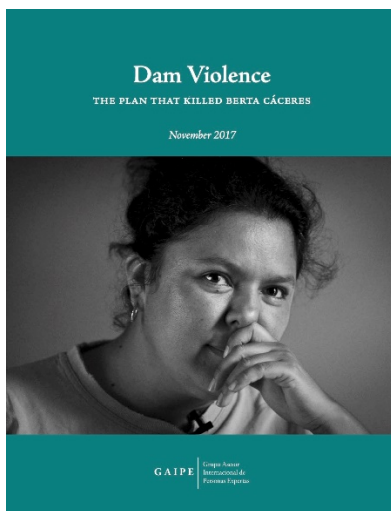


# Berkeley Law International Human Rights Law Clinic

## Stand for Justice

### 2017 Newsletter

#### Independent Investigation of the Murder of Berta Cáceres



On March 2, 2016, armed persons stormed into the home of human rights defender Berta Cáceres, shot her dead, and injured Gustavo Castro Soto, a Mexican national. Before her death, Berta had mobilized indigenous Lenca communities in a grassroots campaign that prompted the world's largest dam builder to withdraw from the Agua Zarca Dam project – one of dozens of dam projects approved by the Honduran government on Lenca land.

Immediately after the murder, the Cáceres family called for an independent investigation of the crime

by international experts. The Honduran government, however, refused to reach an agreement with the Inter-American Commission on Human Rights to authorize an international investigation.

In 2016, the International Expert Advisory Panel (GAIPE) was created at the request of the Cáceres family and with the support of national and international civil society organizations. In November 2017, GAIPE released [a report](#) with the results of its investigation. [Several IHRLC students helped with the investigation.](#)

GAIPE found that a criminal network comprised of DESA executives and employees, state agents, and hitmen is responsible for killing Berta Cáceres and committing a range of other crimes such as unlawful association, conspiracy, obstruction of justice, and abuse of authority.

Although eight individuals have been indicted for the murder, including an active member of the military, the social and environment manager for the company, and DESA's former director of security, Honduran investigators have failed to pursue who ordered and financed the crime. GAIPE found that the Public Ministry has had sufficient evidence to bring company executives into custody for the murder and other crimes since May 2016,

but has failed to act. GAIPE also found the decision by international financial institutions to finance the Agua Zarca Project disregarded the right of indigenous communities to free, prior, and informed consultation as well as the acts of violence and intimidation committed by DESA and state security forces.

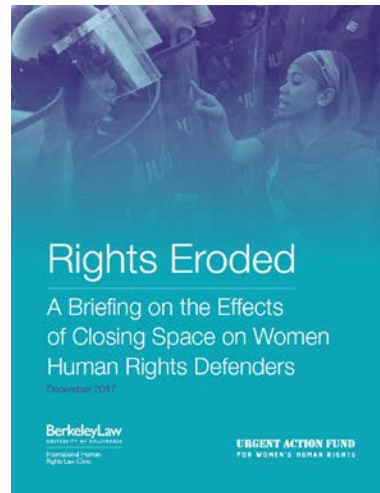
Based on its findings, GAIPE recommends that Honduras revoke the concession, licenses, and permits for the Agua Zarca Dam; the Public Ministry dismantle the criminal network responsible for Berta Caceres' murder and other crimes by conducting an exhaustive investigation that leads to the prosecution and punishment of the intellectual and material authors; and international financial institutions release all information related to acts of violence and intimidation by DESA and implement effective policies to protect critics and opponents of development projects from reprisals.

Click [here](#) to read the report the news coverage.

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## Clinic Addresses “Closing Space” Phenomenon on Women Human Rights Activists

Human rights defenders around the world find themselves operating in an increasingly hostile climate. Governments are restricting the ability of activists to operate through harassment, intimidation, and by imposing new legal restrictions on the ability of civil society actors to form associations and receive funding. This phenomenon is known as “closing space.” It erodes rights, threatens social justice movements, and undermines participatory democracy and human rights promotion.



IHRLC partnered with the Urgent Action Fund for Women's Human Rights to investigate this issue and, on Human Rights Day 2017 (December 10<sup>th</sup>), released [“Rights Eroded: A Briefing on the Effects of Closing Space on Women](#)

[Human Rights Defenders.”](#) A team of IHRLC students interviewed dozens of women human rights defenders in five regions around the world and reviewed relevant domestic laws in sixteen countries—Bahrain, Bangladesh, China, Ecuador, Egypt, El Salvador, Honduras, India, Indonesia, Kenya, Kyrgyzstan, Mexico, Nicaragua, Russia, Turkey, and Zimbabwe.

This is the first legal report of its kind documenting the gendered experiences of women's human rights defenders amongst the growing trend of criminalized activism. Women defenders are at the forefront of social movement struggles and yet face particular forms of targeting based on their gender and social vulnerabilities.

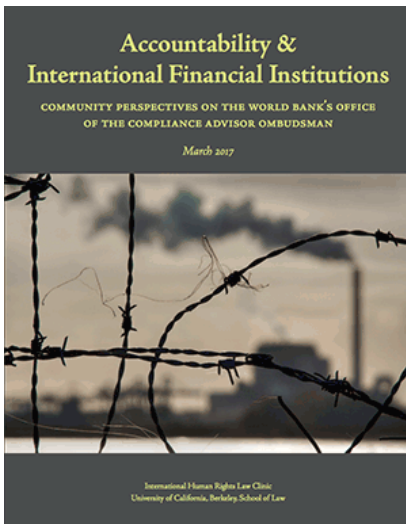
The Briefing throws into stark relief the degree to which States are falling short of their obligations under international law to these activists. It offers recommendations to States, the United Nations, and funders on how to address the impacts of closing space on these vulnerable human rights defenders.

Click [here](#) to read more about the students' work on the report.

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## New Report Critical of World Bank's Internal Watchdog

The World Bank created the Office of Compliance Advisor Ombudsman (CAO) in 1999 to ensure that its development projects were sustainable and benefited the poor. CAO addresses community concerns through dispute resolution (e.g., mediation) and by investigating bank compliance with its social and environmental policies. But, according to a IHRLC report, [Accountability & International Financial Institutions: Community Perspectives on the World Bank's Office of the Compliance Advisory Ombudsman](#), CAO's mandate and authority are too weak to hold bank and companies accountable or remedy harms caused by projects.



The report uses quantitative and qualitative methods to offer an empirical view of how CAO works, what factors influence its approach and outcomes, and when communities believe it is effective and fair. Even though the

bank's accountability office had some success as a problem solver, during its first decade of operation, CAO closed the vast majority of cases without investigating whether the bank violated its own social and environmental policies. CAO's lack of authority, the voluntary nature of the dispute-resolution process, and the complexity of conflicts

prevented parties from reaching agreements in most cases.

IHRLC also examined how stark power imbalances between the parties affected CAO cases. The clinic's data suggests that several factors—such as the wealth of the company, the involvement of international NGOs as complainants, and the size of the World Bank's loan—may have influenced CAO's process and outcomes.

The report is unique because it offers a glimpse of how CAO worked on the ground. The report also offers recommendations for how CAO should address power imbalances in situations when indigenous communities seek redress from multibillion-dollar companies. The report recommends that the World Bank contractually obligate companies receiving bank financing to participate in CAO's dispute resolution process and require its officials to address CAO's findings regarding compliance. The report similarly recommends that the World Bank redouble efforts to ensure that complainants can meaningfully participate in CAO's process by improving community access to project information and allowing their representatives to participate in mediation.

Read more about the students' work on the report [here](#).

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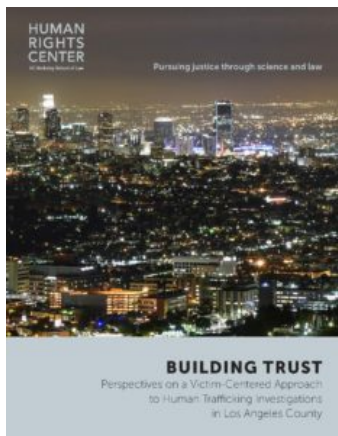
## First Study of Novel Anti-Trafficking Efforts That Could Be Model for the Nation

IHRLC collaborated with UC Berkeley's Human Rights Center to release the first study of Los Angeles County's novel anti-trafficking efforts—evaluating a model that could be replicated nationwide to improve investigations of human trafficking and provide support for victims.

[Researchers](#) studied the first year of the Human Trafficking Bureau of the Los Angeles Sheriff's Department, a member of the Los Angeles Regional Human Trafficking Task Force, which brings together investigators, service providers, and prosecutors to investigate—and stop—human trafficking. The study is the first comprehensive look at the Bureau, which was established in 2015.

Researchers interviewed 45 federal, state, and county investigators, service providers, and prosecutors for [Building Trust: Perspectives on a Victim-Centered Approach to Human Trafficking Investigations in Los Angeles County](#).

The study's findings highlighted the importance of collaboration between state and federal law enforcement and service providers, building trust between law enforcement and trafficked youth and adults, expanding law enforcement coordination in California and surrounding states to share data,



securing better short- and long-term housing options for trafficked youth and adults, and strengthening efforts to address labor trafficking.

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## Clinic Highlights the Lack of Redress for Victims of Sexual Abuse by Peacekeepers

Since 2004, there have been over 2,000 reports of sexual exploitation and abuse (SEA) by United Nations peacekeepers. In the face of what has proven an intransigent problem for the United Nations, the current UN Secretary-General has announced a new approach to confront sexual exploitation and abuse that seeks to “put the rights and dignity of victims first.”

In response to this announcement, In September 2017, REDRESS released [Sexual Exploitation and Abuse in Peacekeeping Operations: Improving Victims' Access to Reparation, Support, and Assistance](#). IHRLC students conducted legal research, prepared detailed analysis, and interviewed numerous experts, service providers, and researchers for the report.

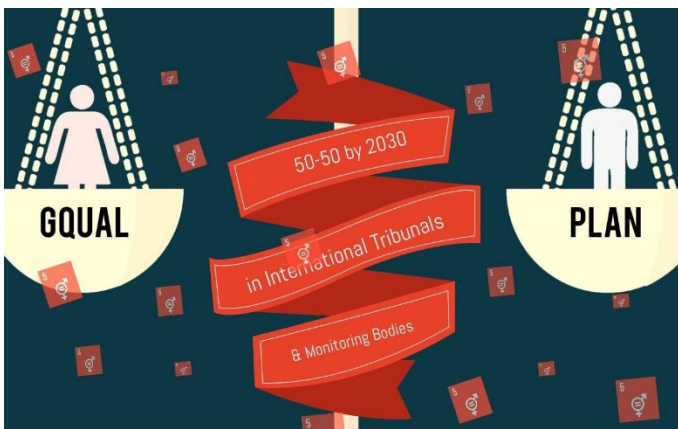
The report examines the question of “what happens to the victims?”—a topic often overlooked in past UN initiatives. It provides an overview of victims' rights, identifies shortcomings of the current approach, and calls on decision-makers to consult with victims about their perspectives, needs, and priorities.

Read more about the launch of the report [here](#).

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## More Than Fair: GQUAL Campaign Mobilizes Law to Change Picture of International Justice



Excerpted from Clinic student Mary Dahdouh's [Intlawgrrls blog post](#)

Globally, women occupy only 33% of the 599 seats found on the 91 adjudicatory bodies of international law. But when one excludes the committees and working groups on the rights of women and children, that number drops to 24% of the remaining 533 seats. Only one woman sits on each of the Inter-American Court of Human Rights, the appellate body of the World Trade Organization, and the Committee on the Rights of Persons with Disabilities. The paucity of women on international bodies reveals a gross imbalance of power that tips against a community that makes up roughly half the world's population.

During the first week of October, ambassadors, legal experts, practitioners, and activists from around the world gathered in The Hague to strategize changing this male-dominated picture of international justice during the [GQUAL Campaign's](#) international conference marking its second anniversary. The [Action Plan](#) adopted at the

conference begins with an important reminder that achieving gender equality on international bodies is not solely a policy of fairness and institutional legitimacy but an action mandated by law. Together with IHRLC, GQUAL released at the conference a [working paper](#) that identifies the international legal basis for the Campaign's aim of realizing gender parity.

International law should be harnessed to address the stark imbalance of power between men and women within international bodies. International law demands the reconstruction of the nominating and voting procedures that currently inhibit the equal representation of women on international courts and treaty monitoring bodies. The Action Plan of the GQUAL Campaign has already taken the first step by affirming that gender equality in the international arena, which requires State commitment to adopt affirmative measures, is neither an aspiration nor a privilege but a human right and fundamental principle of international law.

The GQUAL Campaign calls upon States to live up to their legal and moral obligations to shatter the glass ceiling, reform nomination and selection procedures, and to proactively work to achieve gender parity on international judicial and adjudicatory bodies.

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## Clinic Helps Draft Amicus Brief for Uganda's First War Crimes Trial

Thomas Kwoyelo, former commander of the Lord's Resistance Army, has been implicated in war crimes and crimes against humanity committed during armed conflict in northern Uganda from the late 1980s through the early 2000s. After years of deliberation on his eligibility for amnesty, proceedings against Kwoyelo are slowly moving



forward before the International Crimes Division (ICD) of the Uganda High Court.

This case is the first war crimes case to be tried within Uganda’s domestic court system—a unique example of the “domestication” of international criminal law. The Kwoyelo case is expected to reveal critical lessons for both the potential and limitations of national courts seeking to prosecute international crimes.

In the spring 2017 semester, IHRLC students assisted colleagues at the Human Rights Center in providing technical assistance to Ugandan lawyers observing the case. These experts had noticed a puzzle the pre-trial judge faced as she considered the proposed charges against Kwoyelo: what was the applicability of customary international law in this domestic case?

With guidance from the Human Rights Center and international criminal law experts, IHRLC students helped draft an amicus curiae brief for submission by eminent African legal scholars, including professors of Uganda’s Makerere University Faculty of Law and Justice Richard Goldstone of South Africa. In this brief, amici clarify the relevance and constitutionality of customary international law with respect to the confirmation of charges in Kwoyelo’s case. This question would also be relevant in any later, similar cases coming before the Ugandan court.

Additionally, students produced an online library on customary international law as a resource for local lawyers and judges. To increase access to their findings, students also contributed research to an article on the role of customary international law in the Kwoyelo trial for the California Law Review.

Whatever the outcome of the Kwoyelo case, the clinic students have helped clarify a complex legal question that is emerging in domestic war crimes trials around the world. We all now wait to see how it plays out in Uganda.

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## **LL.M. and J.D. Students Help UN Expert Respond to Abuses against Human Rights Defenders**



In the fall 2017 semester, IHRLC partnered with Michel Forst, the current U.N. Special Rapporteur on the Situation of Human Rights Defenders, to offer the U.N. Human Rights Practice Course. The course, is conducted in an intensive, workshop style format and provides LL.M. students the opportunity to engage in substantive human rights work with an immediate impact by drafting “observations” on complaints of human rights violations committed against human rights defenders and lodged before the Special Rapporteur. Twelve LL.M. students, hailing from eight different countries and five regions, and four J.D. Clinic interns participated in this year’s course. Drafting in the three primary languages of the United Nations (English, Spanish and French), the students were able to complete nearly one-quarter of the observations expected to be issued to the Human Rights Council in the Special Rapporteur’s next Observation Report slated for release in spring 2018.

# WE NEED YOUR SUPPORT!

During 2018, the International Human Rights Law Clinic will celebrate its Twentieth Anniversary! This important milestone is an opportunity to remember, rejoice, and reinvigorate our commitment to teaching and service. Keep a look out for information about commemorative events and t-shirts.



*Fall 2017 IHRLC Students*

In the meantime, we continue our important work and need your support to help us make a difference both at home and abroad. Please consider making a gift to the International Human Rights Law Clinic as part of your year-end giving. Every gift counts and allows us to continue to do this vitally important work and train the next generation of human rights advocates.



*Spring 2017 IHRLC Students*

Please click [here](#) to make your online donation. If you would prefer to send a check, please make your check payable to “UC Regents/Berkeley Law International Human Rights Law Clinic,” and mail to:

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**THANK YOU!**

