



## GUATEMALA HUMAN RIGHTS COMMISSION/USA

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### October 2021: Guatemala Human Rights Update

#### Summary:

Undeterred by statements made by the US and the addition of top officials to the Engel List, both the President and Attorney General have progressed their campaigns to co-opt and control institutions in Guatemala, leaving human rights defenders in danger. As a result, the human rights situation continues to deteriorate, as seen by the attacks on defenders, international organizations, and independent judges and prosecutors throughout the month.

#### Attacks and Threats Against Human Rights Defenders and Organizations

- *Congress Approves State of Siege in El Estor After Police Repress Protesters*

Thousands of police and military violently repressed the indigenous Q'eqchi' resistance to the illegal [Fenix nickel mine](#) in El Estor, Izabal on October 23. Community members had installed an encampment to block the passage of mining equipment to the project which was declared illegal by the Constitutional Court in a 2020 [ruling](#) that ordered the company to cease mining operations until a proper consultation and environmental impact study could be carried out. A new consultation process has begun, but--according to indigenous authorities--it is being carried out "in bad faith" and excludes impacted communities. (Read more about the case on our [blog](#).) Video footage shows Guatemalan security forces using [excessive force](#) against protesters, including teargas, beatings, and confiscation of phones to prevent documentation of the events.

The violent eviction came after weeks of police intimidation against the resistance, including an attempted eviction of the community of Chinebal, El Estor--where many resistance leaders live--in the early morning of October 6. Hundreds of Guatemalan National Civil Police (PNC)--of which several were identified as carrying high-caliber weapons by eyewitnesses--attempted to [evict](#) 94 Maya Q'eqchi' families from their ancestral land and [threatened to use force](#) against the community if they did not vacate the premises. According to the legal representative of the PNC present at the eviction, "You do not want to leave peacefully, so we are ordered to remove you by force." After a standoff between the PNC and the community, the eviction was [suspended](#).

On October 23, President Giammettei declared a [state of siege](#), which despite [popular condemnation](#), was approved by Congress on October 25. Under the state of siege, a dusk-to-dawn curfew is being enforced by police, who have maintained a permanent

presence in the community. Police have [raided the homes](#) of community leaders and journalists and have arrested at least two leaders and one journalist. Indigenous Authorities presented an Act of Unconstitutionality against the decision on October 27; the state of siege will remain in effect for 30 days unless a decision on the act is made before then.

Human rights organizations condemned the violence that has been ongoing since the declaration of the State of Siege. A [joint urgent action](#) signed by GHRC on October 24 calls on Guatemalan authorities to “stop the excessive violence against Maya Q’eqchi defenders in peaceful resistance against the illegal nickel project in El Estor.” The [Office of the High Commissioner for Human Rights](#) called for “for calm and dialogue, recalling that the State has the responsibility to protect human rights, including the right to life, and facilitate the exercise of free and peaceful assembly.”

- *International Accompaniment Organization Threatened*

An international human rights accompaniment organization, [ACOGUATE](#), was threatened for its work providing protective accompaniment to human rights defenders in Guatemala. Operating in Guatemala for the last 20 years, “ACOGUATE provides international accompaniment to people or organizations of the Guatemalan social and human rights movement who are at risk for their work.” On October 18, the organization--along with the [Campesino Unity Committee](#)--received notice that [charges](#) had been filed against them by a group called Immortal Guatemala for alleged crimes of sedition, activities against the internal security of the nation, and depredation of cultural heritage related to a march that took place on October 12.

Team members from ACOGUATE accompanied the “March for Dignity” in Guatemala City as international observers. Unknown persons at the March took photographs of the accompaniers that later appeared on social networks and were used as part of a defamation campaign against international accompaniment. Contributing to the campaign, the director of the Foundation Against Terrorism in Guatemala, [Ricardo Méndez Ruiz](#), tweeted, “Today’s violent riots were financed by ACOGUATE, a far-left NGO.” [Government officials](#) also called for investigations into ACOGUATE on their Twitter accounts. Immortal Guatemala--which filed the complaint--shared defamation and threats on its social media accounts.

Human rights organizations condemned the attack against ACOGUATE and the attempt to criminalize the organization. The Forum of International NGOs in Guatemala released a [joint statement](#) demanding an end to “defamation and criminalization of organizations that accompany human rights defenders.” GHRC initiated a [statement in solidarity](#) with ACOGUATE, co-signed by the Washington Office on Latin America, the Due Process of Law Foundation, and RFK Human Rights, recognizing the importance of the organization’s work in Guatemala. The statement calls on Guatemalan authorities to, “respect fundamental rights, including the right to freedom of expression, association, and peaceful demonstration,” and calls on the international community to “ensure that it is

not financing state institutions or private initiatives that have links to groups that criminalize, threaten, and violate the human rights of indigenous communities, organizations, and human rights defenders.”

## **Worsening Situation for Judges, Prosecutors and Judicial Independence**

- *Attorney General Transfers Out Chief Human Rights Prosecutor*

On October 11, Attorney General Consuelo Porras [transferred](#) esteemed prosecutor Hilda Pineda out of her position as head of the Special Prosecutor's Office on Human Rights, assigning her instead to the Prosecutor's Office for Crimes Against Tourists. The [Convergence for Human Rights](#) denounced Pineda's transfer and demanded that Porras “cease her actions to destroy the Public Ministry's criminal prosecution capabilities.”

In her [ten years](#) as head of the Special Prosecutor's Office on Human Rights, Pineda led [successful prosecutions](#) of military officers responsible for crimes against humanity during the internal armed conflict. Pineda played a pivotal role in the [advancement](#) of cases such as the [Death Squad Dossier](#) case, the genocide case against [Efrain Rios Montt](#), and the [Dos Erres case](#). [According to Impunity Watch](#), the transfer “puts at risk the investigation of emblematic cases of serious human rights violations.”

The families, victims, and survivors of the Death Squad Dossier case [condemned](#) Pineda's transfer, voicing their support for Prosecutor Pineda and her team of prosecutors, who, as they noted, are “committed to justice, objectivity, and professionalism that have strengthened transitional justice processes.”

As the Never Again Genocide Coordinating Committee [points out](#), Pineda's transfer occurred in a context increasing attacks on journalists and judicial officials, categories which fall under her office's purview, as well as advancements in key transitional justice cases. In the Dos Erres massacre case, for example, in which hundreds of villagers, including children, were brutally killed, a court has just [ruled](#) that deported US resident [José Mardoque Ortiz](#) will stand trial. Other cases moving forward in the courts include the case against [Luis Enrique Mendoza Garcia](#), director of the Army's General Staff from 1982 to 1983, for genocide and crimes against humanity committed against the Ixil people. The [Death Squad Dossier](#) case, in which eleven former military and police officers are accused of forced disappearance and crimes against humanity, is also advancing.

The US [withdrew financial support](#) to the Attorney General's Office in July, following Porras' [arbitrary removal](#) of the head of the Special Prosecutor's Office Against Impunity, Juan Francisco Sandoval. The US [pulled Porras' visa](#) in September, designating her on the Engel list as one of Guatemala's “undemocratic and corrupt” officials. In Guatemala, the [public has been calling for her removal](#) for months. In the words of Illinois [Senator Dick Durbin](#), Pineda's transfer serves as yet “another cynical and transparent move to undermine important anti-corruption efforts in Guatemala.”

- *Supreme Court Targets Pablo Xitumul in Latest Move to Criminalize Independent Judges*

On October 6, [the Supreme Court of Justice ruled](#) to move forward with [preliminary proceedings](#) against Judge Pablo Xitumul of High Risk Court D regarding a [traffic violation charge](#). Judge Eduardo Galván, an investigative judge of the Second Court of Appeals, then [recommended](#) the removal of Judge Pablo Xitumul's immunity from prosecution. Xitumul, known as an independent judge, has overseen many pivotal cases and, with the possible loss of his immunity, could face baseless charges that have been leveled against him in apparent retaliation for his rulings. Guatemala's Supreme Court had asked Judge Galván "to declare the formation of a case against the judge as justified."

Now the Supreme Court and the Appeals Chamber will determine whether or not to remove Xitumul's immunity and allow the Public Ministry to conduct an official investigation into an incident that occurred in 2019 when a [police officer](#) stopped Xitumul in front of his home and demanded to search his car. When Xitumul refused, a struggle ensued. Both Xitumul and the officer filed complaints to the Public Ministry for abuse of authority; the Public Ministry threw out Xitumul's complaint and only pursued the one against him.

Xitumul denounced the accusation against him as [spurious and irregular](#) and said he was not given a chance to submit evidence to be incorporated into the report sent to the Supreme Court. He has filed a [request for the recusal](#) of six Supreme Court magistrates and six Appeals Court judges overseeing the next step in the process, arguing that they have exhibited a lack of impartiality.

Guatemala's Observatory for Judicial Independence issued a statement denouncing the case against Xitumul as "malicious" stating, "The Supreme Court of Justice has the responsibility to protect the independent exercise of the high-impact judges, watching out so they aren't victims of spurious persecutions that only seek to undermine the fight against impunity and corruption." Xitumul is also a recipient of precautionary measures through the Inter-American Commission on Human Rights (IACHR). According to the [Guatemalan Association of Judges for Integrity](#), "The State of Guatemala has the duty to act to protect the judicial independence and integral security of said judicial officials."

- *Constitutional Court Rules to Open Pretrial Proceedings Against Judge Erika Aifán*

The Constitutional Court (CC) [ratified its decision](#) on October 4 to reactivate the preliminary trial against Judge Erika Aifán. The court declared the appeal she made for clarification and extension on September 19 [inadmissible](#). The legal process against Aifán began in 2020 when the Institute of Magistrates of the Appeals Chambers of the Judicial Branch filed a complaint claiming that she authorized an "illegal" investigation of magistrates implicated in the "[Parallel Commissions 2020](#)" influence-peddling case.

This week's decision will now be sent to the Supreme Court, where the pretrial process--which determines the fate of her judicial immunity--can begin.

Aifán condemned the ruling, claiming it is a move to intimidate her by opening criminal proceedings that could possibly lead to her imprisonment. She also argued that it violates her right to judicial independence. [The Guatemalan Association of Judges for Integrity](#) issued a [statement](#) calling for “objectivity, transparency, and strict compliance with guarantees of due process” for the pretrial proceedings against both Aifán and Judge Pablo Xitumul. The group also urged citizens to demand judicial independence “as a right of citizens and as a guarantee of the democratic and constitutional rule of law to have independent and impartial courts.”

## **Developments on Guatemala in the InterAmerican Commission on Human Rights**

- *IACHR Holds Hearing on Threats to Judicial Independence in Guatemala*

On October 28, the Inter-American Commission on Human Rights (IACHR) held a [hearing](#) on justice operators and judicial independence in Guatemala. The [hearing](#)--requested by various human rights organizations, including GHRC--featured testimonies from Judge Erika Aifán, former head of the Special Prosecutor's Office Against Impunity (FECI) Juan Francisco Sandoval, Human Right Ombudsman Jordan Rodas, and others.

During the hearing, the [participants raised topics of concern](#), including criminalization and harassment of judges, threats to independent prosecutors, and the violation of access to justice and judicial independence. On behalf of independent judges in Guatemala, Judge Erika Aifán shared cases of retaliation against Pablo Xitumul, Miguel Ángel Gálvez, and Jamin Barrios for their work against corruption and impunity. Moreover, she voiced concerns about the threat posed by daily by systematic attacks by groups that disseminate hate and threats on their social media accounts, labeling the judges as guerrillas and connecting them to images of torture. Finally, she pointed out the inefficiency of the state authorities and their failure to investigate the judges' complaints against those behind the harassment and threats to their lives.

Those testifying in the hearing asked the IACHR to press the Guatemalan government to assume its obligation to ensure the protection of an independent judicial system. [Jordan Rodas](#) invited the IACHR to conduct a field visit as soon as possible, given that Guatemala is “facing an authoritarian regime.” The Guatemalan government, however, claimed it is meeting its “constitutional obligations” and that institutions like the Public Ministry are “operating efficiently to best serve the public.”

The hearing concluded with comments from representatives of the IACHR. Citing [189 attacks and 51 legal proceedings](#) against judicial officials, Commissioner Flavia Piovesen warned that complaints against judges, prosecutors, and human rights defenders reveal a context of weakening judicial independence in Guatemala. Commissioner [Esmeralda Arosemena de Troitiño](#) explained the importance of an independent justice system,

stating, “There is no rule of law if there is no judicial independence.” Finally, Commissioner Antonia Urrejola ended the hearing reiterating her concern about the situation of judges, prosecutors, and human rights defenders and expressed willingness to conduct a field visit to promote dialogue and observance of human rights.

- *IACHR Passes Resolution to Protect FECI Special Prosecutors*

The Inter-American Commission on Human Rights (IACHR) on October 7 [granted precautionary measures](#) to two special prosecutors in the Special Prosecutor’s Office Against Impunity (FECI). The IACHR cited risks to the individuals’ rights to life, personal integrity, and independence given their positions as investigators on high profile cases involving extrajudicial killing. The Valenzuela Ávila and Ruiz Fuentes cases are tied to operation "[Plan Gavilán](#)," in which the IACHR has already found the State of Guatemala responsible for human rights violations.

[The resolution](#) references the arbitrary removal of head prosecutor Juan Francisco Sandoval from the FECI in July, in addition to the “context of adverse risk to the work of the FECI, as well as attacks and threats against justice operators in attempts to advance in the fight against impunity and corruption.” The IACHR calls upon the State of Guatemala to ensure the protection of the rights of these special prosecutors. The state has until December 13, 2021 to prove their compliance with the latest resolution.

- *Organizations Request Protective Measures for Migrants Suffering Under Title 42*

Human rights organizations [requested](#) emergency precautionary measures from the Inter-American Commission on Human Rights (IACHR) on behalf of asylum seekers who have been or would be expelled from the United States under the Title 42 policy. The request is aimed at [stopping](#) the US from expelling asylum seekers at the Southern Border. Originally implemented during the Trump administration, [Title 42](#) allows border officials to expel undocumented migrants to their home countries without allowing them to make a political asylum claim. Between October 2020 and August 2021, 938,045 migrants were [expelled](#) under Title 42.

According to the request, Title 42 violates the human right principle of [nonrefoulement](#), which “guarantees that no one should be returned to a country where they would face torture, cruel, inhuman, or degrading treatment or punishment and other irreparable harm.” Nicole Ramos at Al Otro Lado--one of the twelve organizations that made the request--explains, “Title 42 as a policy is the wall that Trump promised he would build but could never finance.” Harold Koh, a senior adviser and the sole political appointee on the State Department’s legal team, [resigned](#) earlier this month to protest the policy, calling it “illegal” and “inhumane.”

## **Movement on Guatemala Issues in DC**

- *Members of Congress Push State Department for Stronger Action on Guatemala*

In a letter released October 15, fifteen members of Congress, led by Representative [Raul Grijalva](#) and Representative [Norma Torres](#), asked Secretary of State Anthony Blinken to take stronger action to support human rights and the rule of law in Guatemala.

Lawmakers asked that the US strongly oppose laws that endanger the work of civil society and the right to justice; ensure protection for the family of former head of the Special Prosecutor's Office Against Impunity, Juan Francisco Sandoval and others at risk; and "leverage all our diplomatic tools, including additional visa restrictions, targeted economic sanctions, steps to ensure accountability in any international lending, and the withholding of assistance and economic support for those in the public and private sector who have committed, financed, and abetted corruption and who are undermining democracy in Guatemala."

The full text of the letter is [here](#). The letter was signed by Reps. James P. McGovern, Ilhan Omar, Mike Quigley, Jesús G. "Chuy" García, Joaquin Castro, Mark Pocan, Adriano Espaillat, Alan Lowenthal, Eleanor Holmes Norton, Rashida Tlaib, Juan Vargas, Albio Sires, Maxine Waters, Lucille Roybal-Allard, and Jim Himes.

- *Human Rights Defenders Visit DC to Share Concerns and Discuss Action from the US*

Last week, two representatives from the [Center for Human Rights Legal Action](#) (CALDH) visited Washington, DC to meet with policy makers to advocate for stronger action from the US against regressive laws and increasing human rights violations in Guatemala. Accompanied by GHRC, Director of CALDH Hector Reyes and Jovita Tzul Tzul, an attorney with CALDH, presented their analysis of the deterioration of the rule of law and their suggestions for policy makers to support human rights in Guatemala.

As lawyers embedded in the work of the social movement in Guatemala, they shared their first-hand perspectives on topics of concern, including the criminalization of defenders, threats to civil society with the passage of the [NGO law](#), and human rights violations as a result of private investment and development projects. Moreover, they discussed the role that US policymakers need to play in order to combat the current crisis. In favor of stronger action, they suggested strengthening the consequences for those promoting corruption and impunity, the need for US support of civil society organizations that could disappear should their appeal to stop the regressive NGO law fail, and ensuring that loans and aid are not contributing to projects that violate human rights.