

JUSTICE AND
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Submission to the Public Sector Integrity Commissioner in Relation to the Embassy of Canada in Mexico

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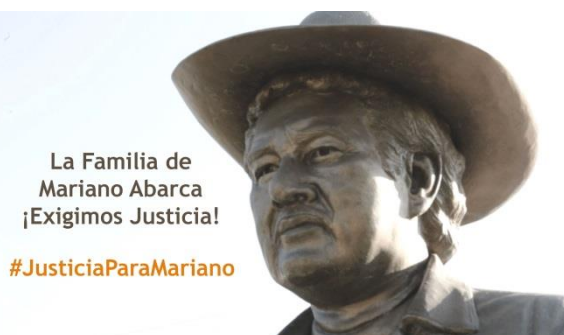
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I. Introduction

Today, in the main square of the small town of Chicomuselo (population about 6,000) located in the state of Chiapas, Mexico, there is a bust of Mariano Abarca. He was a community leader who led protests against the social and environmental impacts of a mine owned by Canadian company, Blackfire Exploration. He was beaten by employees of the mine, detained at the mine's behest, received multiple death threats and was finally murdered on November 27, 2009. He is survived by his wife and four children. The bust was erected to honour a respected community leader, but it is also a reminder of the role played by a Canadian mining company and the Canadian Embassy that supported the mine.



The story is a complex one involving murder, payments to a local mayor so that people would not “take up arms” against the project, and the eventual closing of the Canadian mine for breaches of environmental regulations. We rely on documentation released from the Canadian Department of Foreign Affairs and International Trade (“DFAIT”)¹ under an access to information request (“ATIP”)² as well as other information we have been able to find through our research. As the ATIP material is extensively redacted, we can only glean part of the story concerning the role of Canadian authorities recounted in this submission.

What we can determine, however, is that the Canadian Embassy acted in ways that appear to be contrary to government policies at that time, and may have resulted in two types of wrongdoing that should be investigated. The first issue relates to the Canadian Embassy's failure to follow three policies relating to conflicts between local Mexican communities and Canadian mining companies. The Canadian Embassy ignored warnings that Mr. Abarca's life and safety were in danger, while actively advocating on the company's behalf with the government of the State of Chiapas. The second issue is whether the Canadian Embassy knew about, but did not report, suspicious payments made by the mining company into the personal bank account of a local politician.

¹ A note on terminology: Canadian embassies report to the Minister of Foreign Affairs, but the government Department has had several names over the years: Foreign Affairs and International Trade Canada (DFAIT), Foreign Affairs, Trade and Development Canada (DFATD). At the time of the events described herein, the department was called DFAIT. It is now called Global Affairs Canada, but it incorporates Foreign Affairs, International Trade and International Development. In this submission we will refer to it as DFAIT, or “the Department”.

² Access to information request A-2010-00758/RF1 [ATIP].

The events in question happened between 2007 and 2010. However, the aftermath of the events of those years is still very much in play. The murder of Mr. Abarca has not yet been resolved, and the role then and now of the Canadian Embassy continues to rankle his family and supporters who live or work in mining-affected communities in Mexico where Canadian companies, and the Canadian embassy, are active. The resolution of this matter is of public interest for it affects the stated objective of DFAIT ('the Department' from hereon in) to advance "the Canadian values of democracy, human rights, the rule of law, and environmental stewardship,"³ and of Canada's international obligations to the Organisation for Economic Co-operation and Development ("OECD") to control corruption.

An investigation by the Public Sector Integrity Commissioner is important for providing greater clarity on Canada's commitment to the values espoused above, and some closure for the family, who continue to seek justice for Mr. Abarca's assassination.

Synopsis of the facts

Blackfire Exploration is a small Canadian company based in Calgary that sought to mine barite in the state of Chiapas in Mexico. It ran into difficulties with getting state licensing approval and asked for help from the Canadian Embassy. In December 2007, the Canadian ambassador, led a delegation to Chiapas and met with the Governor of Chiapas. The Ambassador, along with the Political Counsellor arranged for meetings between Blackfire and the Governor of Chiapas, which led to land-use agreements being signed with the *ejidos*⁴ (peasant farmer communities) on whose land Blackfire's mine was to operate.⁵

In March 2008, Blackfire began making regular secret payments into the personal bank account of the mayor of the local town of Chicomuselo in order to "keep the peace and prevent local members of the community from taking up arms against the mine."⁶ However, there was opposition to the mine, both from members of the *ejidos* and from townspeople of Chicomuselo.⁷ A prominent spokesperson for the latter group was Mariano Abarca. In August 2008, three men came to his house and beat him, his wife and one of his sons.⁸ One of the men eventually convicted was the manager of personnel and

³ Foreign Affairs, Trade and Development Canada, "Values and Ethics Code", (Ottawa: DFATD, 23 May 2014), online: http://publications.gc.ca/collections/collection_2015/maecd-dfatd/FR5-67-2014-eng.pdf, [DFATD Values and Ethics Code]. We quote from the 2014 Code because we were not able to obtain the version that was in existence in 2009. However, we believe that the spirit of the directive will be similar.

⁴ An *ejido* is communally held territory, managed by a council of elected *ejido* members.

⁵ Access to information request A-2010-00758/RF1 at 000157-000162.

⁶ Greg McArthur, "RCMP raid Calgary miner over bribery allegations" *The Globe and Mail* (29 August 2011), online: <http://www.theglobeandmail.com/news/national/rcmp-raid-calgary-miner-over-bribery-allegations/article542841/>.

⁷ Access to information request A-2010-00758/RF1 at 000186, 000197.

⁸ Petition by Jose Luis Abarca and others against Mexico to the Inter-American Commission on Human Rights (filed on June 26, 2017), parag 20 and 62 [Petition to IACHR]; United Steelworkers, Common Frontiers, MiningWatch Canada, "Report from the March 20-27, 2010 fact-finding delegation to Chiapas, Mexico, to inves-

security, as well as driver and translator for company executives.⁹ Mr. Abarca continued to speak out against the environmental and human impacts of the mine at protests in the community and at a protest in front of the Canadian Embassy, in July 2009.¹⁰

In August 2009, Mr. Abarca was detained based on a complaint by Blackfire, but was released eight days later “because there was no evidence that the protest in which Mariano Abarca Roblero was participating was violent or threatened public order.”¹¹ During this time, the Canadian Embassy received 1,400 emails and letters expressing concerns for Mr. Abarca’s safety and the safety of other community members who were also speaking out about the social and environmental impacts of other Canadian mines in Chiapas.¹² On November 23, 2009, Mr. Abarca made an official complaint to the police that two Blackfire employees had made death threats against him.¹³

On November 27, 2009, he was assassinated, shot at close range outside of his home.¹⁴ The assailant escaped on a waiting motorcycle. Three individuals associated with Blackfire were arrested for the murder, but all were eventually released or acquitted.¹⁵

In December 2009, shortly after Mr. Abarca’s murder, Canadian newspapers reported that what appeared to be bribes had been paid by Blackfire to the mayor of Chicomuselo.¹⁶

tigate the assassination of Mariano Abarca Roblero and the activities of Blackfire Exploration Ltd”, (2010) at 11 [Chiapas Delegation Report].

⁹ United Steelworkers, Common Frontiers, MiningWatch Canada, “Corruption, Murder and Canadian Mining in Mexico: The Case of Blackfire Exploration and the Canadian Embassy”, (May 2013) at 19, online: https://miningwatch.ca/sites/default/files/blackfire_embassy_report-web.pdf [2013 Blackfire Report]. Caralampio López Vázquez was sentenced to prison for the beating, but was able to pay a fine and be set free. Petition to IACHR (June 26, 2017), parag. 62.

¹⁰ Tamara Herman, “Anti-Mining Groups Stage 36 Hours sit-in at Canadian Embassy in Mexico City”, 24 July 2009, The Media Co-Op, <http://www.mediacoop.ca/story/1769>.

¹¹ Amnesty International, “Mexico: Protester’s Family at Risk after Killing” (3 December 2009), online: <https://www.amnesty.org/en/documents/amr41/062/2009/en/>. The Embassy seemed to know that the company had filed the complaint that led to his arrest. A Political Counsellor reported that Abarca “is known to the company” and that the company “pressed the charges” against him for damages. As per Access to information request A-2010-00758/RF1 at 000208.

¹² Access to information request A-2010-00758/RF1 at 000202, 000208.

¹³ Chiapas Delegation report, p. 11. Also: Amnesty International, “Mexico: Protester’s Family at Risk after Killing” (3 December 2009), online: <https://www.amnesty.org/en/documents/amr41/062/2009/en/>

¹⁴ Chiapas Delegation Report, at 12.

¹⁵ Access to information request A-2010-00758/RF1 at 000249; 2013 Blackfire Report at 19; Fredy Martín Pérez, “Liberan a implicado en homicidio de Mariano Abarca “ [“A suspect in the murder of Mariano Abarca is Released”] (4 February 2014) online: <https://www.chiapasparalelo.com/noticias/chiapas/2014/02/liberan-a-implicado-en-homicidio-de-mariano-abarca/>. See also: Marcus Baram, “Mariano Abarca, Activist, Allegedly Killed by Mine Workers in Mexico”, *Huffington Post* (25 May 2011), online: http://www.huffingtonpost.ca/entry/mariano-abarca-activist-a_n_393303

¹⁶ Andy Hoffman, “Mayor blackmailed us, Canadian mining company says”, *The Globe and Mail* (11 December 2009), online: <https://beta.theglobeandmail.com/news/world/mayor-blackmailed-us-canadian-mining-company-says/article1205944/?ref=http://www.theglobeandmail.com&>.

The mine itself was shut down due to environmental violations on December 7, 2009 by the Ministry of Environment and Housing of the state of Chiapas.¹⁷

Throughout this period, from 2007 onwards, the Canadian Embassy intervened often with state officials on behalf of Blackfire.

- In December 2007, the Canadian Embassy exchanged emails with Blackfire relating to meetings with the governor of Chiapas.¹⁸
- In September 2008, the Canadian Embassy met with Blackfire about getting an explosives licence. The Canadian Embassy then intervened with the Mexican government at the federal level in order to help Blackfire obtain this licence.¹⁹
- In August 2009, the Canadian Embassy contacted the government of Chiapas about the detention of Mr. Abarca, and expressed concerns about the challenges faced by Blackfire.²⁰
- In October 2009, a Canadian embassy delegation was sent to Chiapas to tour Blackfire's mine and to meet with the Secretary General of the State of Chiapas. The Canadian 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."²¹

The synopsis above raises two questions. First, did the Canadian Embassy fail to implement policies in relation to human rights defenders, and did the actions and omissions create a danger to life and safety of Mariano Abarca? Second, did the Canadian Embassy fail to report knowledge about possible corruption?

After a careful review of the record that is available to us, we are satisfied that the matters are serious enough, and the *prima facie* evidence compelling enough, to warrant an investigation by your office.

There are many dates, events, and names in this story, which may become confusing. For this reason we added an appendix with a timeline that we hope will help clarify the narrative.

¹⁷ Access to information request A-2010-00758/RF1 at 000361. Also, Chiapas Delegation Report at 33-44.

¹⁸ Access to information request A-2010-00758/RF1 at 000157-000162.

¹⁹ Access to information request A-2010-00758/RF1 at 000187-000190.

²⁰ Access to information request A-2010-00758/RF1 at 000204-000205.

²¹ Access to information request A-2010-00758/RF1 at 000039.

II. Responsible Civil Servants

Throughout this submission, we refer to the “Canadian Embassy” in the abstract and not to particular individuals. This is because many individuals were responsible for implementing the course of actions through the period under study.

III. Breach of policies related to conflicts in the extractive industry

In this section, we outline the legal framework for wrongdoing under section 8(1)(d) and section 8(1)(e) of the *Public Servants Disclosure Protection Act*²² (“PSDPA”). We show that the Canadian Embassy failed to follow Department policies and that the Canadian Embassy’s actions as well as its omissions may have created the conditions that resulted in “a substantial and specific danger to the life, health or safety” of Mariano Abarca and other community members concerned about the Blackfire mine.

The legal framework

The failure to follow three key policies described below, may have led to the breach of section 8(1) of the *PSDPA* which provides that a “wrongdoing” includes

(d) an act or omission that creates a substantial and specific danger to the life, health or safety of persons, or to the environment, other than a danger that is inherent in the performance of the duties or functions of a public servant;

(e) a serious breach of a code of conduct ...

One of the core functions of civil servants is to carry out their duties in accordance with Canadian laws and policies. For example, the Department’s *Values and Ethics Code*²³ provides:

For public servants, respecting democracy means:

- respecting the rule of law and carrying out their duties in accordance with legislation, policies, and directives in a non-partisan and objective manner.²⁴

²² SC 2005, c 46 [*PSDPA*].

²³ Foreign Affairs, Trade and Development Canada, “Values and Ethics Code”, (Ottawa: DFATD, 23 May 2014) [DFATD Values and Ethics Code]. We quote from the 2014 Code because we were not able to obtain the version that was in existence in 2009. However, we believe that the spirit of the directive will be similar.

²⁴ DFATD Values and Ethics Code, at 5 s 6.1.

In order to understand how section 8 of the *PSDPA* would apply to the work of the Canadian Embassy in our case, we need to look at three specific government policies that are relevant to conflicts in the extractive industries abroad.

The *first policy* relates to the Canadian Embassy's role in carrying out the government's approach to Corporate Social Responsibility ("CSR"). In March 2009, the government of Canada revealed its policy, *Building the Canadian Advantage: A Corporate Social Responsibility (CSR) Strategy for the Canadian International Extractive Sector*.²⁵ The policy stated that "the government encourages and expects Canadian companies to meet high standards of corporate social responsibility."²⁶ It also specifically mentioned the existence of concerns regarding "the human rights impacts of the activities of Canadian extractive companies with respect to their operations abroad"²⁷ and indicated that:

One area of particular concern with respect to extractive sector operations is violence-related risk assessment, including the relations between extractive industries and security providers.²⁸

The *second policy* relates to the Canadian Embassy's role in identifying and providing support to human rights defenders. Human rights defenders are people who take leadership roles in protecting and promoting human rights and strengthening the rule of law.²⁹ Documents from the Department state:

Canada's network of missions abroad pursues objectives related to the promotion and protection of the rights of human rights defenders consistent with our human rights agenda.³⁰

This policy is consistent with the United Nations' *Declaration on human rights defenders* which was adopted by the General Assembly in 1999.³¹ The policy in 2007-2009 was very

²⁵ Global Affairs Canada, "Building the Canadian Advantage: A Corporate Social Responsibility (CSR) Strategy for the Canadian International Extractive Sector", (Ottawa: GAC 22 April 2016), online: <http://www.international.gc.ca/trade-agreements-accords-commerciaux/topics-domaines/other-autre/csr-strat-rse-2009.aspx?lang=eng#1> [Building the Canadian Advantage].

²⁶ Building the Canadian Advantage web page

²⁷ Building the Canadian Advantage web page

²⁸ Building the Canadian Advantage web page

²⁹ Canada, "Voices at risk: Canada's guidelines on supporting human rights defenders", (Ottawa: 7 December, 2016), at ss 1.1, 1.2, online: http://international.gc.ca/world-monde/issues_developpement-enjeux_developpement/human_rights-droits_homme/rights_defenders_guide_defenseurs_droits.aspx?lang=eng [Voices at Risk Policy].

³⁰ Access to information request A-2016-01193, at A0449574_2-000002. This statement is from a document in 2016. A similar statement was found on the webpage of the Department before 2013, but we were not able to get a copy of the web page, since it was taken down, and replaced with the *Voices at Risk Policy* which came into force in December, 2016.

³¹ UNGAOR, 53rd Sess, *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*, UN Doc

general and it was replaced by a much more detailed policy called “Voices at risk: Canada’s guidelines on supporting human rights defenders” (“Voices at Risk”) in December 2016. We do not claim that the Voices at Risk policy applied retroactively, but we refer to Voices at Risk policy to provide examples of what the Canadian embassy could have done to implement the human rights defender policy as it existed in 2008-2009.

The *third policy* lays out specific guidelines on what the Canadian embassies should do when there is conflict involving the host state, a Canadian mining company and a local community. In a statement issued to the *Toronto Star* on December 11, 2009, the Department said, in relation to allegations of violations of applicable laws and international standards by Canadian companies:

When our department hears such allegations, we take these very seriously and try to play a constructive and helpful role. Our officials in Canada and abroad consult and 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.³² (emphasis added)

In the following sections we describe how each of the three policies were violated. We submit that there are clear grounds to investigate whether the failure to implement the three policies outlined above led to a substantial and specific danger to the life, health or safety of persons in the community, including Mariano Abarca, as well as detrimental impacts on the environment.

The first policy: Blackfire’s violence risk assessment

The March 2009 policy, *Building the Canadian Advantage: A Corporate Social Responsibility (CSR) Strategy for the Canadian International Extractive Sector*, required Canadian embassies to promote CSR and assess possible human rights impacts, including violence.

The Canadian Embassy knew about tensions between Blackfire and the community before the mine was even operational, as early as 2007.³³ On October 14, 2008, the Canadian Embassy received an email containing a PowerPoint presentation that expresses opposition to mining in Chiapas specifically against Blackfire Exploration.³⁴ The Canadian

A/RES/53/144 (1999). The General Assembly adopted this Declaration by consensus, and as such, it represents a strong commitment by states to its implementation. See OHCHR, “Declaration on Human Rights Defenders”, online: <http://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/Declaration.aspx>.

³² Access to information request A-2010-00758/RF1 at 000391[emphasis added]. See also a PowerPoint briefing to the Minister of International Trade, showing Canada’s role as “facilitating dialogue without getting in the middle,” Access to information request A-2010-00758/RF1 at 000013.

³³ Access to information request A-2010-00758/RF1 at 000157.

³⁴ Access to information request A-2010-00758/RF1 at 000186.

Embassy knew about protests against the mine in early 2009³⁵ and the Embassy was informed by Abarca personally in July 2009 that Blackfire was using its employees as thugs against community members who were opposed to the mine.³⁶ The Canadian Embassy also knew that Abarca had been detained and it had received 1,400 emails and letters from people alarmed at “the kidnapping of Mr. Abarca at the behest of Blackfire” in the summer of 2009.³⁷

However, the Canadian Embassy never investigated the source of the tensions. It did not conduct a “violence-related risk assessment” itself, nor did it inquire whether Blackfire had conducted such an assessment.

In this case, there were specific allegations related to a situation in which the Canadian government was deeply involved. The conflicts and dangers were brought to its attention. Instead of investigating and assessing “violence-related risk”, and determining whether Blackfire was conforming to international CSR standards, the Canadian Embassy consistently advocated for Blackfire, as we show in the next section.

The second policy: Protection of human rights defenders

As noted above, one of the objectives of Canada’s mission abroad is the “promotion and protection of human rights defenders.”³⁸

The dangers to human rights defenders in Mexico were well known at that time. The United States State Department, for example, stated in its 2010 *Country Reports on Human Rights Practices* on Mexico:

The UN and NGOs reported harassment of human rights defenders. According to a November update by the Office of the UN High Commissioner on Human Rights (OHCHR), from September 2009 to October 2010, there were 37 attacks against human rights activists but only three prosecutions. The report criticized government authorities for the lack of comprehensive policies to reduce and eliminate the risks faced by human rights activists and recommended that the government establish a national mechanism for protection of human rights defenders.³⁹

³⁵ Access to information request A-2010-00758/RF1 at 000197.

³⁶ “Mariano Abarca Frente a la Embajada Canadiense”, *YouTube* (July 22, 2009) online: <http://www.youtube.com/watch?v=zwGavLzTob8>.

³⁷ Access to information request A-2010-00758/RF1 at 000004.

³⁸ Access to information request A-2016-01193, p. A0449574_2-000002. This statement is from a document in 2016. A similar statement was found on the webpage of the Department before 2013, but we were not able to get a copy of the web page, since it was taken down, and replaced with the *Voices at Risk Policy*, which came into force in December 2016.

³⁹ US Department of State, Bureau of Democracy, Human Rights, and Labor, *2010 Country Reports on Human Rights Practices*, (8 April 2011) at 25, online: <https://www.state.gov/j/drl/rls/hrrpt/2010/wha/154512.htm>.

As we mention above, although the Canadian Embassy knew of serious community opposition to Blackfire Exploration,⁴⁰ at no time did the Embassy attempt to contact the community. The only time Canadian Embassy personnel met with Mr. Abarca was on July 22, 2009 when Mr. Abarca and others from Chicomuselo travelled to Mexico City to protest outside the Canadian Embassy.⁴¹ An Embassy worker was present outside the Canadian Embassy and listened while Mr. Abarca spoke to the protesters through a microphone. At this protest, Mr. Abarca said that he had been threatened for taking a stand against the impacts of Blackfire's mine, and that the company had been using workers as "thugs."⁴² In response to the protest, a journalist made the following observation regarding the Embassy's stance:

[The Ambassador] sent a staff member from the public relations department to receive the statement issued by sit-in participants condemning the Embassy's support for open-pit mines. No official response has yet been issued.⁴³

Soon after this protest, Blackfire filed a complaint against Mr. Abarca alleging that he was responsible for the crimes of "illicit association, organized crime, attacks on communication routes, damages against the company and disturbing the peace," among other serious accusations.⁴⁴ A Political Counsellor of the Embassy reported that Mr. Abarca "is known to the company" and that the company "pressed the charges" against him for damages.⁴⁵ There is no indication that the Canadian Embassy considered whether Blackfire was justified in its actions, nor considered issues relating to human rights defenders. Mr. Abarca was detained and held for investigation without being charged for eight days.⁴⁶ As it turned out, Mr. Abarca was released "because there was no evidence that the protest in which Mariano Abarca Roblero was participating was violent or threatened public order."⁴⁷

As a corollary to the Canadian Embassy's view of its responsibilities to Blackfire, the Embassy viewed its relationship to the government of Chiapas as an advocate for

⁴⁰ Access to information request A-2010-00758/RF1 at 000039, 000157, 000186, 000197

⁴¹ Tamara Herman, "Anti-Mining Groups Stage 36 hours sit-in at Canadian Embassy in Mexico City", *The Media Co-Op* (24 July 2009), online: <http://www.mediacoop.ca/story/1769>.

⁴² "Mariano Abarca Frente a la Embajada Canadiense", *YouTube* (22 July 2009) online: <http://www.youtube.com/watch?v=zwGavLzTob8>

⁴³ Tamara Herman, "Anti-Mining Groups Stage 36 hours sit-in at Canadian Embassy in Mexico City", *The Media Co-Op* (24 July 2009), online: <http://www.mediacoop.ca/story/1769>.

⁴⁴ Public Attorney's Initial Assessment of Blackfire complaint against Mariano Abarca: Procuraduria General de Justicia del Estado, Fiscalía de Distrito Fronterizo Sierra, Fiscalia del Ministerio Público de Chicomuselo, Chiapas, Averiguación Previa Número 00033/FS10/2009.

⁴⁵ Access to information request A-2010-00758/RF1, at 000208.

⁴⁶ Chiapas Delegation Report, at 11.

⁴⁷ Amnesty International, "Mexico: Protester's Family at Risk after Killing" (3 December 2009), online: <https://www.amnesty.org/en/documents/amr41/062/2009/en/>.

Blackfire's interests. For example, on October 5, 2009, a Canadian delegation met with the Secretary General of the State of Chiapas, Noé Castañón León. According to the notes of a Trade Commissioner, "the Embassy's goal was to *advocate* for greater attention by Chiapas to try to resolve challenges that Blackfire is facing (emphasis added)" including "lengthy blockades."⁴⁸ While the ATIP disclosure does not specify what the state was asked to do, clearly, it related to the continuing protests against the mine and Blackfire's complaints about disruption in which Mr. Abarca was involved. There is no indication that the Canadian Embassy ever raised any concerns with the Mexican government about the safety of Mr. Abarca, or the importance of respecting democratic values such as free speech.

The proactive interventions made to the government of Chiapas on behalf of Blackfire stand in stark contrast to the Canadian Embassy's position on Mr. Abarca's murder, where the Embassy distanced itself from involvement. A good illustration of the Embassy's perspective is found in a statement given on December 3, 2009:

[Canada] regrets this act of violence, but the Embassy of Canada is not involved in the investigation. It is a matter for Mexican officials.⁴⁹

In a revealing exchange after Mr. Abarca's murder, Canadian Embassy personnel decided to tone down their public comment from "urging" the Mexican government to investigate Abarca's murder, to "Canada welcomes the judicial investigation by Mexican authorities to determine facts related to Mr. Abarca's death".⁵⁰ In another instance, while the Canadian Embassy knew that three men charged with Mr. Abarca's murder were associated with Blackfire, Embassy personnel suggested that public statements not mention that connection.⁵¹ In fact, the Canadian Embassy minimized its knowledge of the threats faced by Mr. Abarca. On December 8, 2009, for example, after Mr. Abarca's murder, the Canadian Embassy somewhat disingenuously counselled the Governor General to publicly state that "the Government of Canada had no knowledge of potential acts of violence against Mr. Abarca."⁵²

In 2007-2009, there was a general policy in place in relation to human rights defenders, but there do not appear to have been any precise rules on what Canadian Embassy personnel should do to protect human rights defenders. However, the Department's current *Voices at Risk* policy on human rights defenders, which was released in December 2016, provides examples of what the Embassy could have done. The measures include:

⁴⁸ Access to information request A-2010-00758/RF1 at 000039.

⁴⁹ Access to information request A-2010-00758/RF1, p. 000253.

⁵⁰ Access to information request A-2010-00758/RF1, p. 000245

⁵¹ Access to information request A-2010-00758/RF1, p. 000285.

⁵² Access to information request A-2010-00758/RF1 at 000002.

- Missions abroad gathering information and documenting individual cases and evolving contexts⁵³
- Maintaining contact with at-risk human rights defenders⁵⁴
- Building relationships with local authorities and raising issues pertaining to at-risk human rights defenders with these authorities⁵⁵
- Having missions meet with human rights defenders in order to demonstrate the importance of the work of these individuals⁵⁶

In 2009, the Canadian Embassy did not do any of these things. In fact, the Canadian Embassy actually advocated *against* the community and urged the state government to deal with the protests to protect Blackfire. With or without specific guidelines, the Embassy's choice to completely ignore the human rights implications of its actions should be investigated.

The third policy: Facilitating open and informed dialogue

According to the Department, the policy for dealing with community conflicts at that time was to

... try to play a constructive and helpful role.... [and to] 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.⁵⁷

In our factual synopsis above, we indicated that the Canadian Embassy had a very close and supportive relationship with Blackfire Exploration from 2007, when the Ambassador himself intervened with the Governor of the State of Chiapas on behalf of the Canadian company. These contacts included support to Blackfire even after the murder of Mr. Abarca, the closing of the mine for breaches of environmental law, and news reports in Canada about extortion allegations. Example of these contacts are:

- Immediately after Mr. Abarca's murder, the Canadian Embassy and Canadian government officials shied away from urging a full and impartial investigation, and sought to distance the Embassy from the proceedings⁵⁸

⁵³ Voices at Risk Policy, s 3.2. The Department of State has a similar policy to guide its embassies. See "US Support for Human Rights Defenders", online: <https://www.state.gov/j/drl/rls/fs/2017/266903.htm>.

⁵⁴ Voices at Risk Policy, s 3.3.

⁵⁵ Voices at Risk Policy, s 3.5.

⁵⁶ Voices at Risk Policy, s 3.7.

⁵⁷ Access to information request A-2010-00758/RF1 at 000391.

⁵⁸ United Steelworkers, Common Frontiers, MiningWatch Canada, "Corruption, Murder and Canadian Mining in Mexico: The Case of Blackfire Exploration and the Canadian Embassy", (May 2013) at 19-22, online: https://miningwatch.ca/sites/default/files/blackfire_embassy_report-web.pdf [2013 Blackfire Report].

- On January 7, 2010, the Trade Commissioner at the Canadian Embassy, sent Blackfire contact information for officials in the Mexican government who could help it reopen its mine.⁵⁹
- Additionally, on January 25, 2010, he provided information to Blackfire on how to sue the state of Chiapas under NAFTA for \$800 million.⁶⁰

We have described only the main interventions made by the Canadian Embassy, but the access to information disclosures show that there were over 30 contacts between Blackfire and the Embassy between 2007 and 2010.⁶¹

As noted above, the Canadian Embassy also had many interactions with the governments of Chiapas and the Mexican federal governments, including direct personal interventions by the Ambassador, direct meetings with Mexican government officials, and email contacts over a number of matters of concern to Blackfire.

The only time the Canadian Embassy met with Mr. Abarca and members of the community was in July 2009, at the protest outside of the Embassy.⁶²

The contacts that the Canadian Embassy had with Blackfire Exploration and the government of Chiapas included a direct reference to the protests in which Mr. Abarca had been involved.⁶³ In other words, there was a clear nexus among the three parties, but the Canadian Embassy did not “play a constructive and helpful role,” nor did it “facilitate open dialogue.” Rather in the words of the Trade Commissioner, “the Embassy’s goal was to *advocate* for greater attention by Chiapas to try to resolve challenges that Blackfire is facing (emphasis added).”⁶⁴

“Serious breach of a code of conduct”

The three Departmental policies outlined above were aimed at protecting the democratic rights and the physical integrity of human rights defenders. The Canadian Embassy appears to have violated every one of those policies. Given what happened to Mr. Abarca, this failure must be taken very seriously.

It is open to the Commissioner to find that there was no breach of the code of conduct because the Canadian Embassy was under specific instructions to act the way that it did –

⁵⁹ Access to information request A-2010-00758/RF1 at 000551-000552, 000700.

⁶⁰ Access to information request A-2010-00758/RF1, pp. 000576-000578, 000700.

⁶¹ ATIP documents disclose at least 30 documented contacts between Blackfire and Embassy personnel, either in person or through email.

⁶² Tamara Herman, “Anti-Mining Groups Stage 36 hours sit-in at Canadian Embassy in Mexico City”, The Media Co-Op (24 July 2009), online: <http://www.mediacoop.ca/story/1769>. The Embassy only met with Mr. Abarca’s family two months after his murder.

⁶³ Access to information request A-2010-00758/RF1 at 000039.

⁶⁴ Access to information request A-2010-00758/RF1 at 000039 [emphasis added].

to advocate for Blackfire, to ignore concerns about human rights defenders and *not* to engage with the communities around the mine and *not* to foster open dialogue. If that were the case, the Commissioner should investigate the *other* public servants who made erroneous and misleading statements about government policy relating to human rights defenders and the Canadian Embassy's dealing with conflict around extractive industries.

“Substantial and specific danger to the life”

The Canadian Embassy had very close relations with Blackfire Exploration, as we note above, and also had met with the state government in Chiapas on several occasions. The Canadian Embassy clearly had influence on both parties: Blackfire because it depended on Canadian Embassy support and the Mexican and Chiapas governments because they acceded to Canada's interventions on behalf of Blackfire's contracts and licences. Therefore, we submit, the Canadian Embassy could have influenced the course of events in relation to the community conflict, if it had approached the issues with a perspective that took into account the three policies relating to human rights defenders and mining conflicts.

The failure to raise concerns to the state of Chiapas about Mr. Abarca's right to protest peacefully and to live free of threats and intimidation may well have *increased* the dangers by encouraging the government of Chiapas to intervene more actively to protect Blackfire's interests. The role of the Canadian Embassy in encouraging more intervention is clear from the meeting on October 5, 2009 with the Secretary General of the State of Chiapas, Noé Castañón León, where, as previously mentioned, “the Embassy's goal was to advocate for greater attention by Chiapas to try to resolve challenges that Blackfire [was] facing.”⁶⁵ The Canadian Embassy did not advocate for greater *dialogue*, as we have seen above, as the Embassy itself was not engaging in any dialogue with the communities opposed to the mine. Such advocacy was reckless in view of the dangers faced by human rights defenders in Mexico, as it could have been taken as a coded instruction to make the problem go away.

In fact, Horacio Culebro Borrayas, who was a lawyer for Blackfire for 3 months, said that he was in a meeting with Director General of Blackfire, Artemio Avila Cervera and Subsecretary of State for Chiapas, Nemesio Ponce Sánchez in August, 2009 around the time of the arrest of Mr. Abarca. At the meeting, Ponce Sanchez demanded payment of almost \$1 million pesos (\$65,000) for some members of one of the *ejidos* and purportedly said that Abarca could be “eliminated.”⁶⁶ No one from the government of Chiapas has been investigated for the murder, even though the family has requested an investigation.

⁶⁵ Access to information request A-2010-00758/RF1 at 000039.

⁶⁶ Complaint by Horacio Culebro Borrayas to the National Human Rights Commission dated 1 March 2010 (received on 2 March 2010), at Tuxtla Gutierrez, Chiapas, in Chiapas Delegation Report at 18. See also Isain Mandujano, “Nemesio Ponce, El Maquiavélico Poder Tras El Trono En El Sexenio Sabinista”, Chiapas Paralelo

The Canadian Embassy did not scrutinize Blackfire's actions around the protests. For example, Blackfire's manager of security was accused by Mr. Abarca of beating him and his son in August 2008. Neither the state of Chiapas nor Blackfire followed up on the complaint until Blackfire's manager of security was convicted of the beating in January 2010, after Mr. Abarca had been murdered. Mr. Abarca also accused two Blackfire employees of threatening him two days before he was murdered. Again, there is no indication that Blackfire followed up on those complaints. Three men associated with Blackfire were charged with the murder of Mr. Abarca, but the Canadian Embassy did not raise questions with Blackfire. As noted above, the Canadian Embassy continued to help Blackfire after the murder, even giving Blackfire advice on how to sue the government of Mexico for closing its mine. Had the Canadian Embassy followed the three policies described above, it would have scrutinized Blackfire's involvement in the attacks on Mr. Abarca, and it would have used its influence to ensure that Blackfire acted in ways that were consistent with human rights standards. For example, Blackfire could have been encouraged to investigate the involvement of its personnel in targeting Mr. Abarca.

In conclusion, as the tragic events unfolded, they proved that there was a substantial and specific danger to the life, health and safety of Mr. Abarca. However, in order to find that section 8(1)(d) of the *PSDPA* was breached it is not necessary to determine whether an act or omission of the Canadian Embassy would have saved Mr. Abarca's life. The test is whether the act or omission created a "specific danger".

The Canadian Embassy knew about the allegations of these dangers. At best, the Canadian Embassy may have subjectively thought that no such danger existed; at worst, the Canadian Embassy was so focused on supporting Blackfire that it ignored the dangers with reckless disregard. In either case, however, the test under section 8 of the *PSDPA* is not the *subjective* view of the Canadian Embassy, but whether *objectively* there was such a danger created by an act or omission of the Embassy.

It is always difficult to judge past actions and omissions in the light of the final outcomes, but it is clear that both the government of Chiapas and Blackfire had reason to want Mr. Abarca silenced. The Canadian Embassy encouraged the Chiapas government to take measures to stop the blockades and other "challenges" faced by Blackfire. We submit that this advocacy was an *action* that created "a specific danger" to the life and safety of Mr. Abarca. The Canadian government's failure to raise human rights concerns with Blackfire, and with the government of Chiapas, we submit, was an *omission* that also created "a specific danger" to the life and safety of Mr. Abarca.

(4 September 2017), online: <http://periodistasfronterasur.blogspot.ca/2017/09/nemesio-ponce-el-maquiavelico-poder.html> These allegations have not been confirmed, but nor have they been investigated.

Section 8(1)(d) provides, however, that “wrongdoing” does not extend to situations where a danger is “inherent in the performance of the duties or functions of a public servant.” Certainly, for a diplomat operating in a country where human rights defenders are in great danger, it is arguable that the danger to those defenders is “inherent” in the functions of the diplomat. However, this exception would only be available when the diplomat followed the policies set out to minimize those dangers. In a case, as we have here, where the diplomat ignores the policies meant to decrease those dangers, the diplomat cannot rely on the dangers inherent in the job to avoid being found to have committed a “wrongdoing”.

IV. Duty to report suspected corruption

In this section, we outline the prohibition against bribing foreign public officials and the responsibility of civil servants to report suspected corruption. As noted in the synopsis of facts, the Canadian Embassy reported suspected bribery to the RCMP once the issue was revealed in the *Toronto Star* and the *Globe and Mail* in December 2009. However, the payments had been revealed publicly by Blackfire itself six months earlier, in June 2009. Why did it take so long to report to the RCMP?

Legal framework

Section 8 (1) (e) of the *PSDPA* provides that a “wrongdoing” includes “a serious breach of a code of conduct established under section 5 or 6.”

As mentioned above in section III, civil servants have an obligation to carry out their duties in accordance with Canadian laws and policies.⁶⁷ There are specific directives relating to the reporting of corruption. As a signatory to the OECD’s *Convention on Combatting Bribery of Foreign Public Officials in International Business Transactions*, Canada enacted the *Corruption of Foreign Public Officials Act*⁶⁸ in 1998. This act makes it illegal to bribe foreign officials in order to obtain a business benefit.⁶⁹

Under the 2010 *Policy and Procedures for Reporting Allegations of Bribery Abroad by Canadians or Canadian Companies*, public officials are to report suspected bribery to their headquarters in Ottawa, “if officers become aware of allegations of corruption or bribery involving Canadian individuals or Canadian companies.”⁷⁰

⁶⁷ DFATD Values and Ethics Code, at 5 s 6.1.

⁶⁸ SC 1998 c 34 [CFPOA].

⁶⁹ CFPOA, ss 3-5.

⁷⁰ Foreign Affairs, Trade and Development Canada, “Policy and Procedures for Reporting Allegations of Bribery Abroad by Canadians or Canadian Companies” (Ottawa: GAC March 2010) [2010 Policy for reporting Allegations of Bribery]. We were only able to find the 2010 policy, but the same principles applied before 2010.

When did the Embassy report?

On June 15, 2009, a statement signed by Artemio Avila Cervera, the General Manager of Social Responsibility for Blackfire Mexico, was filed with the Chiapas State Congress.⁷¹

Artemio Avila Cervera provided receipts for 14 payments made by Blackfire to the mayor of Chicomuselo, Julio Cesar Velazquez Calderon,⁷² in order to “keep the peace and prevent local members of the community from taking up arms against the mine.”⁷³ These payments were made every month from March 2008 until May 2009.⁷⁴ Mr. Avila Cervera revealed that Blackfire had also provided airline tickets to the mayor and his family. But what crossed the line for Blackfire was a request for money to invite a cabaret dancer name NIURKA, to perform at a local fair, and that her contract include a “night of sex” with the mayor. This, said the company, was unreasonable and constituted extortion.⁷⁵ On June 24, 2009, the information claiming that Blackfire had been extorted by the mayor was published in the local paper, *El Herald de Chiapas*, in an article by Isai Lopez.⁷⁶ There is no mention of this event in the disclosures we received from the ATIP.

On December 11, 2009, the *Globe and Mail*⁷⁷ and the *Canadian Press* both reported on the payments to the mayor:

⁷¹ Chiapas Delegation Report, at 24; Blackfire Exploration, “To: President of the Honourable Congress of the State of Chiapas”, (15 June 2009), archived online:

https://miningwatch.ca/sites/default/files/Supporting_documents_for_investigation_into_Blackfire_B.pdf.

The English translation of this document can be found archived online:

https://miningwatch.ca/sites/default/files/Supporting_documents_for_investigation_into_Blackfire_A.pdf.

⁷² Blackfire Exploration Mexico S de RL de CV, “Concentrado de Depositos Efectuados al C Julio Cesar Velazquez Calderon”, archived online:

https://miningwatch.ca/sites/default/files/Supporting_documents_for_investigation_into_Blackfire_C.pdf

⁷³ Greg McArthur, “RCMP raid Calgary miner over bribery allegations” *The Globe and Mail* (29 August 2011), online: <http://www.theglobeandmail.com/news/national/rcmp-raid-calgary-miner-over-bribery-allegations/article542841/>.

⁷⁴ Blackfire Exploration, “To: President of the Honourable Congress of the State of Chiapas”, (15 June 2009), archived online:

https://miningwatch.ca/sites/default/files/Supporting_documents_for_investigation_into_Blackfire_C.pdf.

⁷⁵ Blackfire Exploration, “To: President of the Honourable Congress of the State of Chiapas”, (15 June 2009), archived online:

https://miningwatch.ca/sites/default/files/Supporting_documents_for_investigation_into_Blackfire_B.pdf.

The English translation of this document can be found archived online:

https://miningwatch.ca/sites/default/files/Supporting_documents_for_investigation_into_Blackfire_A.pdf.

See also, Access to information request A-2010-00758/RF1, at 000405-000407.

⁷⁶ Chiapas Delegation Report at 24. Also:

https://miningwatch.ca/sites/default/files/Supporting_documents_for_investigation_into_Blackfire_F.pdf

⁷⁷ Andy Hoffman, “Mayor blackmailed us, Canadian mining company says”, *The Globe and Mail* (11 December 2009), online: <https://beta.theglobeandmail.com/news/world/mayor-blackmailed-us-canadian-mining-company-says/article1205944/?ref=http://www.theglobeandmail.com&>. Also, Access to information request A-2010-00758/RF1, at 000405-000407.

According to the Globe, Blackfire's complaint alleges it paid the mayor money to prevent locals from vandalizing and protesting against its mine. It included documentation showing company funds totaling about 214,000 pesos, nearly \$17,700, ended up in the mayor's bank account.⁷⁸

On December 15, 2009, Trade Commissioner told the Ambassador that the RCMP had assigned an individual to follow up on the bribery allegation.⁷⁹

What concerns us here is that the Canadian Embassy did not report to the RCMP until the matter was revealed in the Canadian newspapers. Is it possible that no one in the Canadian Embassy knew about the extortion allegations until December 8, 2009?

What did the Canadian Embassy know?

We know that the Canadian Embassy mentioned on several occasions that they were closely monitoring the situation surrounding Blackfire's mine,⁸⁰ and we have recorded 30 interactions between Blackfire and the Embassy between 2007 and 2010. We also know that Blackfire approached the Canadian Embassy whenever it encountered problems:

- In December 2007, the Ambassador intervened with the Governor of Chiapas in order for Blackfire to negotiate land-access agreements with the local *ejidos*.⁸¹
- In September and October 2008, the Canadian Embassy intervened with the federal government to get Blackfire an explosives licence, after a face to face meeting between the Political Counsellor and someone from Blackfire.⁸²
- In August 2009, Blackfire and the Canadian Embassy were in contact about blockades around Blackfire's mine and the subsequent detention of Mario Abarca.⁸³
- In October 2009, the Canadian Embassy sent a delegation to Chiapas to meet with Blackfire and the Secretary General of the State of Chiapas, Noé Castañón León, about continuing protests around the mine, and the challenges faced by Blackfire.⁸⁴

At one point, after a successful intervention by the Canadian Embassy, Blackfire wrote:

⁷⁸ Access to information request A-2010-00758/RF1, at 000404-000405.

⁷⁹ Access to information request A-2010-00758/RF1, at 000419.

⁸⁰ Access to information request A-2010-00758/RF1, at 000002.

⁸¹ Access to information request A-2010-00758/RF1, at 000184, 000157-000162.

⁸² Access to information request A-2010-00758/RF1, pp. 000184-000185, 000187-000191. The name of the Blackfire employee is redacted in the ATIP disclosure, and as such it is impossible to know who within Blackfire he met with.

⁸³ Access to information request A-2010-00758/RF1, at 000204-000205, 000208-000209, 000722.

⁸⁴ Access to information request A-2010-00758/RF1, at 000038-000040.

[a]ll of us at Blackfire really appreciate all that the embassy has done to help pressure the state government to get things going for us. We could not do it without your help.⁸⁵

Given such a close relationship, it is curious that the ATIP shows no record of Blackfire and the Canadian Embassy discussing the payments to the mayor of Chicomuselo, nor the complaint of extortion made to the state assembly of Chiapas. Could it be that Blackfire hid these matters from the Embassy? And did the Canadian Embassy somehow miss this very public complaint by Blackfire to the state government?

What seems even more curious is that Canadian Embassy personnel had face-to-face meetings with members of the Chiapas state government after the June 15, 2009 complaint was filed by Blackfire with the Chiapas State Congress. The ATIP record shows that the issue of the benefits to the community was discussed.⁸⁶ In fact, at the meeting of October 5, 2009 with Dr. Noé Castañón León, a high-level minister within the government of Chiapas who had been copied on Blackfire's June 15, 2009 extortion complaint, the Minister advised the Canadian Embassy that the company could improve its situation through "better relations with the mayor of Chicomuselo," among other things.⁸⁷

Could it be that the Dr. Noé Castañón León never mentioned the extortion allegations to the Canadian Embassy, even while suggesting that Blackfire needed "better relations" with the mayor of Chicomuselo? And could it be that the Canadian Embassy did not ask what was wrong with the "relations" between the mayor and Blackfire?

Another possibility is that the Canadian Embassy officials heard about the extortion, and may even have discussed it with Dr. Noé Castañón León, but deliberately or inadvertently did not record the fact because they did not consider it relevant.

But a deaf ear to corruption would be very strange as the problem of corruption in Mexico was very well known at that time. According to the US State Department's evaluation of corruption in Mexico:

The law provides criminal penalties for official corruption; however, the World Bank's Worldwide Governance Indicators and other indices reflected that corruption remained a problem at all levels of government, as some public officials

⁸⁵ Access to information request A-2010-00758/RF1, at 000185.

⁸⁶ Access to information request A-2010-00758/RF1, at 000039.

⁸⁷ Access to information request A-2010-00758/RF1, at 000039.

continued to perpetrate bureaucratic abuses and some criminal acts with impunity.⁸⁸

In 2009, Transparency International rated Mexico as 89th out of 180 countries for corruption⁸⁹ and the World Bank gave Mexico a low percentile rating of 47.85 for “control of corruption”.⁹⁰

One would have thought that corruption would always be on the radar for Canadian Embassy officials. By way of illustration, it is interesting to note that corruption controversy followed the three Chiapas State officials that the Canadian Embassy had met with, in the years after the events discussed in this submission. The Governor, Juan Sabines Guerrero was accused of corruption after he left office and in fact was charged, although acquitted.⁹¹ Family members of Noé Castañón León, the Secretary General of the State of Chiapas, were later exposed with money hidden offshore through the Panama Papers revelations.⁹² Lastly, Nemesio Ponce Sánchez, the former assistant secretary of the governor of Chiapas, was accused of being the intellectual author for the murder of Mariano Abarca by a lawyer who briefly worked for Blackfire.⁹³

The RCMP eventually investigated the payments by Blackfire to the mayor, and on February 18, 2015 decided not to proceed because “... the assessment of the evidence does not support criminal charges.”⁹⁴ We do not know the basis on which the RCMP

⁸⁸ US Department of State, Bureau of Democracy, Human Rights, and Labor, *2009 Country Reports on Human Rights Practices: Mexico*, (11 March 2010), online: <https://www.state.gov/j/drl/rls/hrrpt/2009/wha/136119.htm>.

⁸⁹ Christopher Hope, “Transparency International's 2009 corruption index: the full ranking of 180 countries”, *The Telegraph* (17 November 2009), online: <http://www.telegraph.co.uk/news/newstoppers/mps-expenses/6589735/Transparency-Internationals-2009-corruption-index-the-full-ranking-of-180-countries.html>.

⁹⁰ World Bank, *Worldwide Governance Indicators*, (2009), online: <http://info.worldbank.org/governance/wgi/index.aspx#reports>.

⁹¹ “¡Exigen juicio político contra Juan Sabines!” *Diario de Chiapas* (6 October 2017), online: <http://www.diariodechiapas.com/landing/exigen-juicio-politico-contra-juan-sabines/>.

⁹² Isain Mandujano, “Hijo de exministro de la Suprema Corte niega vínculos con #PanamaPapers”, *Proceso* (5 April 2016), online: <http://www.proceso.com.mx/435941/hijo-exministro-la-suprema-corte-niega-vinculos-panamapapers> Also: Enrique Hernandez, “Crean “offshore” políticos ligados a gobierno de Chiapas”, *Forbes Mexico* (9 May 2016), online: <https://www.forbes.com.mx/crean-offshore-politicos-ligados-gobierno-chiapas/>

⁹³ Complaint by Horacio Culebro Borrayas to the National Human Rights Commission dated 1 March 2010 (received on 2 March 2010), at Tuxtla Gutierrez, Chiapas, in MiningWatch Canada et al, *Corruption, Murder and Canadian Mining in Mexico: The case of Blackfire Exploration and the Canadian Embassy* (May, 2013) at 18. See also Isain Mandujano, “Nemesio Ponce, El Maquiavélico Poder Tras El Trono En El Sexenio Sabinista”, *Chiapas Paralelo* (4 September 2017), online: <http://periodistasfronterasur.blogspot.ca/2017/09/nemesio-ponce-el-maquiavelico-poder.html>.

⁹⁴ RCMP, “Blackfire Exploration Ltd and Blackfire Exploration Mexico S de RL de CV”, Letter to MiningWatch Canada (18 February 2015). See also: MiningWatch Canada, “Mexican Network Deplores Conclusion of Canadian Investigation into Blackfire in Chicomuselo, Chiapas”, News Release (11 March 2015), online:

reached this decision. However, the obligation of the Canadian Embassy to report bribery does not depend on whether bribery charges were brought, but rather on whether Canadian officials become “aware of allegations of corruption.”⁹⁵

The fact that the Canadian Embassy reported to the RCMP once the information became public shows that the information about the payments crossed the threshold of being “allegations of corruption”. What should be investigated by the Commissioner is whether there was knowledge of the payments before December 2009. There is no mention of the payments to the mayor of Chicomuselo in the disclosures made available to us, but one cannot help but feel that there is something missing in the story that we been given access to.

V. Jurisdiction to investigate

The legal framework

We do not represent civil servants and we present this information pursuant to section 33(1) of the *PSDPA*, which provides:

If ... as a result of any information provided to the Commissioner by a person who is not a public servant, the Commissioner has reason to believe that ... a wrongdoing ... has been committed, he or she may, subject to sections 23 and 24, commence an investigation into the wrongdoing if he or she believes on reasonable grounds that the public interest requires an investigation.

Section 24(1) of the *PSDPA* sets out grounds for the Commissioner to refuse to commence an investigation:

The Commissioner may refuse to deal with a disclosure or to commence an investigation — and he or she may cease an investigation — if he or she is of the opinion that

(b) the subject-matter of the disclosure or the investigation is not sufficiently important ...

(d) the length of time that has elapsed since the date when the subject-matter of the disclosure or the investigation arose is such that dealing with it would serve no useful purpose

<https://miningwatch.ca/news/2015/3/11/mexican-network-deplores-conclusion-canadian-investigation-blackfire-chicomuselo>.

⁹⁵ Foreign Affairs, Trade and Development Canada, “Policy and Procedures for Reporting Allegations of Bribery Abroad by Canadians or Canadian Companies” (Ottawa: GAC March 2010)

Public interest in the investigation (s.33(1) of the PSDPA)

There are very strong public interest reasons to investigate this case. The murder of the father of four is in itself serious and his family are still pursuing justice for this crime. If there is any chance that Canadian public servants failed to follow policies that could have lessened the chance of the murder, it should be investigated. There are also larger policy grounds based on Canada's international human rights obligations. According to the Department:

Canada's network of missions abroad pursues objectives related to the promotion and protection of the rights of human rights defenders consistent with our human rights agenda.⁹⁶

There is little evidence in the story we have recounted here that the Canadian Embassy acted consistently with these principles. We are stressing the importance, not of general statements supporting human rights made by the Canadian Embassy, but rather of specific actions of the Embassy to implement these statements in this specific case.

Preventing corruption of foreign public officials is also a serious commitment to the international community, one which requires vigorous monitoring by Canadian Embassy officials on the ground. We have presented evidence that raises serious questions about whether Canadian Embassy officials knew about possible corruption and did not report it.

Sufficient importance (s. 24(1)(b) of the PSDPA)

The arguments here are the same as the public policy arguments outlined above. We submit that the criminalization and subsequent murder of an activist who pleaded with the Canadian Embassy for assistance is a serious matter, if the Canadian Embassy acted in a way that exacerbated the dangers to the individual or failed to act within its means to diminish those dangers. Corruption is also a matter of great importance, not only because of the provisions of the *Corruption of Foreign Public Officials Act*⁹⁷, but also because it implicates Canada's obligations to the international commitments to the OECD.

Passage of time (s.24(1)(d)) of the of the PSDPA)

With respect to section 24(1)(d) of the PSDPA, we acknowledge that eight years have passed since these events and some of the individuals may not even be employed as public servants. The delay is due to a number of factors. It took almost two years to

⁹⁶ Access to information request A-2016-01193, at A0449574_2-000002. This statement is from a document in 2016. A similar statement was found on the webpage of the Department before 2013, but we were not able to get a copy of the web page, since it was taken down, and replaced with the *Voices at Risk Policy* which came into force in December, 2016.

⁹⁷ Corruption of Foreign Public Officials Act (S.C. 1998, c. 34).

receive the 982-page ATIP disclosure; a lot of analysis relied on the labour of volunteer law students; and there were serious challenges in identifying the appropriate place to bring this complaint and to verify information with organizations in Chiapas. Section 24(1)(d) of the *PSDPA* refers only to “length of time elapsed” and not any specific time limit and we submit that the practical difficulties with reconstructing a difficult history make the length of time reasonable.

In any case, the elapsed length of time, on its own, is not sufficient to refuse an investigation. Section 24(1)(d) of the *PSDPA* also requires that there is a causal relationship between the delay and whether the investigation would serve “no useful purpose”. The second part of section 24(1)(d) of the *PSDPA* then brings us back to the public interest in an investigation under section 33(1) of the *PSDPA*. In our view, then, if there is a public interest in an investigation, then the request for an investigation cannot be refused simply on the basis of elapsed time.

Final Comment

We do not know who killed Mr. Abarca: Blackfire employees were charged, but were released or acquitted, in spite the fact that Mr. Abarca was beaten and received death threats from individuals employed by or associated with Blackfire. A member of the government of Chiapas has also been accused of being involved in his murder, but no charges have been laid and the Chiapas public prosecutor’s office has been reluctant to summon former public officials. Impunity in such situations is unfortunately common in cases of threats and murder of human rights defenders in Mexico. Your investigation is not required to determine who killed Mr. Abarca, nor determine why the matter is still outstanding.

Rather, we submit that your responsibility is to look at the values espoused by the Canadian government in order to determine whether specific policies meant to implement those values were followed. In doing so, your office should also implement the spirit of those policies by taking these allegations “very seriously and try to play a constructive and helpful role”.

Appendix: Dates of Key Events

Year	Date(s)	What Happened
2007	Nov. 29 – Dec. 1 Access to information request A-2010-00758/RF1, p. 000157.	Canadian Ambassador led a delegation to Chiapas and met with Chiapas Governor Juan Sabines Guerrero, and with Blackfire. Embassy arranged for a meeting between Blackfire and the Chiapas Governor. The Canadian Embassy was aware that Blackfire was having difficulties in negotiating land-access agreements with a local community.
2007	Dec. 10-18 Access to information request A-2010-00758/RF1, p. 000157-000162.	Emails exchanged between the Canadian Embassy and Blackfire regarding meeting between Blackfire and the Chiapas Governor, Juan Sabines Guerrero.
2007	Dec. 13 Chiapas Delegation report, p. 26-32.	Land-use agreement was signed between Blackfire and the community Ejido Grecia.
2008	Exact Dates are Unknown Access to information request A-2010-00758/RF1, p. 000213.	According to the Canadian Embassy email, Blackfire was subject to a 3.5 month blockade in 2008, no further information was made available to us.
2008	March 10 Report tabled by Blackfire executive (see fn 76).	Blackfire started making roughly monthly payments to the Mayor of Chicomuselo, Julio Cesar Velasquez Calderon.
2008	August 11 Chiapas Delegation report p. 11. Petition to Inter-American Commission on Human Rights, para. 20 and para. 60.	According to allegations made to the Inter-American Commission on Human Rights, three Blackfire employees came to Abarca's home. While one of the men held a pistol to the head of Abarca's wife, the others beat Abarca and one of his sons. Caralampio López Vázquez, one of the men charged for this crime, was manager of personnel and security and a driver for the executive of the mine. He was sentenced to prison in 2010 for the beating and robbery, but was freed after paying a fine.
2008	Sept. 11 Access to information request A-2010-00758/RF1, p. 000184.	A Political Counsellor met with a Blackfire representative over breakfast, who asked for help in obtaining an explosives license.
2008	Sept. 12 – Oct. 9 Access to information request A-2010-00758/RF1, p. 000184-000185, 000187-000190.	Email exchanges document extensive help by the Canadian Embassy in pressuring the Mexican government to issue an explosives permit to Blackfire.

2008	Oct. 14 Access to information request A-2010-00758/RF1, p. 000186.	The Canadian Embassy received a PowerPoint presentation expressing opposition to mining in Chiapas and Blackfire Exploration.
2009	April 16 Access to information request A-2010-00758/RF1, p. 000197.	March by 3,000 Catholics in Chiapas protesting Blackfire's mine and demanding cancellation of mining permits.
2009	May 8 Report tabled by Blackfire executive (see fn 76)	Last payment by Blackfire is made to the Mayor of Chicomuselo, Julio Cesar Velasquez Calderon. In total, Blackfire paid more than 200,000 pesos (equivalent to \$17,000) to the mayor.
2009	June – July Access to information request A-2010-00758/RF1, p. 000213.	Blackfire was subject to a 2-month blockade, interrupting one of its transport routes to the mine.
2009	June 15 Chiapas Delegation Report, p. 24.	The Director General of Blackfire, Artemio Avila Cervera filed a complaint with the Chiapas Congress, accusing the Mayor of Chicomuselo, Julio Cesar Velasquez Calderon, of extortion, and asking for his removal from office.
2009	June 24 Chiapas Delegation Report, p. 24.	The newspaper, <i>El Herald de Chiapas</i> , reports that Blackfire paid monthly sums of money to the mayor of Chicomuselo and paid for airline tickets for his family.
2009	July 22 "Mariano Abarca Frente a la Embajada Canadiense" YouTube (July 22, 2009) online: http://www.youtube.com/watch?v=zwGavLzTob8 .	A delegation traveled from Chiapas to demonstrate its discontent to the Canadian Embassy in Mexico City. Mariano Abarca gave a speech to an embassy worker, informing that Blackfire had used "thugs" against protesters.
2009	Aug. (no exact date) See March 3, 2010	Horacio Culebro Borrayas, who was a lawyer for Blackfire for 3 months, made a declaration on March 3, 2010, saying that he was in a meeting with Director General of Blackfire, Artenio Avila Cervera and Subsecretary of State for Chiapas, Nemesio Ponce Sánchez. At the meeting, Ponce Sanchez demanded payment of almost \$1 million pesos (\$65,000) for some members of one of the ejidos and purportedly said that Abarca could be "eliminated."
2009	Aug. 17 Chiapas Delegation Report, p. 11.	Abarca was arrested by plain-clothes police in response to the complaint of Blackfire employees.

2009	Aug. 19 Access to information request A-2010-00758/RF1, p. 000204.	The Canadian Embassy began asking for clarification regarding Abarca's detention from the State of Chiapas. Blackfire sent emails to the Canadian Embassy, claiming that it was worried for its workers due to planned protests on Aug. 29-30, 2009.
2009	Aug. 24	Abarca was released after being detained for 8 days without charge.
2009	Aug. 27 Access to information request A-2010-00758/RF1, p. 000208, 000026.	The Canadian Embassy acknowledges receiving 1,400 emails and letters concerning Abarca's detainment. Embassy contacted the Chiapas State government, the Chiapas Human Rights Commission, the federal Economy Ministry, the Canadian Chamber of Commerce and Blackfire to find out more information. The Canadian Embassy was aware that Blackfire had pressed the charges that had led to Abarca's arrest.
2009	Aug. 29-30 Chiapas delegation report, p. 13.	240 individuals got together in Chicomuselo for a meeting of the Mexican Network of People Affected by Mining (REMA).
2009	Sept. 7 Chiapas delegation report, p. 10, 14.	The <i>ejido</i> Nueva Morelia issued a statement, expressing its opposition to Blackfire's mine and complaining about threats from Blackfire workers.
2009	Oct. 4 Access to information request A-2010-00758/RF1, p. 000038.	The Canadian Embassy sent a delegation to Chiapas, and met with Blackfire and toured its mine.
2009	Oct. 5 Access to information request A-2010-00758/RF1, p. 000039.	The Canadian delegation to Chiapas met with Noé Castañón León, a senior member of the government of Chiapas. Noé Castañón León provided recommendations for Blackfire to improve its relationship with the local communities, such as increasing its social spending on local communities and better relations with the mayor of Chicomuselo.
2009	Oct. 13 Access to information request A-2010-00758/RF1, p. 000213-000216.	The Canadian Embassy informed the Canadian Department of Foreign Affairs and International Trade of troubleshooting it has done on behalf of 4 Canadian companies in Mexico, and states that they had been successful in all cases. One of the cases was Blackfire.
2009	Nov. 23 Chiapas Delegation report, p. 11. Amnesty International Urgent Action (see footnote 13)	Abarca filed an administrative complaint against 2 Blackfire personnel, Ciro Roblero Perez, and Luis Antonio Flores Villatoro. Abarca claimed those individuals had made serious death threats against him.
2009	Nov. 27 Huffington Post story, fn.15. Petition to Inter-American Commission on Human Rights, para. 45	Abarca was assassinated while sitting in his truck outside his home with a friend, Orlando Velazquez. He was shot three times at close range and the shooter escaped on a waiting motorcycle. Velazquez was injured but survived.

2009	Dec. 1 Access to information request A-2010-00758/RF1, p. 000245	Canadian Embassy personnel told Global Affairs personnel in Canada to tone down language, from “urging” the Mexican government to investigate Abarca’s murder, to “Canada welcomes the judicial investigation by Mexican authorities to determine facts related to Mr. Abarca’s death”.
2009	Dec. 2 Access to information request A-2010-00758/RF1, p 000248-249.	Canadian Embassy personnel were aware that 3 people had been detained in connection with Abarca’s murder and that Canadian personnel had left the country.
2009	Dec. 3 Access to information request A-2010-00758/RF1, p. 000270, 000262.	Protest took place outside the Canadian Embassy in Mexico City. Protesters called for the complete withdrawal of Canadian mining investment in Mexico, including Minera San Xavier belonging to New Gold and Blackfire. The protest numbered between 100-250 people. The Canadian Embassy discovered the men detained for Abarca’s murder all had ties to Blackfire.
2009	Dec. 6 Access to information request A-2010-00758/RF1, p. 000298-000299.	Common Frontiers wrote to the office of the Governor-General, asking for a meeting with the Mexican Network of People Affected by Mining (REMA) during the Governor General’s trip to Chiapas later that month.
2009	Dec. 7 Chiapas Delegation report, p. 33.	Blackfire’s mine was shut down after a surprise visit by the Ministry of the Environment and Housing.
2009	Dec. 8 Access to information request A-2010-00758/RF1, p. 000375-000376.	Common Frontiers released a Media Alert claiming that Blackfire had bribed the mayor of Chicomuselo in order to suppress opposition to its mine.
2009	Dec. 9 Access to information request A-2010-00758/RF1, p. 000575.	Governor-General Michaëlle Jean visited the state of Chiapas. A requested meeting with Mexican Network of People Affected by Mining (REMA) was declined. There was a demonstration against Canadian mining during her visit in San Cristobal.
2009	Dec. 15 Access to information request A-2010-00758/RF1, p. 000419.	A Trade Commissioner told the Ambassador that the RCMP had been tasked to look into the Blackfire corruption allegation. The Ambassador tells the Trade Commissioner to track developments surrounding Blackfire, but to no longer initiate contact with the company.
2009	Dec. 18 Access to information request A-2010-00758/RF1, p. 000458.	1,500 protesters marched in a town 20 km away from Chicomuselo, protesting Abarca’s death.

2009	Dec. 20 Access to information request A-2010-00758/RF1, p. 000474.	Canadian civil society groups call on RCMP to launch criminal investigation into Blackfire under the <i>Corruption of Foreign Public Officials Act</i> for the alleged bribery of the mayor of Chicomuselo.
2009	Dec. 22 Access to information request A-2010-00758/RF1, p. 000476.	More than 2,000 people marched in Chicomuselo, protesting Blackfire's mine in Chiapas and Abarca's murder.
2010	Jan. 7 Access to information request A-2010-00758/RF1, p. 000551-000552.	A Trade Commissioner emailed Blackfire contact information of Mexican government officials it should contact to have its mine re-opened.
2010	Jan. 14 Chiapas Delegation report, p. 12. Access to information request A-2010-00758/RF1, p. 000575.	Walter Antonio Leon Montoya, a political opponent of the then-Governor of Chiapas, was arrested for conspiracy to commit murder in connection with Abarca's death. He was eventually released by the court.
2010	Jan. 15 Petition to Inter-American Commission on Human Rights, para. 56.	Three employees of Blackfire arrested – Jorge Carlos Sepúlveda Calvo, Caralampio López Vázquez (manager of personnel and security and a driver for the Blackfire executives), and Ricardo Antonio Coutiño Velasco (a contractor for Blackfire). Artemio Ávila Cervera and Emiliano Canales Cervera, Blackfire executives, had left the country to avoid being detained.
2010	Jan 18-19 Access to information request A-2010-00758/RF1, p. 000845-000848.	A Political Counsellor, went to Chiapas to speak with the Chiapas government and with the communities affected by Blackfire. He also met with members of Otros Mundos Chiapas, a member organization of Mexican Network of People Affected by Mining(REMA).
2010	Jan. 25 Access to information request A-2010-00758/RF1, p. 000577-000578	A Trade Commissioner asked whether someone at Global Affairs could talk to Blackfire regarding how it could sue the Mexican government under Chapter 11 of NAFTA.
2010	Jan. 26 Petition to Inter-American Commission on Human Rights, para. 60	Blackfire employee, Jorge Carlos Sepúlveda Calvo, was convicted of murdering Mariano Abarca and injuring Orlando Velázquez Rodríguez. (His conviction was overturned on appeal on June 19, 2013).
2010	Feb. 10 Access to information request A-2010-00758/RF1, p. 000700-000702.	News article claims that Blackfire was looking to sue the Government of Chiapas for 800 million pesos for shutting down its mine. Canadian Embassy personnel were aware of this situation.

2010	March 3 Petition to Inter-American Commission on Human Rights, para. 58. Chiapas Delegation report, p.18	Horacio Culebro Borrayas, who was a lawyer for Blackfire for 3 months, made a declaration about a meeting in August 2009 with General Manager of Blackfire, Artenio Avila Cervera and Subsecretary of State for Chiapas, Nemesio Ponce Sánchez. [See August 2009.]
2010	March 10 Access to information request A-2010-00758/RF1, p. 000583-000584, 000579-000582.	Nine Canadian organizations ask the RCMP to launch investigation into Blackfire under the Corruption of Foreign Public Officials Act, for the alleged bribery of the mayor of Chicomuselo. The Canadian Embassy sought advice from its legal department.
2010	Jan. 26 Petition to Inter-American Commission on Human Rights, para. 60 and 62.	Jorge Carlos Sepúlveda Calvo was convicted for the murder of Mariano Abarca and the injuries that Orlando Velásquez sustained at the same time. He was a former contractor for Blackfire. He was sentenced for murder and jailed, but then released on appeal in June 2013. Caralampio López Vázquez was manager of personnel and security and a driver for the executive of the mine. He was sentenced to prison for the beating of Abarca in 2008, but paid a fine in order not to serve his sentence.
2010	May 5 Access to information request A-2010-00758/RF1, p. 000033.	Canadian Embassy met with the Special Committee to Monitor Mining Conflicts of the Mexican Chamber of Deputies. The Special Committee informed them that 5 Canadian-owned mining projects were on their radar, one of which was Blackfire.
2010	May 12 Access to information request A-2010-00758/RF1, p. 000629.	A Trade Commissioner briefed Blackfire about the Canadian Embassy's meeting with the Special Committee to Monitor Mining Conflicts of the Chamber of Deputies. He encouraged Blackfire to meet with this committee, as the company was on the Committee's radar.
2010	July 21 Access to information request A-2010-00758/RF1, p.000643.	A Trade Commissioner informed Blackfire that the Committee on Mining Conflicts in Mexico wished to speak to the company, and that the embassy passed along Blackfire's contact information.
2013	June 19 Petition to Inter-American Commission on Human Rights, para. 64.	Jorge Carlos Seupúlveda Calvo, the only one of the three Blackfire employees who was charged and convicted is absolved of the murder on appeal and released.
2015	Feb 18 RCMP Letter to MiningWatch, see fn 99.	RCMP decided not to pursue criminal charges against Blackfire for the alleged bribery of the mayor of Chicomuselo, Julio Cesar Velasquez Calderon.