Petition Against Canada for Violations of the Right to Life and Other Rights of Mariano Abarca

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I. OVERVIEW

[1] The Justice and Corporate Accountability Project (JCAP) and partners1 submit this petition to the Inter-American Commission on Human Rights (the “Commission”) on behalf of the family of Mariano Abarca. Mr. Abarca was a beloved community leader and human rights defender who was murdered with impunity on November 27, 2009, in Chiapas, Mexico. Mr. Abarca was killed for defending community rights in relation to a mining project owned by the Canadian company Blackfire Exploration Ltd. (“Blackfire”), which relied heavily on Canada and the Canadian embassy (the “Embassy”) in Mexico to operate its mine. Before Mr. Abarca was murdered, he reported being threatened and beaten in his home by mine employees. Mr. Abarca was also detained without charge following a criminal complaint from Blackfire. In July 2009, Mr. Abarca travelled to the Embassy, explaining to Embassy staff why the mining project was putting his life at risk. The Embassy received 1,400 e-mails describing who Mr. Abarca was and expressing concern for his safety. Unfortunately, the Embassy took no meaningful steps to help protect Mr. Abarca and, instead, continued to put him in harm’s way through its reckless approach to advocacy for Blackfire. Despite repeated requests and legal challenges, Canada never investigated Embassy or company conduct in the lead up to Mr. Abarca’s murder.

[2] Although the events occurred in Mexico, Canada exercised jurisdiction over Mr. Abarca for the purposes of the Inter-American Human Rights System. By becoming directly involved in the mining project from its early stages, the Embassy came to exercise “effective control or authority” over Mr. Abarca. The “effective control or authority” test is still evolving,2 but the Commission and Inter-American Court of Human Rights (“Inter-American Court”) have interpreted it broadly,3 finding “effective control or authority” in a variety of fact situations whenever a member State is in a position to exercise significant influence over protected rights, directly or indirectly through third parties, particularly when serious extraterritorial harm is foreseeable.4 Serious harm concerns violations of the right to life and physical integrity, especially when these violations are directed at human rights

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1 JCAP specializes in supporting litigation and legal work at the intersection of transnational corporate activities, resource extraction, and communities. Justice and Corporate Accountability Project, “Objectives” (2022), online [https://perma.cc/K33M-BMS9]. This Petition is presented in collaboration with MiningWatch Canada, Institute for Policy Studies, Otros Mundos A.C., Mexican Network of Mining Affected People (REMA), Centro de Derecho Humanos de la Facultad de Derecho de la Universidad Autónoma de Chiapas, and José Luis Abarca Monterrozo.


4 Coard et al. (United States of America), (1999) Inter-Am Com on HR, at paras 35, 37, 60-61, Case No. 11.951, Report No. 109/99, online (American government agents placed the petitioners under their authority and control when they detained the petitioners in Grenada) [Coard]; Jose Isabel Salas Galindo and Others (United States of America), (2018) Inter-Am Com on HR, at paras 307, 318, 324, 334, Case No.10.573, Report No. 121/18, online (Commission exercised competence over acts occurring outside the territory of the United States because, when the United States invaded Panama, it had effective control over Panamanian territory) [Jose Isabel Salas Galindo]; Nelson Ivan Serrano Suarez (United States of America), Admissibility and Merits (Publication) (2020) Inter-Am Com Hr, Case No. 13.356, Report No. 200/20, at paras 9-10, 27-29, online (Commission is competent over violations committed by American authorities in Ecuador when they paid an Ecuadorian mayor to pay off-duty police officers to help them detain and illegally render the petitioner to the United States); Armando Alejandro Jr., Carlos Costa, Mario de la Peña, and Pablo Morales (Cuba), (1999) Inter-Am Com on HR, Case No. 11.589, Report No. 86/99, at para 25, online (Cuba placed civilian pilots under its power and authority when Cuban state agents shot the pilots down in international airspace) [Armando Alejandro Jr.]; Franklin Guillermo Asialla Molina (Ecuador-Colombia) (2010), Inter-Am Com Hr (Ser L/VII (140) Doc. 10, Admissibility Report, No 112/10, at para 100, online (Obligations in extraterritorial conduct, in particular, respect for the right to life and humane treatment, “arise in the period of time that agents of a State interfere in the lives of persons who are on the territory of the other State”) [Franklin Guillermo Asialla Molina]; Advisory Opinion OC-23/17, Inter-Am Ct HR (Ser A) No 23, State Obligations in Relation to the Environment in the Context of the Protection and Guarantee of the Rights to Life and to Personal Integrity, 2017, at paras 93-94, 140, online (Effective control or authority should be interpreted purposively to include acts or omissions within a State’s territory that could have effects on territory or inhabitants in another state, including a duty to prevent significant harm involving violations of the right to life and personal integrity) [Advisory Opinion OC-23/17].
defenders. In the context of economic diplomacy, extraterritorial jurisdiction can thus arise when State agents 1) exercise significant influence over a business venture that has the potential to adversely impact human rights, and 2) know, or ought to know, that there is a real risk to the lives of human rights defenders because of that venture. When this occurs, State agents owe these human rights defenders certain actionable obligations flowing from the Home State’s duty to respect and protect the right to life. In this case, Embassy officials clearly exercised jurisdiction over Mr. Abarca by July 2009.

[3] Unfortunately, Canada and its Embassy failed in their duty to respect and protect Mr. Abarca’s right to life, viewing their international human rights obligations as voluntary and secondary to Blackfire’s stated needs. Canada, and Embassy officials, made a significant contribution to the situation of risk that Mr. Abarca faced. When this risk became real and immediate, Embassy staff failed to do what was within their area of responsibility and scope of influence that could have been reasonably expected to help protect him. Canada failed to investigate Embassy and company conduct in the lead up to Mr. Abarca’s murder, instead continuing to support the company. It also failed to press Mexico to carry out an adequate and effective investigation. In doing so, Canada violated Mr. Abarca’s right to life, liberty and personal security (Art. I). Given that Mr. Abarca was murdered as a result of his work as a human rights defender, the above acts and omissions also violated Mr. Abarca’s rights to freedom of expression (Art. IV) and association (Art. XXII). In addition, by refusing to conduct an adequate investigation, or provide a path to an effective remedy in Canada, Canada violated Mr. Abarca’s rights to judicial protection (Arts. XVIII and XXVI). The Petitioners now ask the Commission to declare that Canada exercised jurisdiction over Mr. Abarca and violated his protected rights.

II. CONTEXT

A. Home State responsibility and “economic diplomacy” in the extractive industry

[4] The Commission, the Inter-American Court, and other human rights bodies have recognized that respecting and protecting human rights in the context of transnational extractive projects is a shared responsibility. “Host States” (where extractive projects take place) and “Home States” (where companies are headquartered and financed) have a duty to cooperate with one another to ensure that State agents, and non-state actors whose conduct they are in a position to influence, do not impede on the enjoyment of human rights. The Commission has also recognized that States have a duty to collaborate so that acts constituting human rights infringements in which businesses are involved do...
not remain in impunity.\textsuperscript{11} This position, based in international human rights law,\textsuperscript{12} is part of a larger effort to address the “governance gap” in the global regulation of the potential human rights impacts of multinational corporate activity.\textsuperscript{13}

[5] For decades, Canada has been the home jurisdiction for nearly half to two thirds of the world’s publicly listed mining companies.\textsuperscript{14} As of 2019, nearly two-thirds of the sector’s total assets were invested abroad, with the majority directed at Latin America, at more than $100 billion in investments.\textsuperscript{15} The Canadian government has played a strategic role in the global success of Canadian extraction companies. It provides a favourable domestic legal framework for corporations, offers financial and technical support to Canadian companies operating overseas, and uses the term “economic diplomacy” to describe its commitment that “all diplomatic assets of the Government of Canada will be marshalled on behalf of the private sector”, offering “privileged access to foreign governments, key business leaders and decision-makers”, in addition to on-the-ground intelligence.\textsuperscript{16} In sum, Canada enables and promotes industrial mining overseas in both a structural and direct manner.

B. Canada’s failure to effectively regulate mining despite widespread human rights violations

[6] Unfortunately, Canada has failed time and again to effectively regulate the conduct of its extractive companies overseas. Between 2002 and 2017, seven UN bodies issued at least ten statements expressing concern about the effects of Canadian resource extraction outside Canada, and the deficiencies of Canada’s oversight.\textsuperscript{17} The OECD and others have also expressed concern about Canada’s limited enforcement of the country’s anti-bribery legislation overseas.\textsuperscript{18} In the years directly preceding Mr. Abarca’s murder, Canadian officials were informed about human rights risks related to Canadian mining in a number of high-profile events in Canada, including the 2006 National Roundtables on Corporate Social Responsibility and the Canadian Extractive Industry in Developing Countries.\textsuperscript{19} Canada

\textsuperscript{11} Business and Human Rights: Inter-American Standards, supra note 3, at para 171.
\textsuperscript{12} Yearbook of the International Law Commission, supra note 2, at pp. 229, para 1; General comment No. 24, supra note 9, at para 27; Robert McCorquodale & Penelope Simons, “Responsibility Beyond Borders: State Responsibility for Extraterritorial Violations by Corporations of International Human Rights Law” (2007) 70:4 MLR 617-613 [McCorquodale & Simons].
\textsuperscript{15} Natural Resources Canada, supra note 14.
\textsuperscript{16} Global Markets Action Plan, supra note 6, at pg. 11; Government of Canada, Trade Commissioner Service, Trade Commissioner Service - Eligibility and services, online, accessed 20 January 2023 [https://perma.cc/ACY7-M6ZX].
\textsuperscript{19} From June to November 2006, the Government of Canada held a series of national roundtables to discuss corporate social responsibility in the mining, oil and gas sectors and their operations in developing countries: Foreign Affairs and International Trade Canada, The National Roundtables on Corporate Social Responsibility (June – November 2006), online [National Roundtables] [https://perma.cc/J6ET-8ZK4]; The National Roundtables followed a 2005 hearing before the Canadian parliament on the same topic: Standing Committee on Foreign Affairs and International Trade, Mining in Developing Countries-Corporate Social Responsibility (June 22, 2005) 38-1, No. 14 (Hon Bernard Patry), online [2005 Parliamentary Hearing on Mining] [https://perma.cc/VE3P-BP86].
has produced a number of “aspirational” policies and statements about business and human rights, but has never passed human rights due diligence legislation or implemented an effective way of ensuring that its companies live up to their human rights obligations. Canada does not appear to monitor or collect data about the human rights impact of the sector. To this day, the Canadian legal system remains inaccessible to the marginalized, rural and indigenous communities who are most affected by mining in Latin America. Canada has thus repeatedly refused to effectively regulate or investigate its companies, and does not provide access to justice for affected communities in Canada.

[7] In addition, Canada has failed to adequately regulate the behaviour of its own State agents tasked with carrying out economic diplomacy in Latin America. As detailed below, Canadian policies in place at the time that Mr. Abarca was murdered stated that the Canadian government “encourages and expects Canadian companies to meet high standards of corporate responsibility.” Canadian embassies were directed to “facilitate an open and informed dialogue between all parties” when allegations emerged about companies failing to live up to corporate social responsibility standards. However, Canada has taken the position that these directives were voluntary, that it is not required to protect the right to life overseas, and, more generally, that Canada is “not obliged to ensure that the human rights of individuals are upheld by Canadian companies operating in Mexico.” While a more detailed Canadian policy on human rights defenders exists today, there is growing evidence it is not being implemented. In this way, Canada fails to effectively require respect for human rights by its own State agents engaged in economic diplomacy.

20 Gordillo v. Canada (Attorney General), 2019 FC 950 at para 66 (Annex 16) [Gordillo FC].
21 This public statement appears throughout documents obtained through the access to information request: “The Government of Canada encourages and expects all Canadian companies working around the world to respect all applicable laws and international standards, to operate transparently and in consultation with host governments and local communities, and to conduct their activities in a socially and environmentally responsible manner.” For example: Government of Canada, Department of Foreign Affairs, Trade and Development, Access to Information Request A-2010-00758/RF1, at 000279, 000321, 000360, 000391 (Annex 1) [Access to Information Request A-2010-00758/RF1].
25 Global Affairs Canada, “Building the Canadian Advantage: A Corporate Social Responsibility (CSR) Strategy for the Canadian International Extractive Sector” (March 2009), online [Introduction and Overview] [Building the Canadian Advantage] [https://perma.cc/3SX8-6AZB]. See also: Access to Information Request A-2010-00758/RF1, supra note 21, at 000391.
26 Access to Information Request A-2010-00758/RF1, supra note 21, at 000391; House of Commons, Standing Committee on Foreign Affairs and International Development, “Committee Meeting Evidence” No. 043, 40th Parl 2nd Sess (December 1, 2009) online [https://perma.cc/K242-X2X4]; See also: Access to Information Request A-2010-00758/RF1, supra note 21, at 000013 (PowerPoint briefing to the Minister of International Trade describing Canada’s role as “facilitating dialogue without getting in the middle”).
Canada’s vigorous overseas promotion of an extractive sector that it fails to effectively regulate has had a well-documented, widespread, and prolonged impact on human rights across Latin America. As the Commission is aware, industrial mining can cause devastating and irreparable harm to indigenous, campesino and other marginalized communities and their lands. In addition, between 2000 and 2015, at least 17 community leaders opposed to Canadian mining in eight different countries across Latin America were murdered in targeted attacks. Well before Mr. Abarca was murdered in 2009, it was public knowledge that serious human rights violations like these were common in the mining sector. Canada’s own 2009 corporate social responsibility policy expressed concern regarding the human rights impacts of its project overseas, in particular, the issue of “violence-related risk assessment, including the relations between extractive industries and security providers.” Canada was thus aware that its mining industry posed significant risks to community rights, including the right to life of human rights defenders.

C. Risk to human rights defenders in Mexico

In Mexico, human rights organizations have, for many years, reported on the violent oppression of human rights defenders in their country, marked by threats, attacks, stigmatization, criminalization, murder and impunity. As the Commission is aware, Mexico frequently fails to hold the intellectual authors of these murders to account. Impunity perpetuates violence against human rights defenders and works to silence the communities they represent. Given that this information was publicly available at the time Mr. Abarca was murdered, the Embassy was likely aware of the risks to community leaders affected by mining in Mexico, and in Chiapas in particular.

III. FACTS

A. Overview

It was against this backdrop that, as early as November 2007, the Embassy began actively advocating for Blackfire’s “Payback” mine in Chiapas. The facts in this Petition are based largely on documents

30 For example: Indigenous Peoples and Afro-descendent Communities Report, supra note 24, at paras 1-2, 16, 22; Business and Human Rights: Inter-American Standards, supra note 3, at paras 6, 341; IACHR (Public Hearing), Human Rights and Extractive Industries in Peru, 162 Period of Sessions (25 May 2017); IACHR (Public Hearing), Citizen security and complaints of the irregular use of police forces in activities of natural resource exploration and exploitation in Peru, 169 Period of Sessions (1 October 2018).
31 Imai, Gardner and Weinberger, supra note 23, at pg. 50. See also: UPR Submission on Human Rights Defenders (2023), supra note 22, at pgs. 16-18.
32 For example: National Roundtables, supra note 19; 2005 Parliamentary Hearing on Mining, supra note 19.
33 Building the Canadian Advantage, supra note 25 (CSR Performance Guidelines and Reporting).
34 Building the Canadian Advantage, supra note 25 (CSR Performance Guidelines and Reporting).
36 Office in Mexico of the UN High Commissioner for Human Rights, supra note 34, at pgs. 13-14; US State Department, supra note 34, at pg. 25.
38 Access to Information Request A-2010-00758/RF1, supra note 21, at 000157; Jen Moore & Gillian Colgrove, “Corruption, Murder and Canadian Mining in Mexico: The Case of Blackfire Exploration and the Canadian Embassy” (2013), MiningWatch Canada, at pg. 5, online [Moore and Colgrove] [https://perma.cc/CF53-VB4J].
obtained through a Canadian Access to Information and Privacy Request. The documents date from November 2007 to May 2010. They are partially redacted, and consist mainly of self-reporting by Embassy staff about their work, as well as internal and external e-mails. When read in context, and with other, sometimes contradictory, sources, a picture emerges: Embassy staff went out of their way to become involved in the mining project. They knew human rights defenders, like Mr. Abarca, were at risk, but viewed their human rights obligations as voluntary and secondary to what their “client” company expressed as its needs. They supported Blackfire in a way that put Mr. Abarca at greater risk. Any minimal action in support of what the Embassy viewed as corporate social responsibility was grossly inadequate given its degree of involvement in the project and knowledge of risk to Mr. Abarca.

**B. Embassy’s role in getting the mining project off the ground**

[11] In or around 2005, a small Canadian company called Blackfire Exploration Ltd. (“Blackfire”) obtained concessions to mine for barite in the municipality of Chicomuselo, Chiapas, Mexico.

[12] In December 2007, the Canadian Ambassador in Mexico led a delegation to Chiapas, and met with the Governor of Chiapas and with Blackfire. The Ambassador, along with the Embassy’s Political Counsellor, arranged for meetings between Blackfire and the Governor of Chiapas, which led to initial land-use agreements being signed with the two ejidos (peasant farmer communities) on whose land Blackfire’s mine was to operate.

[13] Embassy staff noted in a delegation report that Blackfire had mentioned tensions with local communities. It also noted that the company claimed to “negotiate payments and programs with local community leaders,” but that there were potential deficiencies with the company’s approach to consultation.

[14] A Canadian civil society delegation later concluded that, before mine development began, “there appears to have been little to no consultation with the community” in the ejido Nueva Morelia, and in ejido Grecia “very little community consultation.”


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38 Moore & Colgrove, *supra* note 37, at pg. 1 (Access to information request submitted by Canadian civil society organizations United Steelworkers, Common Frontiers and MiningWatch Canada).
39 Id.
40 Access to Information Request A-2010-00758/RF1, *supra* note 21, at 000173.
41 Moore & Colgrove, *supra* note 37, at pg 1; United Steelworkers, Common Frontiers and MiningWatch Canada, “Report from the March 20-27, 2010 fact-finding delegation to Chiapas, Mexico, to investigate the assassination of Mariano Abarca Roblero and the activities of Blackfire Exploration Ltd.” (2010), at pg. 6, online [Canadian Fact-Finding Delegation] [https://perma.cc/C8MK-BDHT].
42 Access to Information Request A-2010-00758/RF1, *supra* note 21, at 000157.
43 An ejido is communally held territory, managed by a council of elected ejido members.
45 Access to Information Request A-2010-00758/RF1, *supra* note 21, at 000157. The Embassy’s Political Counsellor reported on his visit that Blackfire claimed to be “encountering difficulties in negotiating with a local community in order to have access to one of its sites [several lines redacted].”
46 Access to information request A-2010-00758/RF1, *supra* note 21, at 00159. The Embassy’s Political Counsellor reported: “The company claims that it has negotiated payments and programs with local community leaders, including road infrastructure, water wells, and has offered to develop the planting of ‘jatropha’ in adjacent lands, a biofuel crop that is apparently used successfully in India and China. However, it is unclear to us what process was used or how well these negotiations are understood by all members of the community.”
49 Moore & Colgrove, *supra* note 37, at pg. 1; Access to Information Request A-2010-00758/RF1, *supra* note 21, at 000213.
C. Early conflict and threats against Mariano Abarca

[16] Around this time, Mr. Abarca emerged as a prominent community leader critical of the mining project. Mr. Abarca’s work included investigating the legal standing of the company, demanding benefits for his community, and networking with ejido members. Mr. Abarca also coordinated educational activities related to the struggle against mining with the local Catholic parish, and, in 2008, became a co-founding member of the Mexican Network of Mining Affected People (REMA).

[17] In May 2008, the Mexican newspaper La Jornada reported that the ejido Grecia had blockaded the mine due to what protesters said was a failure by the company, and the State government, to follow through on social projects that were promised in exchange for allowing the company to begin work, as well as fears of water contamination and shortages.

[18] The Embassy was aware of the blockade, which it characterized as the ejidos wanting “additional benefits above and beyond the land access agreements.”

[19] On March 10, 2008, Blackfire began making regular secret payments into the personal bank account of the mayor of the local town of Chicomuselo to “keep the peace and prevent local members of the community from taking up arms against the mine.”

[20] On July 1, 2008, the Embassy reported on a survey they conducted of Canadian mining companies in Mexico. Nearly all companies surveyed reported community relations problems, but very few had “CSR [corporate social responsibility] programs”, and fewer still measured the results of those programs. It noted a “knowledge gap” for junior mining companies “in regards to CSR and its potential business benefits.” The survey did not include any questions about consultation or human rights due diligence.

[21] On August 11, 2008, according to the Abarca family and the Mexican Network of Mining Affected People (REMA), three armed Blackfire employees came to Mr. Abarca’s home and physically assaulted him and his son.

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50 Canadian Fact-Finding Delegation, supra note 41, at pg. 11.
51 Canadian Fact-Finding Delegation, supra note 41, at pg. 11; José Abarca Montejo (Mexico) “Updated Petition before the Inter-American Commission on Human Rights against The United States of Mexico for violation of the right to life, personal integrity and other rights of Mariano Abarca Roblero” (November 3, 2020) (Annex 19), at para 26 [IACHR Petition Against Mexico (2020)].
52 Elio Henríquez, “Baté, another treasure that has not left benefits for residents of Chiapas”, La Jornada, 4 May 2008. online [Henríquez] [https://perma.cc/MC3H-XFCG].
53 Access to Information Request A-2010-00758/RF1, supra note 21, at 000213.
55 Access to Information Request A-2010-00758/RF1, supra note 21, at 000167-000172.
56 Access to Information Request A-2010-00758/RF1, supra note 21, at 000171.
57 Access to Information Request A-2010-00758/RF1, supra note 21, at 000173-000178.
D. Embassy continues to advocate for Blackfire

[22] On September 11, 2008, Embassy staff met with a Blackfire representative about obtaining an explosives license so the company could bypass a certified supplier. 59

[23] On September 12, 2008, Blackfire wrote in an e-mail on the topic: ...“[a]ll of us at Blackfire really appreciate all that the Embassy has done to help pressure the state government to get things going for us. We could not do it without your help.” 60

[24] Following the meeting, the Embassy lobbied the Mexican government at the federal level to help the company obtain this license. 61

E. Protests and corruption allegations

[25] On October 14, 2008, the Embassy received a PowerPoint presentation expressing opposition to mining in Chiapas and Blackfire. 62

[26] On April 16, 2009, an Embassy media scan picked up news of a 3,000-person march organized by Catholics in Chiapas calling for the cancellation of Blackfire’s mining license. 63

[27] In June 2009, Chicomuselo community members, led by Mr. Abarca, blocked a transport route to the mine. 64 Demands included reparations for damaged homes in the town of Chicomuselo due to heavy traffic. 65 The Embassy was aware of the blockade. 66

[28] On June 15, 2009, a Blackfire official filed a complaint with the Chiapas Congress, accusing the mayor of Chicomuselo of extortion, and asking for his removal from office. 67 The complaint included receipts of the payments made by the company into the mayor’s personal account from March 10, 2009 – May 8, 2009. 68

[29] On June 24, 2009, the newspaper, El Heraldo de Chiapas, reported that Blackfire paid monthly sums of money to the mayor of Chicomuselo, and paid for airline tickets for his family. 69

59 Access to Information Request A-2010-00758/RF1, supra note 21, at 000184-000185.
60 Ibid.
61 Access to Information Request A-2010-00758/RF1, supra note 21, at 000187-000190.
62 Access to Information Request A-2010-00758/RF1, supra note 21, at 000186.
63 Access to Information Request A-2010-00758/RF1, supra note 21, at 000197; See also: Elio Henríquez & Ángeles Marisca, “Catholics demand to remove mining companies from Chiapas” (April 16, 2009), La Jornada, online [Henríquez and Marisca] [https://perma.cc/M3U2-SAQ2].
64 Access to Information Request A-2010-00758/RF1, supra note 21, at 000213. Canadian Fact-Finding Delegation, supra note 41, at pg. 11; “Mariano Abarca Roblero, REMA, Chicomuselo, Chiapas”, YouTube, December 3, 2009, online [September 2009 Interview with Mariano Abarca].
65 Canadian Fact-Finding Delegation, supra note 41, at pg. 11; September 2009 Interview with Mariano Abarca, supra note 64.
66 Access to Information Request A-2010-00758/RF1, supra note 21, at 000213.
67 Blackfire (2009), supra note 54.
69 López, supra note 54. Translation archived by MiningWatch Canada: online [https://perma.cc/YR7T-8GKZ].
F. Mariano Abarca travels to the Embassy amidst ongoing threats

[30] On July 21, 2009, during the ongoing blockade, Mr. Abarca, and others from Chicomuselo, travelled 13 hours to Mexico City to participate in a sit-in outside the Canadian Embassy. Embassy staff did not invite Mr. Abarca inside, but an Embassy officer listened while Mr. Abarca spoke outside.

[31] Mr. Abarca’s exchange with this officer was captured on video. He is seen arguing that Blackfire had broken its promises to provide work to everyone in the ejido Grecia, and to carry out community projects. He argued that infrastructure in Chicomuselo had been damaged by the company’s trucks, and that the community was concerned about environmental contamination, given the importance of the rivers that flow from the Sierra Madre highlands of Chiapas. Mr. Abarca also complained that the company was using some of its workers as “thugs” against mine opponents. He stressed that community members who spoke out about problems with the mine were at personal risk.

G. Criminalization of Mariano Abarca

[32] From August 17-25, 2009, Mr. Abarca was detained by plain clothes police officers and held for investigation without charge. The Embassy was aware that the detention was in response to a complaint filed by Blackfire.

[33] While Mr. Abarca was detained, the Embassy received some 1,400 e-mails expressing concern for his safety. The messages stated that Mr. Abarca had been organizing a regional gathering of communities affected by mining corporations.

[34] On August 19, 2009, the Embassy contacted the state of Chiapas to “establish the facts” and express concern “about any allegation of illegal activity surrounding Canadian investments in Mexico.”

H. Embassy urges Mexican officials to counter protests

[35] On August 21, 2009, Blackfire contacted the Embassy for help regarding protests it claimed were planned for August 29-30, 2009. The company wrote, without providing any evidence, that the groups involved were “dedicated to organizing violent actions against companies and municipalities to demand large sums of money in exchange for their withdrawal,” and expressed concern, “that they may try to forcefully take over Blackfire’s installations and threaten the personal security of our employees.”

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70 Moore & Colgrove, supra note 37, at pg. 10; Tamara Herman, “Anti-Mining Groups Stage 36 Hours sit-in at Canadian Embassy in Mexico City”, (24 July 2009), online [Herman] [https://perma.cc/ZKAS-3M5C].
71 Ibid.
72 Ibid.
73 Ibid.
74 Canadian Fact-Finding Delegation, supra note 41, at pg. 11; For more information about the Mexican detention practices known as “arriago” or “pre-charge detention” and the criminalization of human rights defenders in Mexico, see: September 2009 Interview with Mariano Abarca, supra note 64.
75 Access to Information Request A-2010-00758/RF1, supra note 21, at 000208.
76 Access to Information Request A-2010-00758/RF1, supra note 21, at 000208. Example letter at 002202.
77 Access to Information Request A-2010-00758/RF1, supra note 21, at 000202; See also Mariano Abarca discussing the organization of this gathering in September 2009 Interview with Mariano Abarca, supra note 64, at 5:59.
78 Access to Information Request A-2010-00758/RF1, supra note 21, at 000204.
79 Access to Information Request A-2010-00758/RF1, supra note 21, at 000208-000209; 000722.
80 Access to Information Request A-2010-00758/RF1, supra note 21, at 000722.
On August 25, 2009, with Blackfire’s approval, the Embassy sent this e-mail, with Blackfire’s criminalizing statements and unsubstantiated allegations, to both the Mexican federal Ministry of Economy and the State of Chiapas Ministry of Government.81

No violent protests occurred, and Mr. Abarca was released on August 25, 2009 “because there was no evidence that the protest in which Mariano Abarca Roblero was participating was violent or threatened public order.”82

Instead, on August 29 and 30, 2009, as planned, around 240 people assembled in Chicomuselo for a meeting of the Mexican Network of Mining Affected People (REMA).83 Attendees denounced the lack of consultation with communities affected by mining in the region and called for Blackfire’s mining project to be canceled.84

On September 7, 2009, ejido Nueva Morelia issued a statement expressing its opposition to Blackfire’s mine, which it accused of mining barite in its ejido without permission.85 The statement also complained about threats from armed mine workers.86

From October 4-6, 2009, the Embassy sent a second delegation to Chiapas to tour and promote Blackfire’s mine.87 The Embassy’s stated goal was to “advocate for greater attention by Chiapas to try to resolve challenges that Blackfire [was] facing,” namely economic problems caused by “lengthy blockades.”88 The Embassy made the point to Mexican officials that “Blackfire is a significant Canadian investment in Chiapas, and its treatment will send a signal to other foreign investors [...] as to the attractiveness of Chiapas as an investment location.”89

There is no indication in the documents that the Embassy discussed the need to protect human rights defenders, like Mr. Abarca.90

Following the Embassy’s visit, the Trade Commissioner told Blackfire that it had raised the company’s concerns about possible protests being planned for December 2009 with government officials, and offered to help the company at a potential meeting with the governor of Chiapas around that time, writing, “If a meeting happens, we will check with you and [name redacted] to see what the current situation is, and to fashion appropriate messaging.”91

The Trade Commissioner also sent a note to Mexico’s Ministry of Economy, with a Blackfire official in copy, stating, “we’re going to have new problems/blockades in the future.”92

81 Access to Information Request A-2010-00758/RF1, supra note 21, at 000204, 000208-000209.
83 Moore & Colgrove, supra note 37, at pg. 13, citing: REMA, “II REMA Meeting Chiapas: Chicomuselo Declaration” (“II Encuentro REMA Chiapas: Declaración de Chicomuselo”) (September 3, 2009), online [https://perma.cc/N9VS-332J].
84 Ibid.
85 Ibid.
86 Ibid.
87 Access to Information Request A-2010-00758/RF1, supra note 21, at 000038-000039.
88 Ibid.
89 Ibid.
90 Ibid.
91 Access to Information Request A-2010-00758/RF1, supra note 21, at 000211-000212.
92 Access to Information Request A-2010-00758/RF1, supra note 21, at 000720 (translated from Spanish).
I. Continued threats against Mariano Abarca and his murder

[44] On November 23, 2009, Mr. Abarca complained to the Chiapas State Attorney General that a Blackfire employee named Ciro Roblero Perez had threatened to “pump him full of lead” (“quebrar[le] la madre a plomazos”). He asked for an investigation into threats made against him and for the authorities to find that he had a well-founded fear for his life.

[45] On November 24, 2009, at a national mining forum in the capital of Chiapas, the state Governor declared, “Chiapas is decided: there will be no new concessions for mineral extraction in Chiapas; the state’s riches lie in environmental conservation.”


[47] On November 27, 2009, Mr. Abarca was murdered, shot at close range outside of his home. The assailant escaped on a waiting motorcycle. At least four individuals associated with Blackfire were detained as part of the murder investigation. One appears to have been acquitted on appeal and the rest were eventually released.

[48] On December 3, 2019, community members traveled from Chiapas to the Canadian Embassy to protest Mr. Abarca’s murder. This escalated to a 1,500-person march on December 18, 2009.

[49] When speaking with the Canadian press about the investigation into Mr. Abarca’s murder, the Embassy used the following statement: “The embassy of Canada is not involved in the investigation; this is a matter for Mexican officials.”

[50] Shortly after Mr. Abarca’s murder, the Embassy spoke with Blackfire officials who categorically rejected any involvement in the crime. Blackfire issued statements denying any involvement in the murder, condemning “any form of violent conduct” and offering condolences to “all the families that have suffered by the effects of any criminal acts.”

93 Complaint by Mariano Abarca Roblero to the Public Prosecutor (November 24, 2009) (Annex 8) [Mariano Abarca Complaint]. See also: Amnesty International (2009), supra note 82; Moore & Colgrove, supra note 37, at pg. 18.
94 Mariano Abarca Complaint, supra note 93. See also: Moore & Colgrove, supra note 37, at pg. 18.
95 Moor & Colgrove, supra note 37, at pg. 14, citing “Participating: Federal and local legislators, of all parties, organizations and civil society,” Catholic Church and the Governor of Chiapas (“Participan legisladores federales y locales, de todos los partidos, organizaciones y sociedad civil, Iglesia Católica y el Gobernador de Chiapas”), in the newspaper El Heraldo de Chiapas (November 24, 2009).
96 Summons by the Public Prosecutor of Chicomuselo - Ciro Roblero Pérez, dated November 26, 2009 (Annex 9).
97 Amnesty International (2009), supra note 82.
98 Ibid.
99 Access to Information Request A-2010-00758/RF1, supra note 21 at 000249, 000338, 000340 (citing Andy Hoffman and Campbell Clark, “Canadian mining firm at centre of Mexican murder probe” The Globe and Mail (December 7, 2009); Horacio Culebro Borrayas declaration to the president of Mexico’s Comisión Nacional de los Derechos Humanos (March 1, 2010) (Annex 21).
100 Moore and Colgrove supra note 37, at pg. 19; Katarina Sabados, “Mining, Murder and Impunity,” Organized Crime and Corruption Reporting Project (September 3, 2019) online [https://perma.cc/EH9I-MS9E]; See also IACHR Petition Against Mexico (2020), supra note 51, at paras 58-88.
101 Access to Information Request A-2010-00758/RF1, supra note 21, at 000252, 000258, 000262.
102 Access to Information Request A-2010-00758/RF1, supra note 21, at 000458-000459, 000472-000473.
104 Access to Information Request A-2010-00758/RF1, supra note 21, at 000982.
105 Access to Information Request A-2010-00758/RF1, supra note 21, at 000364, 000713-000714; Business and Human Rights Resource Centre, “Blackfire Exploration response re allegations of human rights abuses in connection with its mine in Chiapas, Mexico”, (September 13, 2010) online [https://perma.cc/6CY9-9AR2]. Former Blackfire owner Brent Willis self-published his version of events on LinkedIn in 2018, where he claimed that Mariano Abarca was a “local Mafia boss” who had attempted to extort the company: online [https://perma.cc/WC3W-5GNJ].
[51] Despite the detention of multiple people associated with Blackfire, Embassy staff reported in January 2010 that the Chiapas government did not suspect the company was behind the killing.106

J. Mine shut down, corruption complaint, Embassy’s continued advocacy for Blackfire

[52] On December 7, 2009, the Ministry of Environment and Housing of the state of Chiapas shut down Blackfire’s Payback mine due to environmental irregularities.107

[53] On December 8, 2009, in preparation for another delegation to Chiapas, this time by the Canadian Governor General Michaëlle Jean, the Embassy appears to have counselled the Governor General to say, in response to questions from the public about the murder, that “the Government of Canada had no knowledge of potential acts of violence against Mr. Abarca.”108

[54] On December 9, 2009, Michaëlle Jean visited the state of Chiapas.109 The Mexican Network of Mining Affected People (REMA) requested a meeting with the Governor General, but Canada declined.110

[55] On December 11, 2009, a prominent Canadian newspaper reported on the corruption allegations previously reported in Mexico, which the company denied.111

[56] On December 15, 2009, the Trade Commissioner at the Embassy informed the Ambassador that the Royal Canadian Mounted Police (RCMP) was looking into the Blackfire corruption allegations. The Ambassador told the Trade Commissioner to track developments surrounding Blackfire, but to no longer initiate contact with the company.112

[57] On January 18-19, 2010, a Political Counsellor for the Embassy finally met with affected communities, including REMA. He noted that community organizations held Blackfire responsible for Mr. Abarca’s murder and that they criticized Canada for not providing better oversight.113

[58] On January 25, 2010, the Trade Commissioner asked Global Affairs Canada if it could provide Blackfire information about how it could sue the Mexican government under Chapter 11 of NAFTA.114

[59] On February 18, 2015, the RCMP closed its investigation into the corruption allegations, stating that the evidence did not support criminal charges. The RCMP did not provide any details about the investigation or explain how it came to this conclusion.115

106 Access to Information Request A-2010-00758/RF1, supra note 21, at 000892-000893.
107 Access to Information Request A-2010-00758/RF1, supra note 21, at 000361. See also: Canadian Fact-Finding Delegation supra note 41, at pgs. 33-44.
108 Access to Information Request A-2010-00758/RF1, supra note 21, at 000002.
109 Access to Information Request A-2010-00758/RF1, supra note 21, at 000575.
110 Id.
112 Id.
113 Access to Information Request A-2010-00758/RF1, supra note 21, at 000419.
114 Moore and Colgrove, supra note 37, at pg. 24; Access to Information Request A-2011-01962/LA, supra note 58, at 000001-000004.
115 Access to Information Request A-2010-00758/RF1, supra note 21, at 000576-000578.
K. Mexican investigation and IACHR complaint against Mexico

[60] In the years following Mr. Abarca’s murder, the Petitioners have repeatedly demanded that the Mexican government conduct an exhaustive investigation and hold all those responsible for Mr. Abarca’s murder to account.116

[61] In 2017, the Petitioners filed a petition with the Commission against Mexico for Mexico’s failure to protect Mr. Abarca and adequately investigate his murder.117 The complaint, which was updated in 2020, also alleges that, under Canadian Embassy pressure, Mexican authorities put the interests of the company above the protection of Mr. Abarca.118

L. Canadian access to information request and complaint to Canada’s Public Sector Integrity Commissioner (PSIC)

[62] In 2010, Canadian civil society groups working with the Abarca family filed an Access to Information and Privacy (ATIP) Request in Canada, focused on the Embassy’s involvement in the mining project.119 In 2012, they received hundreds of pages of documents in response to the request.120

[63] In 2013, three prominent Canadian civil society groups published a report on Embassy conduct before and after Mr. Abarca’s murder.121

[64] On February 5, 2018, after campaigning for an investigation and seeking pro bono legal assistance in Canada (see discussion at paras 84-87), the family and its Canadian allies decided that their only option was to file an administrative complaint (“disclosure”) with Canada’s Public Sector Integrity Commissioner (“Commissioner”). The disclosure requested that the Commissioner investigate Embassy conduct in this case.122

[65] On April 5, 2018, the Commissioner responded to the disclosure, refusing to investigate.123

[66] On March 25, 2019, a Mexican judge confirmed that the public prosecutor in Chiapas had failed in their constitutional duty to take sufficient steps to investigate Mr. Abarca’s murder, giving the prosecutor’s office 45 days to gather additional evidence.124 The prosecutor’s office failed to respond, even after two subsequent court orders.125

116 For example: IACHR Petition Against Mexico (2020), supra note 51, at paras 72-87; “Five Years After Mariano Abarca Was Murdered for his Resistance Against Blackfire Exploration, We Demand Justice!” (November 27, 2014) MiningWatch Canada, online [https://perma.cc/JC48-G7U9]; “Justice Now! Eight Years of Impunity Since the Murder of Mariano Abarca in Chiapas, Mexico” (November 27, 2017) MiningWatch Canada and others, online [https://perma.cc/XLAC-XW3K]; MiningWatch Canada, “Speaking Tour: Canada’s Deadly Diplomacy and Mining Justice in Mexico” (January 23, 2018) online [https://perma.cc/F4U8-NTQF].

117 José Abarca Montejo (Mexico), “Petition before the Inter-American Commission on Human Rights against The United States of Mexico for violation of the right to life, personal integrity and other rights of Mariano Abarca Roblero” (2017) (Annex 10) [IACHR Petition Against Mexico (2017)].


119 Moore and Colgrove, supra note 37, at pg. 1.

120 Ibid.

121 Moore and Colgrove, supra note 37.

122 Shin Imai, “Submission to the Public Sector Integrity Commissioner in Relation to the Embassy of Canada in Mexico” (February 5, 2018), (Annex 11) [PSIC Disclosure].


[67] On July 18, 2019, Canada’s Federal Court upheld the decision of the Public Sector Integrity Commissioner not to investigate, but stated in obiter: “Undoubtedly, the Applicants would have liked the Embassy to have acted in a certain way, and perhaps Mr. Abarca would not have been murdered.”

[68] On February 9, 2022, Canada’s Federal Court of Appeal upheld the decision, and on January 16, 2023, the Supreme Court of Canada declined to hear the case.

IV. COMPETENCE AND ADMISSIBILITY

A. Competence

[69] The Commission has competence _ratione loci, personae, temporis and materiae_.

1. _Ratione Loci_

[70] The _American Declaration_ does not contain a jurisdiction clause, but the Commission has taken the position that States only owe obligations flowing from the _American Declaration_ to people “subject to their jurisdiction”, as is the case with the _American Convention_. The concept of jurisdiction in international human rights law is not exclusively territorial. When the _American Convention_ was adopted, the Inter-American Specialized Conference on Human Rights chose to omit the reference to “territory” in the Convention’s jurisdiction clause. The range of protection for the rights recognized in the _American Convention_ was thus widened so that States not only may be held internationally responsible for acts and omissions attributable to them within their territory, but also for those acts and omissions committed wherever they exercise jurisdiction.

i. Effective control or authority in the Inter-American System

[71] As the Inter-American Court has recognized, jurisdiction is a threshold criterion to be established before determining State responsibility. States have jurisdiction over anyone outside a State’s territory who is in any way subject to its authority, responsibility, or effective control. This test is still evolving in international human rights law, but the Commission and Inter-American Court have interpreted it broadly, recognizing “effective control or authority” in a variety of fact situations whenever States are in a position to exercise significant influence over protected rights directly, or indirectly through third party actors, particularly when serious extraterritorial harm is foreseeable.

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126 Gordillo FC, supra note 20, at para 66.
127 Gordillo FCA, supra note 123, at para 134.
131 Franklin Guillermo Asialla Molina, supra note 4, at para 90.
132 Ibid.
133 Advisory Opinion OC-23/17, supra note 4, at para 72.
134 Advisory Opinion OC-23/17, supra note 4, at para 73.
135 Yearbook of the International Law Commission, supra note 2, at paras 1-3.
137 Coard, supra note 4, at paras 35, 37, 60-61 (American government agents placed the petitioners under their authority and control when they detained the petitioners in Grenada); Jose Isabel Salas Galindo, supra note 4, at paras 307, 318, 324, 334 (Commission exercised competence over acts occurring outside the territory of the United States because, when the United States invaded Panama, it had effective control over Panamanian territory); Nelson Iván
Serious, or “significant” harm is established on a case by case basis, but generally involves violations of the right to life and physical integrity. The Commission has noted that attacks on the right to life of human rights defenders are particularly harmful, hindering the work of other human rights defenders, and harming democracy and the rule of law.

[72] In the context of business and human rights, the Commission has recognized that Home States can be held in breach of their duty to respect and guarantee protected rights outside their territory when the Home State exercises influence over these rights. The stronger the degree of State influence over the enjoyment of human rights outside its territory, the stricter the analysis of its duties to respect and guarantee. Influence over rights can be measured through influence over a corporate national, as well as through the relationship between the State’s behavior and the factors that threaten or allow human rights violations related to corporate activities. The Commission has expressed particular concern about allegations of human rights violations associated with economic diplomacy, recognizing that Home States can incur international responsibility for violations related to the practice, given the direct intervention of State agents in corporate ventures, and the ability of these agents to affect risk to human rights outside their territory.

[73] Other human rights monitoring bodies have made similar comments. The UN Human Rights Committee has recognized that extraterritorial jurisdiction can arise when a person’s right to life is “affected” by a State’s “military or other activities in a direct and reasonably foreseeable manner.” The obligation to protect the right to life extends to activities undertaken by corporate entities operating within a State’s territory that have “a direct and reasonably foreseeable” impact on the right to life of individuals outside their territory. The Committee on Economic and Social and Cultural Rights (CESCR) has confirmed that “[e]xtraterritorial obligations arise when a State party may influence situations located outside its territory”, for example, “by controlling the activities of corporations domiciled in its territory”. Jurisdiction arises when harm is “reasonably foreseeable”. According to the CESCR, a State would be in breach of its obligations whenever there is a “failure by the State to take reasonable measures that could have prevented” corporate-caused harm, even when “other causes contributed to the occurrence of the violation.” Such a risk is

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Serrano Saenz, supra note 4, at paras 9-10, 27-29 (Commission exercised competence over violations committed by American authorities in Ecuador when they paid an Ecuadorian mayor to pay off-duty police officers to help them detain and illegally render the petitioner to the United States); Armando Alejandro Jr., supra note 4, at para 25 (Cuba placed civilian pilots under its power and authority when Cuban State agents shot them down in international airspace); Franklin Guillermo Asialla Molina, supra note 4, at para 100 (Obligations in extraterritorial conduct, in particular, respect for the right to life and humane treatment, “arise in the period of time that agents of a State interfere in the lives of persons who are on the territory of the other State); Advisory Opinion OC-23/17, supra note 4, at paras 93-94, 140 (Effective control or authority should be interpreted purposively to include acts or omissions within a State’s territory that could have effects on territory or inhabitants in another State, including the duty to prevent significant harm involving violations of the right to life and personal integrity).

138 Advisory Opinion OC-23/17, supra note 4, at para 140.


140 Business and Human Rights: Inter-American Standards, supra note 3, at para 165.


142 Business and Human Rights: Inter-American Standards, supra note 3, at paras 162, 167.

143 Business and Human Rights: Inter-American Standards, supra note 3, at para 312.

144 Business and Human Rights: Inter-American Standards, supra note 3, at paras 306-308.

145 General Comment No. 36, supra note 5, at para 63.

146 General Comment No. 56, supra note 5, at para 22.

147 General Comment No. 24, supra note 9, at paras 28, 32.

148 General Comment No. 24, supra note 9, at para 27. The CESCR adds “...the International Court of Justice has acknowledged the extraterritorial scope of core human rights treaties, focusing on their object and purpose, their legislative history and the lack of territorial limitation provisions in the text. Customary international law also prohibits a State from allowing its territory to be used to cause damage on the territory of another State, a requirement that has gained particular relevance in international environmental law. The Human Rights Council has confirmed that such prohibition extends to human rights law, when it endorsed the guiding principles on extreme poverty and human rights, in its resolution 21/11/7.”

149 General Comment No. 24, supra note 9, at para 32.
expressly indicated as a possibility in the extractive industry, and as such, “particular due diligence is required with respect to mining-related projects and oil development projects."[150]

[74] Finally, the Committee on the Rights of the Child notes that States have obligations “to respect, protect and fulfil children’s rights in the context of businesses’ extraterritorial activities and operations, provided that there is a reasonable link between the State and the conduct concerned.”[151] Citing the Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights, the Committee has stated that a reasonable link exists when a business enterprise has its centre of activity, is registered or domiciled, or has its main place of business, or substantial business activities, in the State concerned.[152]

[75] All of these thresholds for establishing extraterritorial jurisdiction require two elements: 1) a degree of influence over actors and situations that can affect the enjoyment of protected rights, and 2) the reasonable foreseeability of serious harm. As mentioned above, the greater the influence a State has over the enjoyment of protected rights, the stricter the analysis of the duty to respect and guarantee rights will be. Thus, in the context of economic diplomacy in the Inter-American System, “effective control or authority” is clearly established when a State exercises significant influence over a business venture that has the potential to affect human rights, and knows, or ought to know, that there is a real risk to the life of a human rights defender because of that venture. When this occurs, State agents engaged in economic diplomacy should be on notice that they have an actionable duty to do what is reasonably within their area of responsibility, and scope of influence, to respect and guarantee the right to life of that human rights defender.

ii. Canada had jurisdiction over Mariano Abarca

[76] Canada placed Mr. Abarca under its jurisdiction by July 2009, when 1) the Embassy exercised significant influence over the mining project, as demonstrated by its direct involvement in the project, and its influence over Blackfire and Mexican officials; and 2) Embassy staff knew that the project had the potential to adversely affect human rights, and that their acts and omissions could elevate the real risk to Mr. Abarca’s life.

a. Direct involvement and influence over the project

[77] The Embassy went out of its way to become involved in the Payback mining project, exercising significant influence over Blackfire, which depended on Canada and the Embassy to get its mining project off the ground. In 2007, the Embassy intervened with the government of Chiapas to set up meetings with the ejidos on whose land the mining project would take place, which led to land access agreements being signed.[153] In 2008, the Embassy intervened again with the federal government to secure a much-needed explosives permit for Blackfire.[154] These successes demonstrate the degree of influence the Embassy had over Blackfire and Mexican authorities. The company, itself, clearly believed in the Embassy’s power of persuasion. In September 2008, a Blackfire employee messaged

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[150] Ibid.
[151] General Comment No. 16, supra note 9, at para 43.
[153] Access to information request A-2010-00758/RF1, supra note 21, at 000157-000162. See also: Memorandum of understanding with ejido Grecia (Annex 3).
the Embassy, writing: “[a]ll of us at Blackfire really appreciate all the Embassy has done to help pressure the state government to get things going for us. *We could not do it without your help*” [emphasis added].\(^{155}\)

b. Embassy knew human rights were a concern and that it could influence rights protection

[78] At the time, Canada and its Embassy were aware that mining projects in Mexico had the potential to adversely affect human rights. Canada’s 2006 *National Roundtables on Corporate Social Responsibility*, and a parliamentary hearing on the topic in 2005, addressed the problem on a national stage.\(^{156}\) Canada’s subsequent federal policy *Building the Canadian Advantage* noted concern for violent conflict related to mining projects in developing countries.\(^{157}\) In this case, Embassy officials were aware that “community relations” were a common problem at Canadian mines in Mexico,\(^{158}\) and that Canadian companies often failed to implement or measure “CSR programs”, especially junior companies in the early stages of a project.\(^{159}\) The Embassy also flagged potential defects in the consultation process at the Payback mine,\(^{160}\) and was aware of social unrest in relation to the project as early as 2007.\(^{161}\) In sum, Canada and its Embassy clearly knew that that the Payback mining project could generate significant human rights risks for communities.

[79] Canada also recognized that its embassies could influence mining companies and foreign governments to reduce conflict and protect human rights defenders. On multiple occasions, Canadian officials publicly stated that Canada’s embassies “work closely with companies and the affected communities, governments, indigenous peoples and civil society organizations to facilitate an open and informed dialogue between all parties.”\(^{162}\) Canada also co-sponsored the UN *Declaration on Human Rights Defenders* in 1999,\(^{163}\) reflecting a public commitment to protecting human rights defenders at home and abroad, which it later reaffirmed in its detailed policy “Voices at risk: Canada’s guidelines on supporting human rights defenders” (“Voices at Risk”).\(^{164}\) The declaration, and its related documents, define what it means to be a human rights defender.\(^{165}\) Mr. Abarca falls squarely within this definition.\(^{166}\) These documents also highlight various ways States can help protect human

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155Access to Information Request A-2010-00758/RF1, supra note 21, at 000185.
156National Roundtables, supra note 19; 2005 Parliamentary Hearing on Mining, supra note 19; National Roundtable Recommendations, supra note 22.
157Building the Canadian Advantage, supra note 25 (CSR Performance Guidelines and Reporting).
158Access to Information Request A-2010-00758/RF1, supra note 21, at 000167-000172.
159Ibid.
160Access to Information Request A-2010-00758/RF1, supra note 21, at 000159. The Embassy’s Political Counsellor reported: “The company claims that it has negotiated payments and programs with local community leaders, including road infrastructure, water wells, and has offered to develop the planting of ‘jatropha’ in adjacent lands, a biofuel crop that is apparently used successfully in India and China. However, it is unclear to us what process was used or how well these negotiations are understood by all members of the community.”
161Access to Information Request A-2010-00758/RF1, supra note 21, at 000157. The Embassy’s Political Counsellor reported that Blackfire claimed to be “encountering difficulties in negotiating with a local community in order to have access to one of its sites” [several lines redacted].
162Standing Committee on Foreign Affairs and International Development “Evidence” Meeting No 43, 40th Parl, 2nd Sess (December 1, 2009), online [https://perma.cc/K242-X2X4]. Canadian officials reiterated this in a statement issued to the Toronto Star on December 11, 2009: Access to Information Request A-2010-00758/RF1, supra note 21, at 000391.
164Voices at Risk Guidelines, supra note 28. This policy was updated in 2019 with special annexes for land and environment defenders.
166See facts section above. Mr. Abarca was a leading and vocal defender of community rights in relation to mining. He carried out his work peacefully, and in association with others, at the local, national and international level. He was a founding member of REMA (Red Mexicana de Afectados por la Minería or Mexican Network of People Affected by Mining).
rights defenders at home and abroad.\textsuperscript{167} Canada thus knew it had the capability to influence the enjoyment of human rights in this case, including to help protect Mr. Abarca’s right to life.

c. Embassy knew Mariano Abarca was in real danger because of the project

[80] By July 2009, Embassy officials clearly knew that there was a real and immediate risk to Mr. Abarca’s life due to the conflict caused by Blackfire’s operations. In late July, Mr. Abarca traveled to the Embassy and said directly to an official that community leaders were at risk, and that mine employees were acting as “thugs” for the company.\textsuperscript{168} In August 2009, Blackfire filed an unsuccessful criminal complaint against Mr. Abarca.\textsuperscript{169} The Embassy knew that Blackfire made the complaint.\textsuperscript{170} When Mexican officials detained Mr. Abarca for nine days without charge, the Embassy received 1,400 e-mails from the public explaining how he was being criminalized and put at risk, and presenting facts that challenged Blackfire’s claim that violent protests were forthcoming.\textsuperscript{171} Embassy officials thus knew that individuals associated with Blackfire were putting Mr. Abarca in real danger. They ought to have known that Canada’s crucial and unconditional support for the company had enabled that behaviour.

d. Conclusion

[81] By July 2009, Canada had placed Mr. Abarca under its jurisdiction through its support for Blackfire. At this point, the Embassy exercised significant influence over the mining project, as demonstrated by its direct involvement in the project, and its influence over Blackfire and Mexican officials. Embassy staff also knew that the project had the potential to adversely affect human rights, and that their acts and omissions could elevate the real risk to Mr. Abarca’s life.

2. Competence ratione personae, temporis and materiae

[82] This Petition alleges that Canadian officials contributed to the violation of Mr. Abarca’s rights, which are enshrined in the American Declaration. Canada is subject to the obligations imposed by the American Declaration pursuant to the OAS Charter, Article 20 of the Statute of the Commission, and Article 51 of its Rules of Procedure.\textsuperscript{172} Canada has been a member of the Organization of American States since January 8, 1990, when it deposited the instrument of ratification of the OAS Charter.\textsuperscript{173} Therefore, the IACHR has competence ratione personae to review this Petition.

\textsuperscript{168} Moore and Colgrove, supra note 37, at pgs. 10-11; Mariano Abarca at the Canadian Embassy, supra note 71.
\textsuperscript{169} Access to Information Request A-2010-00758/RF1, supra note 21, at 000208.
\textsuperscript{170} Ibid.
\textsuperscript{171} Canadian Fact-Finding Delegation, supra note 41, at pg. 11; Access to Information Request A-2010-00758/RF1, supra note 21, at 000208. Example letter at 000202. See also Mariano Abarca discussing the organization of this gathering in: September 2009 Interview with Mariano Abarca, supra note 64, at 5:59. This video also provides more information about the Mexican detention practices known as “arriago” or “pre-charge detention” and the criminalization of human rights defenders in Mexico.
\textsuperscript{173} OAS, Charter of the Organisation of American States, Signatories and Ratifications, online.
The Commission has competence *ratione temporis* as the obligation to respect and ensure the rights protected by the *American Declaration* was already in force for Canada on the dates on which the incidents described in this Petition occurred. Finally, the Commission has competence *ratione materiae*, as this Petition describes possible violations of human rights protected by the *American Declaration*.

### B. ADMISSIBILITY

#### 1. Exhaustion of Domestic Remedies

The Petitioners have exhausted all domestic remedies in Canada because they have been denied access to an adequate and effective remedy under Canadian law. They have exhausted the only remedy available to them, namely the administrative complaints procedure through the office of Canada’s Public Sector Integrity Commissioner ("Commissioner" or PSIC). This procedure is an inadequate remedy, as described below.

After consultations with Canadian lawyers, and careful consideration of the possible paths to remedy in Canada, Mr. Abarca’s family identified the PSIC complaints process as the only viable option to obtain more information about what happened, and perhaps encourage policy changes related to Embassy conduct in this case. Civil liability was not an option. Civil lawsuits in Canada remain almost entirely inaccessible for low-income victims overseas due to extremely high costs, as well as jurisdictional and other legal hurdles. Through supporters in Canada, the Abarca family approached multiple Canadian lawyers about a potential case, but, given these hurdles, none were in a position to offer pro bono support for a civil claim in Canada, which can be a massive undertaking. In addition, Canada’s *Crown Liability and Proceedings Act* establishes a six-year limitation period for civil liability claims against the Canadian government, which would have been extremely difficult to meet, especially given Mexico and Canada’s failures to investigate in a timely manner. Finally, the current Canadian Ombudsperson for Responsible Enterprise is not independent, does not have the power to investigate complaints without company consent and cooperation, and only accepts cases dating back to May 1, 2019.

While it was reasonable for the Abarca family to turn to the PSIC complaints process, this administrative procedure is not an adequate remedy by Commission standards. The PSIC office is not an adjudicatory or judicial body, does not have jurisdiction to order a remedy for human rights

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176 *Crown Liability and Proceedings Act*, RSC 1985, c C-50, at s. 32, online.
177 For example: House of Commons, *Mandate of the Canadian Ombudsperson for Responsible Enterprise: Report of the Standing Committee on Foreign Affairs and International Development and Subcommittee on International Human Rights* (June 2021) (Committee Chair, Sven Spengemann, Subcommittee Chair, Peter Fonseca), online [https://perma.cc/9GSJ-H9JX]; Mike Blanchfield “UN official criticizes Canadian delays setting up corporate ethics watchdog”, *CBC News* (20 April 2019), online [https://perma.cc/ACA9-M95A]; Canadian Network on Corporate Accountability, “An Ombudsperson with Teeth”, February 26, 2021, online [https://perma.cc/H3SL-HJ8L]. See also: Catherine Cowans, Letter of resignation from the Multi-Stakeholder Advisory Body on Responsible Business Conduct Abroad (August 19, 2019) online [https://perma.cc/3PAS-W7EW]. Some other serious limitations with the CORE’s current mandate in the context of investigations are: its lack of power to compel the disclosure of evidence, its lack of power to make binding recommendations, and its lack of power to enforce remedies for victims.

violations, and, by design, has relatively low standards of procedural fairness. It is responsible for receiving and investigating disclosures of wrongdoing within the Canadian government. The purpose of investigating disclosures is to bring the existence of wrongdoing to the attention of the organization’s chief executive (in this case, Global Affairs Canada), and to make non-binding recommendations concerning corrective measures. Judges reviewing the Commissioner’s decisions are required to show deference to the Commissioner. The process is thus extremely limited in what it can accomplish. For example, the Abarca family could not ask the Commissioner to provide a remedy for the violation of Mr. Abarca’s right to life or related rights. The family could only request that he investigate whether the Embassy violated Canadian policy in place at the time Mr. Abarca was murdered, and that he make suggestions to Global Affairs Canada about how to improve. In sum, the PSIC is not an independent judicial body and is not equipped to provide an adequate remedy in this case.

[87] The family’s experience with the PSIC process further illustrates why it is an inadequate remedy. The Commissioner concluded that there was no reason to investigate, determining that the corporate social responsibility guidelines in question were voluntary for Embassy staff. In July 2019, Canada’s Federal Court upheld the Commissioner’s decision, indicating that the Abarca family and its Canadian supporters had “not identified anything which created a legal obligation upon the Embassy to act or not act in a certain manner,” despite acknowledging that, if the Embassy had acted in a certain way, “perhaps Mr. Abarca would not have been murdered”. In February of 2022, Canada’s Federal Court of Appeal upheld the Federal Court’s decision. The appeals court decided not to consider arguments from prominent intervenors with respect to the relevance of international human rights law in ordering an investigation. Sadly, the PSIC complaints process allowed Canadian decision-makers to refuse to investigate allegations of misconduct linked to serious human rights abuse based on technicalities of Canadian administrative law, and the position that Canada’s corporate social responsibility guidelines, which flow from the country’s international human rights commitments, were merely “aspirational”.

2. Timeliness of the Petition

[88] This Petition meets the requirement set forth in Article 32(1) of the Commission’s Rules of Procedure. The Abarca family is submitting this Petition within six months of the Supreme Court of Canada denying leave to appeal the decision of the Federal Court of Appeal that upheld the Public Sector Integrity Commissioner’s decision not to investigate. However, because Canada’s PSIC complaints process is not an adequate remedy, the applicable standard for the timeliness of this Petition is a “reasonable period of time” after the violation. The Abarca family has clearly met this standard, having persistently sought information and justice in this case since 2009, despite Mexico and

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180 Gordillo FC, supra note 20, at para 59.
182 Public Servants Disclosure Protection Act, SC 2005, c 46, s 8, at s. 26(1), online.
183 Gordillo FC, supra note 20, at para 55.
184 Gordillo FCA, supra note 123, at paras 43-45 and 50.
185 Gordillo FC, supra note 20, at para 66.
186 Gordillo FCA, supra note 123, at para 134.
187 Gordillo FCA, supra note 123, at paras 92-100.
188 Gordillo FC, supra note 20 at para 66.
189 Leave to appeal to the Supreme Court was denied on January 12, 2023: Gordillo SCC, supra note 128.
190 Inter-American Commission Rules of Procedure, supra note 172, at Art 32(2).
Canada’s failures to adequately investigate in a timely manner. For example, the Petitioners and their allies have done the following:

- filed a complaint to the Royal Canadian Mounted Police (RCMP) (2010); 192
- made an access to information request in Canada (2010); 193
- released a public report in English based on information in the access to information request (2013); 194
- filed legal complaints in Mexico regarding the stalled Mexican investigation (2016, 2017, 2019); 195
- petitioned the Inter-American Commission for violations by Mexico (2017, 2020); 196
- filed a complaint to Canada’s Public Sector Integrity Commissioner (PSIC) (2018); 197
- applied for judicial review of the PSIC decision (Federal Court decision: 2019, Federal Court of Appeal decision: 2022; Supreme Court of Canada denied leave to appeal on January 16, 2023). 198

[89] The Abarca family and its allies produced these formal requests and reports in tandem with tireless public campaigning in both Mexico and Canada. 199

[90] Finally, it was reasonable for the Petitioners to engage Canada’s PSIC complaints process before submitting this Petition to the Commission. The complaint could have led to an investigation in Canada that could have provided valuable information for this Petition, which is based largely on redacted Embassy documents obtained through an access to information request. The Commissioner could have also made recommendations to Global Affairs Canada that, if adopted, may have addressed the family’s central, and valid, concern that Canada has learned nothing from this tragedy and has failed to take any steps to ensure it is not repeated. 200

3. Duplication of proceedings and international res judicata

[91] This Petition meets the requirement established in Article 33(1) of the Commission’s Rules of Procedure. The claim is not currently before any other international body. As discussed above, on June 26, 2017, the Abarca family and its allies submitted a petition to the Commission against Mexico for its failure to protect Mr. Abarca and adequately investigate his murder, but the two complaints

193 Moore and Colgrove, supra note 37, at pg. 1.
194 Moore and Colgrove, supra note 37.
195 IACHR Petition Against Mexico (2020), supra note 51, at paras 72-75.
197 PSIC Disclosure, supra note 122.
198 Gordillo FC, supra note 20; Gordillo FCA, supra note 123; Gordillo SCC, supra note 128.
199 For example: Council of Canadians, “Mexican Activist Murdered for Opposing Canadian Mining Company - Killing Sparks Protest at Canadian Embassy in Mexico City” (December 9, 2009) online [https://perma.cc/6F2D-24YD]; Access to Information Request A-2010-00758/RF1, supra note 21, at 000458-000459, 000472-000473; Moore and Colgrove, supra note 27, at pg. 19 (“After the murder, Mariano Abarca’s family, community, and fellow activists called for an investigation into the company’s involvement in the murder, naming 13 individuals for investigation . . . .”); Common Frontiers, United Steelworkers, and MiningWatch Canada, “Canadian Fact-finding Delegation Discovers Mexican Community Devastated by Mining Activities of Blackfire Exploration” (April 21, 2010), online [https://perma.cc/EZ5V-4MWK]; Committee for Human Rights in Latin America et al, “Family of Murdered Mexican Activist Seeks Answers on Canadian Embassy's Support for Implicated Canadian Company” (August 13, 2013) online [https://perma.cc/C4Z6-WHHR]; Atlantic Regional Solidarity Network et al, “Four Years After Submitting Evidence, Organizations Challenge Anti-Corruption Law as Ineffective” (March 10, 2014) online [https://perma.cc/HEE2-WRTZ]; MiningWatch Canada (2015), supra note 115.
200 A recent submission to Canada’s Universal Periodic Review highlights the ways in which history appears to be repeating itself with respect to how economic diplomacy can put human rights defenders at risk: UPR Submission on Human Rights Defenders (2023), supra note 22.
are not substantially the same. The impugned State is different, and the object of the Petition is different, namely, Canada’s extraterritorial duty to respect and guarantee the right to life. Additionally, the legal grounds are different.  

V. COLORABLE CLAIM  
A. The right to life  

[92] We have established that Canada brought Mr. Abarca under its jurisdiction by July 2009 and thus had an actionable duty to respect and protect his right to life and related rights. In this section, we demonstrate that Canada violated Mr. Abarca’s right to life by making a decisive contribution to the situation of risk that Mr. Abarca faced, failing to help protect him when that risk became real and immediate, and refusing to adequately investigate Blackfire or Embassy officials after Mr. Abarca was murdered with impunity.  

1. Home State duty to respect and protect the right to life  

[93] The Commission and Inter-American Court have established that the acts of private actors can generate State responsibility in the Inter-American System. An illegal act that violates human rights, and which is initially not directly imputable to a member State, can be indirectly imputable to that State, not because of the act itself, but because of the State’s lack of due diligence to prevent reasonably foreseeable harm, or the State’s failure to investigate and hold the perpetrators to account. The responsibility of the State can be conditioned upon: (i) whether the State had or should have had knowledge of a situation of risk; (ii) whether said risk was real and immediate; (iii) the particular situation of affected persons; and (iv) whether the State adopted measures reasonably expected to avoid said risk from materializing. Positive obligations can also arise, or intensify, if a State’s prior behavior created, or decisively contributed to, the existence of risk for the commission of a violation of a protected right. The more involved a State is in generating the conditions that allow violations by private parties, the more State action can rise to the level of complicity in these violations, implicating the duty to respect.  

[94] The Commission has recognized that the coexistence of Home State and Host State human rights obligations can form the basis for shared responsibility between these States, “without prejudice to the individual acts of each State being considered separately in light of their applicable specific obligations”. In the context of economic diplomacy, what a Home State can reasonably be expected to do to avoid putting human rights defenders in harm’s way, and to help protect them, differs from what a Host State can do. In this case, Canada had a general duty to cooperate with Mexico to respect and protect the right to life of human rights defenders affected by the Payback  

201 Ruena-Ricardo et al v Panama, Preliminary Objections, Judgment (1999), Inter-Am Ct HR (Ser C) No 61, at para 53; Cavallaro et al, supra note 191, at pgs. 142-143.  
202 Ibid.  
203 I/A Court H.R. Case of Velásquez Rodríguez v. Honduras. Merits. Judgment of July 29, 1988 Series C No. 4., at para 172 [Velásquez Rodríguez]. For example: I/A Court H.R. Case of the Massacre of Pueblo Bello v. Colombia, Judgment of January 31, 2006, Series C No. 140, at para 146 [Pueblo Bello]. See also: McCorquodale and Simons, supra note 12, at pgs. 617-623 (Due diligence to prevent harm outside a State’s territory is also a general principle of the law of State responsibility, which can apply to cases involving corporate nationals operating overseas).  
204 Business and Human Rights: Inter-American Standards, supra note 3, at para 88.  
205 Business and Human Rights: Inter-American Standards, supra note 3, at para 96.  
206 Business and Human Rights: Inter-American Standards, supra note 3, at para 75.  
Below, we refer to Inter-American and other human rights standards, as well as Canadian policy and the case context, to describe, specifically, what the Embassy ought to have done, or refrained from doing, to meet these general duties and avoid violating Mr. Abarca’s right to life and related rights.

2. Canada made a decisive contribution to the situation of risk

i. Canada enabled company behaviour that put Mariano Abarca at risk

As described in the context section above (paras 4-9), Canada’s legal and financial system, its public support for the mining industry overseas, and its lack of extraterritorial regulation facilitates the implementation of mining projects like the “Payback” mine, even when they pose significant human rights risks. Prior to 2009, Canada was told time and again about human rights violations linked to its mining projects overseas, including during the 2005 National Roundtables on Corporate Social Responsibility and the Canadian Extractive Industry in Developing Countries, which issued its final report in 2007. Following this report, which condemned the lack of action by Canada through the years, Canada released its 2009 policy Building the Canadian Advantage, which expressed a public commitment to high standards of corporate accountability, but did not take any meaningful steps to curb the problem. By 2009, Canada knew this human rights problem was widespread and serious, but did nothing to address it. Instead, it continued to enable projects throughout Latin America that posed significant risks to human rights.

In this case, the Embassy went out of its way to offer Blackfire vital support without conducting any human rights due diligence, even as warning signs of potential violence against community leaders, like Mr. Abarca, mounted. Blackfire relied heavily on the Embassy, which facilitated its early agreements with the ejidos, helped it obtain crucial permits, organized delegations to Chiapas, and frequently advocated on the company’s behalf with Mexican officials. As Blackfire told the Embassy in a 2008 e-mail: “[a]ll of us at Blackfire really appreciate all that the Embassy has done to help prevent the state government to get things going for us. We could not do it without your help.” This support did not appear to waver, even after early red flags emerged, like potential problems with consultation, community unrest, and evidence of potential corruption. Nor did it waver when Mr. Abarca told the Embassy directly that mine employees were acting as “thugs” for

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208 Business and Human Rights: Inter-American Standards, supra note 3, at para 169; See also Advisory Opinion OC-23/17, supra note 4, at para 140, 173, 182 (duty to cooperate to ensure protection against significant transboundary harm to the environment).


210 National Roundtables, supra note 19; National Roundtable Recommendations, supra note 22; 2005 Parliamentary Hearing on Mining, supra note 19.


212 Access to Information Request A-2010-00758/RF1, supra note 21, at 000157-000162. See also: Memorandum of understanding with ejido Grecia (Annex 3).

213 Access to Information Request A-2010-00758/RF1, supra note 21, at 000187-000190.

214 Access to Information Request A-2010-00758/RF1, supra note 21, at 000157, 000038-000039.

215 For example: Access to Information Request A-2010-00758/RF1, supra note 21, at 000157-000162, 000187-000190, 000204, 000038-000039, and 0000720.

216 Access to Information Request A-2010-00758/RF1, supra note 21, at 000185.

217 Access to Information Request A-2010-00758/RF1, supra note 21, at 000159. The Embassy’s Political Counsellor reported: “The company claims that it has negotiated payments and programs with local community leaders, including road infrastructure, water wells, and has offered to develop the planting of ‘jatropha’ in adjacent lands, a biofuel crop that is apparently used successfully in India and China. However, it is unclear to us what process was used or how well these negotiations are understood by all members of the community.”

218 Access to Information Request A-2010-00758/RF1, supra note 21, at 000157-000159, 000186, 000197, and 000213. Henríquez and Mariscal, supra note 63.

219 López, supra note 54.
the project, or when a letter-writing campaign explained how Mr. Abarca was being criminalized because of a complaint that Blackfire had filed against him. In the many recorded communications between the Embassy and Blackfire between November 2007 and January 2009, none suggest that the Embassy ever conditioned its support for the company on respect for human rights, or even pressed the company on issues like consultation or risk to community leaders. In this way, the Embassy not only enabled the project, but caused it to progress in a way that put Mr. Abarca at risk.

ii. Embassy staff pressured Mexico to counter the protest movement

As Mariano Abarca and his community became more successful in their advocacy for community rights in relation to the mining project, and the risk to Mr. Abarca’s life grew, the Embassy repeatedly pressed Mexico to put an end to the protest movement he was leading:

- In July 2009, Embassy staff were publicly dismissive of Mr. Abarca when he travelled 13 hours to the Embassy to explain what was happening around the mine, and why his life was in danger. This had the effect of undermining Mr. Abarca’s credibility in the eyes of Mexican officials, putting him at risk.
- In August 2009, while Mr. Abarca was detained, the Embassy contacted Mexican officials to express concern “about any allegation of illegal activity surrounding Canadian investments in Mexico”. The Embassy also shared Blackfire’s unsubstantiated and criminalizing claims with Mexican officials that violent protests were being planned for late August 2009 when the event that Mr. Abarca was helping to plan was a peaceful meeting of the REMA, with national and international participation.
- In October 2009, when tensions were at their highest, the Embassy led its second of three delegations to Chiapas to “advocate for greater attention by Chiapas to try to resolve challenges that Blackfire [was] facing,” namely economic problems caused by “lengthy blockades.”
- Following the Embassy’s visit, the Embassy’s Trade Commissioner raised Blackfire’s concerns about possible future protests with government officials and sent a note to the federal Ministry of Economy stating, “we’re going to have new problems/blockades in the future.”

Despite knowledge that Mariano Abarca was at risk, Embassy staff appear to have made these requests without any mention of Mr. Abarca’s safety or the need to respect human rights. By doing so, they sent a message to Mexican officials, and to Blackfire, that the company’s desire to end the protests were more important than Mr. Abarca’s protection. This significantly contributed to the situation of real risk that Mr. Abarca was facing.

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220 Moore and Colgrove, supra note 37, at pgs.10-11; Mariano Abarca at the Canadian Embassy, supra note 71.
221 Access to Information Request A-2010-00758/RF1, supra note 21, at 000208. Example letter at 000202.
222 Documents in the Access to Information Request A-2010-00758/RF1, supra note 21, disclose roughly 30 documented contacts between Blackfire and Embassy personnel, either in person or through e-mail, but none suggest any pushback against the company on the issue of human rights. See also: Moore & Colgrove, supra note 37, at pg. 2.
223 Herman, supra note 70; Moore & Colgrove, supra note 37, at pgs. 10-11; Mariano Abarca at the Canadian Embassy, supra note 71.
224 Special Rapporteur Report on Human Rights Defenders (2011), supra note 34, at para 81: “States should refrain from stigmatizing the work of human rights defenders and should recognize the role they play, including women defenders and those working on women’s rights or gender issues, as well as the legitimacy of their activities in public statements. Such recognition is a first step for preventing or reducing threats and risks against them.”
225 Access to Information Request A-2010-00758/RF1, supra note 21, at 000204.
226 Access to Information Request A-2010-00758/RF1, supra note 21, at 000204, 000208-000209, 000722.
227 Moore & Colgrove, supra note 37, at pg. 13, citing: REMA, “II REMA Chiapas Meeting: Chicomuselo Declaration” (“II Encuentro REMA Chiapas: Declaración de Chicomuselo”) (September 3, 2009), online [https://perma.cc/N9YS-332J].
228 Access to Information Request A-2010-00758/RF1, supra note 21, at 000038-000039.
229 Access to Information Request A-2010-00758/RF1, supra note 21, at 000211and 000720 (translated from Spanish); Moore and Colgrove, supra note 37, at pgs. 16-17.
3. Canada failed to help protect Mariano Abarca when the risk to his life became real and immediate

[99] By July 2009, Embassy officials clearly knew that there was a real and immediate risk to Mr. Abarca’s life. As described above, Mr. Abarca told the Embassy that community leaders, like himself, were at risk.230 He was then criminalized,231 and the Embassy received 1,400 e-mails explaining who he was and why he was in danger.232 Mr. Abarca also reported death threats to police, which the Embassy would have known about if they had met with Mr. Abarca or followed up with him after he left the Embassy.233 Embassy staff ought to have done this long before July 2009, given what they knew about the project, and the information available to them about the human rights risks associated with the Canadian mining industry and the situation of human rights defenders in Mexico.234 Nonetheless, by July 2009, the Embassy clearly knew that the risk to Mr. Abarca’s life was real and immediate.

[100] International business and human rights standards, and Canadian policy, point to the various ways the Embassy could have acted to help protect Mr. Abarca. For example, the Embassy could have conducted its own human rights due diligence,235 taken diplomatic steps to encourage Mexico to protect Mr. Abarca,236 or conditioned support for Blackfire on the company’s efforts to protect human rights defenders.237 In particular, the Embassy could have done any of the following, as outlined in Canada’s current Voices at Risk policy, which flows from the basic principles of the 1999 Declaration on Human Rights Defenders, which Canada co-sponsored:238

- mapping, gathering information and reporting
- relationship building, regular contact and information exchanges with human rights defenders
- enhancing visibility for human rights defenders
- engaging with local authorities
- cooperating with key regional and international actors
- visiting detained human rights defenders
- making public statements and using social media
- supporting emergency assistance needs
- promoting responsible business conduct239

[101] Any of these measures would have helped protect Mr. Abarca and encouraged Blackfire and Mexico to take steps to protect him as well.

[102] Unfortunately, the record shows the Embassy doing virtually nothing in this regard. As discussed above, Embassy support for the company appears to have been unwavering, at least until January

230 Moore and Colgrove, supra note 37, at pgs. 10-11; Mariano Abarca at the Canadian Embassy, supra note 71.
231 Access to Information Request A-2010-00758/RF1, supra note 21, at 000208. Example letter from letter-writing campaign explaining how Mr. Abarca was being criminalized: 000202. See also: September 2009 Interview with Mariano Abarca, supra note 64, at 5:59. This interview provides more information about the Mexican detention practices known as “arruigo” or “pre-charge detention” and the criminalization of human rights defenders in Mexico.
232 Canadian Fact-Finding Delegation, supra note 41, at pg. 11; Access to Information Request A-2010-00758/RF1, supra note 21, at 000208. Example letter at 000202.
233 Mariano Abarca Complaint, supra note 93. See also: Amnesty International (2009), supra note 82; Moore and Colgrove, supra note 37, at pg. 18.
234 See the Context section above for details (paras 7-12).
236 Maastricht Principles, supra note 152.
237 Guiding Principles, supra note 235, at pgs. 6-7 (Principle 4); General Comment No. 24, supra note 9, at para 50.
238 UNECOSOC, supra note 163, at para 388.
239 Voices at Risk Guidelines, supra note 28, at 3 (1) – (12).
2010, when news of possible corruption at the mine surfaced in the Canadian media ( paras 96, 55-56). Embassy staff don't appear to have ever discussed the safety of community leaders with the company, or the ways the project could be putting community leaders, like Mr. Abarca, at risk. The Embassy never appeared to seek out, or even consider, the opinion of affected communities or their leaders until after Mr. Abarca was murdered.240 They failed to take diplomatic steps to elevate Mr. Abarca’s profile or signal that he was in need of protection, instead choosing to delegitimize and stigmatize him (see para 97 above).241 Even the Embassy's inquiry into Mr. Abarca’s detention was framed as a way to express concern “about any allegation of illegal activity surrounding Canadian investments in Mexico,” appearing to refer to Mr. Abarca’s alleged illegal activities, even though those allegations were unsubstantiated.242 Any minor act the Embassy took in support of human rights or corporate social responsibility, generally, was grossly inadequate given the Embassy’s degree of involvement in the project and knowledge of risk to Mr. Abarca.

4. Canada failed to adequately investigate Embassy staff or Blackfire

[103] Following an initial violation of the right to life of a person under a State’s jurisdiction, competent organs of the State must conduct an adequate investigation.243 As the Commission has noted, otherwise, “such acts would, in a way, be aided by governmental authority by leaving them unpunished”.244 The Commission, and other human rights bodies, have also recognized that the duty of States to enable effective adjudication to prevent, investigate, punish and redress all forms of threats and attacks against human rights defenders can also form part of a State’s extraterritorial obligation to respect and protect human rights.245 In addition, the UN Special Rapporteur on the Situation of Human Rights Defenders has stated that “where attacks have been carried out against defenders in Host States, Home States should use all avenues possible to advocate for an independent, impartial and transparent investigation and should provide financial and technical support to such an investigation”.246 Home States thus have a duty to investigate violations of the right to life of human rights defenders subject to their jurisdiction, and to advocate for an adequate and effective investigation by the Host State.

[104] Canada has repeatedly refused to adequately investigate the conduct of Embassy staff or Blackfire in the lead up to Mr. Abarca’s murder. An Embassy staff member finally met with affected communities from January 18-19, 2010, but the meeting notes were brief, and were only made public through the Abarca family’s access to information request.247 As discussed above, when a Canadian newspaper reported on possible corruption at the mine, the RCMP began looking into the allegations.248 After five years, investigators announced that there was not enough evidence to bring corruption charges, without providing an explanation for their conclusion.249 As noted in the context section above,

241 Herman, supra note 70; Access to Information Request A-2010-00758/RF1, supra note 21, at 000722, 000204.
242 Access to Information Request A-2010-00758/RF1, supra note 21, at 000204.
247 Moore and Colgrove, supra note 37, at pg. 24; Access to Information Request A-2011-01962/LA, supra note 58, at 000001-000004.
248 Hoffman 2009, supra note 111; Access to Information Request A-2010-00758/RF1, supra note 21, at 000419.
249 MiningWatch Canada (2015), supra note 115.
Canada has long been criticized for its failure to enforce its anti-bribery law overseas.250 The Canadian Public Sector Integrity Commissioner later declined the Abarca family’s request for an investigation into Embassy conduct in this case.251 Canada’s judiciary upheld this decision.252 In sum, Canada has failed to investigate how Embassy or company conduct contributed to this tragedy.

[105] In the days and weeks following Mr. Abarca’s murder, Canada also signaled to Mexican officials that it would not press for accountability in Mexico. As the Commission has noted, attacks against human rights defenders are often systematic, organized and perpetrated by different persons at various levels of participation.253 States must investigate the direct perpetrators, but also the intellectual authors of these violations, as partial investigations and punishment lead to impunity.254 Canada knew that the individuals detained for Mr. Abarca’s murder were associated with the company,255 that all Canadian employees had left the country within days of the murder,256 and that the Mexican Network of Mining Affected People (REMA) strongly believed the company was to blame for the murder.257 The Embassy knew about Mr. Abarca and his relationship to Blackfire,258 but continued to offer the company information and support even after Mr. Abarca was murdered.259 The Embassy made no statements in support of bringing the intellectual authors to justice, and instead, publicly stressed that the investigation was “a matter for Mexican officials.”260 Embassy staff do not appear to have attended any of the hearings or trials following Mr. Abarca’s murder. When considered in context, Canada’s failure to adequately investigate, or to press Mexico to do the same, significantly increased the likelihood that Mr. Abarca’s murder would end in impunity.

5. Canada violated Mariano Abarca’s right to life

[106] Canada made a decisive contribution to the situation of risk that Mr. Abarca faced, failed to do what was within its power to help protect him when that risk became real and immediate, and refused to investigate Canada’s role in his death, or encourage Mexico to conduct an adequate and effective investigation. By doing so, Canada violated Mr. Abarca’s right to life.

B. Rights to freedom of expression and association

[107] Given that Mariano Abarca was a community leader and human rights defender, these same acts and omissions violated his rights to freedom of expression and association.261 As the Commission has recognized, States have a duty to prevent and investigate the intimidation and murder of social communicators and human rights defenders who are targeted for their opinions, or for participating in a particular activity, like social organizing.262 This especially brutal means of violating the rights to freedom of expression and association has an impact on the rights of society at large and anyone

250 Transparency International, supra note 18, at pgs. 8, 23, 31-32; OECD, supra note 18, at para 181.
251 Gordillo FCA, supra note 123, at paras 2-3.
252 Gordillo FCA, supra note 123, at para 134; Gordillo SCC, supra note 128.
254 Ibid.
255 Access to Information Request A-2010-00758/RF1, supra note 21, at 000248-000249, 000338, 000340.
256 Access to Information Request A-2010-00758/RF1, supra note 21, at 000248-000249.
257 Moore and Colgrove, supra note 37, at pg. 24; Access to information request A-2011-01962/LA. supra note 58, at 000002-000003.
258 Access to Information Request A-2010-00758/RF1, supra note 21, at 000208, 000225 (Internal e-mail about Mr. Abarca’s murder: “FYI - Long story behind this one - in essence Blackfire Mine (barite) in Chiapas has had long standing conflict with this individual. And now he was assassinated [redacted]”).
259 Access to Information Request A-2010-00758/RF1, supra note 21, at 000551-000552, 000700; 000576-000578.
260 Access to Information Request A-2010-00758/RF1, supra note 21, at 000001-000002, 000253; Associated Press, supra note 103; Popplewell, supra note 103.
261 American Declaration, supra note 7, at Art. IV and Art. XXII.
who wishes to participate in the targeted speech or activity. Mr. Abarca was killed as a result of his speech and organizing in defense of community rights. His criminalization and murder with impunity, at the height of his organizing success, not only silenced him, but had a chilling effect on his community and other human rights defenders in Mexico. Violence against land and environment defenders in Mexico since this time has only worsened.

C. Right to judicial protections (fair trial and due process)

Canada also violated Mariano Abarca’s right to judicial protections. Canada failed to investigate Embassy or company conduct in the lead up to Mr. Abarca’s murder; failed to encourage an adequate and effective Mexican investigation, including an investigation into the intellectual authors of Mr. Abarca’s murder; and failed to provide access to an effective remedy in Canada, as described above (paras 84-87). Canada had jurisdiction over Mr. Abarca and, given its position and involvement in the project, could have helped shed light on what happened to him and provided an effective remedy. In failing to do so, Canada violated Mr. Abarca’s right to judicial protections.

VI. CONCLUSION

The Petitioners ask the Commission to do the following:

Accept the presentation of this Petition in accordance with Articles 27, 28, 30, 31, 32 and 33 of the Commission’s Rules of Procedure.

Remit the Petition to the State of Canada in accordance with the timeframe set out in Article 30 of the Commission’s Rules of Procedure.

Determine that it has the competence to review the present case.

Determine that the present Petition is admissible.

At the appropriate procedural moment, establish the international responsibility of the State of Canada and the obligation to make full reparation for the violation, to the detriment of the victim in the instant case, of the rights to Life (Art. I), Freedom of Expression (Art. IV), Association (Art. XXII), Fair Trial (XVIII), and Due Process of Law (Art. XXVI).

264 Global Witness, supra note 34.
265 American Declaration, supra note 7, at Arts. XVIII and XXVI.