



GUATEMALA HUMAN RIGHTS COMMISSION/USA

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Summary:

In a serious blow to the justice system and future of judicial independence in Guatemala, Judge Erika Aifán resigned and was forced to flee. Judge Pablo Xitumul was also removed from his position in High Risk Court “C” after losing his immunity last month. Attacks on judicial workers have also resulted in increased attacks on human rights defenders, specifically those in resistance to mega-projects. A massive data leak—reported on and analyzed by a coalition of international journalists—revealed that the Russian company Solway manipulated the consultation on the mine in El Estor, covered up environmental damage, and spied on indigenous communities and journalists. In response to the rapid deterioration of human rights and rule of law—a situation unmatched in severity since the signing of the Peace Accords—GHRC, along with 17 other organizations, sent a letter to CEO of the US Development Finance Corporation Scott Nathan asking that the DFC reconsider their investments in Guatemala.

Attacks on the Justice System:

- *Judge Erika Aifán Forced into Exile*

On [March 21](#), Judge Erika Aifán joined the growing group of Guatemalans exiled in Washington, DC. On [twitter](#), she announced her resignation as High Risk Court Judge, stating, “It became clear to me that remaining in Guatemala and continuing to do my job represented a threat to my life.” Years of intimidation and threats made against her for her work as an independent judge came to a head with the latest attempt to remove her judicial immunity and the subsequent preliminary hearing that took place in early March. She was forced to make the difficult decision to flee Guatemala after receiving word that her judicial immunity would likely be removed.

Since 2016, Aifán had served as Judge for High Risk Court “D,” overseeing key cases of high-level corruption and transitional justice. Recognized by the US State Department as a “[Woman of Courage](#)” in 2021, Aifán in her work as an independent judge has garnered full support from the US and broader international community. That work, however, has come with risks. In 2019, the Inter-American Commission on Human Rights granted her precautionary measures, demanding her protection by the Guatemalan government in the face of intense defamation campaigns against her on social media, surveillance, and espionage. Most recently, her role in the [Parallel Commissions](#) case and investigations into the alleged [illegal funding](#) of Giammattei’s 2019 campaign has drawn attention and attracted pushback from the Attorney General’s Office. “My departure makes me feel sad because in fact I see that structures have been undermining the rule of law, and some institutions of the justice sector are being used to

persecute those of us fighting and working against corruption and impunity," [she explained](#).

The [International Observatory for Human Rights in Guatemala](#) lent its support to Aifán , condemning “the systematic pattern of repeated attacks, persecution and criminalization of independent justice operators by state authorities and groups interested in consolidating a system of corruption and impunity.” According to the [Convergence for Human Rights](#), her resignation and subsequent exile are “a severe blow to the fight against impunity.” Aifán was replaced by [Judge Edwin Ramírez](#), who upon taking over her caseload in the [Rancho Bejuco](#) case, denied press access to the courtroom.

The loss of Aifán serves as a blow to judicial independence that will have lasting effects on the judicial system. According to [Kim-Mai Vu](#), Advocacy Coordinator for Peace Brigades International-Switzerland, “The collapse of the justice system translates directly into threats and risks for defenders.” According to Aifán, “What happened to me is an indication of just how bad things have become.”

- *High-Risk Court Judge Pablo Xitumul Stripped of his Position*

On March 22—one day after Aifán resigned and fled the country—the Guatemalan Supreme Court ruled to remove Judge Pablo Xitumul from his position in High Risk Court “C.” The court ruled to remove his judicial immunity on February 9, a move which was widely criticized. “We strongly condemn the decision taken by the Supreme Court of Justice of Guatemala in the case of Judge Pablo Xitumul, which we consider a grave attack on his independence, and an unacceptable action that seeks to frighten and intimidate justice operators in the country,” stated the [International Observatory for Human Rights in Guatemala](#). According to [Xitumul](#), “This was an orchestrated plan to get Judge Aifán and me out.”

Xitumul is known for his work as an independent judge, having presided over high-level cases of corruption and transitional justice, including the [2013 Rios Montt genocide case](#).

- *State Department Condemns Attacks on Anti-Corruption Attorneys Awaiting Trial in Prison*

In the wake of the systematic arrests and detention of anti-corruption attorneys in the past month, the US State Department in a March 8 [statement](#) expressed deep concern about “Guatemalan Attorney General Consuelo Porras’ continued, brazen attacks on Guatemala’s justice system through politically motivated arrests and detentions of current and former public servants fighting corruption. The reports of repeated, uncommon delays in arraignment hearings, the withholding of information to defense counsels, refusals to hold hearings publicly, and leaks of sealed case details to online entities raise serious concerns regarding the fairness of these proceedings. In addition to the arrest of at least six former and current anti-corruption prosecutors, other prosecutors have been forced to flee the country and efforts continue to remove the

immunity of additional anti-corruption judges and prosecutors. We are also alarmed that procedural delays often place public servants in the same facilities with those they have helped investigate or convict, leading to serious risks to their safety.” Calling on the Guatemalan government to respect the human rights of all individuals, including by guaranteeing fair trials and ensuring the personal safety and fair and transparent treatment of all justice sector actors, the State Department noted that “Guatemalan Attorney General Consuelo Porras’ efforts to target anti corruption and other prosecutors follow a disturbing trend of corruption and the weakening of democratic institutions and processes in Guatemala.”

Unit for Protection of Human Rights Defenders ([UDEFEQUA](#)) director Jorge Santos echoed the concerns of the State Department regarding the detained prosecutors’ safety, [reiterating](#) that “there is no prison in the country that has guarantees for the protection and life of people, and in the case of former prosecutors there is a greater risk.”

Former FECCI anti-corruption prosecutors Aliss Morán and Paola Escobar, who were arrested in mid-February, were detained in Mariscal Zavala prison until their hearing in mid-March, when a judge [dismissed](#) the charges against them for lack of merit. Even after being ordered released on March 11, the women were kept in prison for two additional days; the judge refused to sign their release papers because, he said, it was a Friday afternoon and he would have to extend his work hours to do so. The prosecutors were forced to remain in prison until the judge returned to work on March 14. Leily Santizo, the former head of CICIG who was [detained](#) on February 10th, and Siomara Sosa, a former FECCI prosecutor detained on February 15th, were finally [released](#) on March 8th from Mariscal Zavala prison on Q10,000 (approximately \$1300) bail. Their arraignment hearings had been suspended [seven times](#). Judge Geisler Pérez placed them under [house arrest](#) until their intermediate hearings, which are set for July 28th.

The preliminary hearing for Virginia Laparra, former head of FECCI office in Quetzaltenango, was heard behind closed doors on March 3rd after being suspended [six times](#). Sergio René Mena Samayoa determined that she would have to face charges and sent her to pretrial detention in Mariscal Zavala prison. On March 12 a judge [denied](#) her request for alternatives to pretrial detention.

Numerous [solidarity protests](#) have taken place against the detention of the prosecutors in the past week, drawing attention to the danger under which anti-corruption champions live.

The [Guatemalan Convergence of Human Rights](#) deemed the attack on anti-corruption actors “a brutal and ruthless hunt” and called for the resignation of Attorney General Consuelo Porras, FECCI head Rafael Curruchiche, and head of the Prosecutor’s Office for Internal Affairs, Juan Jose Mendizabal. They called for the criminal prosecution of the same officials, for abuse of authority and prevarication, and added that the judges who had lent their services in this effort should also be prosecuted, along with the president

of the Foundation Against Terrorism, for his [attack](#) on two of the accused as they were in a hearing.

Six prosecutors with FECI resigned in February, the most recent being Amy Girón Rodas, who announced her [resignation](#) as a FECI prosecutor on February 22, to take effect on March 11.

At least three have fled Guatemala since January 1, citing concerns for their safety: [Carlos Antonio Videz Navas](#); Rudy Herrera, for whom an arrest [warrant has been issued](#); and [Lorenzo Bolaños Sánchez](#).

Violence and Criminalization Against Human Rights Defenders:

- *Data Leak Reveals Mining Company Suppressed Consultation*

A leak to international journalists of [8 million documents](#) from the Swiss-Russian mining conglomerate Solway and its Guatemalan subsidiaries has shed light on the mining company's strategies to repress opponents of the mine and ensure support from Guatemalan police and governmental authorities. The machinations of the company running the open-pit nickel mine in El Estor, Izabal, have been fully detailed through [Forbidden Stories](#)—a network of over 65 international journalists—who accessed the massive data leak, revealing the aggressive and illegal tactics employed by the company.

[Email correspondence](#) confirms that the legally mandated “consultation” that took place at the end of last year was manipulated in favor of a positive result for the mine. In 2019, the Constitutional Court ordered the [suspension](#) of all mining activities until a consultation with the impacted communities was carried out. [Evidence](#) from the leak showing record profits for the company from 2019-2021 confirmed that the mine never stopped operating, in direct violation of the Constitutional Court ruling from 2019. Moreover, Solway manipulated the consultation in its favor, bribing community leaders and specifically planning who would participate. In a document titled “Participation Communities,” Solway tracked their “strategic donations” to community leaders in the area; [\\$34 thousand in donations](#) were funneled through the Polochic Fisherman's Association to create pro-mining allies. According to bank records and invoices obtained through the [leak](#), the company started regularly donating to community leaders in 2020 through a foundation called Raxché. To carry out the consultation, Solway hand-picked which communities would participate in meetings, specifically excluding groups like the Fisherman's Guild for being anti-mine. One folder [spelled out](#) how the consultation would be carried out, including a list of the 46 communities hand selected by the company, listed as 29 in favor, 5 opposed, and 12 neutral.

[Emails](#) sent between Solway officials reveal that the company employed counter-insurgency style tactics against anti-mine community members and journalists covering the conflict. [One email thread](#) detailed a plot for the “destruction of their methods of subsistence” in which company employees planned to pay local criminals to burn the

cardamom crops of a community, Las Nubes, whose land the company wanted in order to expand.

The head of security for Solway subsidiary Pronica, Roberto Zapeda, has a Masters degree in Advanced Strategic Studies with a Specialization in Security and Defense, and he maintains a direct relationship with the Army School of Intelligence. One of the strategies he suggested to weaken opposition to the mine was to [plant criminal charges](#) against leaders to discredit them so that they would lose support.

Solway employees also engaged in the surveillance of journalists and community leaders. In a file labeled “key photos” were dozens of photos of journalist [Carlos Choc](#), in various settings such as driving his truck through El Estor, carrying out a reporting trip in March 2019, and walking with lawyer Rafael Maldonado to his court hearing in nearby Puerto Barrios. As a journalist with the Preense Comunitaria, Choc became a [target](#) after documenting the death of a protester killed by company security in 2017. International journalists investigating the mine were also [surveilled by Solway](#), sometimes by drone. [Documents](#) reveal that Solway made audio and video recordings of community leaders’ private discussions, such as those of members of the Fishermen’s Guild regarding the mine, and the company planted informers among the communities.

In 2018, when a [red slick](#) appeared on the surface of Lake Izabal, the Guatemalan Ministry of the Environment issued a determination that the color was not due to runoff from the nearby nickel mine, but instead was [algae](#). Gustavo García, head of the mine’s environmental department, echoed this explanation, stating, “The increase in nitrogen and phosphorus promotes algae growth,” and “that’s what gave [the lake] this hue.” However, an [internal company report](#) reveals that the company knew that sediments of limonite were being released into the lake and were responsible for the red slick. According to the report, “The discharge of sediments into the lake was evident due to the reddish color of the water at this location.” A [government environmental audit](#) from November 2017 showed waterways around the mine were contaminated with nickel and while government compliance officers found Solway had violated 19 of their binding commitments to the state, these reports were hidden from the public.

Finally, the leak revealed evidence of Solway and its subsidiaries wielding their power and influence over a myriad of state institutions, from [local police](#) to the [Guatemalan President’s Office](#). Emails contain receipts that show significant financial contributions made to local police, covering the cost of vehicle repairs, gasoline, and hotels during the state of siege in El Estor in 2021. According to the [report](#), “Over the course of 2020, one of Solway’s subsidiaries, Pronico, made at least five donations to Raxché for “aporte strategico” (strategic support) of the PNC, worth roughly 350,000 Quetzales (\$45,000 USD) in total.” Between 2014 and 2017, the company paid the National Civil Police \$193,000. Leading up to the “consultation” and subsequent [state of siege](#) imposed on El Estor, [General Manager](#) of CGN-Pronico Sergey Nosachev [sent a letter](#) to President Giammattei, asking for “support to guarantee free movement in the municipality of El Estor.” A few months later, when anti-mining protesters blocked passage of mining

equipment to protest the continuing operation of the nickel processing plant and the exclusionary pre-consultation process, he [followed up](#) with the President: "We request the immediate intervention of the authorities to actively participate in achieving the stabilization of the situation." Hours later, President Giammattei [declared a state of siege](#) in El Estor. A thousand members of the National Civil Police and the Guatemalan Army occupied the community until early December. According to [Olga Che](#), winner of the 2021 Alice Zachmann Award and Treasurer of the Fisherman's Guild, "That's when we could see that the government is in favor of the company, even co-opted by it."

In a meeting on March 16, Assistant Secretary of State for Western Hemisphere Affairs Brian Nichols explained the challenge posed by corruption in Guatemala, drawing particular attention to the influence of the private sector in corruption. In apparent reference to the Coordinating Committee of Agricultural, Commercial, Industrial, and Financial Associations, he [said](#), "Those who seek to perpetuate corrupt practices will feel the weight of our sanctions."

- *Son of Human Rights Defender Arrested and Beaten in El Estor*

Julio Toc Mucu was [apprehended by police](#) on March 22 around noon near his home in El Estor, Izabal and was brought to the Penitentiary Center in Puerto Barrios where he was reportedly beaten. On March 24, he had his initial hearing and was released on his own cognizance pending trial. He will be required to sign at the courthouse as he awaits trial twice a month.

Toc is being charged with "[incitement to commit a crime](#)," allegedly in connection with his participation in a protest that was violently repressed on October 21, 2021. Twelve other arrest warrants related to the protest are rumored to have been issued soon for members of the Fishermen's Guild who were involved in the protest last year. Toc, however, was not present at the demonstration and, according to the [Fishermen's Guild of El Estor](#), "has been confused with another person."

Toc is the son of Julio Ancelmo Toc, vice president of Fishermen's Guild and a member of the Ancestral Indigenous Council in El Estor. Since the October 2021 protest and subsequent imposition of a state of siege, in which thousands of military and police occupied the community, members of the Fisherman's Guild and Ancestral Indigenous Council have been persecuted by government authorities. Members and their families report sexual harassment, surveillance, and illegal raids at the hands of police and military. Intimidation and harassment have continued since the state of exception was officially lifted in early December.

- *Bernardo Caal Released from Prison on Good Behavior*

After over four years in prison, political prisoner Bernardo Caal Xol was [released](#) from the penitentiary in Cobán; the judge ordered his early release for good behavior. According to [Erika Guevara-Rosas](#), Americas director at Amnesty International, "It's

great news for Bernardo, his family and Guatemala's Indigenous Mayan Q'eqchi' communities that he can leave prison and be reunited with his loved ones after more than four years of being a prisoner of conscience. However, Bernardo remains convicted of a crime he did not commit and thus the Guatemalan authorities continue to criminalize him for his work in defense of human rights and the environment."

In spite of a lack of evidence, Caal was [sentenced](#) to seven years and four months in 2018 for the alleged crimes of aggravated robbery and aggravated illegal detention. According to the [UN Special Rapporteur](#) on the rights of indigenous peoples, the mounting spurious charges against Caal "are consistent with the patterns of criminalization directed at those that defend their land and the environment." Caal was targeted for his role as a community leader in resistance to two hydroelectric projects on the Cahabon River, a sacred water source to the surrounding Q'eqchi communities.

Guatemala continues to be one of the most dangerous countries in the world for human rights and environmental defenders like Caal. According to the [latest Global Witness report](#), thirteen environmental activists were killed in 2020 in Guatemala.

US Policy and Migration:

- *Eighteen NGOs Call for Reconsideration of DFC's Investment Plans in Guatemala*

In spite of increasing pressure from the United States and other countries, Guatemala's top officials have continued their assault on independent prosecutors and judges. In addition, recently a report was released illustrating the corrupt practices that one of Central America's largest nickel mines, located in El Estor, Izabal, has engaged in, with the cooperation of various sectors of the Guatemalan government. These practices have included making regular payments to the National Civil Police, plying other officials, apparently including judges, with gifts, surveilling, bribing, dividing, and co-opting leaders of communities affected by the mine, strategically planning a "consultation" that would give mine owners the results they desired, and hiding their knowledge of sediment leaks into Lake Izabal. In response to the unchecked corruption in Guatemala and the intensifying human rights crisis, GHRC and 17 other nongovernmental organizations have written a [letter](#) to Scott Nathan, head of the Development Finance Corporation, asking the DFC to reassess its investment plans in the country. Led by GHRC and the Latin America Working Group, the letter was sent to Scott Nathan on March 17.

- *Protesters Call for Freedom for Wrongfully Imprisoned Maya Chuj Woman*

Protesters gathered outside of the Mexican Embassy in [Washington DC](#) and the Mexican Consulate in [Quetzaltenango](#) to demand the release of Juana Alonzo Santizo, a Maya Chuj woman who has been [wrongfully detained](#) in Mexican prison for the last seven years. GHRC [joined](#) the [International Mayan League](#) to deliver a [petition letter](#) to the Mexican Embassy demanding Santizo's immediate release. The petition—organized by [Promoters of Migrant Liberation](#)—was signed by 5,135 individuals and 43 organizations in support of Santizo.

March 8 marks the deadline set forth by the United Nations Human Rights Commission's [statement](#)—sent on September 8—that requested the Mexican Government release Juana within the next six months. The International Mayan League also demanded the immediate release of Santizo and [requested](#) the Mexican Government “conduct a full and exhaustive, transparent, and independent investigation of the circumstances surrounding the arbitrary detention of Juana.”

Santizo was forced to migrate [in 2014](#) and was headed to the United States. On her journey, she was kidnapped and held in a house a few kilometers from the US/Mexico border. When police discovered the traffickers, Juana was [accused](#) of being a trafficker herself and wrongfully arrested by police. Because she did not speak Spanish, she was unable to defend herself and was [forced at gunpoint](#) to sign a document incriminating herself. For the last seven years, she has been detained in Mexico [without access](#) to an interpreter, legal counsel, or consular support. The Mayan League [calls](#) Juana's case “emblematic as it highlights discrimination and racism faced by Indigenous migrants including Indigenous language exclusion and illustrates the particular realities of Indigenous women.”

Transitional Justice:

- *Solicitor General's Office Appeals Reparations on Historic Achi Women Verdict*

Just two months after the [historic verdict](#) convicting five former civil patrollers with crimes against humanity and establishing reparations to the survivors, the Achi Women face yet another challenge to justice. On March 24, the Guatemalan Solicitor General's Office appealed the ruling, arguing that the reparations measures contradict the constitution and are already addressed in the Peace Accords.

Responding to the appeal, the Achi Women proclaimed their commitment to continue defending the sentence, [stating](#), “Our struggle will serve so that future generations will know that great injustices cannot go unpunished.”

- *Transitional Justice Cases Continue In Spite of Weakening Justice System*

Despite the recent [attacks](#) on Guatemala's anti-corruption prosecutors and judges, the prosecution of many transitional justice cases has continued. The [Rancho Bejuco](#) case implicating eleven former Civil Defense Patrollers in the 1982 massacre continues under Judge Edwin Ramírez after Judge Erika Aífan's recent [resignation](#); the prosecution of [Luis Enrique Mendoz García](#), one of the former military officials implicated in the [Genocidio Ixil](#) case, will move into the evidentiary phase in May; the [intermediate hearing](#) for former soldiers and police officers accused of forced disappearances, murder, attempted murder, and kidnappings during the Guatemalan internal armed conflict described in the [Diario Militar](#) continues; and José Manuel Castañeda Aparicio was recently [sentenced](#) to 45 years in prison for his role in the disappearance of three [social leaders](#) in 1983.