



## GUATEMALA HUMAN RIGHTS COMMISSION/USA

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Preliminary Observations  
November 27, 2018

Trial for the Murder of Berta Caceres  
Tegucigalpa, October 19 to November 24, 2018

On Saturday, November 24, the trial of eight men accused of the murder of renowned Honduran human rights defender and indigenous Lenca leader Berta Caceres and attempted murder of her Mexican colleague Gustavo Castro concluded. The Tegucigalpa Criminal Court is expected to rule on Thursday, November 29. This is the first trial for Caceres' murder, a second trial involving a ninth suspect is expected in 2019. The Guatemala Human Rights Commission has been present in the courtroom throughout the trial, and actively participated in the Legal Observer Mission.

Since the June 28, 2009, military coup, Berta Caceres frequently denounced the existence of State-sponsored death squads; her murder trial gave a clear illustration of how they operate. In the course of the five-week trial, State prosecutors demonstrated, largely through text messages and geolocation from seized telephones, that executives with the DESA hydroelectric corporation hired their former private security chief, retired military intelligence officer Douglas Bustillo, to coordinate Berta Caceres' murder. While DESA's social and environmental manager, Sergio Rodriguez, used a network of paid informants to monitor Berta's movements, Bustillo recruited the top-ranking special forces intelligence officer, Major Mariano Diaz, and a criminal cell he managed to carry out the murder. That criminal cell included a young former soldier, Henry Hernandez, who established a relationship with a band of paid assassins, street killers that have proliferated in the drug war. Prosecutors argued that the three paid assassins, Edilson Duarte, Oscar Torres, and Elvin Rapalo, under the direct coordination of Hernandez, comprised the tactical group that carried out the assassination based on planning by Diaz, Bustillo and Hernandez, and using information about Berta's movements facilitated by Sergio Rodriguez. An eighth defendant, Emerson Duarte, Edilson Duarte's twin brother, was also charged with murder but with little evidence to link him to the crime, the State prosecutors asked the Court to sentence him for concealment. Honduran law exempts close relatives from prosecution for concealment.

Communications between additional individuals associated with DESA were described by prosecutors as related to the conspiracy, specifically communications by the deceased DESA Security Chief Jorge Avila, DESA Financial Manager Daniel Atala, and DESA President David Castillo, who is currently indicted and in detention awaiting trial for Caceres' murder. Other members of the DESA Board were frequently mentioned as participants in communications relevant to the murder, such as Pedro Atala Zablah, José Eduardo Atala Zablah y Jacobo Atala

Zablah. Prosecutors also frequently referred to a network of informants in the Rio Blanco region who monitored Berta and other members of COPINH.

COPINH reports that threats against community members who oppose DESA's ongoing hydroelectric concession grew during the trial, forcing at least one Lenca leader to flee the region. This may have been fueled by a smear campaign directed against COPINH. As evidence against their clients grew, a Washington based law firm hired by DESA published unsubstantiated accusations of violence by COPINH, putting the organization and its members at risk. They also published outrageous and demeaning suggestions about Caceres' sexual life, going so far as to assert that harassing messages sent to Caceres by Bustillo demonstrated the existence of a romantic relationship.

Before their expulsion from proceedings, victims proposed two hostile witnesses, DESA employees and brothers, Hector Garcia and Olvin Mejia. Evidence in the investigation showed that Mejia had been the subject of extensive messaging by DESA executives in December 2015, following his arrest for possession of illegal weapons and the murder of a young man in Rio Blanco. When DESA executives sent an unusually large sum of money to a lawyer following the arrest, the charges against Mejia were inexplicably dropped. State prosecutors allowed Hector Garcia to testify but failed to question them regarding DESA's network of informants or Mejia's escape from murder and illegal weapons charges, and allowed him to make unsubstantiated accusations against COPINH without requesting clarification.

As we await the ruling in this paradigmatic case, we call on the Honduran Attorney General to fully investigate and prosecute additional individuals implicated in Berta Caceres' murder, other acts of violence related to the Agua Zarca dam, including intellectual authors and individuals who continue to promote violence in the Rio Blanco region. Other crimes made public in the evidence must also be fully prosecuted.

We also reiterate due process concerns that have been raised by members of the Legal Observer Mission<sup>1</sup> and others, which could provide grounds for future appeals. It is also concerning that the scope of the criminal activity examined in the trial was limited.

- Though most of the evidence was gathered in the months following the murder and during the arrests of the accused, the trial did not begin until almost two and half years after the initial arrests. The time limit for pre-trial or preventative detention expired mid-way through the trial and was further extended by the court.
- Throughout the preliminary hearings, both the victims and the defense were denied access to evidence by state prosecutors, this occurred even when the Court ordered public prosecutors to hand over the evidence. The Court did not sanction the State prosecutors at any time for disobeying orders.
- Public prosecutors did not complete the paperwork necessary to allow Gustavo Castro, the only eyewitness and a victim to the crime, to testify in proceedings.
- The delay in the start of the trial placed the victims' in the difficult position of choosing between risking the release of the defendants based on the expiration of pretrial detention and fully defending due process through a robust engagement in motions challenging problematic rulings. .

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<sup>1</sup> Honduras: Serious irregularities obstruct truth and justice in Berta Caceres case - Legal Observer Mission November Graves irregularidades obstaculizan verdad y justicia en caso Berta Cáceres  
<http://observacioncalificadabertacaceres.blogspot.com/2018/10/honduras-graves-irregularidades.html>

- Despite repeated requests, prosecutors did not present Criminal Conspiracy charges against the accused, which would have facilitated the introduction of evidence that more fully described the activities of the criminal networks responsible for Berta Caceres' murder.
- A large proportion of the evidence gathered was not analyzed by investigators until after the trial was scheduled to begin which made it logistically impossible to integrate that evidence into the trial.
- Evidence proposed by the victims that provided important context and information regarding the broader criminal structure that conspired to commit the murder was not allowed by the court, including expert analysis that demonstrated the likelihood of participation additional conspirators.
- The victims lawyers were expelled from the trial. As in most nations in Latin America, under Honduran law it is victim's right to enter into the legal proceedings as "private accusation." . This has been key to the advance litigation of human rights abuses in Latin America. On October 19, the Court convened the parties to open the trial, but the private accusation, in accordance with Honduran law, presented a written explanation that they would not be present because the motion for recusal had still not been resolved and therefore the trial could not legally move forward. At the petition of public and private defense lawyers and the State's prosecutors, the Court ruled to declare the private accusation, the victims and their lawyers, as having abandoned the case. Their expulsion from the trial raised serious concern amongst national and international legal observers.
- The Court proceeded with the trial before pretrial motions had been exhausted, putting the eventual ruling at risk. This includes a constitutional challenge of a ruling against a motion to allow COPINH to participate in the trial as victims. Most importantly, a final decision regarding the motion to recuse the judges overseeing the trial has not been issued.
- The Court has refused to provide audio recordings of the trial to the victims or the public. In addition, a sensitive hearing regarding text messages by DESA executive Sergio Rodriguez was held at a time the court had announced to the public that the trial would be in recess. Victims were also not notified of the proceeding. This meant the victims and others monitoring trial could not observe the presentation of critical evidence about the involvement of a DESA employee and former employee.