

Guatemalan Judge Erika Aifan forced into exile, facing death threats

“The state and three branches of government have been co-opted by criminal networks. It is a megastructure, including international actors, rooted in Guatemala’s past”

<https://mailchi.mp/rightsaction/guatemalan-judge-erika-aifan-forced-into-exile>

“A strategy of terror has been instituted in the country that we can see in the persecution of those of us involved in the fight against corruption and impunity. There’s a lot of fear.”

68 years a “democratic ally” of the U.S., Canada and “international community”

Rights Action recommends reading this important - and depressing! - interview with Judge Erika Aifan, that provides a deeper understanding of the depth of corruption of the Guatemalan government and institutions of the State.

Every land, environmental, human rights and justice struggle that Rights Action supports in Guatemala confronts these very same structures of corruption and complicity.

Since the U.S.-orchestrated military coup in 1954, through the decades of U.S.-supported massacres and genocides in the 1970s and 1980s, through the “transition to democracy” in 1996, through to today, the U.S. and Canada, World Bank and IMF, and transnational companies in many sectors of the global economy maintain full political, economic and military relations with corrupt, repressive, military-backed regimes in Guatemala, referring to them as “democratic allies”.

“Hunger Games” global economic, political order

It remains an urgent and timeworn challenge for the people and institutions of the cabal of rich, powerful countries to hold our governments, companies and banks politically and legally accountable each and every time they intervene in, ‘legitimize’ and do ‘business-as-usual’ with corrupt, repressive, anti-democratic regimes in Guatemala, and beyond.

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Judge Aifán, from Exile: “My life was in danger in Guatemala”

By José Luis Sanz, el Faro, March 20, 2022

<https://elfaro.net/en/202203/centroamerica/26082/Judge-Aif%C3%A1n-from-Exile-%E2%80%9CMy-life-was-in-danger-in-Guatemala%E2%80%9D.htm>

When Erika Aifán last visited Washington, the former Guatemalan attorney general Thema Aldana half-joked that she hoped not to see her again soon. Aldana, who gained political asylum in 2019, choked down a knot in her throat: by then, last November, it seemed inevitable that Judge Aifán would soon join the growing community of Guatemalans exiled in the U.S. capital.



Erika Aifán, a former High-Risk Tribunal judge in Guatemala,
in front of the Lincoln Memorial in Washington, D.C. Photo: José Luis Sanz/El Faro

As the head of Guatemala’s High-Risk Tribunal D, a court specialized in handling complex high-stakes criminal cases, Aifán spent six years trying dozens of the most powerful business people, politicians, judges, and capos of Guatemala on charges of corruption, money laundering, and drug trafficking. For that work she has faced constant threats, espionage, and judicial persecution.

In February, El Faro revealed that a witness in her court accused President Alejandro Giammattei of financing his electoral campaign with \$2.6 million in bribes (<https://elfaro.net/en/202202/centroamerica/26008/Witness-Accuses-Guatemalan-President-of-Funding-Campaign-with-Construction-Bribes.htm>) from construction firms.

It was reason enough for Attorney General Consuelo Porras, converted into Giammattei's enforcer, to file seven motions to repeal Aifán's judicial immunity from prosecution and look to incarcerate the judge who may otherwise have put the president of Guatemala behind bars.

In the evening on Wednesday, March 9, and without warning her team of bodyguards, Erika Aifán crossed the land border into El Salvador to fly via Costa Rica to the United States. This morning her attorneys formally tendered her resignation from the Guatemalan judiciary. Her departure makes fifteen justice system operators to have abandoned Guatemala in the last 11 months.

Have you decided to exile yourself?

Yes. I see no other way to guarantee my physical safety. I need to ask another country for the protection that I should have been granted by the Guatemalan state and the judicial branch.

Two weeks ago, someone close to you told me that you had made the opposite decision, that you were going to face the charges against you in Guatemala and were ready to go to prison.

That was my initial decision. I imagined myself in prison and prepared a plan of action if it were to happen. But it's obvious that I would not receive due process and the guarantees of a democratic justice system. My life was in danger in Guatemala, so in consultation with my family and attorneys, we determined that I should look for new spaces to defend myself.

Did you also fear for your safety if you were imprisoned?

Especially if I were imprisoned. I received precautionary measures from the Inter-American Commission on Human Rights and since 2006 the Supreme Court of

Justice has granted me a security detail that has grown over time amid imminent threats against my life.

But that protection would be removed the moment that they impeach me, and there is no prison in Guatemala that would be safe for me. Since 2016 my courtroom has seen cases against operationally and militarily powerful national and transnational criminal organizations, and I have ordered pre-trial detention for individuals in almost all of the prisons in the country.

Is it that you do not believe that the Guatemalan state can guarantee your safety, or do you really fear the state itself?

My work has taught me that in Guatemala there are criminal groups embedded in the three branches of government. In fact, I have held the only trial to include investigations into high-profile individuals in the three branches. Far from receiving support, what I have received from the state are attacks, harassment, and threats. An attack against me could undoubtedly come from the Guatemalan state.

Including from President Alejandro Giammattei?

I don't want to name names. It could come from any of the people accused in trials that I have handled, and among them are accusations against the president.

Among them, the testimony that connects the president to the cash found in Antigua, Guatemala and accuses him of financing his campaign with bribes from construction firms. Is it true that Giammattei asked you for a copy of Witness A's testimony?

Yes, the president requested a copy of the recording of that testimony. He said that he knew that it implicated him. I rejected his request because he is neither plaintiff nor defendant in the trial. I want to be emphatic in clarifying that the trial is sealed from the public, but the president's request is not, and that is precisely because he is not part of the investigation. That is why I can speak about his request.

In your final days in Guatemala you defended your innocence behind closed doors before a judge who must evaluate whether to recommend that the Supreme Court remove your judicial immunity. What happened in those hearings?

There were two hearings for me to exercise my legal right to defense. They lasted for many hours because my attorneys and I laid out an extensive analysis to disprove each point in the accusations against me.

I have been accused of ordering an investigation into magistrates and judges with judicial immunity, so during the first hearing I asked that the investigating magistrate show me the resolutions that I supposedly signed to order those investigations, but he could not do so, and even indicated that no resolution signed by me had been submitted as evidence. Days later, in the second hearing, he tried to change that point of the courtroom record.

I believe that he rejected my request to open the hearings to the public precisely so that he could manipulate the courtroom record. We objected, of course, and both what happened in that first hearing and his attempt to change the accusations entered into the record, because I obviously cannot be held responsible for alleged actions if there are no resolutions with my signature. He could not present them because none exist. I don't know if they are currently fabricating them.

That's a serious allegation.

If the hearing had been public, Guatemala would have seen that there was no resolution signed or issued by me relating to an investigation into judges or magistrates with judicial immunity. And they would have heard each of the arguments and seen the proof that debunks the Institute of Magistrates' accusations. In private it is easier for the investigating magistrate to generate impunity and corruption.

Another example: the plaintiff asked for the court to hear witness testimony, and I asked to be present to inform my defense. But the magistrate was emphatic in stating that, should he decide to hear it, he will not allow me to be present. This is why I believe he had already made a decision against me before the hearings, and

it would be illogical to expect that he could rule in my favor after all of these efforts to violate due process.

Was it what happened in those hearings that pushed you to leave Guatemala?

I had already made my decision. I postponed my plans because the second hearing had been scheduled, and had there been a third, I would have delayed again. I wanted to lay out my defense at this phase of the impeachment proceedings, no longer with the trial in Guatemala in mind, but rather the international arena. While the latter is slower, I still think it is viable, and that is where I will continue my fight. I have requested measures from the Inter-American Commission on Human Rights and am analyzing other legal actions against the Guatemalan state.

Do you believe that the Supreme Court has also judged you in advance?

Unquestionably. I requested that various magistrates recuse themselves for conflicts of interests, but they have not responded and will rule on my case without processing my request, despite the fact that the law requires them to do so. They are infringing on my right to an impartial, independent judge.

You are referring to the fact that many of the magistrates who will determine whether to revoke your immunity are defendants in an ongoing trial in your court.

The case is known as Parallel Commissions 2020, an investigation into the possible co-optation of the judicial appointment process. Seven of the 13 Supreme Court magistrates are defendants in the case. Also named in the case are some appellate court magistrates who would fill in for temporary absences on the Supreme Court.

The accusations against me are for supposed abuse of authority in Parallel Commissions. It's obvious that the magistrates have a direct conflict of interest in determining whether I continue trying the case.

And there are other conflicts: the Institute of Magistrates, the plaintiff in the case against me, has met privately with the Supreme Court, something prohibited by

law. The Supreme Court president has paid, according to its financial department, at least 20,000 quetzales to the Institute. In addition, the lead plaintiff is the president of the Institute. The head prosecutor is the secretary of the Institute, and its treasurer is a Supreme Court magistrate.

In summary: the lead plaintiff, investigating magistrate, and one of the judges sit on the board of the Institute that has accused me. It would be illogical to think that they could rule in my favor.

In the last ten months, fifteen justice system operators have fled the country after the attorney general presented accusations against almost all of them — people like Juan Francisco Sandoval, who, had he not left Guatemala, would probably be in prison.

He would probably be dead. There is a palpable, deep-seated hatred for Sandoval and me in the statements in court and on social media of some individuals that we have investigated or tried.

Sandoval's statements to the U.S. Embassy (<https://lahora.gt/se-desconocen-avances-en-pesquisa-por-plan-de-estrada-para-asesinar-fiscales/#Echobox=1644775616-1>) about a sophisticated plot to kill him easily establish that he faced not only detention, but death.

Why the hatred? What nerve have you touched?

We simply did not impede investigations or convictions of people with political or economic power. I equally judged people with a high profile and those without power. We strived to always maintain the objectivity afforded by due process. We touched spheres of power not accustomed to finding themselves in the snares of justice.

I have heard multiple times that high-profile business people felt humiliated by being forced to publicly apologize for corruption. Did this exacerbate the hatred?

Yes, those perceptions exacerbated the hatred toward us. I'm aware of multiple comments relating to the circumstances you mention, and I must clearly indicate that I had nothing to do with them.

Are you referring to the press conference where businessmen apologized (<https://www.prensalibre.com/guatemala/justicia/empresarios-se-pronuncian-por-caso-de-financiamiento-electoral-ilicito-a-fcnnacion/>) in 2018? There are those who attribute it to you. They say that the conference twisted the arm of the business sector.

People say that there could have been pressure or coercion for it to happen, but I was not involved. Part of that hatred toward me are distortions of information. In this case I was only aware of what happened in the court hearings. I found out about that situation at the same time as the rest of Guatemala, through the news media.

What has happened for Guatemala to get to this point?

The state has been co-opted by criminal networks. We have said so for a long time, in multiple judicial opinions. The democratic order has been undermined and the networks have made a major effort to obtain impunity by co-opting the judiciary. When we see that not even the highest courts uphold due process, that is an indication that the justice system has collapsed.

How would you describe those criminal networks?

It is a megastructure including international actors, roots in Guatemala's past, and many sectors of the country.

People tied to the Armed Forces, politicians, business people, illicit economies?

Yes. The case file 359 alone, which some detractors have called the "multicausa" ("multi-indictment"), touches many of the sectors that you mention. It is a historic case file, because the investigation revealed a criminal network with ties to politics, the judiciary, and the economy. The military does not appear in this case file, though other open cases allow us to infer the involvement of drug traffickers, the military, etc.

Case file 359 led to Parallel Commissions, to corruption networks in the executive and legislative branches, and even to the money laundering case derived from the cash found in Antigua, Guatemala and the testimony against President Giammattei. All of those cases are related.

Yes, they all surged from one case file. These cases surged from the inevitable findings of the investigations sparked by that file.

Will you claim asylum in the United States?

I'm weighing different options.

That means that you will leave the judiciary.

Yes.

What will become of the cases that you have worked on, including the one that touches President Giammattei?

I don't know. The Supreme Court should name an independent judge, but right now, as it has forced into exile someone who has done nothing more than work objectively, honestly, and independently, I don't expect that they will.

Three years ago, you said in an interview: "The day that I stop believing will be the day that I stop fighting." Have you stopped believing? Are you no longer fighting?

No. I'm leaving the judiciary, which is different. It was a difficult decision. It's 20 years of work. But I haven't stopped believing. I'm changing the arena of my fight. I will focus on international procedures and other spaces.

In 2015, Guatemala took to the streets to defend justice system actors like the International Commission against Impunity in Guatemala (CICIG) and the Special Prosecutor's Office against Impunity (FECI), and that led to the resignation of then-president Otto Pérez Molina, who has spent the past six years in prison and is now on trial. Where is that citizenry today?

The context of the country is complicated. The pandemic, poverty, and present circumstances have led to disappointment and exhaustion in the population. There are frequent demonstrations against the actions of the three branches of government, but now they take place on social media.

A strategy of terror has been instituted in the country that we can also see in the attorney general's persecution those of us who were involved in the fight against corruption and impunity. There's a lot of fear.

Do you see a way out of this situation?

Not in the short term, but no situation, whether good or bad, is sustainable in the long term. I hope that Guatemala will one day recover the rule of law and strengthen its justice system. An important opportunity would have been the election of the attorney general, but I also see corruption in that process. I'm not sure that the person designated to lead the Attorney General's Office in the coming years can restore the institution's credibility.

It could be said that you're not impartial. You wanted to apply for the position but the Constitutional Court did not allow you to.

I'm not speaking from a personal perspective, but rather from that of many judge colleagues who would have done an exceptional job as attorney general and who have had that opportunity closed off, precisely because Congress is not looking for someone on the basis of merits or independence. Many judges have extensive knowledge of criminal law and a training that would have elevated the competition in the selection process. On other occasions, my colleagues have made it to the final list of six candidates submitted to the president, but this time no judges were allowed to compete.

That is a grave violation of judicial independence, because it is a punishment for the fact that our rulings do not respond to spurious political interests.

What does your future hold?

That is the toughest question. I don't know. Right now I only know the decision that I made: to leave my career as a judge in Guatemala in search of other spaces to defend justice and the rule of law, which I still believe in.

Rights Action (US & Canada)

Since 1995, Rights Action funds land and environment, justice and human rights defense struggles in Guatemala and Honduras. We also provide emergency relief funds (Covid19, hurricanes, victims of repression, etc.).

At the same time, Rights Action works to hold accountable the U.S. and Canadian governments, multinational companies, investors and banks (World Bank, etc.) that help cause and profit from exploitation and poverty, repression and human rights violations, environmental harms, corruption and impunity in Honduras and Guatemala.

Act / Stir up the pot / Chip away ... in the "Hunger Games" global economic, political order

Keep sending copies of Rights Action information (and that of other solidarity groups/ NGOs) to family and friends, your networks, politicians and media outlets, asking: 'When will there be proper legal and political accountability for how our governments, companies and investment firms help cause, benefit from and turn a blind eye to corruption and impunity, and to poverty, repression environmental harms in countries like Honduras and Guatemala?'

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- Honduras Solidarity Network: www.hondurassolidarity.org
- Witness for Peace Solidarity Collective: www.solidaritycollective.org
- Friendship Office of the Americas: <https://friendshipamericas.org>
- NISGUA (Network in Solidarity with People of Guatemala): www.nisgua.org
- GHRC (Guatemalan Human Rights Commission): www.ghrc-usa.org
- Breaking the Silence: www.breakingthesilenceblog.com
- CISPES (Committee in Solidarity with People of El Salvador): www.cispes.org
- Peace Brigades International: <https://www.peacebrigades.org>
- Mining Watch Canada: www.miningwatch.ca
- Mining Injustice Solidarity Network: <https://mininginjustice.org>
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