



*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

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) [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 Montejo.

² For example: “Report on the work of its fifty-eighth session” (Annex V Extraterritorial Jurisdiction) in *Yearbook of the International Law Commission 2006*, vol 2, part 2, (New York: UN, 2006) at p 229 paras 1-3, [online](#) (UN Doc. A/CN.4/SER.A/2006/Add.1 Annex Part 2) [Yearbook of the International Law Commission].

³ Inter-American Commission on Human Rights and the Special Rapporteur for Economic, Social, Cultural and Environmental Rights, *Business and Human Rights: Inter-American Standards*, OEA/Ser.L/V/II (November 1, 2019) CIDH/REDESCA/INF.1/19, at para 148, [online](#) [Business and Human Rights: Inter-American Standards].

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 Iván Serrano Saenz (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/V/II.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.⁵ In the context of economic diplomacy,⁶ 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).⁷ 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).⁸ 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.⁹ "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.¹⁰ 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

⁵ Advisory Opinion OC-23/17, *supra* note 4, at para 140; OAS, Inter-American Commission on Human Rights, *Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II.124 (7 March 2006), at paras 42-43, [online](#) [Report on the Situation of Human Rights Defenders in the Americas (2006)]; Human Rights Committee, *General comment No. 36 on article 6 of the International Covenant on Civil and Political Rights, the Right to Life*, UN Doc. CCPR/C/GC/36 (2018), at para 23 [General comment No. 36].

⁶ See discussion on economic diplomacy in the context section below. This policy is a formal commitment that "all diplomatic assets of the Government of Canada will be marshalled on behalf of the private sector" as described in: Global Affairs Canada, *Global Markets Action Plan: The Blueprint for Creating Jobs and Opportunities for Canadians Through Trade*, Catalogue NoFR5-84/2013 (Ottawa: Global Affairs Canada, 2013), at pg. 11, [online](#) [Global Markets Action Plan] [<https://perma.cc/W7ZQ-E8WZ>].

⁷ *American Declaration of the Rights and Duties of Man*, Adopted by the Ninth International Conference of American States, Bogotá, Colombia, 1948, [American Declaration].

⁸ *Ibid.*

⁹ Business and Human Rights: Inter-American Standards, *supra* note 3, at para 168; General comment No. 36, *supra* note 5, at para 22; Economic and Social Council, *General comment No. 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities*, UN Doc. E/C.12/GC/24 (2018) at para 27, [online](#) [General comment No. 24]; Committee on the Rights of the Child, *General comment No. 16 (2013) on State obligations regarding the impact of the business sector on children's rights*, UN Doc. CRC/C/GC/16 (2013) at para 43, [online](#) [General comment No. 16].

¹⁰ 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 7 (Duty to cooperate to ensure protection against significant transboundary harm to the environment).

not remain in impunity.¹¹ This position, based in international human rights law,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.¹³

- [5] For decades, Canada has been the home jurisdiction for *nearly half to two thirds* of the world’s publicly listed mining companies.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.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.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.¹⁷ The OECD and others have also expressed concern about Canada’s limited enforcement of the country’s anti-bribery legislation overseas.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*.¹⁹ Canada

¹¹ Business and Human Rights: Inter-American Standards, *supra* note 3, at para 171.

¹² Yearbook of the International Law Commission, *supra* note 2, at pg. 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, at pgs. 617-613 [McCorquodale & Simons].

¹³ McCorquodale & Simons, *supra* note 12, at pgs. 598-599; Patricia Rinwigati Waagstein, “Justifying Extraterritorial Regulations of Home Country on Business and Human Rights” (2019) 16:3 Indonesian J Int’l L 36 at pgs. 362-363; Penelope Simons & Audrey Macklin, *The Governance Gap: Extractive Industries, Human Rights, and the Home State Advantage* (New York: Routledge, 2014).

¹⁴ Charis Kamphuis, “Canadian Mining Companies and Domestic Law Reform: A Critical Legal Account” (2012) 13:9 German L J 1456 at pgs. 1457-1458; Natural Resources Canada, *Canadian Mining Assets* (Publications), [online](https://perma.cc/M83K-JWFJ), accessed 20 January 2023 [Natural Resources Canada] [https://perma.cc/M83K-JWFJ]; Global Affairs Canada, *Minister Ng promotes Canada’s mining industry at virtual Prospectors & Developers Association of Canada 2021 Convention* (Press Release), March 17, 2021, [online](https://perma.cc/5WZD-C5JA), accessed 20 January 2023 [https://perma.cc/5WZD-C5JA].

¹⁵ Natural Resources Canada, *supra* note 14.

¹⁶ Global Markets Action Plan, *supra* note 6, at pg. 11; Government of Canada, Trade Commissioner Service, *Trade Commissioner Service - Eligibility and services*, [online](https://perma.cc/ACY7-M6ZX), accessed 20 January 2023 [https://perma.cc/ACY7-M6ZX].

¹⁷ Charis Kamphuis & Leah Gardner, “Effectiveness Framework for Home-State Non-Judicial Grievance Mechanisms” in Amissi M Manirabona & Yenny Vega Cárdenas, eds, *Extractive Industries and Human Rights in an Era of Global Justice: New Ways of Resolving and Preventing Conflicts* (Toronto: LexisNexis Canada, 2019) 75, at pgs. 89-90; For example: UNHCR, *Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises on its mission to Canada* (2018) A/HRC/38/48/Add.1, [online](https://perma.cc/6T8K-8ZK4) [Report of the Business and Human Rights Working Group (2018)]; UNHRC, *Concluding Observations on the Sixth Periodic Report of Canada*, UN Doc. CCPR/C/CAN/CO/6 (13 August 2015), at para 6, [online](https://perma.cc/6T8K-8ZK4) [Sixth Periodic Review of Canada (UNHRC)]; UNCRC, *Concluding observations on the combined third and fourth periodic report of Canada*, adopted by the Committee at its sixty-first session (17 September – 5 October 2012), UN Doc.CRC/C/CAN/CO/3-4, (6 December 2012), at paras 28–29, [online](https://perma.cc/6T8K-8ZK4).

¹⁸ Transparency International, “Exporting Corruption 2022: Assessing Enforcement of the OECD Anti-Bribery Convention” (2022, at pgs. 8, 23, 31-32 [online](https://perma.cc/NW5A-2M46) (pdf) [Transparency International] [https://perma.cc/NW5A-2M46]; OECD, Working Group on Bribery, *Phase 3 Report on Implementing the OECD Anti-Bribery Convention in Canada*, Adopted on 18 March 2011, at para 181 [online](https://perma.cc/6T8K-8ZK4) [OECD].

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](https://perma.cc/J6ET-8ZK4) [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](https://perma.cc/VE3P-BPS6) [2005 Parliamentary Hearing on Mining] [https://perma.cc/VE3P-BPS6].

has produced a number of “aspirational” policies²⁰ and statements²¹ 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.²² Canada does not appear to monitor or collect data about the human rights impact of the sector.²³ 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.²⁴ 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.”²⁵ 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.²⁶ 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.”²⁷ While a more detailed Canadian policy on human rights defenders exists today, there is growing evidence it is not being implemented.²⁸ 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].

²² For example, Advisory Group Report, “National Roundtables on Corporate Social Responsibility (CSR) and the Canadian Extractive Industry in Developing Countries” (March 29, 2007), at pg. iii, [online](https://perma.cc/2TTE-FQ5P) [https://perma.cc/2TTE-FQ5P] (Advisory Group Members urge the Government of Canada to adopt a set of CSR Standards that Canadian extractive-sector companies operating abroad are expected to meet and that is reinforced through appropriate reporting, compliance and other mechanisms) [National Roundtable Recommendations]; Canadian Network on Corporate Accountability, “Human Rights and Due Diligence Legislation in Canada” (2023) [online](https://perma.cc/HU3J-VL9P) [https://perma.cc/HU3J-VL9P]; Charis Kamphuis, “Building the Case for a Home-State Grievance Mechanism: Law Reform Strategies in the Canadian Resource Justice Movement” in Isabel Feichtner, Markus Krajewski & R Roesch, eds, *Human Rights in the Extractive Industries: Transparency, Participation, Resistance* (Springer, 2019) at section 3 (Canada’s Corporate Social Responsibility Policy Response), and section 4 (Empirical, Normative & Political Critiques of Canada’s CSR Policy) [Kamphuis 2019]; Justice and Corporate Accountability Project and MiningWatch Canada, Submission to the UPR Working Group of the United Nations Human Rights Council in anticipation of the 2023 Universal Periodic Review of Canada, “Canada’s Systematic Failure to Fulfill its International Obligations to Human and Environmental Rights Defenders Abroad” (April 4, 2023), at pgs. 12-13, [online](https://perma.cc/5WZG-MW4X) [UPR Submission on Human Rights Defenders (2023)] [https://perma.cc/5WZG-MW4X].

²³ Shin Imai, Leah Gardner & Sarah Weinberger, “The ‘Canada Brand’: Violence and Canadian Mining Companies in Latin America” (2017), at p 4, [online](https://perma.cc/2UM9-RV37) [Imai, Gardner and Weinberger].

²⁴ For example: Sixth Periodic Review of Canada, *supra* note 17, at para 6; Report of the Business and Human Rights Working Group (2018), *supra* note 17, at para 20; Business and Human Rights: Inter-American Standards, *supra* note 3, at paras 138-139; Inter-American Commission on Human Rights, “Indigenous peoples, Afro-descendent communities, and natural resources: Human rights protection in the context of extraction, exploitation, and development activities” (31 December 2015), OEA/Ser.L/V/II. Doc.47/15/OEA, at paras, 18-24 [Indigenous Peoples and Afro-descendent Communities Report].

²⁵ Global Affairs Canada, “Building the Canadian Advantage: A Corporate Social Responsibility (CSR) Strategy for the Canadian International Extractive Sector” (March 2009), [online](https://perma.cc/3SX8-6AZB) (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) [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”).

²⁷ *Gordillo FC*, *supra* note 20, at para 66; Canada’s supplementary submissions in response to an amicus brief by Amnesty International Canada, Court File No. A-290-19, at para 22, in the case *Gordillo v. Canada (Attorney General)*, 2022 FCA 23 (Annex 13); Canada’s supplementary submissions in response to amicus brief submitted by Canadian Lawyers for International Human Rights and the International Justice and Human Rights Clinic, Court File No. A-290-19, at para 1, in *Gordillo v. Canada (Attorney General)*, 2022 FCA 23 (Annex 12).

²⁸ Global Affairs Canada, “Voices at Risk: Canada’s Guidelines on Supporting Human Rights Defenders,” 2019, [online](https://perma.cc/2UM9-RV37) [Voices at Risk Guidelines] [https://perma.cc/2UM9-RV37]; Charis Kamphuis, et al, “The Two Faces of Canadian Diplomacy: Undermining Human Rights and Environment Defenders to Support Canadian Mining” (December 10, 2022) *Justice and Corporate Accountability Project*, at pg. 20, [online](https://perma.cc/43WY-NDN4) [Kamphuis et al 2022] [https://perma.cc/43WY-NDN4]; Kevin Philipupillai, “Canadian officials ignored their obligation to support activist detained in 2017 over mining dispute in Peru: report” (December 27, 2022) *The Hill Times*, [online](https://perma.cc/WZ9R-NGJ5) [https://perma.cc/WZ9R-NGJ5]; UPR Submission on Human Rights Defenders (2023), *supra* note 22, at pg. 11.

[8] 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.²⁹ 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.³⁰ 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.³¹ Canada’s own 2009 corporate social responsibility policy expressed concern regarding the human rights impacts of its project overseas,³² in particular, the issue of “violence-related risk assessment, including the relations between extractive industries and security providers.”³³ 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

[9] 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.³⁴ As the Commission is aware, Mexico frequently fails to hold the intellectual authors of these murders to account.³⁵ Impunity perpetuates violence against human rights defenders and works to silence the communities they represent.³⁶ 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

[10] It was against this backdrop that, as early as November 2007, the Embassy began actively advocating for Blackfire’s “Payback” mine in Chiapas.³⁷ The facts in this Petition are based largely on documents

²⁹ 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).

³⁰ 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.

³¹ For example: National Roundtables, *supra* note 19; 2005 Parliamentary Hearing on Mining, *supra* note 19.

³² Building the Canadian Advantage, *supra* note 25 (CSR Performance Guidelines and Reporting).

³³ Building the Canadian Advantage, *supra* note 25 (CSR Performance Guidelines and Reporting).

³⁴ For example: Office in Mexico of the United Nations High Commissioner for Human Rights, “2010 Update: Report on the situation of human rights defenders in Mexico” (2009), at pgs. 6-11, [online](https://perma.cc/JDV2-EB28) [Office in Mexico of the UN High Commissioner for Human Rights] [https://perma.cc/JDV2-EB28]; Margaret Sekaggya, *Report of the Special Rapporteur on the situation of human rights defenders*, General Assembly, 66th Sess, UN Doc. A/66/203 (2011), at paras 17–20, [online](https://perma.cc/P9CN-FWYP) [Special Rapporteur on Human Rights Defenders (2011)]; Human Rights Watch, “Mexico Events of 2009” (2010), [online](https://perma.cc/956M-NUGL) [Human Rights Watch – 2010] [https://perma.cc/956M-NUGL]; Amnesty International, “The State of the World’s Human Rights” (2009), at pgs. 224-226, [online](https://perma.cc/5WVM-TG22) [https://perma.cc/5WVM-TG22]. For general information about the pattern of violence against human rights defenders in the Americas available before 2009, see: Report on the Situation of Human Rights Defenders in the Americas (2006), *supra* note 5. For current information about violence against human rights defenders in mining-affected areas of Mexico, see: Global Witness, “Decade of defiance” (September 29, 2022), [online](https://perma.cc/CF5J-VB4J) [Global Witness].

³⁵ 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.

³⁶ Report on the Situation of Human Rights Defenders in the Americas (2006), *supra* note 5, at paras 106-109.

³⁷ 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](https://perma.cc/CF5J-VB4J) [Moore and Colgrove] [https://perma.cc/CF5J-VB4J].

obtained through a Canadian *Access to Information and Privacy Request*.³⁸ The documents date from November 2007 to May 2010.³⁹ 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”⁴⁰ 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.⁴¹
- [12] In December 2007, the Canadian Ambassador in Mexico led a delegation to Chiapas, and met with the Governor of Chiapas and with Blackfire.⁴² 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*⁴³ (peasant farmer communities) on whose land Blackfire’s mine was to operate.⁴⁴
- [13] Embassy staff noted in a delegation report that Blackfire had mentioned tensions with local communities.⁴⁵ 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.⁴⁶
- [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,⁴⁷ and in *ejido* Grecia “very little community consultation.”⁴⁸
- [15] In early 2008, Blackfire’s “Payback” mine went into production.⁴⁹

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 *Ibid.*

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](https://perma.cc/C8MK-BDHT) [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.

⁴⁴ Access to Information Request A-2010-00758/RF1, *supra* note 21, at 000157-000162. See Memorandum of Understanding with *ejido* Grecia (Annex 3).

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.”

⁴⁷ Canadian Fact-Finding Delegation, *supra* note 41, at pg. 6.

⁴⁸ Canadian Fact-Finding Delegation, *supra* note 41, at pg. 7.

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.⁵⁰ 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).⁵¹
- [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.⁵²
- [18] The Embassy was aware of the blockade, which it characterized as the *ejidos* wanting "additional benefits above and beyond the land access agreements."⁵³
- [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."⁵⁴
- [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.⁵⁵ It noted a "knowledge gap" for junior mining companies "in regards to CSR and its potential business benefits."⁵⁶ The survey did not include any questions about consultation or human rights due diligence.⁵⁷
- [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.⁵⁸

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, "Barite, another treasure that has not left benefits for residents of Chiapas", *La Jornada*, 4 May 2008, [online](https://perma.cc/MC3H-XFCG) [Henríquez] [<https://perma.cc/MC3H-XFCG>].

⁵³ Access to Information Request A-2010-00758/RF1, *supra* note 21, at 000213.

⁵⁴ Greg McArthur, "RCMP raid Calgary miner over bribery allegations" (August 29, 2011), *The Globe and Mail*, [online](https://perma.cc/3ZYG-2GLV) [McArthur 2011] [<https://perma.cc/3ZYG-2GLV>]; Letter from the director of Blackfire to the president of the Chiapas State Congress (June 15, 2009) (Annex 5) [Blackfire (2009)]; Isai López, "Impeachment demanded for the mayor of Chicomuselo" (June 24, 2009), *El Heraldo de Chiapas* (Annex 6), Translation archived by MiningWatch Canada: [online](https://perma.cc/YR7T-8GKZ) [<https://perma.cc/YR7T-8GKZ>] [López].

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.

⁵⁸ Government of Canada, Department of Foreign Affairs, Trade and Development, *Access to Information Request A-2011-01962/LA*, at 000003 (Annex 2) [*Access to Information Request A-2011-01962/LA*]; Canadian Fact-Finding Delegation, *supra* note 41, at pg. 11; IACHR Petition Against Mexico (2020), *supra* note 51, at paras 27 and 65, citing Mexican court documents: Initial Investigation Report No. 036/FS10/2016 ("Informe de la averiguación previa"), and description of sentence against José Caralampio López Vázquez for assault against Mariano Abarca and family: Criminal Record No. 130/200, Joint Court of First Instance of the Judicial District of Motozintla, Chiapas, Sentence for Assault and Theft with Violence, May 4, 2020 ("Expediente penal número130/200, Juzgado Mixto de Primer Instancia del Distrito Judicial de Motozintla, Chiapas, Sentencia por Lesiones y Robo con Violencia, 4 May 2010").

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: ...“[all] 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](https://perma.cc/M3U2-SAQC) [Henríquez and Marisca] [https://perma.cc/M3U2-SAQC].

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](https://www.youtube.com/watch?v=...) [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.

⁶⁸ Blackfire Exploration Mexico S de RL de CV, “Deposits made to C Julio Cesar Velazquez Calderon” Bancomer (March 10, 2008) (Annex 4).

⁶⁹ López, *supra* note 54. Translation archived by MiningWatch Canada: [online](https://perma.cc/YR7T-8GKZ) [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.⁷⁰ Embassy staff did not invite Mr. Abarca inside, but an Embassy officer listened while Mr. Abarca spoke outside.⁷¹
- [31] Mr. Abarca's exchange with this officer was captured on video.⁷² 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.⁷³

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.⁷⁴ The Embassy was aware that the detention was in response to a complaint filed by Blackfire.⁷⁵
- [33] While Mr. Abarca was detained, the Embassy received some 1,400 e-mails expressing concern for his safety.⁷⁶ The messages stated that Mr. Abarca had been organizing a regional gathering of communities affected by mining corporations.⁷⁷
- [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."⁷⁸

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, 2009.⁷⁹ 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."⁸⁰

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](https://perma.cc/ZKA5-3M5C) [Herman] [https://perma.cc/ZKA5-3M5C].

⁷¹ Moore & Colgrove, *supra* note 37, at pgs. 10-11; "Mariano Abarca at the Canadian Embassy, 22 JULIO 2009", *YouTube* (22 July, 2009) [online](#) [Mariano Abarca at the Canadian Embassy].

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 000202.

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.

- [36] 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
- [37] 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
- [38] 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
- [39] 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
- [40] 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
- [41] There is no indication in the documents that the Embassy discussed the need to protect human rights defenders, like Mr. Abarca.⁹⁰
- [42] 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
- [43] 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.

⁸² Amnesty International, “Mexico: Protester’s Family at Risk after Killing” (3 December 2009), [online](https://perma.cc/6Z8C-FBVR) [Amnesty International (2009)] [https://perma.cc/6Z8C-FBVR].

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) [https://perma.cc/N9VS-332J].

⁸⁴ *Ibid.*

⁸⁵ Moore & Colgrove, *supra* note 37, at pg. 14, citing: Communiqué issued by *Ejido* Nueva Morelia: “In Ejido Nuevo Morelia, Municipality of Chicomuselo, Chiapas,” dated September 7, 2009 (Annex 7).

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”).⁹³ 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.⁹⁴
- [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.”⁹⁵
- [46] On November 26, 2009, the Public Prosecutor of Chicomuselo issued a summons for Ciro Roblero Perez.⁹⁶
- [47] On November 27, 2009, Mr. Abarca was murdered, shot at close range outside of his home.⁹⁷ The assailant escaped on a waiting motorcycle.⁹⁸ At least four individuals associated with Blackfire were detained as part of the murder investigation.⁹⁹ One appears to have been acquitted on appeal and the rest were eventually released.¹⁰⁰
- [48] On December 3, 2009, community members traveled from Chiapas to the Canadian Embassy to protest Mr. Abarca’s murder.¹⁰¹ This escalated to a 1,500-person march on December 18, 2009.¹⁰²
- [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.”¹⁰³
- [50] Shortly after Mr. Abarca’s murder, the Embassy spoke with Blackfire officials who categorically rejected any involvement in the crime.¹⁰⁴ 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.”¹⁰⁵

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 Moore & 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/EH9J-MS9E) [https://perma.cc/EH9J-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.

¹⁰³ Access to Information Request A-2010-00758/RF1, *supra* note 21, at 000001-000002, 000253; Associated Press, “Canadian mine staff questioned in activist’s slaying,” (December 3, 2009), [online](https://perma.cc/UUJ7-MCR5) [Associated Press] [https://perma.cc/UUJ7-MCR5]; Brent Poppell, “Mexicans protest activist’s death,” (December 4, 2009) *Toronto Star*, [online](https://perma.cc/AHK6-9S5X) [Poppell] [https://perma.cc/AHK6-9S5X].

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) [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) [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 *Ibid.*

¹¹¹ Andy Hoffman, "Mayor blackmailed us, Canadian mining company says", *The Globe and Mail* (December 11, 2009), [online](https://perma.cc/G6A2-3GDM) [Hoffman 2009] [https://perma.cc/G6A2-3GDM].

¹¹² Access to Information Request A-2010-00758/RF1, *supra* note 21, at 000419.

¹¹³ Moore and Colgrove, *supra* note 37, at pg. 24; Access to Information Request A-2011-01962/LA, *supra* note 58, at 000001-000004.

¹¹⁴ Access to Information Request A-2010-00758/RF1, *supra* note 21, at 000576-000578.

¹¹⁵ MiningWatch Canada, "Mexican Network Deplores Conclusion of Canadian Investigation into Blackfire in Chicomuselo, Chiapas", News Release (March 11, 2015), [online](https://perma.cc/K7ZB-JTXK) [MiningWatch Canada (2015)] [https://perma.cc/K7ZB-JTXK].

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) [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/XL4C-XW3K) [https://perma.cc/XL4C-XW3K]; MiningWatch Canada, "Speaking Tour: Canada's Deadly Diplomacy and Mining Justice in Mexico" (January 23, 2018) [online](https://perma.cc/F4U8-NTQF) [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)].

¹¹⁸ IACHR Petition Against Mexico (2020), *supra* note 51, at para 116.

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].

¹²³ *Gordillo v. Canada (Attorney General)*, 2022 FCA 23, at paras 2-3 (Annex 20) [*Gordillo* FCA].

¹²⁴ Judgment of the Second District Judge for Amparo and Federal Trials in the State of Chiapas (March 25, 2019) (Annex 14). For summary, see: IACHR Petition Against Canada (2020), *supra* note 51, at paras 76-77.

¹²⁵ Judgment of the First Collegiate Court in Criminal and Civil Matters of the Twentieth Circuit of the Federal Judiciary (December 6, 2019) (Annex 15); Order of the Second District Judge for Amparo and Federal Trials in the State of Chiapas (October 2, 2020) (Annex 17); Order of the Second District Judge for Amparo and Federal Trials in the State of Chiapas (October 22, 2020) (Annex 18). For a summary, see IACHR Petition Against Canada (2020), *supra* note 51, at paras 78-87.

- [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.”¹²⁶
- [68] On February 9, 2022, Canada’s Federal Court of Appeal upheld the decision,¹²⁷ and on January 16, 2023, the Supreme Court of Canada declined to hear the case.¹²⁸

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*.¹²⁹ The concept of jurisdiction in international human rights law is not exclusively territorial.¹³⁰ 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.¹³¹ 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.¹³²

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.¹³³ States have jurisdiction over anyone outside a State’s territory who is in any way subject to its authority, responsibility, or effective control.¹³⁴ This test is still evolving in international human rights law,¹³⁵ but the Commission and Inter-American Court have interpreted it broadly,¹³⁶ 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.¹³⁷

¹²⁶ *Gordillo FC*, *supra* note 20, at para 66.

¹²⁷ *Gordillo FCA*, *supra* note 123, at para 134.

¹²⁸ Supreme Court of Canada, “Mirna Montejo Gordillo, et al. v. Attorney General of Canada” (January 12, 2023) [online](#) [*Gordillo SCC*].

¹²⁹ OAS, *Charter of the Organisation of American States* (Entered into force 13 December 1951), at Art. 3(l) [OAS Charter]; OAS, *American Convention on Human Rights*, (1969), at Art. 1 [American Convention]; *Coard*, *supra* note 4, at para 37. See also: Ralph Wilde, “The extraterritorial application of international human rights law on civil and political rights”, *Routledge Handbook of International Human Rights Law* (2013) Taylor & Francis, at pg. 639.

¹³⁰ *Jose Isabel Salas Galindo*, *supra* note 4, at para 311, citing ECHR, *Bankovic and others v. Belgium and others*, Judgment of December 12, 2001, at paras 59-61.

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.

¹³⁶ Business and Human Rights: Inter-American Standards, *supra* note 3, at para 148.

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.¹³⁸ 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.¹³⁹

[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.¹⁴⁰ 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.¹⁴¹ Influence over rights can be measured through influence over a corporate national,¹⁴² 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.¹⁴³ 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.¹⁴⁴

[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.”¹⁴⁵ 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.¹⁴⁶ 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”.¹⁴⁷ Jurisdiction arises when harm is “reasonably foreseeable”.¹⁴⁸ 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.”¹⁴⁹ Such a risk is

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.

¹³⁹ Inter-American Commission on Human Rights, “Second Report on the Situation of Human Rights Defenders in the Americas,” OEA/Ser.L/V/II. Doc. 66/31 (December 2011) at paras 13, 25.

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

¹⁴¹ Business and Human Rights: Inter-American Standards, *supra* note 3, at para 167.

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. 36, *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 CESR 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 reasonable 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

¹⁵⁰ *Ibid.*

¹⁵¹ General Comment No. 16, *supra* note 9, at para 43.

¹⁵² General Comment No. 16, *supra* note 9, at para 43; International Commission of Jurists and University of Maastricht, “Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights” Maastricht, (28 September 2011), at pg. 5 (Principle 25), [online](#) [Maastricht Principles].

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).

¹⁵⁴ Access to Information Request A-2010-00758/RF1, *supra* note 21, at 000187-000190.

the Embassy, writing: “[all] 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

¹⁵⁵ Access to Information Request A-2010-00758/RF1, *supra* note 21, at 000185.

¹⁵⁶ National Roundtables, *supra* note 19; 2005 Parliamentary Hearing on Mining, *supra* note 19; National Roundtable Recommendations, *supra* note 22.

¹⁵⁷ Building the Canadian Advantage, *supra* note 25 (CSR Performance Guidelines and Reporting).

¹⁵⁸ Access to Information Request A-2010-00758/RF1, *supra* note 21, at 000167-000172.

¹⁵⁹ *Ibid.*

¹⁶⁰ 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 ‘jatropa’ 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.”

¹⁶¹ Access 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].

¹⁶² Standing Committee on Foreign Affairs and International Development “Evidence” Meeting No 43, 40th Parl, 2nd Sess (December 1, 2009), [online](https://perma.cc/K242-X2X4) [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.

¹⁶³ UNECOSOC, *Commission on Human Rights Report on the Fifty-Fourth Session*, 44th Sess, UN Doc. E/CN.4/1998/177 (16 March-24 April 1998) [online](#), at para 588 [UNECOSOC].

¹⁶⁴ Voices at Risk Guidelines, *supra* note 28. This policy was updated in 2019 with special annexes for land and environment defenders.

¹⁶⁵ UNGA, *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*, 53rd Sess, UN Doc. A/RES/53/144 (8 March 1999), at Art 5 [Declaration on Human Rights Defenders]; Report on the Situation of Human Rights Defenders in the Americas (2006), *supra* note 5 at para 13.

¹⁶⁶ See 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.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.¹⁶⁸ In August 2009, Blackfire filed an unsuccessful criminal complaint against Mr. Abarca.¹⁶⁹ The Embassy knew that Blackfire made the complaint.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.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*.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*.¹⁷³ Therefore, the IACHR has competence *ratione personae* to review this Petition.

¹⁶⁷ For example: Declaration on Human Rights Defenders, *supra* note 165, at Arts. 2, 14, 15; Report on the Situation of Human Rights Defenders in the Americas (2006), *supra* note 5, at paras 122-136.

¹⁶⁸ Moore and Colgrove, *supra* note 37, at pgs. 10-11; Mariano Abarca at the Canadian Embassy, *supra* note 71.

¹⁶⁹ Access to Information Request A-2010-00758/RF1, *supra* note 21, at 000208.

¹⁷⁰ *Ibid.*

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.

¹⁷² OAS Charter, *supra* note 129; OAS, *Statute of the Inter-American Commission on Human Rights*, at Art 20, 9th Sess (October 1979); OAS, *Rules and Procedure of the Inter-American Commission on Human Rights*, at Art. 51, 137th Sess. (Entered into force 2013) [Inter-American Commission Rules of Procedure]. For example: *Roach and Pinkerton v. U.S. Resolution N° 3/87, Case 9647, September 22, 1987*, at paras 47-49. See also: IA Court of HR, *Interpretation of the American Declaration on the Rights and Duties of Man within the Framework of Article 64 of the American Convention on Human Rights*, OC-10.89 (July 14, 1989), at para 45.

¹⁷³ OAS, *Charter of the Organisation of American States*, Signatories and Ratifications, [online](#).

[83] 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

[84] The Petitioners have exhausted all domestic remedies in Canada because they have been denied access to an adequate and effective remedy under Canadian law.¹⁷⁴ 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.

[85] 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.¹⁷⁵ 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.¹⁷⁶ Finally, the current Canadian Ombudsperson for Responsible Enterprise is not independent, does not have the power to investigate complaints without company consent and cooperation,¹⁷⁷ and only accepts cases dating back to May 1, 2019.¹⁷⁸

[86] 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

¹⁷⁴ Inter-American Commission Rules of Procedure, *supra* note 172, at Art. 31.

¹⁷⁵ For example: Sixth Periodic Review of Canada (UNHRC), *supra* note 17 ("Business and human rights"); United Nations Economic and Social Council, Committee on Economic, Social and Cultural Rights, "Concluding observations on the sixth periodic report of Canada," UN Doc E/C.12/CAN/CO/6 (March 23, 2016), at paras 15-16, [online](#); Convention on the Elimination of All Forms of Discrimination against Women, "Concluding observations on the combined eighth and ninth periodic reports of Canada," CEDAW/C/CAN/CO/21-2325 (November 2016), at para 19, [online](#); Report of the Business and Human Rights Working Group (2018), *supra* note 17, at para 20. The Inter-American Commission has also addressed this problem generally. For example: Business and Human Rights: Inter-American Standards, *supra* note 3, at paras 139-140; Indigenous Peoples and Afro-descendant Communities Report, *supra* note 24, at paras 19-20.

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/9GSL-H9JX) [https://perma.cc/9GSL-H9JX]; Mike Blanchfield "UN official criticizes Canadian delays setting up corporate ethics watchdog", *CBC News* (20 April 2019), [online](https://perma.cc/AC4Z-M95A) [https://perma.cc/AC4Z-M95A]; Canadian Network on Corporate Accountability, "An Ombudsperson with Teeth", February 26, 2021, [online](https://perma.cc/HE8L-HJ8L) [https://perma.cc/HE8L-HJ8L]. See also: Catherine Coumans, Letter of resignation from the Multi-Stakeholder Advisory Body on Responsible Business Conduct Abroad (August 19, 2019) [online](https://perma.cc/3PAS-W7EW) [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.

¹⁷⁸ Government of Canada, "Frequently Asked Questions" (August 4, 2021), [online](https://perma.cc/C4LB-AFSX) [https://perma.cc/C4LB-AFSX].

violations,¹⁷⁹ and, by design, has relatively low standards of procedural fairness.¹⁸⁰ It is responsible for receiving and investigating disclosures of wrongdoing within the Canadian government.¹⁸¹ 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.¹⁸² Judges reviewing the Commissioner's decisions are required to show deference to the Commissioner.¹⁸³ 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.¹⁸⁴ 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".¹⁸⁵ In February of 2022, Canada's Federal Court of Appeal upheld the Federal Court's decision.¹⁸⁶ 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.¹⁸⁷ 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".¹⁸⁸

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.¹⁸⁹ 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.¹⁹⁰ The Abarca family has clearly met this standard, having persistently sought information and justice in this case since 2009, despite Mexico and

¹⁷⁹ Inter-American Commission Rules of Procedure, *supra* note 172, Art. 31; Jo Pasqualucci, *The Practice and Procedure of the Inter-American Court of Human Rights*, 2nd ed (New York: Cambridge, 2013) at pg. 95, citing *Godínez Cruz v. Honduras (Merits)*, IACtHR (January 20, 1989) Ser.C. No.5, at para 67; *Gordillo FC*, *supra* note 20, at para 59.

¹⁸⁰ *Gordillo FC*, *supra* note 20, at para 59.

¹⁸¹ Office of the Public Sector Integrity Commissioner of Canada, "Our Vision, Mandate, and Values" (April 2020), [online](https://perma.cc/WL5N-A23C) [https://perma.cc/WL5N-A23C].

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.¹⁹¹ 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

¹⁹¹ For example: *Jose Ivan Correa Arevalo v. Mexico*, Case 333-02, Report No 83/07, Inter-Am Com HR, OEA/Ser.L/V/II.130 (2007), at para 50. See also: James Cavallaro et al, *Doctrine, Practice, and Advocacy in the Inter-American Human Rights System*, (Oxford: Oxford University Press, 2019), at pgs. 140-141 [Cavallaro et al].

¹⁹² MiningWatch Canada, "Canadian Civil Society Welcomes RCMP Raid on Blackfire Exploration," Press Release, (August 29, 2011) [online](https://perma.cc/89MN-ATDU) [https://perma.cc/89MN-ATDU].

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.

¹⁹⁶ IACHR Petition Against Mexico (2017), *supra* note 117; IACHR Petition Against Mexico (2020), *supra* note 51.

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) [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-GM49) [https://perma.cc/EZ5V-GM49]; 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) [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-WR7Z) [https://perma.cc/HEE2-WR7Z]; 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.²⁰¹ 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.²⁰²

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.²⁰³ 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.²⁰⁴ 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.²⁰⁵ 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.²⁰⁶

[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".²⁰⁷ 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 *Raena-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.

²⁰⁷ Business and Human Rights: Inter-American Standards, *supra* note 3, at para 168.

mining project,²⁰⁸ as well as a general duty to avoid hindering Mexico's ability to do the same.²⁰⁹ 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

- [95] 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 2007.²¹⁰ 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.²¹¹ 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.
- [96] 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*,²¹² helped it obtain crucial permits,²¹³ organized delegations to Chiapas,²¹⁴ and frequently advocated on the company's behalf with Mexican officials.²¹⁵ As Blackfire told the Embassy in a 2008 e-mail: ... "[all] 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."²¹⁶ This support did not appear to waver, even after early red flags emerged, like potential problems with consultation,²¹⁷ community unrest,²¹⁸ and evidence of potential corruption.²¹⁹ Nor did it waver when Mr. Abarca told the Embassy directly that mine employees were acting as "thugs" for

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).

²⁰⁹ Advisory Opinion OC-23/17, *supra* note 4, at paras 94, 101.

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

²¹¹ National Roundtable Recommendations, *supra* note 22; Building the Canadian Advantage, *supra* note 25; Canadian Network on Corporate Accountability, "Government Squanders Opportunity to Hold Extractive Companies to Account" (News Release) 26 March 2009, [online](https://perma.cc/88GB-EHEZ) [https://perma.cc/88GB-EHEZ]; Mining Watch Canada, "Canada's Corporate Social Responsibility Strategy Up in the Air Yet Again" (Blog Entry) 27 May 2014, [online](https://perma.cc/HY3A-YT23) [https://perma.cc/HY3A-YT23]; Kamphuis 2019, *supra* note 22, at s. 3.

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 000720.

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 'jatropa' 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, *supra* note 52;

Henríquez and Marisca, *supra* note 63.

²¹⁹ López, *supra* note 54.

the project,²²⁰ or when a letter-writing campaign explained how Mr. Abarca was being criminalized because of a complaint that Blackfire had filed against him.²²¹ 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.²²² 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

[97] 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.²²³ This had the effect of undermining Mr. Abarca's credibility in the eyes of Mexican officials, putting him at risk.²²⁴
- 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".²²⁵ The Embassy also shared Blackfire's unsubstantiated and criminalizing claims with Mexican officials that violent protests were being planned for late August 2009,²²⁶ when the event that Mr. Abarca was helping to plan was a peaceful meeting of the REMA, with national and international participation.²²⁷
- 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."²²⁸
- 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."²²⁹

[98] 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.

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/N9VS-332J) [https://perma.cc/N9VS-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 000211 and 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 "arriago" 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).

²³⁵ UN High Commissioner on Human Rights "Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy Framework" (2011) HR/PUB/11/04, at 6-7 (Principle 4), [online](#) [Guiding Principles].

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 588.

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,

²⁴⁰ Access to Information Request A-2011-01962/LA, *supra* note 58, at 000001-000003.

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.

²⁴³ *Case of González et al. ("Cotton Field") v. Mexico*, Preliminary Objection, Merits, Reparations and Costs, Judgment, Inter-Am Ct HR (Ser C) No 205, (November 16, 2009), at paras 287-288; *Case of Myrna Mack Chang v. Guatemala*, Judgment of November 25, 2003 (Merits, Reparations and Costs), at para 157.

²⁴⁴ Business and Human Rights: Inter-American Standards, *supra* note 3, at para 130, citing: *Velásquez Rodríguez*, *supra* note 203, at para 176 and *Pueblo Bello*, *supra* note 203, at para 145.

²⁴⁵ Business and Human Rights: Inter-American Standards, *supra* note 3, at para 133, citing: Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises, (July 18, 2017) UN Doc. A/72/162, at para 64. See also: Working Group on the issue of human rights and transnational corporations and other business, *The Guiding Principles on Business and Human Rights: Guidance on ensuring respect for human rights defenders*, UNGAOR, 47th Sess, UN Doc A/HRC/47/39/Add.2 (2021), at paras 41, 88.

²⁴⁶ Michel Forst, Report of the Special Rapporteur on the situation of human rights defenders, UNGAOR, 72nd Sess, UN Doc A/72/170 (2017), at para 51.

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.

²⁵³ Report on the Situation of Human Rights Defenders in the Americas (2006), *supra* note 5, at para 109.

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.

²⁶² OAS, Special Rapporteurship for Freedom of Expression, "Background and Interpretation of the Declaration of Principles on Freedom of Expression" (2023), (Principle 9), [online](#); Report on the Situation of Human Rights Defenders in the Americas (2006), *supra* note 5, at paras 33, 43, 52, 69-82.

who wishes to participate in the targeted speech or activity.²⁶³ 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.²⁶⁴

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

[108] Canada also violated Mariano Abarca's right to judicial protections.²⁶⁵ 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

[109] The Petitioners ask the Commission to do the following:

[110] Accept the presentation of this Petition in accordance with Articles 27, 28, 30, 31, 32 and 33 of the Commission's *Rules of Procedure*.

[111] 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*.

[112] Determine that it has the competence to review the present case.

[113] Determine that the present Petition is admissible.

[114] 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).

²⁶³ Report on the Situation of Human Rights Defenders in the Americas (2006), *supra* note 5, at para 43; *Huilca-Tecse v. Peru*, Merits, Reparations and Costs, Judgement, Inter-Am Ct HR (Ser C) No 121, at paras 69-77.

²⁶⁴ Global Witness, *supra* note 34.

²⁶⁵ American Declaration, *supra* note 7, at Arts. XVIII and XXVI.