

Corruption, Murder and Canadian Mining in Mexico: The Case of Blackfire Exploration and the Canadian Embassy

May, 2013



Written by Jennifer Moore and Gillian Colgrove with a special thanks to Rick Arnold, Raul Burbano and Mark Rowlinson, Gustavo Castro and José Luis Abarca for their invaluable contributions and input.

The sponsors of this report, United Steelworkers, Common Frontiers, and MiningWatch Canada, would also like to thank the Justice and Corporate Accountability Project at Osgoode Hall Law School for its generous support in the form of Gillian Colgrove's extensive writing and editing work, along with fact-checking support from other students, including Ian McKellar and Nadia Halum.

Cover photo: The Payback mine, closed by authority of the State of Chiapas Environment and Housing Secretariat, March 2010. Credit: Dawn Paley

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Executive Summary

Documents released from the Canadian Department of Foreign Affairs and International Trade (DFAIT) under an access to information request raise serious concerns about the conduct of the Canadian Embassy in Mexico. Throughout a conflict involving Blackfire Exploration's mining activities in the municipality of Chicomuselo, Chiapas that saw an activist shot and ultimately triggered a Royal Canadian Mounted Police (RCMP) investigation over corruption, it appears the Embassy provided instrumental and unconscionable support to the operations of a Canadian mining company in Mexico.

Blackfire Exploration is a small, privately held, Calgary-based company that obtained mining concessions in Chiapas, Mexico in 2005. In 2008, its Payback mine began to produce barite, a mineral used for drilling petroleum wells. The mine operated for approximately two years before being closed by Mexican authorities for violating environmental regulations. Two much more serious scandals involving the mine bracketed its suspension: a week earlier on November 27, 2009, local anti-mining activist Mariano Abarca was murdered; and days later, allegations that the company was involved in the corruption of a local mayor surfaced in the Canadian news media.

In March 2010, United Steelworkers, Common Frontiers, and MiningWatch Canada carried out a fact-finding mission to Chiapas at the invitation of the Mexican Network of Mine Affected Communities (REMA, by its initials in Spanish). The delegation looked into the impacts of Blackfire's Payback mine in the town of Chicomuselo, where murdered activist and father of four Mariano Abarca lived, and in the outlying communities of Ejidoⁱ Grecia and Ejido Nueva Morelia, where the mine was located. It produced a report in early 2010.

As part of its research, the delegation met with the Canadian Embassy in Mexico City. Although the Embassy repeatedly denied any involvement in the investigation of Abarca's murder, the delegation knew that an Embassy Political Counsellor had travelled to Chiapas two months after Abarca's death. The delegation requested a copy of the report from this trip, but the Counsellor refused to provide it. Several months later, the organizations filed an access to information request, and after 19 months DFAIT released Embassy documents dealing with Blackfire. The release consisted of more than 900 pages of sometimes heavily redacted emails, briefings, and other files dated from November 2007 to May 2010, spanning a period from before Blackfire's mine was operating until six months after Abarca was killed.

Overall, the released documents suggest that in the case of Blackfire, the Embassy provided virtually unconditional support in spite of the company's behaviour and the Embassy's awareness of the tensions around the mine site. The documents also establish that Mariano Abarca was known to the Embassy before he was murdered. In July 2009, Mariano delivered a speech outside the Embassy in Mexico City, and in August 2009 the Embassy reported receiving 1,400 letters about Abarca following his arrest and detention based on a complaint filed by a Blackfire representative in Mexico. Even after Abarca had been killed, the mine had been suspended, and corruption allegations had surfaced, the Embassy continued to defend the company to Mexican state officials and provided it with information on how to sue the state of Chiapas under the North American Free Trade Agreement (NAFTA) for closing the mine.

ⁱ An *ejido* is a social and territorial unit governed by a General Assembly that administers, regulates, and makes decisions over its territory and natural goods found above the surface. Until the signing of the North American Free Trade Agreement in 1994, it was not possible for *ejido* land to be parcelled off or sold.

An analysis of the DFAIT documents and ancillary materials supports the following conclusions. First, the Embassy's active and unquestioning support may have acted as a disincentive for Blackfire to comply with local and international laws. Second, in doing so, the Embassy failed to uphold Canada's own policies, as well as its international obligation to promote universal respect for human rights.

The picture pieced together is tremendously unsettling, especially given Canada's role as a top investor in Mexico's mining industry. Approximately 75% of the world's mining companies are headquartered in Canada, and many of these companies are associated with serious conflict. In 2011, Canada's Office of the Extractive Sector Corporate Social Responsibility (CSR) Counsellor reported that 204 of 269 foreign-owned companies in Mexico's mining sector in 2010 were Canadian.

Canada's prominent role in Mexico's mining sector, and our findings in this case, lead us to make several recommendations, some of which are:

- That Canada create robust eligibility criteria for all government supports to mining companies, including ensuring respect for the free, prior, and informed consent of Indigenous communities and for binding democratic and participatory decision-making processes of non-Indigenous communities before mine prospecting and project development begins;
- That Canada pass legislation to regulate Canadian mining companies operating abroad and provide affected communities with access to Canadian courts and an independent ombudsperson;
- That Canada's anti-corruption legislation be significantly strengthened and greater resources directed towards its enforcement;
- That Canada instruct its embassies abroad to carefully assess the impacts of Canadian mining operations on affected communities to ensure that commercial interests never outweigh collective and individual human rights;
- That Blackfire Exploration Ltd. renounce any future attempt to reopen the Payback mine in Chicomuselo, or open any other new mines in the state of Chiapas.



Mariano Abarca at a protest in front of the Canadian Embassy in July, 2009 (Mariano holding microphone and speaking with an Embassy Public Relations representative). Credit: Tamara Herman.

Introduction

Documents released from the Canadian Department of Foreign Affairs and International Trade (DFAIT) under an access to information request raise serious concerns about the conduct of the Canadian Embassy in Mexico. Throughout a conflict involving Blackfire Exploration's mining activities in the municipality of Chicomuselo, Chiapas that saw an activist shot and ultimately triggered a Royal Canadian Mounted Police (RCMP) investigation over corruption, it appears the Embassy provided instrumental and unconscionable support to the operations of a Canadian mining company in Mexico.

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In March 2010, United Steelworkers, Common Frontiers, and MiningWatch Canada carried out a fact-finding mission to Chiapas at the invitation of the Mexican Network of Mine Affected Communities (REMA, by its initials in Spanish).² The delegation looked into the impacts of Blackfire's Payback mine in the town of Chicomuselo, where murdered activist and father of four Mariano Abarca lived, and in the outlying communities of Ejido Grecia and Ejido Nueva Morelia,³ where the mine was located. It produced a report in early 2010.⁴

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Those documents form the basis of this report. As much as possible, the report supplements its observations and conclusions with the delegation's own fact-finding report, as well as news articles, video recordings, correspondence, interviews, and other documentation. Nevertheless, the picture is still incomplete – partly because substantial sections of the documents from DFAIT were blacked out prior to their release. In particular, Canadian government communications with Mexican state officials, communications with legal counsel, and the names of private individuals tend to be redacted.

² Formed in 2008, REMA is a national network of activists and communities in resistance to mining and mining abuses in Mexico. See: <http://www.remamx.org/>

³ An *ejido* is a social and territorial entity whose General Assembly administers, regulates and makes decisions over land and natural goods found above the arable surface. Until the signing of the North American Free Trade Agreement in 1994, it was not possible for ejido land to be parcelled off or sold.

⁴ 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* (April 21, 2010), online: http://www.miningwatch.ca/sites/miningwatch.ca/files/Chiapas_delegation_report_web.pdf.

Overall, the released documents suggest that in the case of Blackfire, the Embassy provided virtually unconditional support in spite of the company's behaviour and the Embassy's awareness of the tensions around the mine site. From early on, the Embassy knew of conflict between Blackfire and local communities. Later, the murdered activist Mariano Abarca informed Embassy staff that protestors were being threatened. The Embassy appears, however, not to have questioned Blackfire's version of the situation, investigated allegations of violations of human rights and civil liberties, urged thorough investigations, or distanced itself from the company. The Embassy does appear to have monitored Blackfire's mine to some extent through multiple visits to Chiapas, when it solicited input almost exclusively from the company and state actors, while avoiding direct contact with affected community members.

Standards for Embassy Conduct

In order to assess the behaviour of the Canadian Embassy in Mexico, we draw upon four sources of guidance: the mission statement of the Department of Foreign Affairs and International Trade (DFAIT), Canada's international human rights obligations, Canada's voluntary Corporate Social Responsibility framework for the overseas extractive industry, and the Corruption of Foreign Public Officials Act, in place since 1998. [1]

Notably, DFAIT's mission statement includes several "key objectives" that should guide Canadian foreign missions when they provide services to Canadian mining companies overseas. These include "advancing Canada's international trade and economic interests abroad," [2] as well as "using diplomacy to protect against [...] environmental degradation [and] natural resource depletion," and "the projection of Canadian values [...] such as the promotion of human rights, [...] the rule of law [and] sustainable development." [3] Additionally, the Canadian state has assumed international obligations to promote universal respect for human rights as signatory to seven human rights treaties. [4] Given the range of human rights that may be affected by extractive industry developments, most if not all of these treaties are relevant. [5]

Rather than using a legal and regulatory framework, however, the Canadian government purports to offset the negative impacts of extractive activities by encouraging companies to meet voluntary corporate social responsibility standards. Many Canadian civil society groups, including the organizations endorsing this report, have repeatedly criticized this framework as being inadequate and urged the Canadian government to put in place robust and enforceable mechanisms to regulate Canada's large overseas extractive industry. Nonetheless, throughout this report we draw on the government and Embassy's interpretation of the CSR framework within the released documents as a reference point to assess the Embassy's behaviour. During the period in which the events described in this report occurred, the CSR framework was reinforced with the March 2009 launch of the Canadian government's "Building the Canadian Advantage" strategy. In that document, the Canadian government maintains that it "encourages...Canadian companies to meet high standards of corporate social responsibility" through the promotion of widely-recognized CSR and transparency guidelines and the creation of government supports for companies facing CSR issues. [6]

[1] *Corruption of Foreign Public Officials Act*, SC 1998 c 34, online: <http://laws-lois.justice.gc.ca/eng/acts/C-45.2/>.

[2] Department of Foreign Affairs and International Trade Canada (DFAIT), "Our Mandate" (August 30, 2006), online: <http://www.dfait-maeci.gc.ca/departement/mandate-en.asp>.

[3] Department of Foreign Affairs and International Trade (DFAIT), "Our Mandate" (August 30, 2006), online: <http://www.dfait-maeci.gc.ca/departement/mandate-en.asp>.

[4] Department of Foreign Affairs and International Trade (DFAIT), "Canada's International Human Rights Policy" (March 9, 2013), online: <http://www.international.gc.ca/rights-droits/policy-politique.aspx?lang=eng&view=d>

[5] In particular, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, and the Convention for the Elimination of Racial Discrimination are notable. See Department of Foreign Affairs and International Trade (DFAIT), "Canada's International Human Rights Policy" (March 9, 2013), online: <http://www.international.gc.ca/rights-droits/policy-politique.aspx?lang=eng&view=d>. Furthermore, in 2010, the Canadian government endorsed the United Nations Declaration on the Rights of Indigenous Peoples, an important source for Indigenous rights in international law. See DFAIT, "Canada Endorses the United Nations Declaration on the Rights of Indigenous Peoples," (November 12, 2010), online: <http://www.international.gc.ca/media/aff/news-communiques/2010/361.aspx?lang=eng&view=d>

[6] Foreign Affairs and International Trade Canada, "Building the Canadian Advantage: A Corporate Social Responsibility (CSR) Strategy for the Canadian International Extractive Sector," (March 2009), online: <http://www.international.gc.ca/trade-agreements-accords-commerciaux/ds/csr-strategy-rse-strategie.aspx?view=d>.

The documents also establish that Mariano Abarca was known to the Embassy. Abarca was a prominent community activist opposed to the Payback mine. He was murdered on November 27, 2009, shortly after lodging a complaint about threats he received related to his activism. In July 2009, Mariano delivered a speech outside the Embassy in Mexico City to an Embassy official, and in August 2009 the Embassy reported receiving 1,400 letters about Abarca following his arrest and detention based on a complaint filed by a Blackfire representative in Mexico. Even after Abarca had been killed, the mine had been suspended, and corruption allegations had surfaced, the Embassy continued to defend the company to Mexican state officials and provided it with information on how to sue the state of Chiapas under the North American Free Trade Agreement (NAFTA) for closing the mine.

An analysis of the DFAIT documents and ancillary materials supports the following conclusions. First, far from encouraging responsible behaviour, the Embassy's active and unquestioning support may have acted as a disincentive for Blackfire to comply with local and international laws. Reliance on the Embassy did not prevent Blackfire's apparent involvement in a triad of unethical practices – violent repression, corruption, and environmental degradation – and may in fact have encouraged the company to flout the law and ignore the impact on local communities. Second, in doing so, the Embassy failed to uphold Canada's own policies, as well as its international obligation to promote universal respect for human rights.

Specifically, before Abarca was murdered, the Embassy appeared to lack the balanced perspective necessary to face allegations about the company's behaviour; after the murder, its withdrawal from public dialogue about the investigation demonstrates disregard for the high levels of impunity for violent crimes against human rights activists in Mexico. With respect to corruption allegations that surfaced at the same time, the Embassy's continued support for the company appears not to have taken account of DFAIT's



*Memorial march for Mariano Abarca,
November 2012. Credit: Jennifer Moore.*

own mandate, the Canadian government's CSR strategy for the extractive industry and international human rights obligations. Finally, given these conclusions, it seems clear that the mechanisms in place fall far short of ensuring that Canadian mining companies operating abroad demonstrate respect for collective and individual human rights and abide by the rule of law.

The picture pieced together is tremendously unsettling, especially given Canada's role as a top investor in Mexico's mining industry and in other countries. Approximately 75% of the world's mining companies are headquartered in Canada, and many of these companies are associated with serious conflict.⁵ In 2011, Canada's Office of the Extractive Sector Corporate Social Responsibility (CSR) Counsellor reported that Canada is the second largest foreign investor in Mexico after the United States. It also reported that 204 of 269 foreign-owned companies in Mexico's mining sector in 2010 were Canadian.⁶

Canada's prominent role in Mexico's mining sector and our findings in this case lead us to make recommendations in several broad categories. First, Canada must cre-

⁵ See MiningWatch Canada, "Corporate Accountability in Canada – a MiningWatch Archive"

<http://www.miningwatch.ca/article/corporate-accountability-canada-miningwatch-archive>

⁶ Office of the Extractive Sector Corporate Social Responsibility (CSR) Counsellor, "Closing report: Request for review file #2011-01-MEX" (October 2011), online: http://www.international.gc.ca/csr_counsellor-conseiller_rse/assets/pdfs/Closing_report_MEX.pdf.

ate robust eligibility criteria for all government supports to mining companies, including ensuring respect for the free, prior, and informed consent of Indigenous communities⁷ and for binding democratic and participatory decision-making processes of non-Indigenous communities before mine prospecting and project development begins. Second, it is important that Canada pass legislation to regulate Canadian mining companies operating abroad and provide affected communities with access to Canadian courts and an independent ombudsperson. Finally, Canada's anti-corruption legislation must be strengthened and greater resources directed towards its enforcement.

Canadian Mining Companies in Mexico: A Primer

Blackfire's impact is not unique. Canadian-owned mines have recently been focal points for conflict in various areas of Mexico, including:

- In October 2012, Ismael Solorio Urrutia and his wife Manuela Martha Solís Contreras, outspoken opponents of MAG Silver's mine project because of its potential impact on scarce local water supplies, were murdered in Chihuahua. [1]
- Between January and June 2012, numerous members of the Coordinating Committee of the United Villages of the Ocotlán Valley, which leads opposition to Vancouver-based Fortuna Silver's mine in San José del Progreso, Oaxaca, were shot or assaulted. Bernardo Vásquez and Bernardo Méndez were killed. [2]
- Since 2007, New Gold's Cerro de San Pedro open-pit gold mine in San Luis Potosí has operated despite local opposition and court rulings that revoked its original environmental permit [3] and found that land use contracts were fraudulent. [4]
- Currently, Excellon Resources' La Platosa mine in Durango is in conflict with landowners over its land use contract and workers over their rights of association. In autumn 2012, a months-long protest faced intimidation and violence from state armed forces and company-supported groups, culminating in the burning of a protest camp maintained near the mine, but off company property. [5]
- First Majestic Silver is exploring in an area of San Luis Potosí known as Wirikuta that is sacred to the Wixárika Indigenous people, and which they are fighting to protect. [6]
- Evidence of serious health impacts in Carrizalillo, Guerrero were presented at the International People's Health Tribunal in July 2012 in connection with Goldcorp's Los Filos mine, including high incidence of eye, skin, respiratory, and gastrointestinal problems, as well as a significant increase in premature births. [7]

[1] Dawn Paley, "Punching Holes in the Desert". The Dominion (April 23, 2013): <http://dominion.mediacoop.ca/story/punching-holes-desert/16740>

[2] National Assembly of People Affected by Environmental Conflicts, "New Aggression in San José del Progreso, Oaxaca" (June 16, 2012), online: <http://www.minesandcommunities.org/article.php?a=11773&l=1>

[3] MiningWatch Canada and Frente Amplio Opositor, "Mexico to Shut Down New Gold's Cerro de San Pedro Mine – Canadian Parliamentarians and Mexican Congress Members Urge Company to Comply with Law" (November 12, 2009), online: <http://www.miningwatch.ca/mexico-shut-down-new-gold-s-cerro-de-san-pedro-mine-canadian-parliamentarians-and-mexican-congress-m>

[4] Mennonite Central Committee, "Cerro San Pedro, Mexico," Accessed February 14, 2013: <http://mccottawa.ca/miningjustice/casestudies/cerrodasanpedro>.

[5] Project for Economic, Social and Cultural Rights, Mexico (PRODESC), "Fact Sheet: La Platosa Conflict in Durango, Mexico" (November 5, 2012) online: http://www.prodesc.org.mx/?wpfb_dl=10.

[6] Wirikuta Defense Front, "Urgent Second Letter to the President of Mexico, the Peoples and Governments of the World" (February 14, 2013) online: <http://frenteendefensadewirikuta.org/wirikuta-en-bk/?p=1240>.

[7] Agrarian Authorities of Carrizalillo, "La Nueva Fiebre del Oro: Daños a la Salud Vinculados a la Extracción de Minerales a Cielo Abierto" (July 10, 2012)

⁷ As required by the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and international jurisprudence. UNDRIP is grounded in principles such as non-discrimination, self-determination and cultural integrity, and in various articles it indicates that states should consult with Indigenous peoples in order to obtain their free, prior and informed consent prior to the approval of any project affecting their lands or territories or other resources: see for example *United Nations Declaration on the Rights of Indigenous Peoples: resolution / adopted by the General Assembly*, GA Res 295, UNGAOR, 61st Sess, A/RES/61/295 (2007) at Art32.

Embassy Support Enables Blackfire to Mine Despite Seeds of Conflict

“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.”

– email message from XXX@blackfireexploration.com to Political Counsellor Douglas Challborn at the Canadian Embassy in Mexico, September 12, 2008⁸

When the 2010 fact-finding delegation visited the Canadian Embassy shortly after Mariano Abarca had been killed and Blackfire’s mine shut down, it could not ascertain what sort of relationship the Canadian Embassy in Mexico had maintained with Blackfire during the company’s time in Chiapas. DFAIT documents establish that the Embassy in fact had a long-standing relationship with the company, which began prior to its barite mine going into operation. Moreover, according to company statements in the documents, Embassy support was crucial to opening the mine, despite clear indications that local communities had not fully consented and that tensions were brewing.

Embassy officials travelled to Chiapas as early as November 2007 to meet with Blackfire Exploration, state authorities, and NGOs. At that time, Blackfire’s barite mine was not yet in production, and the company had not yet reached agreements with the local communities whose land it proposed to mine.⁹ At that time, the Embassy documented clear evidence of early tension between the company and the communities.

The Embassy’s Political Counsellor Douglas Challborn reported on his visit: “Blackfire informed us that it has identified a number of highly promising claims, one of which it is close to bringing into production, but that it is encountering difficulties in negotiating with a local community in order to have access to one of its sites [several lines redacted].”¹⁰ According to company representatives, he reported, “the main access road had been fenced off by the community, and there have been incidents where their Mexican workers have been held against their will.”¹¹

In reporting on the company’s already-troubled relationship with the community, Challborn flagged potential problems with Blackfire’s approach to consultation. “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

A Tale of Two Ejidos

Ejido Grecia and Ejido Nueva Morelia are communities in the municipality of Chicomuselo, Chiapas. Blackfire’s Payback mine operated in the Ejido Grecia community. To reach the mine, the company built an access road through the community of Ejido Nueva Morelia.

In Mexico, an ejido is a social and territorial entity whose General Assembly administers, regulates and makes decisions over land and natural goods found above the arable surface. Until the early 1990s, when the NAFTA was signed, ejido land could not be sold or broken down into fee simple titles – in other words, it could not be privately owned.

In 2010, the Canadian fact-finding delegation heard numerous complaints and strong opposition to Blackfire’s presence in Chicomuselo. Community members spoke of broken promises, little or no consultation, environmental impacts, social division, intimidation, and violence.

Source: 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.* April 21, 2010.

⁸ Access to information request A-2010-00758/RF1, page 000185.

⁹ The first agreements were signed in December 2007 and June 2008. United Steelworkers, Common Frontiers, and MiningWatch Canada, *supra* note 3 at 7.

¹⁰ Access to information request A-2010-00758/RF1, page 000157.

¹¹ Access to information request A-2010-00758/RF1, page 000159.

planting of ‘jatrophia’ in adjacent lands, a biofuel crop that is apparently used successfully in India and China,” he reported. “However, it is unclear to us what process was used or how well these negotiations are understood by all members of the community.”¹² The 2010 Canadian civil society delegation similarly heard that there appeared to have been “little or no consultation” with the Ejido Nueva Morelia before mine development began, despite the company having purchased land in the Ejido and the requirement under Mexican law that the sale of Ejido land meet certain conditions, including community approval through a General Assembly.¹³ In the case of the Ejido Grecia, the delegation heard that there had been “very little community consultation” about the mine project before mine development began, although land use agreements were ultimately reached.¹⁴

The “Mining Task Force”

DFAIT documents explain that the Mining Task Force of the Canadian Chamber of Commerce in Mexico is the primary vehicle through which the Embassy engages companies in matters of corporate social responsibility (CSR). [1] Based on internal government documents, the Mining Task Force’s aim appears to be less about promoting socially responsible business practices than marketing the perception that Canadian companies are responsible. According to embassy communications, its mandate is “to promote and support the interests of Canadian mining companies exploring and producing in Mexico through public relations outreach in defence of the good practices and corporate social responsibility of Canadian firms.” [2]

The results of a 2008 survey by the Embassy directed to 113 Canadian mining companies found that only 27% of respondents (11 of the 38 companies that responded) had a CSR program [3], while fewer – only 13% – held any related certification. [4] Goldcorp, the “most significant” Canadian mining investor in Mexico, did not respond to the survey. [5] Blackfire Exploration’s web site does not mention CSR. [6]

[1] In a survey, the Canadian Embassy in Mexico defines CSR as “the way in which a corporation interacts with stakeholders in society to address complex issues such as labour rights, environmental protection, bribery and corruption, and human rights. CSR is pursued by business to balance economic, environmental and social objectives while addressing stakeholders’ expectations and enhancing shareholder value. CSR initiatives are broad-ranging and include activities by individual companies and industry sectors as well as international standards and norms endorsed and promoted by government.” Access to information request A-2010-00758/RF1, page 000176.

[2] Access to information request A-2010-00758/RF1, 000212.

[3] Access to information request A-2010-00758/RF1, 000171.

[4] Certification cited, each by only one company, included: standards set by the International Standards Organization (ISO), International Cyanide Management Code, CIM and National Instrument for the Toronto Stock Exchange, 43-101 National Instrument Report, and the Extractive Industry Transparency Initiative. Access to information request A-2010-00758/RF1, 000170.

[5] Access to information request A-2010-00758/RF1, 000169.

[6] <http://www.blackfireexploration.com/>

Embassy records contain no evidence that the Embassy conditioned its support for the company on a better consultative and negotiation process. The only encouragement that the Embassy seems to have offered the company was to inform it of DFAIT’s Mining Task Force in Mexico, which “look[s] at common challenges to mining that Canadian companies are facing,” and appears, according to the Embassy’s own description,¹⁵ to be principally a marketing tool. There is no indication that Blackfire sought to participate.

Even so, the Embassy’s own records indicate that, in the opinion of the company, the Embassy played a crucial role in getting Blackfire’s mine up and running by interceding with the Chiapas state government.

¹² Access to information request A-2010-00758/RF1, page 000159.

¹³ United Steelworkers, Common Frontiers, and MiningWatch Canada, *supra* note 3 at 6. See also: Francisco López Bárcenas and Mayra Montserrat Eslava Galicia, *El Mineral o La Vida: La legislación minera en México*, (2011) 68-69, online: http://www.lopezbarcenass.org/sites/www.lopezbarcenass.org/files/El_mineral_o_la_vida_0.pdf.

¹⁴ United Steelworkers, Common Frontiers, and MiningWatch Canada, *supra* note 3 at 7.

¹⁵ Access to information request A-2010-00758/RF1, 000212.

In correspondence from September 2008, Blackfire thanked the Embassy for its involvement. “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,” a company representative wrote in an email to Political Counsellor Douglas Challborn after another meeting between the Embassy and the company in Chiapas. “We could not do it without your help.”¹⁶

Counsellor Challborn’s correspondence further underscores the Embassy’s role: “Company is very thankful for Ambassador’s interventions with Governor,”¹⁷ he wrote.

Blackfire signed the first of two agreements with representatives of the Ejido Grecia just one month after Counsellor Challborn’s November 2007 visit to Chiapas¹⁸ and the Payback (“La Revancha”) Mine went into operation in early 2008.¹⁹ A second agreement was signed with the Ejido Grecia in June 2008.²⁰ As of September 2008, Counsellor Challborn’s report indicates, “Blackfire tells me the State of Chiapas has committed \$1.3 million to various projects, and have actually started work. Relations with ejido are back to normal, and work is progressing.”

The company, however, again turned to the Embassy for assistance: “Another issue they have is explosives: apparently these are tightly controlled by government (for obvious reasons), and there is only one certified supplier and that supplier is unreliable [...] I said I could not promise anything, but would enquire further here,”²¹ wrote Challborn. An attached email from a company representative states, “I know all of the issues down here and why the system is set up the way it is,” but requests assistance in obtaining its own explosives permits. “We are fine with having the military around to secure the explosives and we just need to have some form of connection in the government to make this happen for us sooner rather than later,” the representative added.²² The Embassy again stepped in to smooth the road for Blackfire by contacting Mexican government officials on its behalf to advise on the process for obtaining a private explosives permit from the state.²³

The Payback Mine

Blackfire Exploration is the only Canadian mining company that has put a mine into production in Chiapas, Mexico’s most southerly state. Its Payback Mine (“La Revancha,” in Spanish) operated for roughly two years. Canadian mining company Brigus Gold Corp (formerly Linear Gold) still holds mining concessions in Chiapas.

On June 23, 2008, Blackfire Exploration Mexico, a wholly-owned subsidiary of Blackfire Exploration, entered into a 10-year lease for land in the municipality of Chicomuselo in Chiapas.

For \$60,000 Mexican pesos per month – approximately \$6,000 – Blackfire leased 1,500 hectares of mountainous terrain on which to excavate an open-pit barite mine. The lease gave surface rights to land within Ejido Grecia, a small, rural community within the municipality of Chicomuselo.

Sources: 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.*, April 21, 2010; Blackfire online: <http://www.blackfireexploration.com/default.asp?id=14>; Brigus Gold Corp., *Annual Information Form*, March 28, 2012.

¹⁶ Access to information request A-2010-00758/RF1, page 000185.

¹⁷ Access to information request A-2010-00758/RF1, page 000184.

¹⁸ United Steelworkers, Common Frontiers, and MiningWatch Canada, *supra* note 3 at 7.

¹⁹ Access to information request A-2010-00758/RF1, page 000213.

²⁰ United Steelworkers, Common Frontiers, and MiningWatch Canada, *supra* note 3 at 7.

²¹ Access to information request A-2010-00758/RF1, page 000184.

²² Access to information request A-2010-00758/RF1, page 000185.

²³ Access to information request A-2010-00758/RF1, page 000183-000185 and 000187-000191.

From the documents released, it appears clear that, at least during the initial stages of Blackfire's operation, Embassy support was essential to the company's success in starting the mine, and that its support included diplomatic pressure on Chiapas state officials. The Embassy seems not to have encouraged compliance with CSR standards, let alone required it as a condition to obtain its assistance. There is no indication of the Embassy having followed up on the issues raised regarding the lack of adequate consultation with affected communities; instead, the Embassy intervened with the state government to help bring the mine into operation.



Posters on Canadian Embassy in Mexico City. July 2009. Credit: Tamara Herman.

Embassy Supports Blackfire Through Escalating Conflict

“The Canadian Embassy intervenes regularly with Mexican officials to encourage the resolution of disputes, which often take the form of a blockade of the access road to the mine.”²⁴
– Confidential briefing note produced following the murder of Mariano Abarca

In the documents released by DFAIT, the Government of Canada describes the role of embassies in dealing with conflicts around Canadian companies as one of “foster[ing] informed debate without being ‘in front’” and “facilitat[ing] dialogue without getting ‘in the middle.’”²⁵ Nonetheless, as conflict grew around Blackfire Exploration’s operations in Chiapas and local community leader Mariano Abarca took on a prominent role in opposition to the mine, the same documents reveal that the Embassy took an active troubleshooting role on Blackfire’s behalf, dismissing concerns raised by affected communities and promoting Blackfire’s characterization of community resistance as dangerous and potentially criminal.

As outlined above, the Embassy was aware of tensions between Blackfire and local communities from as early as its visit to Chiapas in 2007. In October 2008, the Embassy obtained a copy of a presentation that was circulating locally in Chiapas expressing opposition to the company.²⁶ By October 2009, it reported having knowledge of a three-and-a-half month blockade against Blackfire’s operations in 2008, as well as a two-month blockade in 2009.²⁷

Embassy records reveal an awareness of the rising tensions connected to the Payback mine in the following months. In April 2009, an Embassy media scan picked up news from *La Jornada* newspaper about a 3,000-strong Catholic march in Chiapas that targeted Blackfire and demanded the cancellation of mining permits authorized within the state.²⁸ By fall, the Embassy was also aware of a two-month blockade in June and July of 2009, during which the company’s usual transport route to the mine site was interrupted²⁹ – although, according to locals, the company continued operating during this time via an alternate road, passing by the Central Park in Chicomuselo.³⁰

In its internal documents, the Embassy characterizes the blockades as opportunistic attempts to extract more money from Blackfire, even while noting a range of community complaints including the environ-

The Embassy’s General Perspective on Mining Conflicts in Mexico

According to an Embassy briefing note, “Mining projects in Mexico face some unique challenges, notably collective land ownership (ejidos), a perceived imbalance in tax sharing wherein the federal government receives all the revenues (although states receive important federal transfers, there are local perceptions that they do not receive their due, especially with regard to resource extraction).

There is also some traditional opposition in some sectors (including the resource sector) in Mexico to either private and/or foreign investment.

These challenges are in addition to the challenge of addressing environmental impacts which all mining projects face.” [1]

[1] Access to information request A-2010-00758/RF1, page 000003 and 000004.

²⁴ Access to information request A-2010-00758/RF1, page 000358.

²⁵ Access to information request A-2010-00758/RF1, page 000013.

²⁶ Access to information request A-2010-00758/RF1, page 000186.

²⁷ Access to information request A-2010-00758/RF1, page 000213.

²⁸ Access to information request A-2010-00758/RF1, page 000197.

²⁹ Access to information request A-2010-00758/RF1, page 000213.

³⁰ Correspondence between MiningWatch Canada and Otros Mundos Chiapas, February 2013. During this period, the Embassy estimated that it was the target of protests regarding Canadian mines between four and six times per year, described as typically peaceful. Access to information request A-2010-00758/RF1, page 000258.

mental impacts of open-pit mining. “Blackfire is being challenged by the ejidos and in Chicomuselo to give more money above and beyond the agreements that Blackfire has in place,” the Trade Commissioner concluded.³¹

In late July 2009, a delegation from the municipality of Chicomuselo travelled 13 hours to Mexico City in order to participate in a 36-hour sit-in in front of the Canadian Embassy.³² The records released from DFAIT do not contain any reference to that particular demonstration, but independent media reports and an online video of the protest shows community leader Mariano Abarca speaking to an Embassy public

Attacks & Arrest of Mariano Abarca

When the Canadian civil society delegation visited Chiapas in March 2010, it heard that Abarca had been attacked while at home with his family in August 2008. According to reports, two Blackfire employees wearing company vests arrived at Abarca’s home, held a gun to the head of his wife, and beat him and one of his sons. [1] Individuals associated with the attack seem to have been charged – but not until over one year after the incident, after Abarca had already been killed. [2]

In July 2009, Abarca and others travelled to Mexico City, where he told an embassy worker that community activists had been threatened for taking a stand and that the company had been using workers as “shock troops.” [3] In a later interview, he added that the municipal president, Julio Cesar Velázquez Calderón, had also received threats from Blackfire employees, who told him that they would bring an end to an activist blockade if he did not. According to Abarca, officials soon after informed blockaders that they were breaking the law. [4]

In August 2009, as Mariano left the primary school in Chicomuselo where he was arranging space for a meeting of the Mexican Network of Mining-Affected Communities that would include national and international participation, he was approached by plain-clothes personnel who asked if he would “negotiate” about the mine. When he said he could not talk with them alone, he was approached by state police in military vehicles, detained and taken to the state capital, Tuxtla Gutiérrez. [5] His arrest had been triggered by Blackfire’s Public Relations Manager. [6] He was held for investigation without being charged for eight days. [7]

In September 2009, members of the Ejido Nueva Morelia tried to block the way of the company, demanding payment for barite that the company was extracting without permission from alongside the road. In their statement following the event, ejido members report withdrawing after receiving death threats from mine workers who bore firearms, knives, and heavy machinery, and called on the federal government to order the company’s withdrawal. [8]

[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.*, April 21, 2010 at p.11.

[2] Description of sentence against José Caralampio López Vázquez for assault against Mariano Abarca and family: Juzgado Mixto de Primer Instancia del Distrito Judicial de Motozintla, Chiapas, Sentencia por Lesiones y Robo con Violencia, 4 May 2010.

[3] “Mariano Abarca Frente a la Embajada Canadiense” YouTube (July 22, 2009) online:

<http://www.youtube.com/watch?v=zwGavLzTob8>.

[4] “Mariano Abarca Roblero, REMA, Chicomuselo, Chiapas” YouTube (3 December 2009) (based on an interview recorded in September 2009) online: <http://www.youtube.com/watch?v=6UUvYfZPKxQ>.

[5] Ibid.

[6] Public Attorney’s Initial Assessment of Blackfire complaint against Mariano Abarca: Procuraduría General de Justicia del Estado, Fiscalía de Distrito Fronterizo Sierra, Fiscalía del Ministerio Público de Chicomuselo, Chiapas, Averiguación Previa Número 00033/FS10/2009.

[7] United Steelworkers, Common Frontiers, and MiningWatch Canada, *supra* note 1 at 11.

[8] Statement by the Ejido Nueva Morelia against Black Fire, 7 September 2009.

³¹ Access to information request A-2010-00758/RF1, page 000214.

³² Tamara Herman, “Anti-Mining Groups Stage 36 Hour Sit-In at Canadian Embassy, Mexico City” Media Coop (July 27, 2009) online: <http://www.minesandcommunities.org/article.php?a=9375&l=1>.

relations official on July 22, 2009.³³ He explains that the company had broken its promises to provide work to everyone in the Ejido Grecia, and to carry out some 20 projects; that infrastructure in Chicomuselo had been damaged by the company's trucks; and that the community was highly concerned about environmental contamination given the importance of the rivers that flow from the Sierra Madre highlands of Chiapas.

On film, Abarca also alleges that Blackfire was using some of its approximately 40 workers as 'shock troops' against protesters. He concludes by stressing that community members who spoke out about problems were at personal risk: "Some of us in the movement have received threats and we don't think it's fair that foreigners come in creating conflict, while taking the wealth back to their country."³⁴

Three weeks later, on August 17, undercover police detained Abarca acting on a complaint filed by Blackfire's Public Relations Officer.³⁵ Abarca was held without charge for eight days.³⁶ During this time, the Embassy was flooded with 1,400 emails in Spanish and English expressing support for Abarca and concerned that he had been kidnapped.³⁷

The portrait of the Embassy's response is illustrative of its deeply one-sided perspective of the situation and little engagement with the concerns reiterated in the letters or expressed to the Embassy during the July protest in which Abarca participated. By August 19, the Embassy began seeking clarification about what was taking place with the Secretary of Tourism and International Affairs of the State of Chiapas, the State Human Rights Commission, and Blackfire,³⁸ concluding that the detention was "a legal arrest for blockading a road to the Blackfire barite mine site." By August 25, it had also contacted Mexico's federal Ministry of Economy, the office of the Deputy Minister of Government, and the Canadian Chamber of Commerce.³⁹

During this time, the Embassy appears to have been motivated in large part by concern about the possible impact of negative publicity on Canadian business interests in Mexico: "We did this first to establish the facts, as well as to signal our concern with relevant authorities and players about any allegation of illegal activity surrounding Canadian investments in Mexico,"⁴⁰ Challborn reported. There is no record in the documents that, beyond ascertaining the nature of the arrest with Mexican authorities, the Embassy engaged with the concerns expressed in the flood of correspondence. Instead, it appears to have accepted the company's allegations against Abarca, which ultimately turned out to be unsubstantiated.

The documents related to the arrest reveal that Abarca's detention came in response to a complaint filed by Blackfire's Public Relations Officer. The complaint alleged Abarca was responsible for the crimes of "illicit association, organized crime, attacks on communication routes, damages against the company and disturbing the peace, and threats against bodily integrity, as well as collective integrity and the integrity of state heritage."⁴¹ Abarca was released without charge for lack of evidence after being held for eight

³³ "Mariano Abarca Frente a la Embajada Canadiense" YouTube (July 22, 2009) online: <http://www.youtube.com/watch?v=zwGavLzTob8>. See also Tamara Herman, *supra* note 43.

³⁴ "Mariano Abarca Frente a la Embajada Canadiense," *supra* note 44.

³⁵ Public Attorney's Initial Assessment of Blackfire complaint against Mariano Abarca: Procuraduría General de Justicia del Estado, Fiscalía de Distrito Fronterizo Sierra, Fiscalía del Ministerio Público de Chicomuselo, Chiapas, Averiguación Previa Número 00033/FS10/2009.

³⁶ United Steelworkers, Common Frontiers, and MiningWatch Canada, *supra* note 3 at 11.

³⁷ Access to information request A-2010-00758/RF1, page 000026.

³⁸ Access to information request A-2010-00758/RF1, page 000199.

³⁹ Access to information request A-2010-00758/RF1, page 000204.

⁴⁰ Access to information request A-2010-00758/RF1, page 000204.

⁴¹ Public Attorney's Initial Assessment of Blackfire complaint against Mariano Abarca: Procuraduría General de Justicia del Estado, Fiscalía de Distrito Fronterizo Sierra, Fiscalía del Ministerio Público de Chicomuselo, Chiapas, Averiguación Previa Número 00033/FS10/2009.

days.⁴² The Embassy seemed to know that the company had filed the complaint that led to his arrest: Challborn reported that Abarca “is known to the company” and that the company “pressed the charges” against him for damages.⁴³

Instead, the Embassy undertook to advance Blackfire’s perspective to the Mexican government while Abarca was in detention. On August 21, the Embassy received a Spanish-language email from Blackfire indicating that protests against it and other mining companies were being planned for August 29 and 30.⁴⁴ The writer claimed that groups involved are “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.”⁴⁵ The documents contain no record of the sources of Blackfire’s stated fears, beyond the fact that the company was sometimes subject to blockades. The note prompted quick action. According to Counsellor Challborn on August 25, “With Blackfire’s approval, we have shared this letter with both the federal Economy Ministry and the state of Chiapas Ministry of Government.”⁴⁶ A partially redacted section in this same document suggests that “Blackfire’s concerns” may also have been presented to other branches of government.⁴⁷

After Abarca’s release on August 25,⁴⁸ Counsellor Challborn summarized the outcome in inaccurate terms that reflected Blackfire’s perspective: “We understand that charges have not been officially dropped,” he wrote, which “may be a positive signal that a commitment has been made to keep planned demonstrations peaceful, but we simply do not know.”⁴⁹ Amnesty International’s report summarized Abarca’s release as follows: “[Abarca] was held in ‘pre-charge’ detention (*arraigo*) for his participation in protests but he was released unconditionally on 25 August because there was no evidence that the protest in which [Abarca] was participating was violent or threatened public order.”⁵⁰

Challborn’s summary of events continued: “The company feels very strongly that many of these groups (at least those active in Chiapas) are simply trying to ‘shake down’ mining companies for money. Blackfire states that all it wants to do is operate a legally constituted mine that employs some 80 workers⁵¹ from the community (and expects to hire more), has made investments of benefit to the community, makes significant local service purchases, and which (counter to claims made by some of the anti-mining groups) does not/not [sic] contaminate the environment. (To note, barite is a soft mineral like limestone and as such does not need chemical extraction agents). . . . The company has made some public affairs efforts to counter the claim of environmental damage, but feels it is in a losing battle. The company, both verbally and in its letter, has expressed deep concern for what could happen August 28-30, the days of the scheduled anti-mining protest, including fear for the safety of Canadian (three at the site) and local employees, or even a potential take-over of the mine site.”⁵²

⁴² Amnesty International, “Mexico: Protester’s Family at Risk after Killing” (December 3, 2009) online: <http://www.amnesty.org/en/library/asset/AMR41/062/2009/en/6843f8e3-b15a-4bee-a8c4-a92045c0c863/amr4106220109en.html>.

⁴³ Access to information request A-2010-00758/RF1, page 000208.

⁴⁴ Access to information request A-2010-00758/RF1, page 000722 (translated from Spanish).

⁴⁵ *Ibid.*

⁴⁶ Access to information request A-2010-00758/RF1, page 000204.

⁴⁷ Access to information request A-2010-00758/RF1, page 000209. The Embassy seems to have contacted the Secretary of Tourism and International Affairs of the state of Chiapas, the Deputy Minister of Government, the Chiapas Human Rights Commission, and the federal Ministry of the Economy, as well as the Canadian Chamber of Commerce.

⁴⁸ Access to information request A-2010-00758/RF1, page 000026.

⁴⁹ Access to information request A-2010-00758/RF1, page 000208.

⁵⁰ Amnesty International, “Mexico: Protester’s Family at Risk after Killing” (December 3, 2009) online: <http://www.amnesty.org/en/library/asset/AMR41/062/2009/en/6843f8e3-b15a-4bee-a8c4-a92045c0c863/amr4106220109en.html>.

⁵¹ The Embassy estimate of the number of workers differs from the community’s count of 50, as reported to the Canadian delegation in March 2010. United Steelworkers, Common Frontiers, and MiningWatch Canada, *supra* note 3 at 11.

⁵² Access to information request A-2010-00758/RF1, page 000208-000209.

Rather than a violent demonstration, an estimated 240 people met in the central park of Chicomuselo on August 29 and 30. The meeting was the second gathering of the Chiapas chapter of the Mexican Network of Mine-Affected Communities (REMA-Chiapas) that included international attendees.⁵³ Attendees denounced the lack of consultation with local communities and called for the cancellation of mining projects in Chiapas.⁵⁴

It seems clear that throughout the operation of the Payback Mine, the Canadian Embassy knew about conflict surrounding Blackfire's operations in Chiapas and made an effort to monitor the situation. However, the documents contain no evidence that the Embassy either stepped back to analyse the situation with a measure of objectivity, or provided Blackfire with critical feedback. Instead, it adopted and reinforced Blackfire's hostile view of community resistance and Abarca's leading role, which set the stage for the violence to come.

Potential Risks of Mining Barite

Chemical extraction agents are not the only source of environmental contamination from a mine site. When the 2010 civil society delegation interviewed local community members in the municipality of Chicomuselo, they heard complaints about silt and mud in water supplies. According to Environment Canada, "The discharge of effluents with high levels of suspended solids can cause a range of problems in aquatic environments that include impeded oxygen intake by fish and reduced light availability for aquatic plants." [1] Canada's Wastewater Systems Effluent Regulations correspondingly categorize "suspended solids" as a "deleterious substance" and set limits for the concentration at which they can be deposited. [2]

Waste rock from mining can be and often is a source of environmental contamination. The Framework for Responsible Mining notes that metals that had been bound in rock dissolve into water, soil, and air, once the rock has been broken up by mechanical extraction. [3] According to a study prepared by the government of Alberta, impurities associated with barite include aluminum oxide, arsenic, barium, calcium, copper, fluorine, iron (III) oxide, lead, manganese, silica, strontium sulphate, zinc, cadmium, mercury, or radium. [4]

Local community members complained to the 2010 delegation that they lacked expert assistance to adequately investigate their concerns. Given the lack of independent testing, it is not possible to confirm the presence or absence of such contaminants. The Chiapas environmental authority, however, made note of "oily matter" along the sides of one stream affected by the company's operations, and indicated that one of its rock piles was humid because it covered an underground water source. [5]

[1] Environment Canada, "Environmental Code of Practice for Metal Mines" (May 15, 2012) online: http://www.ec.gc.ca/lcpe-cepa/default.asp?lang=En&n=CBE3CD59-1&offset=5&toc=show#s3_3_1.

[2] Wastewater Systems Effluent Regulations (SOR/2012-139) online: <http://laws-lois.justice.gc.ca/eng/regulations/SOR-2012-139/FullText.html>.

[3] Centre for Science and Public Participation, "Framework for Responsible Mining: A Guide to Evolving Standards" (2005) online: <http://www.frameworkforresponsiblemining.org/>.

[4] Alberta Environment, "Soil Remediation Guidelines for Barite" (February 2009) online: <http://environment.gov.ab.ca/info/library/6298.pdf>.

[5] 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.*, April 21, 2010, at 35-36, online: http://www.miningwatch.ca/sites/www.miningwatch.ca/files/Chiapas_delegation_report_web.pdf.

⁵³ REMA, "II Encuentro REMA Chiapas: Declaración de Chicomuselo" (August 31, 2009) online: <http://www.otrosmundoschiapas.org/index.php/mineria/86-mineria/529-ii-encuentro-rema-chiapas-declaracion-de-chicomuselo.html>.

⁵⁴ *Ibid.*

Embassy Troubleshoots for Blackfire as Mining Debate Gains Momentum

"In the last two weeks, Post has intervened at senior levels to troubleshoot for four Canadian mining investments in Mexico. Post was successful in obtaining progress in all four cases."

- Embassy Trade Commissioner Paul Connors in an email entitled "Troubleshooting for Canadian Mining Companies," October 13, 2009 following a trip to Blackfire's Payback mine in Chiapas.⁵⁵

Amidst growing uncertainty over the mine's future, the Embassy sent a delegation to assess the situation and to lend a hand to Blackfire. There is no evidence that, aside from meeting with a well-known human rights organization not directly involved in the conflict, Embassy representatives consulted with any affected community groups. Both Abarca's family members and members of REMA-Chiapas confirm that they were not contacted. Instead, the Embassy appears to have been focused on advancing the interests of Canadian projects operating in the area.

In the months following the August meeting of REMA-Chiapas in Chicomuselo, opposition to mining in the state increased. On September 7, 2009, the Ejido Nueva Morelia, on whose land Blackfire's access road had been built, issued a statement expressing its opposition to Blackfire's project. In that statement, Ejido members claimed the company was extracting barite from their land without their permission, and that blockaders responding to this violation had been seriously threatened by mine workers.⁵⁶ On September 26, 2009, the Chiapas State Governor held a meeting with an estimated 2,500 people in attendance to discuss introducing a 4% tax on mining operations, hold a consultation about mining in Chiapas in November, stop protests until negotiations could take place, and hire experts to analyse environmental impacts.⁵⁷ 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."⁵⁸ Mining concessions are not within the purview of state officials to

Social Impacts

The March 2010 Canadian civil society delegation heard from local residents about various ways that the mining company had divided the community, among these:

- Approximately 50 people from the community were hired by the company to work at or guard the mine site. Some of these people also acted as shock troops used to intimidate any opposition to the Blackfire's operations among other community members;
- Some public authorities handle small payments from the company, but most community members see little or nothing of them;
- There is an increased religious divide between Catholics who question the Blackfire operation and its impact on the communities, and Evangelicals who back the company;
- There is also a growing divide between men and women, as public authorities let it be known that women living in poverty could lose their small bi-monthly state subsidies (*Oportunidades Mujeres*) if they opposed the mining operations.

Source: 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.*, April 21, 2010 at p.11.

⁵⁵ Access to information request A-2010-00758/RF1, page 000213 – 000216. Other mining investments referred to include Genco Resources (La Guitarra Project), Fortuna Silver (San José project) and Oromex (Tejamen project).

⁵⁶ Communiqué issued by Ejido Nueva Morelia: "En El Ejido Nueva Morelia Municipio de Chicomuselo, Chiapas," dated September 7, 2009, with seal affixed stating "Comisariado Ejidal" Col. Nueva Morelia [...] de Chicomuselo."

⁵⁷ Boletín del Frente de Trabajadores de la Energía de México, "Sabines amenaza y provoca al pueblo" (September 26, 2009) online: <http://www.papelrevolucion.com/2009/09/boletin-2089-de-gobierno-de-chiapas.html>.

⁵⁸ "Participan legisladores federales y locales, de todos los partidos, organizaciones y sociedad civil, Iglesia Católica y el Gobernador de Chiapas," *El Heraldo de Chiapas* (November 24, 2009) online: <http://www.oem.com.mx/elsoldetlaxcala/notas/n1415429.htm>. Translated from Spanish.

grant, and some activists raised questions about the governor's sincerity; nonetheless, the state governor's actions indicate that the formerly localized conflict had put mining on the state agenda.⁵⁹

Embassy documents do not contain a record of any of these broader political developments, but they do reveal that a delegation of embassy officials and the Director of the Alberta Office were aware of local developments; these individuals visited Chiapas between October 4 and October 6, 2009 "to discuss the negative climate that Blackfire and other Canadian mining companies are facing."⁶⁰ Trade Commissioner Paul Connors and the Second Secretary of Political Affairs Lynn Hartery were among those who participated. They visited the mine site and held a meeting with the President of Blackfire Exploration.

Secretary Hartery also met with the Chiapas State Commission for Human Rights, the Centre for Human Rights Fray Bartolome de las Casas, the Department of Indigenous Communities for the State of Chiapas, and the Coordinator of the Canada Fund for Local Initiatives. Within Secretary Hartery's minimally redacted report, only the record of the meeting with the Centre for Human Rights Fray Bartolome de las Casas makes any reference to the conflict with Blackfire. She wrote: "It was not clear to me the position of the organization on mining, only that in principle, they are against a policy of 'no consultation.'"⁶¹ The report does not indicate whether the NGO's representatives felt that local communities had not been adequately consulted about Blackfire's mine. Hartery recorded that she left a copy of a manual the Embassy had developed⁶² "that explains the mining process to communities and the rights and obligations of the parties involved under Mexican law."⁶³ She also seems to have indicated that the company "is quite open to visitors to the mine,"⁶⁴ although the name to whom this sentiment was attributed is redacted. Finally, Hartery probed about how involved the Fray Bartolome organization might be in local protests, specifically asking about its work with the Emiliano Zapata Campesino Organization (OCEZ by its Spanish initials),⁶⁵ which Blackfire had alleged was planning a blockade.⁶⁶

With respect to the mine visit, Paul Connors' Trade Commissioner's report contains only positive findings about Blackfire's social impact in the Chiapan community: "c. 100 persons were employed by Blackfire, most from Chicomuselo, and ... Blackfire had expanded and upgraded, and was now maintaining 28 km of gravel road for benefit of both the mine and locals along the route," it records.⁶⁷ He interpreted the protests by the Ejidos and the municipality of Chicomuselo to be in the interest of "more money above and beyond the agreements that Blackfire has in place," and added that "this situation is faced by almost all of the Canadian mines in Mexico once they achieve production."⁶⁸ He also reported hearing

⁵⁹ "Pactan diputados y senadores reformas en materia minera," *Noticias de Chiapas* (November 24, 2009) online: <http://www.noticiasdechiapas.com.mx/archivos/pdfs/edicion%2024%20de%20Noviembre%202009.pdf>.

⁶⁰ Access to information request A-2010-00758/RF1, page 000213.

⁶¹ Access to information request A-2010-00758/RF1, page 000218.

⁶² A scanned copy of this manual was obtained from Otros Mundos Chiapas. It is called "Manual Informativo sobre Minería en México" and is copyrighted to the Embassy of Canada in Mexico in 2009. It is modelled after the "Mining Information Kit for Aboriginal Communities" produced in 2006 by Natural Resources Canada et al. (Online: http://www.mining.ca/www/media/lib/MAC/Documents/Publications/English/Mining_Toolkit2006E.pdf) MiningWatch Canada qualified its English-language predecessor as "an insult to Aboriginal people who are struggling to deal with mining impacts and issues in their territories." (Online: <http://www.miningwatch.ca/insult-aboriginal-people-critique-mining-information-kit-aboriginal-communities>). Like the original document, the 2009 manual glosses over the negative impacts that frequently occur at the community level, providing only positive examples based on company input, with little analysis about what to do when things go wrong and lacking resources for Indigenous communities and organizations.

⁶³ Access to information request A-2010-00758/RF1, page 000218.

⁶⁴ *Ibid.*

⁶⁵ *Ibid.*

⁶⁶ Access to information request A-2010-00758/RF1, page 000213.

⁶⁷ Access to information request A-2010-00758/RF1, page 000214.

⁶⁸ Access to information request A-2010-00758/RF1, page 000211.

that the Chiapas Government would “not support new mining projects unless 4% royalty is effected and dedicated to the local communities.”⁶⁹

The group’s visit to the mine reinforced the Embassy’s assessment that the mine’s environmental impact was modest. “The environmental disturbances are (i) removal of vegetation and top soil to get at the deposit, and (ii) dirt in rain run-off water caused by the exposed soil. There are no chemicals used in the process. The company provided Post with copies of its environmental filing, showing that the environmental impacts are within acceptable limits.”⁷⁰ In an email that appears to be directed to a Blackfire representative in Canada, Trade Commissioner Connors thanks the recipient for the trip and congratulates “the entire team at Blackfire for getting this mine permitted and up-and-running. [line blacked out] We very much enjoyed the visit to the mine, and we now have the images in our head of the reality of your operation, particularly its modest environmental footprint.”⁷¹

Environmental Impacts

When the March 2010 Canadian civil society delegation visited Blackfire’s Payback mine in the mountains of the Ejido Grecia in the municipality of Chicomuselo, it found a small mine consisting of two open pits located at substantial elevation at the head of a valley. The forest had been bulldozed and earth at the site had been piled in mounds ranging from 12 to 20 metres high with the sides sloping steeply downward.

At the mine site, several open buckets with unknown substances in them were observed, and abandoned machinery – including backhoes and excavators – remained in two locations. Blackfire had also maintained a storage area some seven kilometres from the mine site, where the delegation found six 200-litre drums of used oil being stored along with used filters and cloths that were impregnated with heavy-duty oil.

The delegation heard from community members living downhill from the mine who were concerned about various environmental impacts, including:

- Soil erosion and fissures in the earth could potentially lead to a landslide in heavy rain or due to seismic activity
- Some mountain streams that provide drinking water had dried up since the arrival of the mine
- Silt and mud had contaminated some rivers so as to cause rashes on people who used them for bathing, clothes could no longer be washed in those rivers, and fish had died
- Cattle were dying at a higher rate on pastures downstream
- Lack of advice or assurances regarding the environmental impact of the mine, or access to expert assistance when facing problems

Source: 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.*, April 21, 2010 at pp. 8-10.

In his follow-up to the visit, Connors took the opportunity to provide the company with assistance. He provided a report on his meeting with the Secretary General of Government of Chiapas, and suggested for a second time that Blackfire join the Mining Task Force. Between redactions, it is clear he confirmed to Blackfire that he had raised the company’s concern about OCEZ’s anticipated protest in December with

⁶⁹ *Ibid.* Nonetheless, according to Otros Mundos Chiapas, the growing protests in Chicomuselo and other parts of the state were taking place in parts of the municipality and the state that were not recipients of benefit agreements with Blackfire and that were speaking out against mining entirely. Correspondence between author and Otros Mundos Chiapas, February 2013.

⁷⁰ Access to information request A-2010-00758/RF1, page 000213.

⁷¹ Access to information request A-2010-00758/RF1, page 000210.

government officials. He offered, “The Ambassador may have occasion to be in Chiapas in December and if so, would see the Governor. If a meeting happens, we will check with you and [name redacted] to see what the current situation is, and to fashion appropriate messaging.”⁷²

Connors then sent a note to Mexico’s federal Ministry of Economy, providing it with Blackfire’s contact information in Chiapas and mentioning that the Ejidos, the municipality, and the Chiapas State Government were seeking increased social expenditures. On behalf of Blackfire, he explained to the Mexican government that the company “has not recovered its investment/costs to build the mine. The company will think about all of these demands, but clearly, there are limits.” Given anti-mining movements in the area, the trade commissioner added, “the company (and the Embassy) believe that we’re going to have new problems/blockades in the future.”⁷³

The Embassy was aware affected communities were unhappy with the mine, specifically infrastructural and environmental damage. The Embassy had previously been presented with allegations that company workers had been using “shock troops” against protestors.⁷⁴ Despite this, the Embassy failed to investigate allegations further with community members and NGOs. Instead, the Embassy dedicated its resources and delegation’s time to fact-finding and lobbying that served the interests of the Canadian company in the face of growing resistance.



Erosion at the Payback mine, March 2010. Credit: Dawn Paley.

⁷² Access to information request A-2010-00758/RF1, page 000211-000212.

⁷³ Access to information request A-2010-00758/RF1, page 000720 (translated from the Spanish).

⁷⁴ “Mariano Abarca Frente a la Embajada Canadiense,” *supra* note 44.

Embassy Support When Trouble Strikes

Canada “regrets this act of violence but the Embassy of Canada is not involved in the investigation. It is a matter for Mexican officials.”

– Canadian Embassy spokeswoman Gabriela Hernandez speaking with The Associated Press on December 3, 2009⁷⁵

“The Government of Canada had no knowledge of potential acts of violence against Mr. Abarca.”
– “Suggested Reply” to press queries, from briefing notes for government officials following Mariano Abarca’s murder⁷⁶

On November 27, 2009, Mariano Abarca was shot in the back at close range by a male assailant outside of his house.⁷⁷ Orlando Vasquez, who witnessed the murder and was also shot during the attack, stated that he could not identify the shooter. He said afterwards that he was convinced that Abarca was assassinated for his opposition to the Blackfire mine.⁷⁸ Abarca had previously stated in a videotaped interview that if any harm should befall him, his family, or other activists, the community would blame Blackfire.⁷⁹

By December 2, the Embassy was aware that three individuals associated with Blackfire had been detained and that all of the company’s three Canadian employees had left Chiapas – at least two of whom had left the country.⁸⁰

Threats & Murder

On August 15, 2009 – two days before Abarca was taken into custody and held without charge – Jose Roblero Carlos Mendes complained to the Municipal courthouse that Blackfire employee, Ciro Roblero Perez, had called to tell him that he should not oppose the mine and that he had been looking for Abarca in order to break him into pieces. He further alleged that Perez had told him that he and others were on a blacklist belonging to the mining company. Five days later, Perez made a statement retracting the threats. [1]

On November 23, Abarca filed a formal complaint to the police about this threat, requesting an investigation into serious threats against his life. In the complaint, he accuses Perez, as well as Blackfire’s Public Relations Manager Luis Antonio Flores Villatoro and “those responsible” for them, of issuing threats.

He wrote, “I ask you to take a statement from Mr. Ciro Roblero Perez and Nestor Velazquez Ortiz [town councillor], so that they make a statement about these threats, explaining to you that I have a well-founded fear that they could hurt me based on the threats against me.” [2]

Summons had only begun to be issued when, five days later, Abarca was shot dead. [3] A human rights complaint filed in March 2010 by a former lawyer for Blackfire alleges that a state government official promised a Blackfire executive that Abarca would be detained and, if necessary, eliminated, in order to prevent roadblocks. [4]

[1] Hand-written statement signed by Ciro Roblero Pérez on August 20, 2009

[2] Complaint by Mariano Abarca Roblero to the Police/Public Prosecutor, 23 November 2009

[3] “Summons Ciro Roblero Perez on 3 November 2009 at 12PM; “Summons by the Public Prosecutor of Chicomuselo, dated 26 November 2009

[4] Complaint by Horacio Culebro Borrayas to the National Human Rights Commission dated 1 March 2010 (received on 2 March 2010), at Tuxtla Gutierrez, Chiapas

⁷⁵ “Canadian mine staff questioned in activist’s slaying, “The Associated Press (December 3, 2009) online: <http://www.minesandcommunities.org/article.php?a=9719>.

⁷⁶ Access to information request A-2010-00758/RF1, page 000333. The “Anticipated Question” to which the reply is directed: “Was the Government warned of potential violence surrounding the La Revancha mine in Chiapas?”

⁷⁷ United Steelworkers, Common Frontiers, and MiningWatch Canada, *supra* note 3 at 12.

⁷⁸ *Ibid.*

⁷⁹ Otros Mundos Chiapas, *Mexico a Cielo Abierto* (2010) online: http://archive.org/details/MexicoACieloAbierto_124.

⁸⁰ Access to information request A-2010-00758/RF1, page 000249.

In its messaging, the Embassy and other Canadian government officials shied away from urging a full investigation, despite high levels of impunity in Mexico, and sought to distance the Embassy from the proceedings.

Initially, in preparation for the upcoming visit of then-Governor General Mich  lle Jean to Chiapas, Ambassador Rishchynski advised: “she will need to acknowledge incident; call on the authorities to bring the

Murder Investigation

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, [1] only one of whom was jailed in what is now widely believed to be a case of political persecution. [2]

Despite the 2008 assault, the record of threats and official complaints, and Blackfire’s role in having Abarca wrongly detained in August 2009, it appears that Blackfire was apparently never the subject of a formal investigation. By late January 2010, the Canadian Embassy reported that the Chiapas Government had indicated the company was not suspected. [3]

Nevertheless, the individuals detained or arrested in connection to the shooting in December 2009 all had links to the company: one was a Blackfire employee, one a contractor for Blackfire, and one a “former” contractor, [4] according to the Embassy. [5] Abarca family members know of only one – Jorge Carlos Sepulveda Calvo, the “former contractor” – who was ever prosecuted for the murder. They report that he was convicted of the shooting and sentenced to 24 years in prison. [6]

Of the other two, Caralampio Lopez Vazquez, the “employee” (head of personnel and security for Blackfire and a translator and driver for a Blackfire executive), was prosecuted for the assault and robbery of Abarca and his family members in August 2008. Abarca’s family members understand that he was fined for this earlier offence and received two-and-a-half years in prison. The third initial suspect, Ricardo Antonio Coutino Velasco – a “contractor,” who owned a truck that he drove for Blackfire – is understood to have been released after a month. [7]

Three other individuals connected with the company were arrested in the months following the shooting. One seems to have been charged with the August 2008 beating, [8] and two are considered to be cases of political persecution by community members. [9] Of the latter, one filed a human rights complaint alleging political persecution, [10] a claim that the well-respected national weekly magazine *Proceso* found to be plausible based on the Governor’s track record of repressing political opponents. [11] This individual, who provided legal services to the company for several months, also believes the Governor’s office to be complicit in the murder of Mariano Abarca. [12]

[1] Otros Mundos Chiapas, “Los Responsables de la Empresa Minera Canadiense Blackfire” (March 18, 2010) online: <http://otrosmundoschiapas.org/index.php/mineria/99-mariano-abarca.html?start=14>.

[2] Represi  n al estilo Sabines,” *Proceso* (November 25, 2012) 48-51, archived online: <http://democratanortedemexico.blogspot.ca/2012/11/represion-al-estilo-sabines.html>.

[3] Access to information request A-2010-00758/RF1, page 000892-893.

[4] Access to information request A-2010-00758/RF1, page 000338.

[5] 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* (April 21, 2010) at 15. See also Access to information request A-2010-00758/RF1, page 000313.

[6] Correspondence between MiningWatch Canada and Abarca family, September, 2012.

[7] *Ibid*.

[8] Description of sentence against Jos   Caralampio L  pez V  zquez for assault against Mariano Abarca and family: Juzgado Mixto de Primer Instancia del Distrito Judicial de Motozintla, Chiapas, Sentencia por Lesiones y Robo con Violencia, 4 May 2010.

[9] United Steelworkers, Common Frontiers, and MiningWatch Canada, *supra* note 4 at 15.

[10] “Complaint by Horacio Culebro Borrayas to the National Human Rights Commission dated 1 March 2010 (received on 2 March 2010), at Tuxtla Gutierrez, Chiapas.

[11] “Represi  n al estilo Sabines,” *supra* note 2.

[12] *Ibid* at 48-51.

perpetrator to justice, repudiate those who commit acts of violence, and underline the need to respect human rights and the rule of law.”⁸¹ In keeping with this, a December 1 set of briefing notes included as a “Key Message” that “The Government of Canada urges Mexican authorities to undertake a complete judicial investigation, as required under Mexican law, to [ascertain] the facts related to Mr. Abarca’s death and to bring the perpetrators of the crime to justice; Canada supports human rights and respect for the rule of law.”⁸²

Nonetheless, in an internal discussion, the Trade Commissioner suggested toning the messaging down: “there is sensitivity here to saying that Canada ‘urges’ Mexico [to undertake investigation] as it could suggest an expectation that without our urging there would not be an investigation.”⁸³ However, Amnesty International was reporting at this time about widespread impunity in Mexico for attacks on human rights defenders, due in part to a lack of “substantial efforts [...] to investigate their cases or provide effective protection,” and persistent “impunity for past and recent human rights violations.”⁸⁴



Epitaph for Mariano, November 2012. Credit: Jen Moore

Another set of briefing notes dated December 8, 2009 demonstrates that the Embassy indeed shifted in this direction. Its “Key Messages” include much weaker statements: “The Embassy of Canada in Mexico is not involved in the investigation; This is a matter for Mexican officials.”⁸⁵ This is the message that

⁸¹ Access to information request A-2010-00758/RF1, page 000225.

⁸² Access to information request A-2010-00758/RF1, page 000327.

⁸³ Access to information request A-2010-00758/RF1, page 000245.

⁸⁴ Amnesty International, *Human Rights in United Mexican States: 2009*, online: <http://www.amnesty.org/en/region/mexico/report-2009>.

⁸⁵ Access to information request A-2010-00758/RF1, page 000001-000002.

Embassy officials provided to the Canadian press when activists protested in front of the Embassy on December 3, 2009.⁸⁶

Both sets of briefing notes deny that the Embassy had any knowledge of potential violence against Abarca.⁸⁷

Elsewhere, however, Blackfire was facing harsher critique. On December 8, 2009, operation of Blackfire's Payback mine was suspended after a State Environment Ministry inspection. The Embassy Trade Commissioner wrote that the closure was ordered: "for (1) not having a permit for the road up the side of the mountain from the landing to the mine (2) air-born dust pollution from its trucks travelling on the gravel road (3) no permit for carbon dioxide emissions from the equipment."⁸⁸ At this time, the Embassy also received further details on the investigation into Abarca's murder: one Blackfire employee, one contractor, and one former contractor had been detained.⁸⁹

A day after the mine's suspension, then-Governor General Mich  lle Jean and then-Minister of State for the Americas Peter Kent arrived for their long-planned visit to Chiapas. Despite concerted efforts, REMA-Chiapas could not secure a meeting with the Canadian representatives during their visit. The Canadian Press reports Kent having publicly stated such a meeting "was impossible to schedule."⁹⁰ Documents show, however, that a last-minute change did take place in order to accommodate a cultural event added by the state.⁹¹

Mine Suspended

On December 7, 2009, The Secretariat for the Environment of the Government of Chiapas closed the Payback mine after an inspection the community had demanded. It noted oily streams, excessive dust, and steep roads. [1] Additional reasons given for the closure include the fragile ecosystem high in the Sierra Madre mountains of Chiapas, since an open-pit mine could lead to deforestation and subsequent erosion causing short, medium, and long-term impacts from which the area would never recuperate, including:

- Climate change impact given disturbance to soil and vegetation, leading to the release of greenhouse gases
- Nascent surface and subsurface water sources were affected, and hydrological cycles interrupted
- Loss of biological diversity
- Heightened risks for area below the mine due to materials-laden runoff from the rain
- Danger posed by the saturation of the earth on the mountainside
- Risk to human habitation should there be a future event of significance [2]

[1] Inspection Report, translated in 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.*, April 21, 2010 at 36-37.

[2] *Ibid*, at 12.

Unable to meet with the Canadian representatives, REMA-Chiapas organized a press conference and a march that obliged the Governor General to speak with the press while she was in San Crist  bal de las Casas.⁹² In her remarks, the Governor General condemned the violence, but, in keeping with the briefing

⁸⁶ "Canadian mine staff questioned in activist's slaying," *supra* note 35. Brent Popplewell, "Mexicans protest activist's death," *Toronto Star* (December 4, 2009). Both archived at <http://www.minesandcommunities.org/article.php?a=9719>.

⁸⁷ Access to information request A-2010-00758/RF1, page 000328 and 000002.

⁸⁸ Access to information request A-2010-00758/RF1, page 000276.

⁸⁹ Access to information request A-2010-00758/RF1, page 000313.

⁹⁰ Dominique Jarry-Shore, "Activist's murder 'deplorable,' G-G says during Mexican visit," *Canadian Press* (December 9, 2009) archived online: <http://www.minesandcommunities.org/article.php?a=9719>.

⁹¹ Access to information request A-2010-00758/RF1, page 000435.

⁹² La Jornada, "Condena gobernadora de Canad   asesinato de activista en Chiapas," (December 10, 2009) archived online: <http://www.jornada.unam.mx/2009/12/10/index.php?section=estados&article=035n1est>.

documents produced by the Embassy, fell far short of urging a full and impartial investigation: “We find it deplorable, inexcusable... We will be following this situation closely with the firm hope and conviction that justice will be served,”⁹³ she said. Minister Kent, for his own part, went as far as to imply support for Blackfire: “A couple of dozen [Canadian companies] are working in the resource area, specifically in the operational mining area,” he stated to the press during the visit. “In many cases our companies are held up and recognized as virtual models of corporate social responsibility.”⁹⁴

Earlier Embassy troubleshooting also served the company at this time. During an interview with Business News Network on December 9, 2009, Blackfire President Brent Willis referred to the Canadian government’s October visit to the mine mentioning how happy officials had been with their operation. When pressed about the murder, he stated that the company was not investigating the situation: “What employees do outside of the company is out of our control,” he said. Once environmental permitting was cleared up, Blackfire planned to “[move] forward unless the authorities feel Blackfire has something to do with this.”⁹⁵

Two days after the Governor General’s visit, *The Globe and Mail* published a damning account of Blackfire, reporting that it had been making payments into the personal bank account of the mayor of Chico-

Corruption Investigation

In March 2010, nine Canadian NGOs asked the RCMP to investigate Blackfire Canada under Canada’s *Corruption of Foreign Public Officials Act*. [1]

Six months after the request was filed, the Business & Human Rights Resource Centre, an international NGO, contacted Blackfire Canada about the allegations. Directly contradicting the 2009 complaint made by its own director, Blackfire Canada stated in its reply that it had never bribed or been extorted by the mayor.

Instead, it claimed that the funds transferred were contributions to a local town fair and for expenses of the municipal government, but that “unfortunately” its “charitable giving” was not used for its “intended purpose.” It also claimed that, in Chiapas, it is appropriate to write personal cheques to an elected official for public purposes. [2]

On July 20, 2011, RCMP raided Blackfire Canada’s corporate headquarters in Calgary seeking information related to the 2010 complaint. According to news reports, the RCMP warrant was obtained on allegations that the company had illegally paid the local mayor about \$19,300 to “keep the peace and prevent local members of the community from taking up arms against the mine.” [3]

In news reports, Blackfire Canada represented that it had transferred the money believing it was for public works, while the president of the Mining Association of Canada stressed that its members follow the law, but pointed out that Blackfire was not a member. [4] The RCMP investigation is ongoing.

[1] MiningWatch Canada, “Groups File Documentation With RCMP on Canadian Mining Company’s Involvement in Mexican Corruption Case (March 10, 2010) online: <http://www.miningwatch.ca/en/groups-file-documentation-with-rcmp-canadian-mining-company-s-involvement-mexican-corruption-case>.

[2] 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: <http://www.business-humanrights.org/Documents/Blackfire-response-re-Mexico-13-Sep-2010>.

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

[4] *Ibid*.

⁹³ Dominique Jarry-Shore, *supra* note 100.

⁹⁴ *Ibid*.

⁹⁵ Business News Network, “Shutdown in Mexico,” (December 9, 2009) online: <http://watch.bnn.ca/clip244497#clip244497>.

muselo.⁹⁶ The allegations first surfaced when Artemio Avila Cervera – Blackfire Mexico’s General Manager of Social Responsibility⁹⁷ and a corporate Director of Blackfire Canada – filed a complaint with the Chiapas State Congress in June 2009 alleging that the mayor of Chicomuselo had been demanding unofficial payments from Blackfire, establishing that the company had been paying them regularly. In the complaint, Avila Cervera stated that then-mayor Velázquez Calderón had been demanding payments to keep the local people from “tak[ing] up arms” against the mine.⁹⁸

In addition to a signed statement describing the alleged payments, Avila Cervera provided bank statements and cheque receipts corroborating 15 transactions to the mayor’s personal account.⁹⁹ According to the documentation, Blackfire Mexico paid the mayor at least 204,022.69 Mexican pesos between March 2008 and April 2009 – around \$20,000. According to Avila Cervera’s statement, Blackfire also gave airline tickets to the mayor, his family and his associates. It was only when the mayor began issuing “ridiculous” demands for “favours” – allegedly including a sexual encounter with a celebrity – that Blackfire did not want to continue the relationship, and reported him for extortion to Chicomuselo’s state government.¹⁰⁰

Canadian civil society organizations requested an RCMP investigation into Blackfire’s payments to the mayor under the *Corruption of Foreign Public Officials Act*.¹⁰¹



Memorial march for Mariano Abarca, Chiapas, November 2012. Credit: Jen Moore.

It seems to be only when this evidence of corruption came to light that the Trade Commissioner at the Canadian Embassy asked the Ambassador if he should suspend support for Blackfire. “Again, I would be grateful,” wrote Connors, “for direction on whether I should be engaging any longer with this company.”¹⁰² Ambassador Guillermo Rishchynski replied, “You will still need to track Blackfire developments, but suggest not initiating contact with [the company] on any matters unless directed by HQ, or if we decide collectively to do so from here. OK by you??”¹⁰³

As with Abarca’s murder, it appears the Embassy never questioned Blackfire about the payments, undertook its own investigation, or called upon Mexican authorities to investigate.

⁹⁶ Andy Hoffman, “Mayor blackmailed us, Canadian mining company says,” *The Globe and Mail* (December 11, 2009) online: <http://www.theglobeandmail.com/news/world/mayor-blackmailed-us-canadian-mining-company-says/article1205944/>.

⁹⁷ Otros Mundos Chiapas, “Los Responsables de la Empresa Minera Canadiense Blackfire,” March 18, 2010.

⁹⁸ Blackfire Exploration, “To: President of the Honourable Congress of the State of Chiapas” (June 15, 2009). Alberta Corporate Registration System, “Corporate Search of Blackfire Exploration Ltd.” (February 8, 2010). Both archived online: <http://www.miningwatch.ca/en/groups-file-documentation-with-rcmp-canadian-mining-company-s-involvement-mexican-corruption-case>.

⁹⁹ Both archived online: <http://www.miningwatch.ca/en/groups-file-documentation-with-rcmp-canadian-mining-company-s-involvement-mexican-corruption-case>.

¹⁰⁰ Blackfire Exploration, “To: President of the Honourable Congress of the State of Chiapas” (June 15, 2009) archived online: <http://www.miningwatch.ca/en/groups-file-documentation-with-rcmp-canadian-mining-company-s-involvement-mexican-corruption-case>.

¹⁰¹ *Corruption of Foreign Public Officials Act* (SC 1998, c 34) online: <http://laws-lois.justice.gc.ca/eng/acts/C-45.2/>

¹⁰² Access to information request A-2010-00758/RF1, page 000419.

¹⁰³ Access to information request A-2010-00758/RF1, page 000419.

Embassy Continues Support Despite Revelations from its Own Investigation

“According to the civil society representatives consulted, the situation surrounding Blackfire, which is considered corrupt and responsible for the murder of the activist, has tarnished Canada’s image among the population of Chiapas and could affect the development of future mining projects.”
– Political Counsellor Karim Amégan, report on trip to Chiapas sent widely to Canadian government officials and diplomatic corps on February 3, 2010¹⁰⁴

Two months after Abarca was killed, a Political Counsellor for the Embassy, Karim Amégan, finally sought the perspective of affected community members and organizations, including REMA-Chiapas. From January 18 to 19, 2010 he visited Chiapas and met with state authorities and community organizations. On February 3, 2010, Amégan widely distributed his report to various levels of government, including the Privy Council, the RCMP, CIDA, National Defence, and other Canadian diplomatic missions in Latin America.¹⁰⁵ According to his account, community organizations condemned Blackfire for corruption and held it responsible for Mariano Abarca’s murder; they also criticized the Canadian government for not providing better oversight. Despite this testimony, the Embassy continued providing support to Blackfire.

Trade Commissioner Paul Connors described the objective of Amégan’s trip as being “to undertake out-calls on the security file to the Chiapas Government and to leading NGOs. He is meeting with REMA, again to discuss their anti-mining position.”¹⁰⁶ In response to a media inquiry, the visit was framed as a “regular liaison visit” to “advance Canadian interests and values, and to ensure we are as well informed as possible.”¹⁰⁷

In Amégan’s report, the summary of his meeting with the government of Chiapas is redacted. The summary of human rights organization Fray Bartolomé de las Casas, however, is not. In its opinion, the Chiapas state government bore some responsibility for Abarca’s murder: the NGO “affirmed that Mariano Abarca had made a complaint to authorities about the threats against his life made by Blackfire employees but that the state had not taken the necessary steps to protect him. According to [the representative], the state of Chiapas has agreed to pay compensation of 90,000 pesos per month to the victim’s family, although this does not mean that they are taking any responsibility [redacted].”

The record of Amégan’s meeting with REMA-Chiapas provided a clear picture of the source of the conflict: “According to [name redacted], Blackfire did not comply with its commitment with the community (Ejido Nueva Morelia) through which its trucks passed [in order to reach its mining concessions in the next town]. A three point agreement had been reached at the start-up of Blackfire’s operations, whereby Blackfire was to build a paved road for the community, install a water tank, and pay a certain amount of money to the community. According to [name blacked out], the road that was built only included two cement tracks for trucks to drive over and not a fully paved surface, and the length was not what had been agreed to; additionally, the water tank was poorly constructed and turned out to be useless.”¹⁰⁸

REMA-Chiapas also dispelled the Embassy’s representation of the dispute between the company and communities as a money grab: “With regard to the economic compensation, [name blacked out] confirmed that the community was looking for a higher amount than had been originally agreed to and that Blackfire had been removing barite from the community that it turned up during the construction of the road, without having a mining concession for that area. The community therefore demanded additional

¹⁰⁴ Access to information request A-2011-01962/LA, page 000035.

¹⁰⁵ Access to information request A-2011-01962/LA, page 000034.

¹⁰⁶ Access to information request A-2010-00758/RF1, page 000560.

¹⁰⁷ Access to information request A-2010-00758/RF1, page 000562.

¹⁰⁸ Access to information request A-2011-01962/LA, page 000035.

compensation of 3,000,000 pesos. When the response of the company was negative, community representatives decided to block the access road to the mine.”¹⁰⁹

Amégan’s notes from that meeting also provide a substantial account of violence encountered by demonstrators, much of which was redacted before release. “Three mine employees with arms that [several words redacted] and [several words redacted] had dispersed the demonstration and had made death threats against the activists. According to [name blacked out], the same Blackfire employees had gone to the house of Mariano Abarca in August of 2009¹¹⁰ and had beat him up and made death threats. The [redacted] who was present at our meeting and had also been beaten up by employees of the mine who he identified as [several words blacked out] and [several words blacked out]. Shortly before his death, Mariano Abarca had made a complaint to the public ministry about the threats that he had received, but his complaint had been ignored. For [name blacked out] there is no doubt that Blackfire is responsible for the murder.”

The meeting with REMA-Chiapas also provided insight into the impact of the alleged bribes paid by Blackfire to the mayor. “According to [name blacked out], the community is deeply divided and Blackfire used corrupt methods and tried to buy the support of authorities, such as the Municipal President of Chicomuselo, Mr. Julio César Velásquez Calderón. Blackfire made payments directly into the bank account of Mr. Velásquez Calderón but eventually the relationship deteriorated and Blackfire then accused him of extortion and asked the State Congress to remove him from office. According to [name blacked out], on top of its involvement in corruption, Blackfire has disrespected the sovereignty of the residents by asking that an elected official be removed from his position.”¹¹¹

Amégan’s notes on the meeting with REMA-Chiapas concludes with some suggestions. “The coordinator of REMA has indicated that although the mine was closed by the state for environmental reasons, Blackfire still has other concessions in Chiapas, but should leave the region. He said that his NGO would continue to oppose the development of open-pit mines that, according to them, should not be authorized because of their irreversible impact on the environment. He found the document the Canadian Embassy published about the rehabilitation of mining projects¹¹² once they have been closed to be absurd, saying that it is not possible to rehabilitate an open-pit mine site.”

Amégan also reported that REMA-Chiapas saw the Canadian government’s role as central to the tragedy. “According to REMA, Canada should fulfil its responsibilities and regulate the activities of its mining companies that operate abroad. They are supportive of the legislative initiative before the Canadian parliament that aims to exercise better control over Canadian mining companies.”¹¹³ Finally, according to [name redacted] Blackfire has been a source of division in the community, has used threats, has humiliat-

¹⁰⁹ Access to information request A-2011-01962/LA, page 000036.

¹¹⁰ This appears to be a reference to the assault on Mariano Abarca and family members that took place in August 2008.

¹¹¹ Access to information request A-2011-01962/LA, page 000036.

¹¹² A scanned copy of this manual was obtained from Otros Mundos Chiapas called “Manual Informativo sobre Minería en México” and copyrighted to the Embassy of Canada in Mexico, 2009. It is modeled after the “Mining Information Kit for Aboriginal Communities” from 2006 by Natural Resources Canada et al. (Online: http://www.mining.ca/www/media/lib/MAC/Documents/Publications/English/Mining_Toolkit2006E.pdf) The chapter assumes that the mine closure process will proceed according to Mexican law and regulations, and provides only one example that it describes in positive terms based on company input and without the perspective of affected communities. Similar to MiningWatch Canada’s critique of the mine closure section in the 2006 version: “It does nothing to tell communities how to deal with closure plans that don’t work, reclamation bonds that are inadequate, or remediation activities that do not address long-term problems. For any community or Aboriginal government faced with the reality of the closure of a large, acid-generating mine, or with a tailings spill, there is no recognition, no advice and no resources.” (Online: <http://www.miningwatch.ca/insult-aboriginal-people-critique-mining-information-kit-aboriginal-communities>)

¹¹³ At this time in January 2010, Bill C-300, *An Act respecting Corporate Accountability for the Activities of Mining, Oil or Gas in Developing Countries*, which would have conditioned public supports to the overseas extractive industry on compliance with a certain set of standards, was before the Canadian parliament.

ed its employees and caused environmental damages. According to him, [name blacked out] would not have died if Blackfire had not gotten involved in corruption and had respected local laws.”¹¹⁴ Amégan also met with state officials in Chiapas, but the entire conversation is redacted.

The report concludes: “Comment: [three or four lines redacted] it is worth mentioning that the Canadian owners of the mine deny any involvement in the death of activist Mariano Abarca and declare that they did not commit acts of corruption, rather were victims of extortion by the mayor of Chicomuselo [three or four lines blacked out]. We will continue to follow up on this matter over the coming months.”¹¹⁵

Five days after Amégan reported on his visit to Chiapas, Trade Commissioner Connors wrote to public servants in Ottawa on Blackfire’s behalf to seek information about how to file an international lawsuit against the state of Chiapas under investor protection provisions in the North American Free Trade Agreement (NAFTA).¹¹⁶

Two days later, on February 10, 2010, the Embassy forwarded a media report in which Blackfire Exploration Mexico threatened to sue the government of Chiapas for almost \$800 million, “considering that this is the amount of damages caused for the illegal closure of the barite mine in the Ejido Grecia in the municipality of Chicomuselo.”¹¹⁷

Connors again corresponded with Blackfire in May 2010 about having met with the Mexican Chamber of Deputies’ Special Committee on Mining Conflicts, reporting that they said, “There was little support for your project in Chicomuselo, and that trucks drove through town doing significant damage to the roads.”

In his email to Blackfire, Connors noted that the Embassy had come to the company’s defence: “We pointed out [...], that you did have support from the two Ejidos on whose land you operate as demonstrated by your accords with them. As to the truck driving through Chicomuselo, we pointed out that Blackfire had been trying to enlist state support to access federal infrastructure funds in order to build a by-pass around the town. We did not have the sense that the Committee had much detailed knowledge of your situation. Rather, they were aware of opposition to your project by some groups, and of the murder of Mariano Abarca.”

“I appreciate that you have other priorities on your plate at the moment,” he concluded. “That said, as part of your public outreach, at some point, you may wish to meet with the Committee. If you have a chance, please let me know how things are progressing with the State Government in terms of addressing the environmental complaints.”¹¹⁸ No response is apparent in the documents. However, on September 13, 2010, Blackfire admitted it had been mining along the edges of the road in the community of Nueva Morelia – one of the ongoing complaints of that community – but that this was due to a mapping error.¹¹⁹ In the same statement, Blackfire claimed it never threatened to sue the Chiapas government.

Overall, Amégan’s report of the company’s behaviour and reputation appeared to have had little impact on the Embassy’s support for Blackfire. The Embassy continued to provide advice to Blackfire on how to sue the state of Chiapas and defended its interests in a meeting with Mexican legislators.

¹¹⁴ Access to information request A-2011-01962/LA, page 000036.

¹¹⁵ Access to information request A-2011-01962/LA, page 000036-37.

¹¹⁶ Access to information request A-2010-00758/RF1, page 000576-577. Chapter 11 of NAFTA establishes substantive rights for private investors that are directly enforceable through investor-state arbitration, a process in which a private party can sue a government in a private international tribunal.

¹¹⁷ Access to information request A-2010-00758/RF1, page 000700.

¹¹⁸ Access to information request A-2010-00758/RF1, page 000629.

¹¹⁹ 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: <http://www.business-humanrights.org/Documents/Blackfire-response-re-Mexico-13-Sep-2010>.

Conclusion

“As far as I can tell, the Canadian Ambassador here is a representative for Canadian mining companies.”
– Statement from a Latin American Minister of Mines and Energy¹²⁰

The documents obtained from DFAIT under the federal *Access to Information Act* relating to the Canadian Embassy in Mexico and Blackfire Exploration between 2007 and 2010 reveal that, far from encouraging responsible behaviour, the Embassy's unequivocal support for Blackfire's operations was an important enabling factor in the emergence of the conflict in Chicomuselo. As the conflict deepened, and even after hearing serious allegations against Blackfire and receiving a large quantity of correspondence over the detention of Mariano Abarca, the Embassy took sides to troubleshoot for the company. The Embassy's underwhelming response after Abarca was killed, the mine was suspended on environmental grounds, and evidence of corruption came to light, further suggests a disturbing mutuality of perspective and goals of a small, privately held Canadian mining company and Canada's foreign policy as carried out by the Embassy in Mexico.

We find that the actions of the Canadian Embassy in Mexico between 2007 and 2009 were out of step with Canada's stated commitment to encourage extractive sector companies operating overseas to abide by voluntary guidelines; were contrary to Canadian values as defined in the DFAIT mission statement; and constituted a violation of Canada's international obligations to promote universal respect for human rights. The Embassy missed key opportunities to positively influence the behaviour of Blackfire Exploration during an escalating conflict that ultimately cost the life of a man who was at once a community organizer, local businessman, father, and brother.

If the activities of the Canadian Embassy in Mexico are representative of the actions of Canadian Embassies in other countries, the story of Blackfire in Chiapas sheds light on why the Canadian industry has such a strong association with conflicts and human rights abuses abroad. A study commissioned by the Prospector and Developer's Association of Canada found that Canadian companies are four times as likely to be at the centre of conflict where they operate than companies from the next most frequently implicated countries – Australia and India.¹²¹

In the following sections, we examine the different phases of the conflict, beginning with the lack of consultation and consent with affected communities, followed by the threats and criminalization of protest, and concluding with the murder and allegations of corruption. We follow this with a series of recommendations to address the central, inescapable finding of this report: that the current framework governing the Canadian overseas mining industry is grossly inadequate.

Lack of consultation and consent

As early as November 2007, before Blackfire started extracting barite in the Ejido Grecia and the Ejido Nueva Morelia in the municipality of Chicomuselo, Chiapas, the Embassy had already flagged tensions between the company and local communities, and noted weaknesses in the company's engagement with

¹²⁰ The statement is cited in a submission to the House of Commons Standing Committee on Foreign Affairs and International Development on February 29, 2012 by Dr. Anthony Bebbington, a member of the US National Academy of Science and Higgins Professor of Environment and Society at Clark University. See Dr. Anthony Bebbington, “Submission to the House of Commons Standing Committee on Foreign Affairs and International Development” (February 29, 2012) online:

<http://www.miningwatch.ca/sites/www.miningwatch.ca/files/Bebbington%20testimony,%20SCFAAE,%2029Feb12.pdf>.

¹²¹ The Canadian Centre for the Study of Resource Conflict, “Corporate Social Responsibility: Movements and Footprints of Canadian Mining and Exploration Firms in the Developing World” (October, 2009) archived online: <http://www.miningwatch.ca/news/suppressed-report-confirms-international-violations-canadian-mining-companies>.

those communities during its consultation process. Shortly after taking note of these problems, however, Embassy officials nonetheless “intervened”¹²² to exert “pressure”¹²³ on the Chiapas state government, enabling Blackfire to put its mine into production.

While the Canadian Government maintains in its CSR strategy that it “encourages and expects Canadian companies to meet high standards of corporate social responsibility,”¹²⁴ the only encouragement evidenced in the Embassy’s own documents is the suggestion that the company join a “Mining Task Force,” an entity described in the Embassy’s own records as principally a public relations tool. Furthermore, despite DFAIT’s description of the role of Canadian missions abroad as “foster[ing] informed debate without being ‘in front’” and “facilitat[ing] dialogue without getting ‘in the middle’,”¹²⁵ we observe that the Embassy played an active role in assisting the company’s operations in Chiapas to get underway.

The 2010 fact-finding delegation of the United Steelworkers, Common Frontiers, and MiningWatch Canada heard that “little or no consultation” had taken place in Ejido Nueva Morelia despite land purchases having taken place; such purchases need to meet certain conditions according to Mexican agrarian law, including approval through the community’s General Assembly.¹²⁶ In Ejido Grecia, the delegation found there had been “very little community consultation” and that there was little accountability to community members regarding benefits derived from agreements reached with the Ejido in December 2007 and June 2008.

Given the importance of adequate consultation and consent prior to mining development, we find the Embassy’s apparent willingness to support Blackfire despite knowing of the local tensions to be a considerable failing. There is no information in the documents released to suggest that the Embassy took steps to satisfy itself that the company was abiding by Mexican law. Nevertheless, the Embassy applied pressure on the state government to expedite the mine’s opening. As a result, Embassy support for Blackfire likely contributed to the emergence of conflict.

Furthermore, the Embassy’s reliance on the Mining Task Force as its principle vehicle for engagement with companies is unacceptable. The Embassy itself described the Task Force as a public relations tool for branding Canadian mining companies as “responsible.” While Blackfire declined to join the Task Force, the Task Force approach seems liable to promote participating Canadian mining companies as responsible even when they are not. A preferable approach would see Canada create regulations to ensure that Canadian overseas extractive operations meet high standards in line with international human rights law, including respect for community consent.

Threats of Violence and Criminalization of Protest

Throughout 2008 and 2009, the Canadian Embassy in Mexico was aware that tensions continued to fester around Blackfire’s Payback mine. The Embassy picked up media reports about thousands-strong protests in Chiapas, received documents expressing opposition to the mine, made reports of months-long blockades, heard the testimony of Mariano Abarca in July 2009 about armed workers being used to intimidate peaceful protesters, and received some 1,400 letters after Abarca’s detention based on unfounded allega-

¹²² Access to information request A-2010-00758/RF1, page 000184.

¹²³ Access to information request A-2010-00758/RF1, page 000185.

¹²⁴ DFAIT, “Building the Canadian Advantage: A Corporate Social Responsibility (CSR) Strategy for the Canadian International Extractive Sector,” (March, 2009) online: <http://www.international.gc.ca/trade-agreements-accords-commerciaux/ds/csr-strategy-rse-strategie.aspx?view=d>.

¹²⁵ Access to information request A-2010-00758/RF1, page 000013.

¹²⁶ Francisco López Bárcenas and Mayra Montserrat Eslava Galicia, “El Mineral o La Vida: La legislación minera en México,” 2011, pages 67-70.

tions from the company in August 2009. These should have represented red flags for the Embassy regarding Blackfire's operation. Instead, an Embassy staff member dismissed them as nothing but tactics to 'shake down' the company for more money.

This perspective and the Embassy's one-sided approach continued during Abarca's detention, as the Embassy undertook to gather information and facilitate communication between parties. Its approach, however, was oriented to dispel doubts over the legitimacy of Blackfire's operation and promote the company's characterization of the protests. When Embassy officials then undertook a fact-finding mission to Chiapas in October 2009, they failed to speak with affected community groups and activists directly involved in the conflict; instead they raised concerns with the state government about possible increases in royalty payments levied on Blackfire.¹²⁷

Canada has committed to promote universal respect for human rights. As such, the Embassy should have been alarmed at complaints about armed workers, threats, and intimidation, and questioned the company's attempt to criminalize Mariano Abarca's involvement in peaceful protests against the mine project when it had him detained on ultimately unfounded and trumped-up accusations.

The Inter-American Commission on Human Rights (IACHR) has found that criminalization of dissent affects both individuals and collectivities; stigmatizes and marginalizes movements, exposing them to violence; and is detrimental to democracy and rule of law.¹²⁸ Moreover, given the company's economically motivated interests in the area and the Embassy's awareness of longstanding opposition to the mine, it should have questioned the allegations made against Abarca. Nonetheless, despite receiving 1,400 individual communications expressing dire worry for the life of Abarca,¹²⁹ the Embassy advanced the company's characterization of Abarca and other protestors as a grave threat¹³⁰ in its correspondence with Mexican government officials. Although we do not have a full record of the Embassy's meetings with state officials, it does not seem to have taken any steps to verify or act on the allegations of threats and intimidation when it sent a delegation to Chiapas in October 2009.

The outcome might have been different for Abarca, his family, and his community had the Embassy taken the evidence of growing opposition and tensions more seriously. The Embassy should strive to respond to such events in a manner that accords with its obligations to promote respect for human rights. Based on available records, we found no evidence that this took place.

Murder

In the wake of Mariano Abarca's murder on November 27, 2009, the Embassy denied knowledge about potential acts of violence against Abarca prior to his death and emphasized that Canadian officials were not involved in the investigation into Abarca's death. The Embassy knew that all three people detained in the murder investigation were connected to Blackfire, that its Canadian employees immediately fled the area, and should have been aware of the high levels of impunity for those who commit violent crime against human rights advocates in Chiapas. Nonetheless, the statements issued by Canadian officials did not call upon the Mexican government to undertake a full and impartial investigation, and at least one Canadian government official took the opportunity to publicly affirm confidence in the responsible behaviour of Canadian mining companies.

¹²⁷ Access to information request A-2010-00758/RF1, page 000720.

¹²⁸ Comisión Interamericana de Derechos Humanos, "Segundo informe sobre la situación de las defensoras y los defensores de derechos humanos en las Américas," (December 31, 2011).

¹²⁹ Access to information request A-2010-00758/RF1, page 000026.

¹³⁰ Access to information request A-2010-00758/RF1, page 000204.

Furthermore, nothing in the released materials suggests Canadian officials seriously questioned Blackfire about what took place. Canadian officials also actively avoided engagement with affected groups and activists while media attention was focused on the situation. This included a December 3, 2009 protest at the Embassy in Mexico City and the Embassy's negative response to a request from REMA-Chiapas to meet with Canadian officials during a visit to Chiapas on December 8, 2009.

As a result, we find that Canadian officials again failed to distance themselves from the company, acting in Blackfire's interests rather than considering all affected parties. A more appropriate response would have been to acknowledge the severity of the situation, express support for the Mexican investigators, engage in dialogue with those affected, suspend support to the company, undertake its own investigation, and urge that Mexican authorities ensure that their investigation be carried out to a full and impartial conclusion, wherever it might lead.

Corruption

Two weeks after the murder of Mariano Abarca, evidence emerged in the Canadian news media that Blackfire had been paying into the personal bank account of the municipal president of Chicomuselo. There is no record that the Canadian Embassy had earlier knowledge of this, even though the company had filed a public complaint to the Chiapas state authorities in June 2009 that was reported in local news,¹³¹ alleging it was paying Chicomuselo's mayor to keep the local people from "tak[ing] up arms" against the mine.¹³² At whatever point the Embassy did find out about the payments, it should at a minimum have alerted the RCMP to the allegations.

According to the October 2009 report on the implementation of Canada's *Corruption of Foreign Public Officials Act* (CFPOA), which came into effect in 1998, "The Department of Foreign Affairs and International Trade (DFAIT) has developed instructions to Canadian missions abroad, including embassy personnel, concerning the steps that should be taken where allegations arise that a Canadian company or individual has bribed a foreign public official or other bribery-related offences. Pursuant to this policy, information in the possession of DFAIT officials is sent to Headquarters and passed on to law enforcement."¹³³ An earlier report noted that, whereas the RCMP is charged with investigating allegations, "The RCMP [...] is confident that credible allegations reported to other law enforcement agencies or Canadian foreign missions will be reported through to the RCMP."¹³⁴

The Embassy's response, according to the documents released, is unclear. We do know that the Embassy sought legal counsel shortly after allegations of corruption reached Canadian national news,¹³⁵ and that Karim Amégan's January 2010 trip report to Chiapas is copied to members of the RCMP, along with other high Canadian government officials.¹³⁶ However, it is not clear whether information that was shared with the RCMP would have led to an investigation had Canadian civil society organizations not filed a

¹³¹ Isai López, El Heraldo de Chiapas, "For Extortion of a Canadian Mining Company: Petition regarding the dismissal of the mayor of Chicomuselo" (June 24, 2009) translation to English archived online:

http://www.miningwatch.ca/sites/www.miningwatch.ca/files/Supporting_documents_for_investigation_into_Blackfire_E.pdf.

¹³² Blackfire Exploration, "To: President of the Honourable Congress of the State of Chiapas" (June 15, 2009) online:

<http://www.miningwatch.ca/en/groups-file-documentation-with-rcmp-canadian-mining-company-s-involvement-mexican-corruption-case>.

¹³³ Tenth Report to Parliament, "Corporate Social Responsibility – Bribery and Corruption," (October 1, 2009) online:

<http://www.international.gc.ca/trade-agreements-accords-commerciaux/ds/10-report-rapport.aspx?lang=en&view=d>.

¹³⁴ Ninth Report to Parliament, "Corporate Social Responsibility – Bribery and Corruption," (December 2, 2008) online:

<http://www.international.gc.ca/trade-agreements-accords-commerciaux/ds/9-report-rapport.aspx?lang=en&view=d>.

¹³⁵ Access to information request A-2010-00758/RF1, page 000408-411.

¹³⁶ Access to information request A-2011-01962/LA, page 000034.

comprehensive complaint on March 10, 2010. Neither do we find evidence that the Embassy questioned Blackfire about the allegations or urged Mexican officials to investigate.

We are concerned that it was not until corruption allegations surfaced in the Canadian national press that the Trade Commissioner questioned the Embassy's relations with Blackfire, and that neither Abarca's murder nor the suspension of the mine seemed to have had the same immediate effect.

We are dismayed that some six weeks later, mere days after Amégan circulated the damning testimony of community members to the highest echelons of the Canadian government, Embassy support to the company continued. Instead of directing its resources and influence to support corruption and murder investigations, and to obtain an third-party perspective on the environmental concerns that led to the company's operations being suspended, the Trade Commissioner provided Blackfire with advice about how to sue the government of Chiapas under *NAFTA* for having suspended the mine, and in May 2010 the Trade Commissioner defended the company to Mexican officials.

The unconditional Trade Commissioner support to Blackfire suggests that, in practice, the objectives of the Canadian Embassy in Mexico are narrowly aligned with those of Canadian mining companies, and are clearly out of step with its CSR strategy and Canada's international obligations to promote universal respect for human rights.

Finally, three years later, an RCMP investigation into Blackfire's dealings with the mayor of Chicomuse-lo continues. Notably, Canada's legislation to prosecute cases of corruption and bribery of foreign public officials has been criticized as weak with a dismal track record of enforcement. Canada only established anti-corruption teams within the RCMP in 2008 and has only convicted three companies under the act to date.¹³⁷ In 2011, shortly before the second conviction, the OECD made recommendations that Canada's law should be strengthened, since "the law applies only to transactions involving a motivation for profit" and "doesn't clearly spell out that Canadian authorities have jurisdiction to prosecute Canadian companies in connection with corrupt activities overseas." It concludes, "Given the size of Canada's economy and its high-risk industries...Canada [should] review its law implementing the convention and its approach to enforcement to determine why it has only had one conviction to date."¹³⁸

On February 5, 2013 proposed amendments to the act were tabled in the Canadian Senate that seek to address several identified gaps.¹³⁹ Based on the events described in this report, any such amendments will need to be accompanied by resources geared to implementing the legislation and reinforcing the reporting requirements of Embassy personnel involved with Canadian mining operations overseas.

Recommendations

Our analysis of the documents released under the *Access to Information Act* reinforces our conviction that the Canadian framework governing the Canadian mining industry overseas is sorely lacking. Further, we find that, based on existing government policy and commitments, the Canadian Embassy in Mexico did not effectively "encourage" Blackfire "to respect all applicable laws and international standards, to oper-

¹³⁷ These include Hydro-Kleen Group Inc. (2005), Niko Resources Ltd. (2011) and Griffiths Energy International Inc. (2013). In the opinion of one forensic investigator of a Toronto-based crime and risk consulting firm, a few months after the second conviction, "There still haven't been enough cases to really grab the attention of Canadian executives." Julian Sher for the *Globe and Mail*, "Canada loses ground on bribery ranking" (November 1, 2011) online:

<http://www.theglobeandmail.com/news/national/canada-loses-ground-on-bribery-ranking/article2221891/?cmpid=nl-news1>.

¹³⁸ Peter O'Neil, *Postmedia News*, "'Significant Concerns' over Canada's anti-bribery laws: OECD" (March 28, 2011) archived online: <http://fairwhistleblower.ca/content/significant-concerns-over-canadas-anti-bribery-laws-oecd>.

¹³⁹ Susana Mas, *CBC*, "Canada to crack down on foreign corruption, bribery" (February 5, 2013) online: <http://www.cbc.ca/news/canada/story/2013/02/05/pol-john-baird-combating-corruption-bribery.html>.

ate transparently and in consultation with host governments and local communities, and to conduct their activities in a socially and environmentally responsible manner.”¹⁴⁰ On the contrary, we believe that the Embassy’s unconditional support to the company served as an incentive to Blackfire’s highly questionable activities in Chiapas.

To what extent, then, is the Canadian Embassy in Mexico an island apart, and to what extent did it take its cue from Ottawa? Given the lack of enforceability of the CSR Strategy in addition to the weak enforcement to date of existing anti-corruption legislation, these findings point to a deeper problem related to corporate impunity among Canadian companies. This may be one of the reasons some 75% of the world’s mining companies have registered in this country.

We conclude this report with the following recommendations:

With regard to the Canadian government:

- The Canadian Parliament should call for a further in-depth review of the Canadian Embassy’s handling of the Blackfire matter, as well as other notable Canadian mine projects that have resulted in murder, threats, and violence against affected communities and workers. The review should: (1) determine whether Canadian officials acted in accordance with Canada’s foreign policy and international human rights obligations and commitments, including the United Nations Declaration on the Rights of Indigenous Peoples; (2) determine accountability for the failure to act in compliance with those standards; (3) ensure that policies are updated to ensure conduct in the future complies with those standards.
- The Canadian government should replace *Building the Canadian Advantage: A CSR Strategy for the International Extractive Sector* with legislation to regulate the overseas operations of Canadian-registered mining companies in accordance with international environmental, labour, and human rights standards, including respect for the right of Indigenous peoples to self-determination and free, prior, and informed consent.
- In so far as DFAIT, Canadian Embassies and other government agencies provide advice and assistance to Canadian mining companies operating abroad, they should create robust eligibility criteria for all government supports to mining companies, including respect for the free, prior, and informed consent of Indigenous communities¹⁴¹ and for democratic and participatory decision-making processes of non-Indigenous communities before mine prospecting and project development begins, respecting when they say no.
- Canada should adopt federal legislation that allows non-Canadians who are affected by the overseas operations of extractive companies to bring civil lawsuits before Canadian courts. The statute should clarify that Canadian courts are an appropriate forum to hear claims against extractive companies registered in Canada. To this end, we urge parliament to debate and pass Bill C-323, as soon as possible.¹⁴²
- Once access to Canadian courts is ensured, Canada should create an independent ombudsman mechanism to receive complaints and verify the compliance of Canadian extractive companies with legally binding standards.

¹⁴⁰ Access to information request A-2010-00758/RF1, page 000236-237.

¹⁴¹ As per the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and international jurisprudence. UNDRIP is grounded in principles such as non-discrimination, self-determination and cultural integrity and in various articles indicates that states should consult with Indigenous peoples in order to obtain their free, prior and informed consent prior to the approval of any project affecting their lands or territories or other resources, such as in Article 32.

¹⁴² For more information: <http://passthebill.ca/bill-c-323/>.

- The Canadian government should cease its involvement in influencing or reforming legislative regimes governing extractive industry development or related institutions in other countries. Similarly, the government should cease directing Canadian overseas development aid to activities related to extractive industry development.
- For the last 20 years, Canada has pursued and negotiated hemispheric trade agreements that promoted and protect the rights of investors at the expense of human rights, labour rights and environmental standards. The conduct of Canadian mining companies such as Blackfire is one of the results of that agenda. Canada must revise its current hemispheric trade agreements and must pursue a different trade agenda based on respect for human, labour and environmental rights.
- The Canadian government should significantly bolster resources devoted to the implementation of the *Corruption of Foreign Public Officials Act*, including the specialized RCMP units and specially trained prosecutors. The Canadian anti-corruption statute should be reformed to apply not only to transactions involving a motivation for profit, clearly spelling out that Canadian authorities have jurisdiction to prosecute Canadian companies in connection with corrupt activities overseas, and ensure that Canadian corporate executives can be prosecuted for bribery and corruption taking place in connection with overseas subsidiaries.



With regard to the RCMP:

*Memorial to Mariano Abarca, November 2012.
Credit: Jennifer Moore.*

- The RCMP must carry to completion a thorough investigation of Blackfire Canada's relations with municipal authorities in Chicomuselo in response to the March 10, 2010 complaint filed with the RCMP by nine Canadian organizations under the *Corruption of Foreign Public Officials Act*.

With regard to Blackfire Exploration:

- In light of the corruption, violence, community conflict and murder that occurred during development and operation of Blackfire's Payback mine in Chiapas, Blackfire should formally renounce any claim to property in the municipality of Chicomuselo or surrounding area and commit that it will not seek to re-open or continue to develop the Payback mine.