



## HONDURAS HUMAN RIGHTS MONITOR/USA

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### **Judge finds Mayor who disregarded Lenca communities' rejection of the Agua Zarca dam 'Not Guilty' of Abuse of Authority**

*April 27, 2018*

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In a ruling that boldly contradicts fundamental concepts in Honduran law, an April 23, 2018 court ruling acknowledged that Lenca communities legally rejected the construction of the Agua Zarca Dam, yet also exonerated the mayor who authorized construction of the dam from charges of abuse of authority. The license to build the dam remains in effect, even as the president of the company holding the license was arrested March 2, 2018 in connection to the murder of Berta Caceres, an opponent of the dam.

In 2011, Martiniano Dominguez Meza was mayor of Intibuca, a township in Honduras with one the highest number of indigenous communities. Before granting the construction license for the Agua Zarca hydroelectric dam, Dominguez convoked meetings in the area impacted. The Lenca indigenous communities of Rio Blanco rejected the project. The Council of Popular and Indigenous Organizations of Honduras, COPINH, demanded that in order to comply with the right to consultation as required by Convention 169 of the International Labor Organization, the mayor should not approve a construction license. Disregarding all of this, he awarded the construction license to the DESA corporation anyway.

With this illegally granted permit, DESA obtained national and international financing, hired major transnational construction companies, and according to investigations by the Honduran public prosecutor's investigation, initiated a campaign of violence and intimidation against Lenca communities who objected to the dam, culminating in the murder of internationally recognized indigenous rights advocate Berta Caceres.

The Honduran Special Prosecutor for Ethnicities first presented charges against Dominguez Meza in April 2013, but the courts did not formalize the charge until June 2016, two months after Berta's murder. In a trial that began March 19, Dominguez faced charges of abuse of authority for not complying to the requirements of ILO 169.

On Monday, April 23, in a ruling that disregarded national and international law, Judge Victor Antonio Calix exonerated Dominguez from the charges. Calix argued that while the communities had rejected the dam, Dominguez's actions did not constitute abuse of authority because there is no secondary legislation to implement ILO 169, and the dam had been approved by the central government.

This ruling ignored two fundamental concepts in Honduran law. First, even without implementing legislation, the Constitution gives international human rights treaties ratified by Honduras the same judicial hierarchy as the constitution, and second, municipal governments have autonomy in their

decision making from the central government. Even if the central government awards a right to use a river the mayor has the obligation to evaluate social and environmental impacts before awarding a construction license. Given that these concepts are so clearly defined in Honduran law, COPINH lawyers are confident that barring blatant intervention in the autonomy of the courts, which frequently occurs in Honduras, appeals of the decision should be successful.

Thousands of Lenca men and women from Intibuca came together in the 1990s to form the COPINH. COPINH and allied indigenous organizations camped out in front of the National Congress for weeks at a time demanding that Honduras ratify International Labor Organization's Convention 169. When ratified, on March 28, 1995, ILO 169 became binding law; the Honduran constitution gives international human rights accords the same status as constitutional law.

While full prosecution of Martiniano Dominguez would likely never result in penalties greater than fines and a bar on holding public office, a guilty verdict against Martiniano Dominguez would clearly establish a route to enforcement of ILO 169, and would confirm that the construction permit was illegally granted. Northern countries with investment interests in the region have supported secondary legislation passed by congresses to implement ILO 169 throughout the region, but COPINH and other indigenous organizations explain that precedents in Latin America demonstrate that ILO 169 can be implemented directly through court decisions on a case by case basis. They prefer this option as the corrupt and criminal sectors of the elite class in Honduras have only deepened control of the congress after the 2009 coup.

In addition to the prosecution of Martiniano Dominguez, the mayor, vice mayor and the six person municipal council of the township across the river, in San Francisco Ojuera, Santa Barbara were charged with the same offense on April 18, 2018. In June and October 2016 two Deputy Secretaries of the Ministry of Natural Resources and the Environment were charged with abuse of authority for approving environmental licenses when indigenous communities had not been consulted, Jonathan Ordonez Lainez, and his successor, Roberto Dario Cardona. Both Ordonez Lainez and Dario Cardona are currently pending trial. Ordoñez Lainez was also charged with the same offense in relation to the Aurora II dam in Santa Elena, La Paz, a process Berta Caceres and COPINH initiated in the office of the Special Prosecutor for Ethnicities at the same time as the Agua Zarca related cases. Dario Cardona was subject to preventative detention for several months because he also faced unrelated corruption charges.

In 2013, COPINH filed similar complaints against Ordonez and Dario's boss, then Minister of Natural Resources and the Environment, Rigoberto Cuellar. In 2015 Cuellar became Adjunct Attorney General, the number two position in the agency. Cuellar was never charged in relation to Agua Zarca. COPINH also asserts that the Environmental and Social Impact Assessment used was flawed. In fact, it was written by a man currently in prison charged with participation in the murder of Berta Caceres.

All of these cases were the result of the efforts initiated by Berta Caceres as part of her work with COPINH; COPINH presented the complaints to the Special Prosecutor for the Ethnicities. The office of the Special Prosecutor for Ethnicities was created in the late 1990's as a result of pressure from marginalized indigenous communities seeking a specialized agency to protect their rights.