



CASE SUMMARY

Justice and Corporate Accountability Project (JCAP)

June 2023

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

In June 2023, the Justice and Corporate Accountability Project (JCAP) will submit a complaint to the Inter-American Commission on Human Rights 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 the “Payback” mining project, owned by Canadian company Blackfire Exploration Ltd. (“Blackfire”). The complaint alleges that the Canadian embassy in Mexico put Mr. Abarca in danger through its approach to advocacy for Blackfire and did nothing to help protect him when it learned that he was in danger. Canada also refused to investigate the Embassy's role in the lead up to his murder. The complaint relies heavily on documents obtained through a Canadian access to information request, disclosing over 1,000 pages of internal embassy reports and e-mails.

The complaint makes the case for Canada’s legal accountability for human rights abuse linked to its extractive industry overseas. First, it argues that the Commission has the power to hear Mr. Abarca’s case because Canada had a legal duty to respect and protect his right to life. The Commission can hear cases in which one country belonging to the Inter-American Human Rights System violates the rights of an individual in another member country, usually when the country committing the violation exercises some form of state responsibility, control or authority over that person. In this case, the complaint alleges that the Canadian Embassy went out of its way to become heavily involved in the “Payback” mining conflict, and by extension Mr. Abarca’s rights, including his right to life. It also alleges that Embassy staff knew that Mr. Abarca was a human rights defender, and that their actions or inaction could elevate the real risk to his life. This combination of influence and foreseeability of serious harm created a legal obligation for Canada to do what was reasonably within its power to avoid increasing the risk to his life and help protect him. The complaint will give the Commission the opportunity to decide whether Canada lived up to those obligations.

The complaint argues that Canada failed in this duty, violating Mr. Abarca's right to life and related rights, namely, his rights to free expression, assembly and judicial protection. The Embassy played a crucial role in getting the mining project off the ground but does not appear to have done any human rights due diligence before becoming involved. Embassy staff did not waver in their support of Blackfire, even when credible evidence emerged of community unrest, possible corruption and threats to Mr. Abarca's safety. Despite knowing he was at risk, the Embassy pressured Mexican officials to counter the protest movement Mr. Abarca was leading, without any apparent mention of his safety. When Mexico detained Mr. Abarca for nine days following a criminal complaint by Blackfire, the Embassy forwarded an e-mail from Blackfire to Mexican officials suggesting, without evidence, that his protest movement might be planning a violent takeover of the mine site. It did this after having been informed through a letter-writing campaign that Mr. Abarca was in danger, and that he was, in fact, organizing a regional meeting of mining affected people. The complaint alleges that these actions made a significant contribution to the situation of risk that Mr. Abarca faced.

As Mariano Abarca and his community continued to defend their rights in relation to the mining project, and the risk to Mr. Abarca's life grew, Canada did nothing to help protect him. Embassy staff took no diplomatic steps to elevate his position or signal that he needed protection. Embassy staff did not seek out, or even consider, his opinion, or that of his community, even after he travelled 13 hours to the Embassy, explaining directly to an Embassy representative that he was in danger. If the Embassy had done so, it would have known that, in the weeks before his death, community members issued a statement complaining about threats from armed mine workers, and that Mr. Abarca, himself, filed an official complaint alleging that a mine worker had promised to "pump him full of lead". Canada could have intervened directly with the company, or with Mexican officials, but did not.

Canada had an obligation to investigate what happened, and to encourage Mexico to hold all those responsible for Mr. Abarca's murder to account. Instead, Canada's response to his murder was to attempt to distance itself publicly from him ("the Government of Canada had no knowledge of potential acts of violence against Mr. Abarca"), and from the Mexican investigation ("this is a matter for Mexican officials"), while continuing to support Blackfire behind the scenes. Despite knowing that groups working with Mr. Abarca blamed Blackfire for his death and criticized Canada for a lack of oversight, Canada never investigated its own role in the lead up to Mr. Abarca's murder. In 2018, the Abarca family and its Canadian supporters made an official complaint to Canada's Public Sector Integrity Commissioner. The Commissioner refused to investigate embassy conduct in this case, and Canada's Federal Court of Appeal upheld the decision. In January 2023, the Supreme Court of Canada denied leave to appeal the decision.

Because the Canadian legal system remains inaccessible to poor communities in Latin America seeking justice against the Canadian government, the family and its Canadian allies now turn to the Commission for accountability. Canada must acknowledge its role in this tragedy, which continues to affect the Abarca family, his community, and human rights defenders across Mexico. Canada must also take steps to repair and end violence at Canadian mines in Latin America.