

# Impunity in Honduras: Flouted Justice for Berta

Thursday 29 November 2018, by [McVICAR Jackie](#) (Date first published: 14 November 2018).

**The trial against Berta Cáceres' accused assassins has been riddled with irregularities and bias—and barred the victims' lawyers from participation. It is a tragic lost opportunity for justice in Honduras.**

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*A vigil for Berta Cáceres at the Organization of American States on April 5, 2016. Berta's daughter, Bertha Zúñiga Cáceres, is on the left. (Daniel Cima/Flickr).*

Three weeks into the trial for the murder of Indigenous Lenca leader Berta Cáceres and attempted murder of Mexican environmentalist Gustavo Castro in Honduras, it has become abundantly clear that political interests will supersede true justice in one of the most emblematic cases the country has ever seen. Cáceres, an internationally-known activist and former leader of the Civic Council of Popular and Indigenous Organizations of Honduras (COPINH), was most known for her opposition to the construction of a dam in Indigenous territory called Agua Zarca, owned by the Honduran company Desarrollos Energéticos SA (Energetic Development, DESA).

The trial against eight men accused of participating in the murder opened on October 19 after a pre-trial period marked by irregularities and bias—even though the judges in the case are currently embroiled in a recusal process and the victims were ordered to be represented by state prosecutors instead of their own attorneys. A ninth man, David Castillo, a former military intelligence officer and General Manager of DESA, [was arrested on March 2, 2018 in connection to the murder](#), but will face a trial at a later date.

The goal of the legal process they have mounted has been to get to the truth of what happened in Berta's case, but also to expose the state and economic systems in place that perpetuate racism, dispossession, and impunity in Honduras. Berta Cáceres' three daughters, son, and mother, as well as Gustavo Castro, the only eyewitness to the events of March 2, 2016, who was also shot and injured during the attack, are the victims of the case. The family and Castro, with their lawyers, assert that Berta was killed as part of a coordinated campaign by DESA against COPINH and Cáceres, and that the assassination was not an isolated event. Their lawyers affirmed that there is

evidence of systematic attacks by DESA against COPINH, which Berta Cáceres co-founded, and the Lenca people, and are asking that DESA be exposed and prosecuted. During the August evidentiary hearing, key evidence was not accepted by the judges presiding over the trial that would have shown the historical and systematic attacks against the Lenca population by the state and companies working in their territory. The goal of the legal process they have mounted has been to get to the truth of what happened in Berta's case, but also to expose the state and economic systems in place that perpetuate racism, dispossession, and impunity in Honduras.

Berta's family and Castro have used every legal recourse available to them to root out corruption in the judicial system over the past two and half years, but multiple irregularities throughout the legal process have persisted. As a result, on September 17, the day the trial was originally set to begin, they filed a criminal complaint against the tribunal, followed by a motion to recuse the judges. This motion led to an immediate suspension of the trial. The complaint and recusal allege the tribunal's abuse of authority, concealment, denial and delay of justice, and violation of their duties as public officials.

In the month that followed the motion, the recusal process went through a legal battle between appeals courts and the private accusers. The three legal teams of the private prosecution—one representing Berta's son, one representing her daughters and mother, and one representing Gustavo Castro—submitted a letter citing that starting the trial on October 19 would be illegal due to the still-underway recusal process for the four judges. But the judges sided with the defense lawyers and Public Prosecutors' Office, claiming that the private prosecution had abandoned their clients, and the trial opened.

The legal right for victims to participate in the legal process as private prosecutors is enshrined in Honduran law. Berta's family was represented by two teams of lawyers from the Movimiento Amplio Para la Dignidad y La Justicia (Broad Movement for Dignity and Justice, MADJ), while Castro was represented by two lawyers from the Comité por la Libertad de Expresión (Committee for Freedom of Expression, C-Libre). Generally, the Public Prosecutor's Office would work hand-in-hand with the private lawyers to build a stronger case against the accused, ensuring that the interests of the victims are fully represented. In Berta's case, nothing could be further from the truth. All evidence points to the Public Prosecutors' Office actively working against the interests of the victims.

Removing the private prosecutors allows the trial to move more quickly, with fewer questions not only for the people on the stand, but also fewer for the state about the deeper implications of the evidence. In the absence of the private prosecutors, on October 19 judges decided that public prosecutors would represent the victims. When this was announced, Berta's daughters, Bertha and Laura Zuñiga Cáceres, gasped audibly in the courtroom. They had been assigned representation by an office that has been actively working against their interests since their mother's murder. Removing the private prosecutors allows the trial to move more quickly, with fewer questions not only for the people on the stand, but also fewer for the state about the deeper implications of the evidence.

This followed a lack of transparency that had defined the case from the start. The state's investigation into Berta's murder was labeled "secret" early on, and barred the victims' lawyers from accessing crucial evidence. On more than 35 occasions, the family requested that the public prosecutors hand over key evidence collected during the raids of the houses of the DESA officers currently on trial, as well as other information pertinent to the case—but the prosecutors failed to do so. They also defied four court orders to hand over the evidence, leaving the private prosecution as well as the defense lacking key information. Yet they were never sanctioned, which in part motivated the private prosecution's attempt to recuse the judges. Without this information, both private prosecutors and defense lawyers were unable to properly prepare for the trial.

On October 12, along with their lawyers, Berta's daughters had asked Attorney General Oscar Chinchilla, also the head of the Public Prosecutors' Office, to step in given the mishandling by public prosecutors and investigators. [They submitted a letter](#) outlining the reasons that four of the eight men who are now facing trial for Berta's murder should be investigated for illicit association. Though usually a charge laid against suspected gang members, they asked Chinchilla to "break with impunity and accuse DESA, the ones building the Agua Zarca hydroelectric project, of illicit association." Chinchilla's office did not respond.

As the trial began, other delays and complications followed regarding the admissibility of using expert testimony on the stand and extending the deadline for preventative prison for five of the eight men on trial, which expired on November 2. This delayed the trial a full day—and though the jail time was extended, several of the defense lawyers now consider their clients to be in illegal detention.

## **Assassins on Trial**

In the year following Berta's murder, the eight men currently facing trial were arrested. Ranging from mid-level DESA employees to high-ranking active military officers to hitmen, none seemed to have any clear motive to kill Berta Cáceres other than being paid to do so. The first four were [arrested and charged with murder](#) on May 2, 2016. Sergio Rodríguez, a DESA Environmental and Social Manager who worked on the ground where the Agua Zarca dam was to be built; Douglas Bustillo, a retired military officer who was the head of security for DESA until mid-2015 but has remained close to the company; and Major Mariano Díaz, a senior military intelligence officer in the same battalion as Bustillo and thought to have recruited one of the young men who carried out the murder, were arrested in Tegucigalpa. That same day, [Edilson Duarte was arrested](#) in La Ceiba and police sought to arrest former military officer and Major Díaz's recruit Henry Hernández in the Bajo Aguán, but he had fled the country. [He was arrested in Mexico](#) on January 13, 2017.

Emerson Duarte Meza, Edilson Duarte's brother, was also arrested on May 2, 2016, on charges of illegal possession of a weapon, for which he was later sentenced to three years in jail. During the current trial, a ballistics specialist from the Public Prosecutor's Office confirmed that the .40-millimeter gun retrieved from under Emerson Duarte's mattress was the gun that killed Berta Cáceres. Yet, the agent tasked with tracing the murder weapon admitted she did not follow procedure and confiscated the gun with no witnesses present. A .40-millimeter was also found in the home of Major Mariano Díaz the day he was arrested, but it was never analyzed. These actions cast serious doubt on the gun theory currently presented by the public prosecutors.

On May 7, immediately following his brother's arraignment, Emerson Duarte was charged with murder. Apart from the weapon found in his home, there seems to be no other evidence linking him to the murder. The private prosecution asked for the charges against him to be dropped but his lawyer pushed for him to face trial in order to prove his innocence. This only raises suspicion that the state's hypothesis of Emerson Duarte's guilt will be carried out at all costs.

On September 8, 2016, 21-year-old [Elvin Rápalo](#) was arrested in Zacapa, Santa Barbara, near the Agua Zarca dam. A protected witness who testified early on in the trial said that Rápalo had confessed to killing "the old lady" and stepping on her body when she fought back. [Oscar Torres](#), the final man on trial, was arrested in La Ceiba on February 9, 2017.

Meanwhile, on March 2, 2018, David Castillo, General Manager of the DESA Corporation, accused of being one of several intellectual authors of Berta's murder, was also arrested. The Public Prosecutors' Office had possessed evidence implicating Castillo and other influential individuals as

the intellectual authors of the crime since at least May 2016 when the first five men were arrested and their homes searched, as well as the offices of DESA—evidence that was ignored until Berta’s legal team was able to obtain a copy of it through a court order.

Castillo will face a separate trial, though the private accusation has also started to point out irregularities in his case. Berta’s family has been pushing for a deeper investigation into who ordered the murder and the illicit associations that were created to systematically attack COPINH and Berta, including the links to the state and in particular, security forces. Evidence in the trial has shown that the military and police worked to protect the company and criminalize Berta and members of COPINH. Prior to Berta’s murder, the Inter American Commission on Human Rights (IACHR) had ordered the Honduran state to provide security for her. The police agent responsible for overseeing that security detail was proposed as a witness by Berta’s family’s lawyers, but the court rejected his testimony at the request of the public prosecutors, leaving his offices’ actions and failure to protect Berta unquestioned. Before her murder, Berta’s name was said to be on a [military hit list](#), a claim that was never investigated. To date, Major Mariano Díaz, the senior intelligence officer and trainer in the Public Order Military Police, is the highest ranking military official implicated in the crime.

### **Motives and Cover-ups**

The process is now culminating in what could be interpreted as an illegal trial—making its outcomes, regardless of “innocent” or “guilty” convictions, appealable. In their opening statements, which lasted less than 15 minutes against all eight of the accused, the public prosecutors stated that the motive for Berta’s murder was to debilitate COPINH and their resistance to DESA’s Agua Zarca project. The evidence that has been presented to date in the trial, along with the irregularities that have marked the entire process, have not backed their hypothesis. The process is now culminating in what could be interpreted as an illegal trial—making its outcomes, regardless of “innocent” or “guilty” convictions, appealable.

In addition, the testimony that Gustavo Castro, not only a victim of attempted murder but also a key eyewitness, gave following the attack in March 2016 may not be heard because the Public Prosecutor’s Office did not follow the procedures for it to be presented. The state prosecutors are making it easy for the defense to cast doubt on the culpability of the accused and leave open the opportunity for them to appeal the decision if found guilty. Berta’s family wants justice, but a rushed trial without the full participation of the victims, an irregular process, and illegal decisions by the justice system along the way will only contribute to the long history of impunity in Honduras.

“Emblematic” is often the word used to describe Berta’s case—because she was an internationally recognized advocate and leader. It sent a signal to everyone in Honduras, and the region, that they weren’t safe anywhere. If they can kill Berta, and get away with it, they can do away with anyone who is part of the resistance against extractive projects in territories throughout the country.

This resistance and repression continue in Honduras. [According to community radio](#) station Radio Popular del Aguán and human rights organizations in the area, on October 27 close to 1,500 state security forces and armed paramilitary groups violently evicted the peaceful “For Life” camp that had set up close to three months ago in the Bajo Aguán region in resistance to the Los Pinares mining project in Guapinol. People were reportedly killed and [others had their homes set on fire and were kidnapped before being released](#). While thousands of Hondurans are fleeing the country in search of refuge from such abuses of power and Berta’s trial continues, there is zero consequence for a government repeatedly singled out for its role in provoking serious human rights abuses.

The trial, in the context of the country's ongoing political crisis, sheds light on the deficiencies and corruption within the judicial system—despite the tens of millions of dollars that the [EU](#), [the U.S.](#), and [intergovernmental organizations](#) have thrown at it in recent years. Berta's case seems doomed to be just one more in a long line of badly-investigated cases manipulated by the system for the state's benefit. Even if there is a conviction, justice for the victims is an unlikely conclusion. The Honduran state's opportunity to properly handle Berta's emblematic case as a litmus test for human rights activist murders has already passed.

Meanwhile, the case against David Castillo, [the DESA executive president arrested on March 2, 2018](#), thought to be an intellectual author of the crime, is barely fumbling forward. The court that presided over his first hearing took more than seven months to formalize his paperwork. It is unclear if he will be charged with illicit association for creating and being part of an illegal criminal structure that led to Berta's murder.

Berta Cáceres' murder sounded the bells on impunity in Honduras. Two and half years later, her trial proves one thing: even the most representative case in recent history won't see justice. Missing evidence, procedural irregularities, and now a trial that is arguably illegal without Berta's family present, proves that the state will forge ahead at any cost—leaving behind due process, access to integral justice, and a step towards ending impunity in Honduras.

**Jackie McVicar**

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## **P.S.**

- NACLA. November 14, 2018:  
<https://nacla.org/news/2018/11/15/flouted-justice-bertha>
- Jackie McVicar has been accompanying human rights social movements and indigenous communities in Central America for the past 14 years and is coordinating an observer mission for the Berta Cáceres' trial.