD REQUIRING THAT CRIMINAL CHARGES BE FORMULATED WITH SUFFICIENT PRECISION AND CLARITY

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5 Sentencia a Virginia Laparra, Una ex fiscal condenada por denunciar, supra note 2.

6 Condena a Virginia Laparra: La contraofensiva al legado de la CICIG, supra note 4.

7 Sentencia a Virginia Laparra, Una ex fiscal condenada por denunciar, supra note 2.

8 Id.

9 Condena a Virginia Laparra: La contraofensiva al legado de la CICIG, supra note 4. See also Sentencia a Virginia Laparra, Una ex fiscal condenada por denunciar, supra note 2.

As applied to the facts of this case, the crime of “continuous abuse of authority committed against the public administration” fails to meet international legal standards of precision and clarity for criminal charges.

As discussed below, Laparra’s actions were not foreseeably prohibited under the law; thus, her actions were not punishable, and her conviction and imprisonment were illegal. Guatemalan authorities violated the principles of legality and legal certainty in Laparra’s case.

The principles of legality and legal certainty - *nullum crimen sine lege, nulla poena sine lege* - require that laws criminalizing behavior be formulated with precision and clarity. As stated nearly a century ago by the Permanent Court of International Justice, “It must be possible for the individual to know, beforehand, whether his acts are lawful or liable to punishment.” Thus, that behavior must be clearly prohibited under the law. These general principles of law, which are also customary international law, are incorporated in many international and regional human rights instruments, including but not limited to:

1. Article 11(2) of the Universal Declaration of Human Rights;
2. Article 15 of the International Covenant on Civil and Political Rights (ICCPR);
3. Article 9 of the American Convention on Human Rights (American Convention);
4. Article 7 of the European Convention on Human Rights;
5. Articles 6 and 7(2) of the African Charter on Human and Peoples’ Rights; and

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11 P.C.I.J., Advisory Opinion No. 65 of the Permanent Court of International Justice on Certain Danzig Legislative Decrees, p. 57 (1935).

12 Customary international law refers to international obligations arising from established international practices, as opposed to obligations arising from formal written conventions and treaties. Customary international law results from a general and consistent practice of states that they follow from a sense of legal obligation. *Customary International Law*, Wex, Legal Information Institute, Cornell Law School, [https://www.law.cornell.edu/wex/customary_international_law](https://www.law.cornell.edu/wex/customary_international_law).

13 Universal Declaration of Human Rights, Article 11(2), GA Res. 217A (III), UNGAOR, 3rd Sess., Supp. No. 13, UN Doc. A/810 (1948): “No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed.”

14 International Covenant on Civil and Political Rights, Article 15, Dec. 16, 1966, S. Exec. Rep. 102-23, 999 U.N.T.S. 171 [hereinafter ICCPR]: “No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed.”

15 Organization of American States, American Convention on Human Rights, Article 9, adopted on Nov. 22, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123 [hereinafter American Convention]: “No one shall be convicted of any act or omission that did not constitute a criminal offense, under the applicable law, at the time it was committed.”

16 Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, Article 7, adopted on Nov. 4, 1950: “No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed.”

17 Organization of African Unity, African Charter on Human and Peoples' Rights ("Banjul Charter"), Article 6, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982): “Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained.” Article 7(2): “No one may be condemned for an act or omission which did not constitute a legally punishable offense at the time it was committed ….”
6) Article 15 of the revised Arab Charter on Human Rights.\footnote{League of Arab States, Arab Charter on Human Rights, Article 15 (revised in 2004): “No crime and no penalty can be established without a prior provision of the law.”}

As a party to both the ICCPR and the American Convention, Guatemala is obligated to uphold these commitments, however, it is also worth noting that the universal acceptance of these principles signifies that they exist independently of national law and must be respected by all nations.

The Constitution of Guatemala also recognizes the preeminence of international law over domestic law, signaling the legal importance of obligations under these instruments.\footnote{Political Constitution of the Republic of Guatemala, 1985, Article 46 (revised in 1993) [hereinafter Constitution of the Republic of Guatemala]: “The general principle is established that in matters of human rights, the treaties and conventions accepted and ratified by Guatemala have preeminence over domestic law.”} Guatemalan authorities have an obligation to respect the principles of legality and legal certainty based on the nation’s international treaty obligations and under customary international law.

The regulation creating the Feci Department of Quetzaltenango (2016 Agreement) does not state or imply that the filing of complaints, particularly in the course of performing one’s professional duties, could be an “abuse of authority,” let alone that it could constitute the basis for any sort of sanction, much less a criminal prosecution.\footnote{See Acuerdo de Fiscalia General 06-2016, creating the Feci special department headquartered in Quetzaltenango [hereinafter 2016 Agreement]. The regulations governing Feci nationwide are equally silent. Acuerdo de Fiscalia General 26-2008, as modified by Acuerdo 98-2011, modified by Acuerdo 18-2012, as modified by Acuerdo 59-2019 creating the Feci (accessible at \url{https://www.mp.gob.gt/transparencia/info/res/source/Articulo%2010:%20Informacion%20General%20C3%A1ctico%20Abic%20C3%83%81ulica%20de%20Oficio%20%20Estructura%20%20Org%20%20C3%A1tica%20Fuciones%20%20%20Marco%20Normativo%20ACUERDOS%20AREA%20FISCAL%20ACUERDO%2059-2019%20FISCALIA%20ESPECIAL%20%20CONT%20%20LA%20%20IMPUNIDAD%20%20FE}.} In fact, reporting criminal conduct such as corruption was part of Laparra’s duties as a Feci prosecutor. According to the regulations governing the Feci, the role of the Feci is to hear, investigate, and criminally prosecute cases related to acts involving the activity of illegal security forces, clandestine security apparatuses and any other criminal conduct related to them or related to acts involving individuals and public officials that may directly or indirectly generate impunity.\footnote{Feci National Regulation, id.} The 2016 Agreement further states that the main function of the Feci in Quetzaltenango is to effectively pursue criminal prosecution of crimes committed through the activity of illegal security forces, clandestine security apparatuses and any other criminal conduct related to them.\footnote{2016 Agreement, supra note 20.} In this case, Laparra was empowered by both of the Feci agreements to file complaints in order to protect the investigation she was overseeing and to prevent impunity. Furthermore, as a public official, Laparra has a duty to report criminal conduct and to not have done so would be considered a crime.\footnote{Criminal Code of Guatemala, Article 457 (accessible at: \url{https://tse.org.gt/images/UECFFPP/leyes/Codigo_Penal.pdf}).} Moreover, Guatemala’s Law on Judicial Careers establishes that any legal official who is aware that a judge or magistrate has
committed an offense may file an administrative complaint.\textsuperscript{24} Thus, even if Laparra’s filing of a complaint against Judge Castellanos could be considered as contrary to her functions as a FECI prosecutor, the law establishes that any legal official, which surely would include a prosecutor, not only is able to file an administrative complaint against a judge when she has knowledge of criminal conduct, but is required to. This is exactly what Laparra did.

Given that reporting criminal conduct such as corruption falls well within the duties of a public official, especially a legal official and let alone a prosecutor, Laparra could not reasonably foresee that her filing administrative complaints alleging corruption by the judge before whom she appeared could constitute a crime. On the contrary: it is common, accepted practice for prosecutors to file administrative complaints against judges in Guatemala.\textsuperscript{25} A document evidencing over 200 such instances was not allowed to be admitted in Laparra’s trial.\textsuperscript{26} Despite this widespread and accepted practice, Guatemalan authorities chose to bring a criminal prosecution against Laparra when she filed such complaints while exercising her duties as a FECI prosecutor.

Prosecuting Laparra for reporting judicial corruption to the judicial disciplinary board thus violated the principle of legal certainty in Article 9 of the American Convention. The Inter-American Court of Human Rights (IACtHR) in Castillo Petruzzi v. Peru stated that “crimes must be classified and described in precise and unambiguous language that narrowly defines the punishable offense.”\textsuperscript{27} The IACtHR ruled that this requires a clear definition of the criminalized conduct, including the elements and factors that distinguish it from other behaviors. Thus, even if Laparra’s complaints could somehow be construed as an abuse of her authority under the 2016 Agreement, the 2016 Agreement was, at best, not clear on whether reporting alleged judicial corruption abused her authority – and in fact, reporting the corruption of a public official is fulfilling her duties as a FECI prosecutor (and her duty as a public official).

By itself, the crime of “abuse of authority” would not be impermissibly vague in all contexts. For example, the United Nations Convention Against Corruption, to which Guatemala is a State Party,\textsuperscript{28} requires States to consider making “abuse of functions” a crime – provided that the abuse is “for the purpose of obtaining an undue advantage for himself or herself or for another person or entity.”\textsuperscript{29}

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\textsuperscript{24} Ley de la Carrera Judicial, Decreto 32-2016, Article 50 (\textit{accessible at http://ww2.oj.gob.gt/es/QueEsOJ/EstructuraOJ/UnidadesAdministrativas/CentroAnalisisDocumentacionJudicial/cds/CDs%20compilaciones/Compilacion%20Normativa%20GT/expedientes/03_06.pdf}).

\textsuperscript{25} Sentencia a Virginia Laparra, Una exfiscal condenada por denunciar, supra note 2; Condena a Virginia Laparra: La contraofensiva al legado de la CICIG, supra note 4.

\textsuperscript{26} Id.


\textsuperscript{28} See Part III below.

Even if her complaints had plausibly amounted to crimes – and nothing in the 2016 regulation on which the convicting court relied so states or implies, to the contrary Laparra was fulfilling her duties as required under the law– the convicting court’s criminal theory would still lack the necessary clarity, such as provided, for example, by the requirement of a purpose of “undue advantage” in the UN Convention. Yet here there was no allegation, let alone evidence, that Laparra filed her administrative complaints for the purpose of unduly advantaging herself or anyone else. The theory of the convicting court was that the mere filing of such complaints was a crime, regardless of purpose. As Laparra was fulfilling her required duties, this cannot be considered to have been for the purpose of undue advantage. In short, the crime of “abuse of authority” is impermissibly vague, not on its face, but as applied unforeseeably to the facts of this case.

Legal certainty is a fundamental element of the rule of law. The concept that the law must be sufficiently clear to provide all persons subject to the laws with the means to regulate their own conduct and to protect against the arbitrary use of public power operates as a foundational rule of law value. The actions of Guatemalan authorities in Laparra’s and other similar cases criminalizing actions that do not clearly—and in this case not even remotely—constitute a criminal offense ignore well-established principles of legality and legal certainty and threaten the rule of law.

III. THE CRIMINAL PROSECUTION OF LAPARRA FOR FILING COMPLAINTS AGAINST ALLEGED JUDICIAL CORRUPTION VIOLATES GUATEMALA’S INTERNATIONAL TREATY OBLIGATIONS TO PREVENT CORRUPTION AND TO PROTECT PERSONS WHO REPORT CORRUPTION

Under both the Inter-American Convention against Corruption (which Guatemala has been a State Party to since 2001),\(^{30}\) and the UN Convention against Corruption (which Guatemala joined in 2006),\(^{31}\) Guatemala has a duty to protect public officials who denounce corruption in good faith and through the appropriate channels.

Guatemala violated a duty to protect Laparra by instead prosecuting her. The Inter-American Convention against Corruption calls on States to consider measures to strengthen “[s]ystems for protecting public servants … who, in good faith, report acts of corruption … in accordance with their Constitutions and the basic principles of their domestic legal systems.”\(^{32}\) Here, Laparra was a public servant, and the court that convicted her made no finding that she acted in bad faith. Protecting her would have been consistent with Guatemala’s Constitution, which provides, “Publications which contain denunciations, criticisms or imputations against public officials or employees for acts done in the exercise of their offices shall not constitute crimes or


\(^{31}\) UN Convention Against Corruption, supra note 29.

\(^{32}\) Inter-American Convention Against Corruption, supra note 30, at Article III.8.
misdemeanors.” In filing administrative complaints against Judge Castellanos for alleged corrupt acts occurring in the course of his duties as a public official, Laparra acted within the bounds prescribed by her domestic legal system. By criminalizing Laparra’s reporting of corruption, Guatemala acted contrary to its duties under the Inter-American Convention.

Guatemala likewise acted contrary to the UN Convention against Corruption. The UN treaty requires States to protect reporting on corruption. States must consider adopting legal measures to “provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences” of corruption. Yet Laparra was convicted with no evidence of bad faith and no proof that she lacked reasonable grounds. Criminalizing her reporting constituted “unjustified treatment.”

Laparra’s reporting was even more entitled to protection because she was a prosecutor in an anti-corruption body. The UN Convention requires States to establish anti-corruption bodies. Guatemala recognizes that the FECI – where Laparra was a prosecutor – is an anti-corruption body. The UN Convention requires States to grant such bodies the “necessary independence” to carry out their functions “effectively and free from any undue influence.” By prosecuting, convicting, and imprisoning her, Guatemala exercised “undue influence” over Laparra. Guatemala thereby undermined the independence of its anti-corruption body.

Furthermore, the UN Convention obligates States to adopt measures to “facilitate the reporting by public officials of acts of corruption to appropriate authorities, when such acts come to their notice in the performance of their functions.” Laparra was a “public official.” She reported acts of alleged corruption to “appropriate authorities” – the judicial disciplinary board. The alleged acts came to her notice in the performance of her functions as a prosecutor. Instead of criminally prosecuting her, Guatemala was treaty bound to “facilitate” her reporting.

Guatemala’s obligation was even more pressing because Laparra reported judicial corruption. The UN Convention requires States to take measures against “corruption among members of the judiciary.” Far from preventing judicial corruption, prosecuting Laparra for blowing the whistle on a judge encourages corrupt judges to believe they can act with impunity.

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33 Constitution of the Republic of Guatemala, supra note 19, at Article 35: “No constituyen delito o falta las publicaciones que contengan denuncias, críticas o imputaciones contra funcionarios o empleados públicos por actos efectuados en el ejercicio de sus cargos.” (English translation ours.)

34 UN Convention Against Corruption, supra note 29, at Article 33.


37 UN Convention Against Corruption, supra note 29, at Articles 6.1, 6.2, and 36.

38 Id., Article 8.4.

39 Id., Article 11.1.
In sum, prosecuting Laparra for reporting alleged judicial corruption violated multiple duties of Guatemala under the anti-corruption treaties of the Organization of American States and the United Nations, to which Guatemala is a State Party.

IV. THE CRIMINAL CHARGES AGAINST LAPARRA VIOLATE THE FREE EXERCISE OF PROSECUTORS’ INHERENT PROFESSIONAL FUNCTIONS

Laparra was charged and convicted of continuous abuse of authority committed against the public administration; however, her actions constituted an inherent part of her functions as a prosecutor, which are protected under international law. The American Convention, the ICCPR, and jurisprudence from the Inter-American Court of Human Rights all have recognized States’ duty to preserve the independence of prosecutors as well as the judiciary and to protect the role of lawyers, particularly those who are acting as human rights defenders. Through its persecution and criminalization of prosecutors, such as Laparra, whose very role is to investigate and denounce corruption, the Guatemalan Government continues to contravene its international obligations.

Laparra’s arrest was a direct result of her filing administrative complaints against Judge Castellanos for alleged corruption within the judiciary, an action which would foreseeably fall under the purview of an anti-corruption prosecutor. Even if filing disciplinary complaints was not expressly enumerated within her powers, Laparra nevertheless was entitled to certain protections under international law that safeguard her ability to fulfill her duties objectively and without risk of retaliation.

Both Article 14.1 of the ICCPR and Article 8 of the American Convention provide due process guarantees for all persons. These due process protections extend to prosecutors, who are guaranteed impartiality and objectivity in proceedings against them because otherwise there may exist an “objective doubt regarding their real possibility of performing their duties without fear of reprisals.”

The Inter-American Court has held that States must guarantee prosecutors freedom from external pressures in order to preserve the independence and objectivity of the exercise of their functions. In reaching this conclusion, the Inter-American Court relies on the UN Guidelines on the Role of Prosecutors, noting that the Guidelines call on States to “ensure that prosecutors are able to perform their professional functions without intimidation… or unjustified exposure to civil, penal or other liability.” The Court has further stated that proceedings against prosecutors must

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40 See supra, Sec. II.
“compl[y] with the right to a fair trial.”\textsuperscript{44} To open prosecutors to retaliation based on the decisions made in the course of their professional duties would constitute a violation of Article 8.1 of the Convention.\textsuperscript{45}

Both the UN Guidelines on the Role of Prosecutors and the Office of the UN Special Rapporteur on the independence of judges and lawyers have addressed the particular role that prosecutors necessarily play in a functioning justice system. In 2012, the former Special Rapporteur, Gabriela Knaul, noted that prosecutors are vital in “protecting society from a culture of impunity,”\textsuperscript{46} and that it is critical that they are able to perform their duties independently, impartially, objectively, and in a transparent manner.\textsuperscript{47} Prosecutors are tasked with the responsibility of upholding human rights and protecting due process principles within the criminal justice system;\textsuperscript{48} their role as “gatekeepers to the judiciary”\textsuperscript{49} inevitably heightens the need for prosecutors to be able to operate free from undue influence or interference.

Laparra is one of many anti-corruption officials in Guatemala to have faced retaliation by means of criminal proceedings for performing an ordinary function within the very type of investigations the FECI was created to pursue. As elaborated in Section II, supra, the act of presenting administrative complaints against judges in Guatemala is not unusual and should be considered a professional function of an anti-corruption prosecutor. Yet Laparra was criminally sanctioned for this act and sentenced to four years in prison.

In prosecuting Laparra for performing this function, the Guatemalan Government denied Laparra the protections to which she is entitled under international law as a prosecutor. The State’s continued persistent targeting of anti-corruption judges and prosecutors for performing routine professional tasks violates international law and interferes with their capacity to exercise their roles in an impartial and transparent manner and will continue fomenting a chilling effect across the entire justice system in Guatemala.\textsuperscript{50}

V. INTERNATIONAL HUMAN RIGHTS LAW REQUIRES PROPORTIONALITY IN CRIMINAL PUNISHMENT, WHICH WAS VIOLATED BOTH BY LAPARRA’S LENGTHY PRETRIAL DETENTION AND BY HER SENTENCE OF FOUR YEARS IN PRISON

\textsuperscript{44} Case of Martínez Esquivia v. Colombia, supra note 40, at para. 96; accord, Case of Casa Nina v. Peru, supra note 42, at paras. 80, 83.

\textsuperscript{45} Case of Casa Nina v. Peru, supra note 43, at para. 72.

\textsuperscript{46} UN Human Rights Council, Report of the Special Rapporteur on the independence of judges and lawyers, para. 35, UN Doc. A/HRC/20/19 (June 7, 2012).

\textsuperscript{47} Id., para. 24.

\textsuperscript{48} Id., para. 35 (citing UN Guidelines on the Role of Prosecutors, supra note 43, at para. 12).

\textsuperscript{49} Id.

\textsuperscript{50} See generally, Criminalization of Justice Operators in Guatemala as a Strategy to Secure Impunity, supra note 10.
International human rights law embodies a principle of proportionality, that was independently violated by Laparra’s lengthy pretrial detention and by her four-year sentence in prison. The principle of proportionality requires that any infringement of an individual’s rights be limited to the extent that is appropriate and necessary for achieving a legitimate aim. Where measures restrict a right protected under the ICCPR, the State “must demonstrate their necessity and only take such measures as are proportionate to the pursuance of legitimate aims in order to ensure continuous and effective protection of Covenant rights,” including the right to liberty.  

Regarding sentencing, the principle of proportionality requires a range of available sentencing options and permits the imposition of prison sentences only when no other sanction would be proportionate to the seriousness of the offense and the nature of its commission, considering any aggravating and mitigating factors. The Standard Minimum Rules for Non-Custodial Measures (Tokyo Rules) clarify in Rule 2.3 that, “In order to provide greater flexibility consistent with the nature and gravity of the offence, with the personality and background of the offender and with the protection of society and to avoid unnecessary use of imprisonment, the criminal justice system should provide a wide range of non-custodial measures, from pre-trial to post-sentencing dispositions” [emphasis added].

The United Nations Human Rights Committee has also elaborated on this point, stating that “restrictive measures must conform to the principle of proportionality; they must be appropriate to achieve their protective function; they must be the least intrusive instrument amongst those which might achieve the desired result; and they must be proportionate to the interest to be protected.” The Inter-American Court has also ruled, in the context of sentencing, that “no one may be subjected to arrest or imprisonment for reasons and by methods which, although classified as legal, could be deemed to be incompatible with the respect for the fundamental rights of the individual because, among other things, they are unreasonable, unforeseeable or lacking in proportionality.” In Laparra’s case, a sentence of four years of prison is not proportional to the alleged crime of filing administrative complaints without the appropriate authority to do so. At most, this alleged crime should be deemed an administrative infraction (even had it been clearly defined as such). As discussed in Section II, supra, the filing of administrative complaints by prosecutors is common practice and the prosecutors filing the complaints are not subject to criminal sanctions in these instances. The State of Guatemala is not adhering to the

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51 UN Human Rights Committee, General comment No. 31 (on the nature of the general legal obligation imposed on state parties to the Covenant), para. 6, UN Doc. CCPR/C/21/Rev/1/Add.13 (2004). ICCPR Article 9 states: “Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.”


53 UN Human Rights Committee, General comment No. 27 on freedom of movement (Article 12), para. 14, UN Doc. CCPR/C/21/Rev.1/Add.9 (1999).

principle that “all measures of detention should be justified, adequate, necessary and proportional.”

The principle of proportionality also governs pre-trial detention. Excessive pre-trial detention is in violation of international law requiring it to be used only as a last resort. The UN Subcommittee for the Prevention of Torture has stated that “it is a recognized norm of international law that pre-trial detention must be used as a last resort, for the shortest time possible, and only for the most serious offences.” The UN Working Group on Arbitrary Detention has also underscored this norm, stating unequivocally that “under international law, detention prior to conviction must be the exception, not the rule.” It has also found that “the non-application of alternatives to detention, lack of effective judicial review, and the excessive length of detention may render the detention of an individual arbitrary.”

International jurisprudence is clear that pre-trial detention should be used only as a measure of last resort when strictly necessary and should follow an individualized assessment of necessity and reasonableness. General Comment No. 35 of the Human Rights Committee reiterates that pre-trial detention “shall be the exception rather than the rule,” should not be general practice, and should never apply automatically to all those charged with a certain crime.

Furthermore, pre-trial detention should be used only for a limited time, based on necessity. The Inter-American Commission on Human Rights has stated that for pre-trial detention to be compatible with international standards, it must be based on consideration of the right to the presumption of innocence and must consider the exceptional nature of this measure; moreover, it should be applied in keeping with the criteria of legality, necessity, and proportionality.

Laparra was charged with abuse of authority for filing administrative complaints, allegedly without the authority to do so. By holding Laparra in pre-trial detention for a period of almost ten


56 ICCPR, supra note 14, at Articles 9, 14. See also UN Tokyo Rules, supra note 52, at Rules 6.1, 6.2; UN Human Rights Committee, General comment No. 35: Article 9 (Liberty and security of person), UN Doc. CCPR/C/GC/35 (Dec. 16, 2014).

57 UN Committee Against Torture, Eighth annual report of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, para. 76, UN Doc. CAT/C/54/2 (Mar. 26, 2015). Guatemala is a State Party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.


60 ICCPR, supra note 14, at Articles 9, 14; UN Human Rights Committee, General comment No. 35: Article 9 (Liberty and security of person), supra note 56.

61 UN Human Rights Committee, General comment No. 35: Article 9 (Liberty and security of person), supra note 56, at para. 38.

months and continuing to deprive her of her liberty, Guatemala has violated its obligations under international human rights law. Accordingly, Laparra’s pre-trial detention is arbitrary.

VI. CITY BAR CALLS ON GUATEMALAN AUTHORITIES TO COMPLY WITH INTERNATIONAL LAW

The New York City Bar Association urges Guatemalan authorities to undertake all necessary measures to comply with the international framework by:

a. Promptly releasing Virginia Laparra from detention and vacating her conviction and sentencing.
b. Ensuring that any disciplinary actions taken against prosecutors, including Virginia Laparra, be properly administered to ensure due process.
c. Ceasing the persecution and criminalization of lawyers, prosecutors, former prosecutors, and judges who exercise their roles as justice operators and who combat corruption in Guatemala, thereby defending the rule of law.
d. Ensuring that lawyers, prosecutors, and all justice operators are able to freely and independently exercise their professional functions.

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April 2023