



## **GUATEMALA HUMAN RIGHTS COMMISSION/USA**

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### **URGENT ACTION**

**July 25, 2018**

#### **Berta Caceres' murder trial to begin**

#### **Evidentiary hearing scheduled amid concern the prosecutor is undermining the case by withholding evidence**

GHRC and our partners in Guatemala are very concerned that justice be served for the murder of Berta Caceres, the Honduran indigenous rights defender who was murdered in her home the evening of March 2, 2016. Her case is a paradigmatic case for the region, and shares many similarities with land and indigenous rights defenders killed in Guatemala. In fact, Guatemalan legal and human rights experts have shared their experience with Berta's organization COPINH to support their struggle for justice.

After tremendous international pressure, the skilled work of the Honduran legal team, and with the courageous insistence of Berta's family and organization, COPINH, nine suspects have been arrested and the real story of Berta's murder is becoming clear. The gunmen who stormed her home were apparently coordinated by an active duty Honduran intelligence officer together with a former military officer working in a private security company, who had been hired by executives of the DESA Corporation. DESA sought to build the Agua Zarca dam in Lenca territory, a dam the communities opposed. Berta, as an effective and internationally recognized human rights defender, was a problem in the way of DESA's plans. The trial of the accused material authors is scheduled to begin September 10; but a key initial hearing is scheduled for Friday, July 27.

#### **Take Action for Berta!**

On Friday, July 27, the Tegucigalpa trial court will preside over the evidentiary hearing for the trial of eight men charged with the murder of Berta Caceres. This key hearing will shape the trial and significantly impact its outcome. The public trial is scheduled to begin on September 10.

There are well founded concerns that the Honduran state prosecutor is undermining the possibility of justice by withholding evidence that could incriminate intellectual authors and providing accused murders with grounds to appeal a guilty verdict.



In this hearing the public prosecutor, the defense lawyers and lawyers representing Berta's family and COPINH will present the evidence they intend to use in the trial. However, to date, the public prosecutor's office has repeatedly refused to comply with court orders to hand over the vast majority of the evidence it has gathered in the investigation.

This amounts to contempt of court. At least five times in the pre-trial phase hearings were suspended because the prosecutor failed to comply with court orders to provide evidence. It is extremely alarming that the hearing to determine evidence may take place when the lawyers representing Berta's family and organization, and the defense lawyers, have not been given access to the evidence gathered in investigations, including the extractions of computers, tablets, and other electronic storage devices seized during the search of DESA's office, the search of Army Major Mariano Diaz's home, and other key searches. The information from most of the cell phones seized by the prosecutor's office, including that of Major Mariano Diaz, has never been provided on the claim that they cannot be extracted.

The trial court must decide on Friday July 27 whether to proceed despite the public prosecutor's office's noncompliance with court orders or declare the public prosecutor in contempt of court and suspend the hearing until the evidence is provided.

The small portion of evidence that the public prosecutor's office has provided to the lawyers demonstrates culpability of most of the accused material authors and identifies intellectual authors who have yet to be prosecuted. Telephone data shows not only the location and communications patterns of the accused but also the words used to coordinate her murder.

As a social movement leader and human rights defender Berta faced systematic persecution, a circumstance that impacts the definition and gravity of the crime. Telephone communications cross referenced with violence and intimidation against Berta and COPINH members who opposed the Agua Zarca dam establish a criminal pattern of which Berta's murder forms part.

The court must allow the victim's lawyers to present evidence, including expert analysis of the context in which Berta's assassination occurred, that established the pattern of criminal actions and describes the criminal structure that carried it out.

Eight accused material authors will go to trial. Douglas Geovanny Bustillo is a retired army officer and former chief of security for the DESA corporation building the Agua Zarca dam. He is accused of planning the murder with DESA president David Castillo while Bustillo worked for an unrelated private security company. Major Mariano Diaz Chavez, a long-time associate of Douglas Bustillo, was an active duty military officer at the time of his arrest and the chief of special forces intelligence at the time the murder plan was set into motion. Henry Hernandez had served under Mariano Diaz in the Special Forces training base, the 15th Battalion in the Bajo Aguan, but left to work in the security company employed by the Dinant palm oil corporation. When murder planning began, Hernandez went to work for Douglas Bustillo. Emerson Duarte is accused of acting as a gunman hired by Henry Hernandez, as is Emerson's twin brother Edilson Duarte, and their neighborhood associate Oscar Arnoldo Torres. The fourth accused hired gun, Elvin Heriberto Rapalo, lived in the general vicinity of the Agua Zarca dam, in Honduras' Minister of Security's hometown. Sergio Rodriguez Orellana is an environmental engineer who was in charge of community outreach in the Rio Blanco region for the DESA corporation. On March 2, 2018 former military intelligence officer and West Point alumnus David Castillo, the President of DESA, was arrested as an intellectual author of the murder. As his arrest came much later, he will be tried separately.

### **Take Action:**

Call and e-mail your embassy in Honduras:

United States: Charge d' Affaires Heidi B. Fulton, U.S. Embassy in Tegucigalpa,  
BronkeHM@state.gov, ++ (504) 2236-0320

Canada: Ambassador James Hill, Embassy of Canada in Honduras, Costa Rica and Nicaragua,  
james.hill@international.gc.ca, tglpa@international.gc.ca, ++ (504) 2232-4551

- Explain who you are and where you're calling from. Tell them you are concerned about the safeguarding of due process in the upcoming trial of the first eight people accused of Berta's murder.

- The public prosecutor has already refused to comply court orders to turn over evidence in at least 5 previous hearings. If the hearing proceeds on Friday, July 27, with the prosecutor's office in contempt of court, it would lay the groundwork for allowing the defendants to appeal a guilty verdict for procedural violations. It could also protect the intellectual authors, create impunity, and deny justice to the victims.
- Ask the embassy to urge the public prosecutor's office comply with court orders immediately, especially given that refusing to comply with court orders would constitute contempt of court. Ask the embassy to express to the court the high value our government places on safeguarding due process, and concern regarding ongoing non-compliance by the prosecutor with orders to present evidence to the victim's lawyers and defense lawyers.
- Also ask the embassy to stress to the court the importance of expert witnesses and other evidence that clarifies the pattern of criminal behavior and structures associated with a crime.