

# Human Rights and Environmental Impacts of Palm Oil in Sayaxché, Guatemala

*The report aims to document the perspectives and concerns of key community stakeholders in Sayaxché, Guatemala with regard to the impacts of the toxic spills in La Pasion river that occurred in April and June 2015, as well as with the systemic social and ecological impacts of palm oil production in the region of Sayaxché in Peten in Guatemala. The objective of the report is to facilitate dialogue and action by the parties involved--REPSA, buyers, the Guatemalan government, and civil society and community groups—to ensure meaningful reform in the palm oil sector in Sayaxché that places human rights front and center, strengthens the rights and livelihoods of indigenous peoples and local communities, and ensures that vital ecosystems are protected. This is an independent assessment report prepared by Ricardo Zepeda commissioned by Oxfam. The report was written based on information and interviews in the Fall 2016 following the release of REPSA’s first sustainability progress report; it was updated in 2017 to incorporate information from REPSA’s second sustainability progress report and a response from REPSA.*

Disclaimer: The research for this report was supported by Oxfam to contribute to the public debate on deforestation, land use change and development policy and practice. This report does not necessarily reflect Oxfam policy positions and the views expressed are those of the author.

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## Executive Summary

One of the biggest income producing crops in the world, palm, is the crop that is expanding most rapidly in Guatemala today. This growth has been achieved through significant comparative advantages that have even led to the displacement of other more-traditional agricultural activities, such as raising crops for food. Advantages enjoyed by the palm oil companies include fiscal incentives, access to abundant water sources, and a context of fragile government institutions that permit the violation of labor rights and environmental regulations. In a little over a decade, palm oil production has also become an agricultural activity that has generated tremendous social conflict in Guatemala because of its adverse social, economic, and environmental impacts in areas where the crop is predominantly produced.

In 2015, an ecological disaster, or "ecocide," occurred on La Pasión River, violating the human rights of the people in over 20 indigenous communities who have depended on the river for sustenance and for their livelihoods. Contamination of the river resulted in the death of thousands of fish and forced local communities to adapt, without adequate support, to a situation in which both food sources and human health have been put at risk. Government efforts to investigate the incident were blocked by interests linked to the palm oil company Reforestadora de Palma de Petén SA (REPSA), the primary actor implicated in the disaster due to its deficient production practices. A court order to close the company temporarily in order to do an in-depth investigation was paralyzed by various appeals. The lack of accountability has fermented conflict in the region and amplified threats to the lives of human rights defenders.

More than a year after the disaster, legal roadblocks continue to prevent a proper investigation into the ecocide, and investigations into the rights violations committed during the ensuing conflict have been stalled due to negligence on the part of the State. Inspections conducted to date by specialized government bodies have been limited to examining the damage caused by the ecocide. They have not, however, been able to identify the conditions at the processing plant that led to the disaster or to ensure accountability for those responsible. The protests of the affected communities have not been given an adequate response by the State, whose actions have been limited to declaring a state of emergency, handing out food and water filters, and providing some communities with mechanical wells.

The effort to close the company for six months and do a proper investigation to clarify REPSA's responsibility for the disaster created an environment of hostility between REPSA workers and the human rights defenders and leaders who made statements on the subject. In September 2015, three human rights defenders were subjected to acts of intimidation and violence and, in another allegedly related incident, a community leader who had denounced the ecocide was murdered. Neither incident has been adequately investigated. These acts of violence must now be addressed in order to build the environment of trust needed to resolve the conflict.

In 2016 Cargill and Wilmar, two of the biggest buyers of REPSA's palm oil, announced a number of conditions for REPSA to meet for it to continue its purchasing contracts with the companies. The

conditions are an effort to ensure REPSA's production activities are responsible and compliant with Cargill's and Wilmar's policy commitment on sustainable palm oil. In response, REPSA established a sustainability plan and announced a policy for responsible palm oil production<sup>1</sup> which aims ensure that its operations are deforestation and exploitation free. In addition, REPSA committed to be more proactive about managing environmental impacts and engaging stakeholders in a transparent and inclusive manner. Since the launch of its sustainability, REPSA has issued a progress report where REPSA states that it has met with community leaders in an effort to build a more harmonious environment<sup>2</sup>. Its second and most recent progress report was released in January 2017.<sup>3</sup>

This research paper is aimed at documenting the human rights and environmental impacts of REPSA's operation, and more broadly palm oil production in the region, outlining the scope of REPSA's response in regard to its sustainability policy and plan and highlighting the views and perceptions of the key local stakeholders and community groups involved, in particular those who felt their voices had not been heard. While there are a range of views in the community, the perception of many stakeholders in the municipality of Sayaxché who were interviewed for this assessment is that there has been no true community buy-in in REPSA sustainability plan and that it has not been disseminated sufficiently in the region. Local stakeholders also believe that the systemic problems caused by the spill and the underlying adverse socio-ecological impacts associated with palm oil production persist. The main stakeholder concerns identified with regard to oil palm production and REPSA's operations include the following:

- **Environmental impact:** Beyond stakeholder perception, there is technical evidence linking the 2015 fish kill with the poor management of toxic waste from REPSA's palm oil production facility. As of August 2016,<sup>4</sup> REPSA still did not have an environmental impact study (EIS) that is formally approved, and the lack of transparent and complete information in REPSA's environmental impact study makes it difficult to validate accuracy of the information the company is using. In fact, inspections show that palm oil production is a high-risk activity and that the threats persist. Furthermore, the wildlife of the area has not yet been able to recover, and non-native species are displacing the niches of the endemic species.
- **Impact on the right to livelihoods and food:** The massive fish kill in the river struck a blow to fishing, which is the primary economic activity of the population not involved in palm oil production. In addition, the volume of fish caught for daily consumption has been severely diminished, so there is now a situation of food dependency. People are uncertain about how contaminated the water continues to be and whether or not it is safe to eat the fish that is caught, and this has led to significant changes in the diets of local communities. The poorest are the most affected since they do not have the income necessary to purchase other foods. REPSA

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<sup>1</sup> <http://repsa.com.gt/images/pdf/repsa-policy-on-responsible-palm-oil-production.pdf>

<sup>2</sup> <http://repsaguatemala.com/index.php/first-progress-report/>

<sup>3</sup> <http://repsa.com.gt/secondprogressreport/>

<sup>4</sup> In its second sustainability report, REPSA states that it has licenses for two mills but there is a lack of public information and consultation on the EIA.

has so far not taken any action to ensure that affected communities who have lost their livelihoods have access to any kind compensation or remedy.

- **Labor rights violations:** Labor conflicts have been constant since palm oil activity began in the municipality of Sayaxché and the State of Guatemala has not been able to enforce labor legislation in activities related to palm oil despite numerous complaints. Workers in REPSA have also raised concerns regarding failure to pay minimum wage, conditions of temporary contract workers. Several labor conflicts between workers and the management remain unresolved.
- **Influence on community structures for political representation:** Palm oil companies in the region have been criticized their violation of individual and collective rights. In the case of REPSA, a key complaint is that there seems to be an effort to replace the most confrontational leaders in the municipality of Sayaxché with people linked to the palm oil companies. This has delegitimized community voices, threatening local governance and development processes in the municipality.
- **Obstruction of justice:** The most visible evidence of REPSA's bad faith and unwillingness to clarify the causes of the ecocide lies in the efforts it has made to block any legal actions it considers a threat to its activities. REPSA has abused the legal remedy of the *amparo* in the courts to block efforts towards a professional investigation that might shed light on the situation. This, in spite of the evidence that thousands of people in the region are at risk and facing potentially serious consequences in the medium and long term.

One of the main criticisms of REPSA's sustainability strategy is that it has not addressed the need to build trust with local communities and that this failure has led to an escalation of conflict. The company must recognize the diversity stakeholders and perspectives and build a legitimate process of community engagement, and a pre-requisite to a meaningful stakeholder dialogue process is recognition of its role in the spill in the La Pasion River along with a concerted effort to address its impacts on local communities. It must also respect the institutional framework to ensure that it is genuinely compliant with the law.

# 1. Introduction and Methodology

The massive fish kill that occurred in La Pasión River in June 2015 in the municipality of Sayaxché, in the department of El Petén in Guatemala, has had serious socio-environmental consequences, and it has created a public debate about the impact of large-scale agricultural activities in indigenous territories and areas with high levels of biodiversity. It has also exposed the weakness of the Guatemalan State's ability to assume its role as arbitrator on environmental matters when it comes to large corporations that base their competitiveness on weak regulations and government supports meant to attract private investment.

In 2015 there were two spills that occurred in the La Pasión river – REPSA acknowledged responsibility for the first spill in April but did not acknowledge responsibility for the second and more deadly spill that occurred in June 2015. The June 2015 incident, classified as an "ecocide" was not only ecological in nature.<sup>5</sup> Community demands that the government investigate and respond to the consequences of the incident tested the State's capacity to deliver a response that provided accountability to affected communities. Efforts were made to temporarily close the company and implement some preventive measures in order to ensure a proper investigation and mitigate the impacts on the surrounding communities. But these efforts were blocked through judicial challenges (*amparos*) lodged by the REPSA corporation, the primary party responsible for the disaster. In September 2015 a situation of social conflict arose that involved company workers who were pressing for the company not to be closed. Using violence, they detained members of a human rights defense organization and held them against their will. It is suspected that the conflict also led to the murder of one community leader who had denounced the ecocide. One year later, both events are still under investigation and no results have been presented.

This study was conducted in July-September 2016 and examines the state of affairs one year after the spill; the kind of social impact the disaster has had, especially on the livelihoods of the impacted communities; and the perceptions people have about the actions REPSA has taken to address the situation as a follow-up to recommendations made by Cargill and Wilmar, its primary purchasers. The study includes a review of documents related to the incident, including the technical studies conducted. It also includes the results of field research carried out in the municipality of Sayaxché in order to learn about the situation on the ground and document the views of those most impacted by the ecocide and community groups and activists who have been mobilizing around this issue. In addition, key informants from local, State, and international arenas were interviewed about issues relating to the ecocide, the resulting social conflict, and the impact of palm oil activity in the region.

The information gathered was systematized to analyze the social impact of the ecocide in the region, the preventive measures taken, the follow-up being given to the case, and any progress being made in the investigations and legal processes.

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<sup>5</sup> The term 'ecocide' is defined as massive environmental damage or destruction in a territory or an ecosystem that endangers the survival of the inhabitants. If recovery capacity is lost, it can be irreversible.

It is hoped that this report will lead the parties involved--REPSA, buyers, the Guatemalan government, and the private sector--to take further action on this matter. The overall objective is to work towards a situation in which the practices of corporations in indigenous territories and peasant farming areas, especially areas of high biodiversity, do not violate human rights or lead to irreversible consequences for the highest value ecosystems of Guatemala.

**REPSA provided the following response that was taken into account when the report was updated in March 2017.**

*In REPSA we acknowledge that constructive feedback and input from our stakeholders is very valuable, strengthens transparency, and helps us to measure our progress. The launch of our October 2016 Policy on Responsible Palm Oil Production marked a significant commitment toward the goal of accountability and sustainability at all levels of our business; as well as helping to meet growing market demand for traceable agricultural products produced responsibly. Indeed, REPSA believes that direct engagement with our stakeholders has, and will continue to play an important and constructive role in ensuring meaningful implementation of our Policy and the operational protocols we derive from it.*

*With this in mind, we welcome OXFAM's report in the spirit of facilitating ongoing dialogue and problem-solving, as well as potential collaborative action by relevant actors, including ourselves, regarding the tragic impacts of the 2015 La Pasion river pollution events (April 28 and June 6). This OXFAM report comes at a time where REPSA has already invested considerably in social and environmental improvements. To be clear, many of these improvements were not identified by the independent consultant hired by OXFAM to draft the report. Thus, we welcome the opportunity to jointly review and understand these operational changes in the near future with concerned parties, at their convenience.*

*It's important to note that the basis for the OXFAM report documents key perspectives and concerns of significant yet limited number of critical stakeholders that have led to and informed the ongoing court case. This has contributed, in our view, to an OXFAM report that reflects a number of inaccuracies and misperceptions.*

*First, REPSA has not obstructed justice and proper investigations related to the June river pollution. Since mid-2015, our company has received more than 20 visits from State research and scientific institutions, never once denying entry or blocked research. On the contrary, REPSA is most interested in promoting all relevant investigations so that justice can be done. For each visit to REPSA, there are official records in which the relevant authorities have verified conditions of process and infrastructure within our property.*

*Second, regarding closure of our operations, REPSA has sought to defend its rights to legal operations, the rights of more than 4500 workers, in addition to the more than 20,000 indirect jobs that the operation generates. We view the September 2015 ruling for temporary closure of the company as both illegal and unnecessary.*

*Most importantly, REPSA wishes to reiterate our commitment to continuous, step-wise, best in practice business improvements, that require enhanced dialogue and inclusive stakeholder engagement. As such, it's important to recognize that REPSA still has significant road to travel in our sustainability pathway. We certainly acknowledge our role in the April 28, 2015 river contamination event. Likewise, the second June 6 event, that we see as totally unrelated to our operations, caused massive, tragic, and deeply regrettable social and environmental impact in approximately 100+ kilometers downriver.*

*While legal responsibility for the June event remains unresolved, we are ready to engage in broader industry monitoring and remediation efforts.*

*A clear example of our commitment to dialogue, broader stakeholder engagement and transparency in acknowledgment of our role and responsibility, is the ongoing scoping process carried out independently by the Consensus Building Institute (CBI) and The Forest Trust (TFT). This scoping effort aims to bring technical and procedural skills to clarifying the willingness and ability of local stakeholder groups to participate in future participatory information gathering and joint problem solving, and to gain a better understanding of overall areas of key concern amongst various stakeholders.*

*2017 will be a crucial year to deepen mutually credible understanding of core issues related to the river events, and where possible to take collaborative action in addressing them. REPSA firmly seeks to do its part to systemically address the root causes of environmental and social issues in the Sayaxché region, while recognizing that for resolving these it will take the effort of various actors, including national and local Government, in addition to the palm oil sector, of which REPSA plays an important role.*

*In closing, REPSA is clear about its mission and values, and we wish to reiterate our core commitment to continue generating shared economic, social and environmental value for the municipality of Sayaxché and beyond, as we have done so since 1999.*



## 2. The Palm Oil Industry in Guatemala and the Legacy of Social Conflict left by the 2015 Ecocide in Sayaxché

### 2.1 Background

On June 11, 2015, the government of Guatemala declared a red alert when the La Pasión River in the municipality of Sayaxché was contaminated, causing the death of thousands of fish in a 147 kilometer section of the river. The incident had already been reported five days earlier by the inhabitants of the area who had seen the effects since June 6, and the causes named initially were related to the intensive use of insecticide by palm oil companies located along the river. The chemical Malathion<sup>6</sup> is permitted in Guatemala despite its high level of toxicity and is believed to be used quite regularly in agricultural activities.<sup>7</sup> A study conducted by a government agency at the time was able to show that Malathion was present in the river. It also showed low oxygen levels in the water, a result of the oxidation that occurs when large quantities of agricultural waste decompose.<sup>8</sup> In the initial government alert, people were warned not to eat fish or use water from the river, however, this instruction was not followed completely by the families in the area because they rely on fish as a major food source.

One day earlier, on June 10, the Public Ministry had searched the premises of Reforestadora de Palma de El Petén, Sociedad Anónima (REPSA), the largest palm oil company in the area and the one that communities believed was at fault for the disaster. Before the raid, workers at the company had been removing thousands of the dead fish from the river and burying them. One technical employee had recognized the responsibility of REPSA publicly on the local radio, saying that the level of water in a dam had risen by 7 inches and that one of the ponds had collapsed.<sup>9</sup> The company, however, officially denied any responsibility and kept the press from entering an area where they sought to verify the collapse of the overflow pond.

The first public statements of the government agency *Consejo Nacional de Áreas Protegidas*, or National Council for Protected Areas (CONAP), refer to the fact that this is not the first time something like this has occurred and that every year an oxidation pond overflows in the rainy season. Prosecutors from the Public Ministry (MP), as well as officials from the Ministry of the Environment and Natural Resources (MARN) and the National Civilian Police (PNC) participated in the first experts report.

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<sup>6</sup> Report No. L899 05 2015 from the toxicology laboratory of the Chemical and Pharmaceutical Sciences Department of the University of San Carlos, Guatemala. Test conducted at the request of the Ministry of the Environment and Natural Resources to verify the presence of insecticides. The sample is from May 1, 2015 which was received in the laboratory on May 14. The result indicates " MALATHION (organophosphate insecticide): POSITIVE."

<sup>7</sup> Statements of Henry Vásquez, Vice-minister of Agriculture in 2015. Electronic article from June 17, 2015 "*MAGA: Malathion es legal*," Available at <http://diariodigital.gt/2015/06/maga-el-malathion-es-legal/>

<sup>8</sup> Interview with Leslie Ojeda of the *Consejo Nacional de Áreas Protegidas*, CONAP.

<sup>9</sup> Interview with Lorenzo Pérez, Coordinator of the *Consejo Nacional de Desplazados de Guatemala*, CONDEG (National Council of the Displaced in Guatemala).

The communities' first response was to block the main highway and entrances to the REPSA farms. Meanwhile, in the company's first statement, it denied that it was using Malathion. Due to the overwhelming nature of the proof of the presence of Malathion and of the overflow from the dam, the *Centro de Acción Legal, Ambiental y Social*, CALAS (Center for Legal, Environmental, and Social Action) and CONAP took legal action with the support of local and national human rights organizations.

Given the urgency of the situation, Judge Karla Hernández<sup>10</sup> ordered a stoppage of company activities for six months to permit more in-depth technical studies. This preventive closure was not enforced, however, and a series of legal challenges aimed at blocking the closure began. Records from the appeals court of El Petén show that a total of seven legal challenges (*amparos*) were lodged by employees of the company and by the company itself. It took until May 2016 to revoke REPSA's *amparo*, but other *amparos* are still pending and this has kept the temporary and preventive closure from being implemented<sup>11</sup>.

Fallout from the incident was not limited to the court cases, however. Ensuing conflicts in the communities led to the kidnapping of three human rights defenders by company workers. In addition, one community leader who had denounced the ecocide was murdered, and there is a suspicion that his murder was linked to this conflict.

## 2.2 The Palm Industry in the Municipality of Sayaxché, El Petén

The contamination of La Pasión River is just one more chapter in long history of conflict stemming from the establishment of palm oil operations in the northern part of the country. During the first phase of these operations, small farmers were pushed off their lands, with the support of intermediaries, and in some cases they were forced to accept very unfavorable sales conditions.<sup>12</sup> In a second phase, after the first plantations began production, the labor rights of workers--especially wage-related rights--were systematically violated.<sup>13</sup> The third phase is one in which the land's natural capacity to absorb intense agro-industrial activity has been surpassed, with disastrous consequences for the environment and the society that must live around these types of projects.

The ecological disaster that occurred in La Pasión River is an example of what happens when agricultural megaprojects are established in areas with weak governance. It is the result of a situation in which the State abdicates its guiding and regulatory role in development, giving free rein to corporations whose

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<sup>10</sup>First Instance Multi-person Criminal Court on Drug Trafficking Activities and Crimes Against the Environment in San Benito, El Petén.

<sup>11</sup> "CC revoca amparo a REPSA por ecocidio en Petén" May 13, 2016, available at:

<http://www.prensalibre.com/guatemala/justicia/cc-revoca-amparo-a-repsa-por-ecocidio-en-peten>

<sup>12</sup> In Sayaxché, some lots were sold for between US\$42 and US\$56 per hectare and were later resold to the companies at a price ten times greater. Land acquisition also took the form of long-term leases with prices around US\$100 per hectare per year. Information from Guereña, Arantxa, and Ricardo Zepeda (2013). "The Power of Oil Palm. Land grabbing and impacts associated with the expansion of oil palm crops in Guatemala. The case of the Palmas del Ixcán Company." Washington.

<sup>13</sup> Interview with Lorenzo Pérez of CONDEG.

objective is to maintain unlimited growth no matter the consequences. The consequences of the ecological disaster are far from over, and the medium and long term effects on the health and livelihoods of those living near the project have yet to be identified.

The African palm industry has grown by leaps and bounds in the municipality of Sayaxché and so it is one of the municipalities most affected by this dynamic. Sayaxché is located in the department of El Petén in northern Guatemala. Most of its population belongs to the Qeqchí indigenous group and, until about ten years ago, the primary economic activity there was small scale agriculture, fishing, and trade. The La Pasión River is the third largest river in El Petén and one of the largest tributaries of the Usumacinta River, which forms a natural border with Mexico.

According to the National Institute of Statistics, INE,<sup>14</sup> one-third of the oil palm crops in the country are located in Sayaxché. Since the installation of the African palm companies, the municipality has experienced enormous changes in its economy and land use as small farms were bought up by the oil palm companies. The process of purchasing the land involved heavy pressure on the communities by the companies. As their lands were increasingly surrounded and cutoff by the plantations, many of the small farmers felt forced to sell.<sup>15</sup> Currently, these large plantations occupy about two-thirds of the territory of the municipality, and work on the oil palm farms is the primary source of jobs.

African palm is the fastest growing agricultural industry in the country. Between 2003 and 2014, it went from occupying 31,000 hectares to occupying 152,700 hectares, and its production grew from 3 tons to 9,267 tons. In the last five years, palm production volume has more or less doubled, and so has the land area it occupies.<sup>16</sup>

**Table 1**  
**Growth of African Palm in Land Area and Production Volume**

	2003	2013	2014
Hectares	31.1	115	152.7
Tons	3.1	4,248	9,267

Sources: INE (2015). 2014 National Agricultural Survey. Guatemala.

Seven palm companies have set up shop in the La Pasión River Basin: Tikindustrias, Nacional Agro Industrial (NAISA), Palmas del Horizonte, UNIPALMA, Palmas del Sur, Palmas del Ixcán, and Reforestadora de Palmas del Peten S.A. (REPSA). The many impacts caused by the establishment of

<sup>14</sup> INE (2015), 2014 National Agricultural Survey, Guatemala.

<sup>15</sup> The 1996 Peace Accords promoted access to land in Guatemala through a process where land could be purchased or given to peasant farmers through soft credits. However, most of the families that had access to these lands were not able to finish making the payments because of the poor quality of the land, and so the land acquired was gradually sold off. This created a new process of land accumulation, where land passed through several intermediaries and finally ended up in the hands of medium and large producers.

<sup>16</sup> <http://www.indexmundi.com/agriculture/?country=gt&commodity=palm-oil&graph=area-harvested>

African palm projects include: an accelerated process of land concentration, labor conflicts, the diversion of the river in order to irrigate palm crops, the obstruction of travel to neighboring areas where access to certain communities has been blocked by the palm farms, a loss of biodiversity due to agro-chemical use, and the contamination of water sources. All of these factors have affected the local food system, reducing the production of food goods for local consumption.<sup>17</sup>

In some municipalities conflicts have arisen between municipal authorities and the companies because of the companies' unwillingness to pay the IUSI property tax to the municipalities. Other conflicts involve labor-related disputes between poor workers and the companies, both because of adverse working conditions and because of company efforts to evade minimum wage payments. Employers also evade their responsibilities by using subcontractors to hire and bring in temporary workers from other regions.<sup>18</sup> To avoid paying taxes, REPSA, NAISA, Palmas del Ixcán, and Palmas del Sur have all listed themselves as *maquilas* (export processing plants) so they can benefit from exemptions offered this group, even though it is clear that their activities are agricultural.<sup>19</sup>

REPSA belongs to the Molina family, one of the largest landowners in Guatemala, and it has been promoting the introduction of African palm in the municipality of Sayaxché since 1999. Currently REPSA oil palm crops occupy 40,000 hectares in Sayaxché, which is about 10% of the land of the municipality. Along with four other companies (Tikindustrias, NAISA, Palmas del Ixcán, and Unipalma), it has formed a consortium called Palma de Sayaxché.

While REPSA is not part of the Roundtable for Sustainable Palm Oil (RSPO) or the Rainforest Alliance, it states that it has a "firm commitment to corporate sustainability," understood as the "ongoing generation of economic, social, environmental, and ethical value in order to maintain competitiveness".

REPSA claims that it reforested the region, which had been deforested as a result of failed agriculture and livestock projects. It also says that it uses biological pest control, natural fertilizer, and a minimum of pesticides. It also states that its weed control is done manually and that these physical processes are used more frequently than chemical ones. It indicates that discarded natural fiber is reused to generate electricity, that wastewaters contain "mud and natural fibers in minimal quantities," and that these are processed for reuse as fertilizers.

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<sup>17</sup> (2013) Guereña, Arantxa, and Ricardo Zepeda. *"The Power of Oil Palm. Land Grabbing and Impacts Associated with the Expansion of Oil Palm Crops in Guatemala. The Case of the Palmas del Ixcán Company,"* Washington.

<sup>18</sup> CONDEG has promoted compliance with labor rights in oil palm activities in northern Guatemala since 2008. It believes it has made some slight progress in the labor arena, but says there has been very serious resistance on the part of the companies.

<sup>19</sup> The so-called Law for the Promotion and Development of Export Activities and Maquilas (Decree 29-89) was passed in 1989 to promote the competitiveness of the assembly-for-export industry by providing an exemption from the Value Added Tax and Income Tax, which would supposedly give certain companies the opportunity to grow and compete on the international market. More than a thousand enterprises have registered under this category, and 47 highly-competitive mega-businesses among them.

Because of the company's refusal to accept adequate inspections, the State has not been able to verify the degree to which the above statements might be true. Furthermore, REPSA's Environmental Impact Study has not been approved and efforts to verify the state of company facilities have been blocked. On the labor front, CONDEG confirms that the region's palm oil industry has been the biggest union buster and evader of labor laws, and that dialogue roundtables have to be established frequently in order to settle differences.

### 2.3 Social Conflicts Caused by the Ecocide at La Pasión River

REPSA is the oldest and largest company in the region. It reports that it has 4,700 employees working in Sayaxché, which means it has very strong ties with the population of the municipality. However, constant reports of labor rights violations contrast sharply with its continuous campaign to improve its image. REPSA has opened a public relations office and buys spots on community radio stations in order to get out its message.<sup>20</sup>

It is clear the company is trying to improve its ability to exercise influence in the region, but its confrontational tactics have opened numerous battle fronts: *"Other companies sit down at the dialogue table and are more respectful, but REPSA doesn't want to meet with the people. They have security personnel who take videos and photos of journalists. They are currently harassing journalists and have an ongoing REPSA radio campaign to convince people of their good image. People are aware of the impact they are having, but in order to keep their job, they don't say anything. Some time ago when 15 workers tried to form a union, they were fired."*<sup>21</sup>

Having more than 4,000 employees is a crucial aspect of REPSA's business because the community's dependence on the company for jobs is REPSA's primary advantage when it comes to making sure its operations are sustainable. *"There have been four spontaneous protests against the company because people are very upset, but REPSA immediately mobilizes its workers to block or neutralize these movements. They tried to block the path of victims who travelled to Guatemala City to do press conferences. The message that comes out most in the media is that if the company closes, thousands of families will be affected and there will surely be violent reactions. But if the company is closed temporarily, it should still pay wages."*<sup>22</sup>

Anonymous campaigns have been created that don't mention the company directly but are clearly trying to influence public opinion around issues related to the conflict. They have placed fliers and banners in public places accusing a local leader Saúl Paau and members of CONDEG and CALAS of leading a campaign to close the company. They have even spread their message to a wider audience using a web page to accuse Paau of trouble-making. *"These are clearly expensive campaigns that are not within the economic means of people who live in these poor farming and working communities,*

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<sup>20</sup> Local radios "Notimundo," "Uyuyuy," and "Nueva Era" are constantly transmitting pro-REPSA messages.

<sup>21</sup> Interview with Lorenzo Pérez, CONDEG.

<sup>22</sup> Interview with Lorenzo Pérez of CONDEG

*where people don't ever earn more than minimum wage, and where 'protests' can never be spontaneous because their pay is docked if they arrive even a few minutes late to work.*<sup>123</sup>

In actions like these, people are accused with false information that exposes them to public reaction and leaves them vulnerable and at risk in a region where conflict is ever latent and where State security institutions have only a weak presence.

On Friday, September 18, 2015, three human rights defenders from CONDEG (National Council of the Displaced in Guatemala)--Manuel Pérez, Lorenzo Pérez, and Hermelindo Asig Mó--were kidnapped by REPSA workers in the community of La Torre. This happened during a full-day rally in which about 3,000 workers participated. The three men were intercepted when they were on their way to a meeting between the "Colectivo por el Agua" ( the Water Collective) and the "Red de Comunidades" (Network of Communities). They were tied up in a truck in the sun and left without any food or water for 12 hours as people threatened to throw gasoline on them. *"You could see that the workers were following someone's instructions and someone was bringing them food. There were armed men driving around in luxury vehicles that could have belonged to the company's security force. Since there was a two-week work suspension for inquiries to occur, they were taking out spots on the radio all day long."*<sup>24</sup> The judge at Sayaxché and the Human Rights Ombudsman's office made an attempt to file a *habeus corpus* appeal [*Recurso de Exhibicion Personal*] but this was blocked by protesters, another organized group of approximately 400 workers who set up shop in front of the San Benito courthouse in El Petén to protest Judge Karla Hernandez's decision to close the company temporarily.<sup>25</sup>

That same day, Rigoberto Lima, a community leader who had denounced the ecocide, was shot down in the center of Sayaxché by hired assassins traveling by motorcycle. One year later, it is still not clear what the investigation has found, but the fact that both events occurred on the same day raises many questions about whether the two were linked. The situation caused a great deal of tension between the people who support the company and people who do not. The kidnapped men were finally released at night on a highway and had a great deal of difficulty finding a safe place to spend the night. The two investigations that should be happening about these serious crimes have not produced any results. In spite of a strong campaign launched by social organizations nationally and internationally to denounce these acts of violence, the Guatemalan government has not taken actions to prevent or sanction these types of defamation campaigns or to ensure the safety of the people who were publically accused.

The harassment did not end with those acts of violence. In fact, leaders have been threatened by phone in patterns that point to a system designed to create terror. *"For three months several of us--Carlos Mucú, Saúl Paau, and Mauricio Coy from COCODE from the El Pato community near REPSA, and Mateo*

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<sup>23</sup> Interview with Saúl Paau.

<sup>24</sup> Interview with Hermelindo Asig Mó of CONDEG

<sup>25</sup> *"Empleados de REPSA en San Benito manifiestan frente a juzgado en rechazo a cierre de empresa,"* available at <http://www.prensalibre.com/guatemala/peten/supeusto-empleados-de-repsa-retienen-a-campesinos-en-sayaxche>

*Torres and Domingo Chuc from ACDIP-- all received threatening phone calls.<sup>26</sup> They told us that they were going to burn down our houses, so our families had to go into hiding".<sup>27</sup>* The Inter-American Commission of Human Rights (IACHR) ordered precautionary measures (*medidas cautelares*) for some of the men threatened, including Saúl Paau, Domingo Chuc, Mauricio Coy, and Carlos Mucú because of their leadership in COCODES. However, the State has not provided the men with any of the security measures that were ordered.

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<sup>26</sup> ACDIP is the *Asociación de Comunidades para el Desarrollo Integral de Petén* (Association of Communities for the Integrated Development of the Petén).

<sup>27</sup> *Ibidem*.

### 3. REPSA's Role in the Human Rights and the Environmental Impacts of African Palm in Sayaxché

#### 3.1 REPSA's Response to Buyer's Demands on Sustainability

As part of Cargill's and Wilmar's commitment to build a 100-percent traceable, transparent and sustainable global palm oil supply chain by 2020 and in response to concerns raised by civil society organizations, in November 2015, Cargill and Wilmar announced that they were asking REPSA to implement a transparent action plan to comply with their standards, stating that the supply agreement would be conditional on the implementation of the plan.

Cargill required REPSA to take the following actions:<sup>28</sup>

- Issue a strong “zero tolerance” policy on violence and intimidation. Cargill recognizes that community members in Guatemala are strained and grappling with loss. Cargill condemns acts of violence and actions that violate the law. REPSA must publicly release an anti-violence and intimidation policy that is effective immediately.
- Strengthen environmental and social protections. Cargill is concerned about the economic, health and environmental impacts of pollution along the La Pasión River. Cargill expects REPSA to fully participate in the legal proceedings on this matter. To further strengthen environmental and social protections, REPSA must issue a responsible palm oil policy and action plan that comply with Cargill's palm policy no later than June 14, 2016. The policy and action plan must include commitments to sound environmental management, human rights, labor rights, respect for communities and ongoing transparency.
- Engage local communities and civil society groups. REPSA must work to rebuild trust by creating a participatory process in partnership with local communities and civil society. As a necessary first step, they must listen and respond to feedback from local leaders on the draft palm oil policy and action plan.
- Adhere to local and national laws. Cargill has outlined its expectation that REPSA will cooperate with ongoing government investigations and take the appropriate actions based on the outcomes of legal proceedings.

Wilmar required REPSA to implement a robust action plan that includes the following elements<sup>29</sup>:

- Develop and communicate a corporate policy on zero-tolerance on intimidation and violence in compliance with all relevant laws and regulations;
- Develop comprehensive sustainability policies on responsible production that should incorporate principles of No Deforestation, No Peat Development and No Exploitation;

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<sup>28</sup> REPSA and Cargill's Commitment to Sustainable Palm Oil. <http://www.cargill.com/news/company-statements/repsa-cargills-commitment-to-sustainable-palm-oil/index.jsp>

<sup>29</sup> <http://www.wilmar-international.com/sustainability/wp-content/uploads/2016/06/Wilmar-Reaffirms-Commitment-to-Human-Rights-and-Engages-Proactively-with-Supplier-to-Address-Supply-Chain-Issues.pdf>



- Strengthen engagement and improve transparency with its stakeholders, especially with local communities and civil society organisations;
- Develop and implement a grievance mechanism to address conflicts and issues raised by local communities and other stakeholders.

In the same month of June 2016, REPSA published its draft "Policy for the Responsible Production of Palm Oil," in which it announced its commitment: *"REPSA will build a transparent and sustainable production chain, committing to the criteria detailed below: These criteria apply to our own operations, as well as the operations of our providers."*<sup>30</sup>

The criteria mentioned are aimed at not deforesting, especially in high conservation value areas; and not exploiting indigenous peoples, workers, and local communities in accordance with national laws, ILO conventions, and the UN Declaration on Human Rights. In addition, it requires its producers: to comply with all the pertinent laws; show zero-tolerance for child labor and forced labor; have zero-tolerance for practices of discrimination or harassment in the hiring of workers; make payments according to terms of contract; and implement decent conditions of work, health, safety, schedules, and wages. Finally, it establishes the need for written or verbal contracts with workers according to the Labor Code in language that is understandable to the employees, and it guarantees the right to free association.

In terms of water and wastewaters, REPSA affirms its commitment to treat wastewater from the extractors appropriately and to use it as fertilizer on its own plantations. In addition, it says it will continue implementing its practice of zero discharge into bodies of water.

In terms of transparency, REPSA states that it will develop processes for managing complaints and questions at the local, national, and international levels, and that to do so, it will establish an on-line procedure for complaints and questions. In its second sustainability report, REPSA states that it now has a complaints system available on its website.

Finally, REPSA proposes to build proactive and constructive relationships with stakeholders, sharing information about the impact of the operations and performance reports. In addition, it pledges to communicate its information in languages that are relevant to its stakeholders and to resolve all complaints openly and transparently.

### **3.2 Community Reactions to Commitments Made by REPSA in Response**

In August 2016, almost none of the people interviewed for this paper knew about REPSA's sustainability plan and policy as set out in the above statements and processes. That includes social leaders from the municipality of Sayaxché, workers from social organizations, and government officials involved in the matter. In general terms, they welcomed actions that are in line with the law and that seek to respect

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<sup>30</sup> REPSA. Policy for Responsible Production of Palm Oil. Available at: <http://www.repsa-politica-de-produccion-responsable-de-aceite-de-palma.pdf>

the human rights of all people who have a relationship with REPSA. However, they also flagged some areas of concern with regard to REPSA, which are highlighted below.

### **i) Impact on the Environment**

The ecocide in La Pasión River triggered a strong response from CONAP, which has conducted two inspections to monitor the impacts of the spill. One study conducted to determine the level to which palm oil activity was responsible for the disaster shows that the risk persists because the palm oil mills are located close to the river so they can have easier access to the water required for operations.

*The raw or partially treated effluent from the mill, has a high content of degradable organic matter. The organic matter present in the raw effluent typically creates an average biochemical oxygen demand of 25,000 mg/L, of which at least 6,000 mg/L correspond to the oil content, which exhausts the oxygen in the water and causes other related effects when it spills into a body of water. (Thani et. al, 1999) It also shows an average potential hydrogen (pH) of 3.4 to 5.2 and a temperature between 80 and 90 degrees Centigrade.<sup>31</sup>*

*As discussed above, effluent spills into bodies of water are devastating. In addition to the possibility of exhausting the oxygen available for life in the water body, it has also been documented that a high concentration of vegetable oils of different types has a toxic effect on various aquatic organisms such as fish, mollusks, and arthropods, causing slow growth or even death in these animals (Fingas, 2015). In addition, the same types of spills on soil can produce alterations in soil conditions. While there is more organic material and nutrients like total nitrogen and phosphorous in the soil, the change in soil pH often causes an impact on the productivity of that soil (Okwute e Isu, 2007), leading to the withering or death of plants, even on oil palm plantations when it is used as fertilizer (Thani et. al , 1999).<sup>32</sup>*

The CONAP report on the impacts caused by the contamination of the La Pasión River recommends the following:

*Evaluate evidence of the presence of oils related to the palm oil mill effluent (POME) since it is a frequent contaminant around the world associated with palm oil production plants and is characterized by acidity, oiliness, and high demand for oxygen in the water. Conduct a detailed inspection of the industrial security measures used for managing the processes and waste in the facilities of the company named in the contamination event.<sup>33</sup>*

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<sup>31</sup> CONAP. "Informe de los efectos de la producción y procesamiento de palma de aceite sobre los ecosistemas." July 1, 2015, Guatemala.

<sup>32</sup> Ibidem.

<sup>33</sup> CONAP. "Informe de los efectos de la producción y procesamiento de palma de aceite sobre los ecosistemas." July 1, 2015. Guatemala.

A recent report presented by the Ministry of the Environment and Natural Resources (MARN) establishes that high levels of contamination persist. October 6-9, 2015, an inspection took place to follow up on a request from the Public Ministry (MP) to examine the extractors, operational processes, fields, and oxidation ponds for waste water treatment. During the visit to the REPSA I and II extractors, inspectors learned that the REPSA I extractor has a capacity of 70 metric tons per hour and that the REPSA II extractor has a capacity of 35 metric tons per hour. Both work 24 hours a day. They verified that REPSA II ponds 9 and 10 are not working and that they are located 10 kilometers from the headwaters of San Ignacio Creek. The REPSA I ponds are working, and inspectors visited the mouth of the San Ignacio Creek in order to look for the sampling point. This inspection process did not include any monitoring of water quality, however, because the MP did not request it. This first inspection process is very descriptive and superficial and does not analyze the impact of managing the volumes indicated. Such analysis would have led to the need to establish an adequate control process and a strict mitigation system for cases of emergency, however, these aspects are not mentioned.

October 13-16, CONAP conducted a second inspection of the companies NAISA and REPSA, since they are in the area closest to the affected zone. On this occasion, a water quality test was done. It was established that the process of extracting palm oil does generate wastewater. At the NAISA plant two effluent streams were found as well as an effluent buffer tank and the leachate pond from the composting. NAISA generates a maximum production of 0.7 cubic meters of water per ton of fruit processed. The samples of water collected in the "fertigation" discharge were sent to the National Health Laboratory (*Laboratorio Nacional de Salud*) under the custody of an adjunct prosecutor. Results showed that the water does comply with the minimums established in Articles 21 and 36 of the Governmental Agreement No 236-2006.

At the REPSA I plant, it was verified that the wastewater treatment plant is 350 meters away from the La Pasión River and 800 meters from the San Ignacio Creek. While this point is not analyzed, it is observed that this is a very short distance for purposes of managing toxic wastes. In addition, analysis of wastewater samples deep in pond 5 show that there is non-compliance with 5 of the 20 parameters.

**Table 2**  
**Parameter Violations Found in Wastewater Monitoring at REPSA**

Parameter	Unit of Measurement	Maximum parameter according to Article 20 of A.G. 236-2006	Wastewater discharge
Suspended solids	Milligrams per liter	400	60,003.8
Total Nitrogen	Milligrams per liter	50	85
Total Phosphorous	Milligrams per liter	30	117.75
Color	Platinum-cobalt units	1,000	5,398.8
Copper	Milligrams per liter	3	6.68

Source: Report from inspection done in the Public Ministry inspections of extractors at REPSA I and II and at NAISA. The company is in compliance in this case in parameters for: fats and oils; floating material; potential hydrogen; arsenic; cadmium; cyanide, hexavalent; mercury, nickel, and zinc. Report No. 134-2015/DRHyC/OOA/crmg from December 15, 2015.

Another observation is that the pond treatment system does not have a lining that would prevent infiltration, and so because of the retention time, the type of wastewater, and the presence of copper, there is a risk of contaminating water bodies and underground aquifers. Meanwhile, the "fertigation" ponds are violating permissible parameters for total nitrogen levels (52.5 mg/liter as compared to limit of 50) and color (1,222.9 units of platinum-cobalt, compared to a limit of 1,000). While the report mentions that this water is used for "fertigation," there is no indication that they are managing it appropriately.

MARN indicated that the REPSA, NAISA, and Palma Sur discharge zones had been inspected. It compared these studies with regulation 236-2006 on Wastewater Discharge and observed that neither REPSA nor NAISA were complying with the limits in three areas: apparent color, nitrogen, and phosphorous. *"These nutrients are being discharged into the river, and microorganisms make use of them in various ways. The suckerfish (pez diablo) has benefitted, but native species that are more sensitive to changes in the composition of the water have been harmed."*<sup>34</sup> Furthermore, the contamination is not occurring through above-ground discharge alone. *"Effluent has been managed poorly. Other companies have better control, but in this case it is evident that the control is inadequate. It is clear that there is a high likelihood that contaminated water will filter down to the water table. If the system is deficient, there will always be problems."*<sup>35</sup>

MARN reported that the REPSA Environmental Impact Study has not been formally approved since the company did not completely comply with the requirements established; it did not pay the required deposit or obtain its environmental license. In spite of this, however, the company has been operating normally. *"When the EIS is lacking, the law assigns a fine of between 5,000 and 100,000 quetzales, and the business is to be closed six months after the finding. MARN did not enforce the fine or the corresponding closure at the time, excusing itself through Resolution 1227-2009 which allows a palm oil extraction plant to be approved even if the paperwork has not been concluded. According to MARN, a sanctions process has begun and is yet to be concluded."*<sup>36</sup>

That a project as large as REPSA does not have an approved EIS clearly demonstrates problems with the company's application of environmental safeguard procedures and indicates the failure of the State to effectively enforce its laws. It is also clear that the company is using deficient information, but the State has not questioned its validity or asked for corrections. There is no mitigation plan for catastrophic situations; there is no explanation of how air and water has been impacted; and there is no inquiry into why the flora and fauna so essential for subsistence in the area have died off. *"This case proves that MARN has failed and that the municipality has failed. The people of the area were not consulted about the project in spite of the fact that it was a project with a huge environmental impact. How is it possible that this type of situation was not foreseen? Or that now the government doesn't know what to do to mitigate the harm done? This shows that the EIS were not real. They monopolize the water. They divert*

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<sup>34</sup> Statement of Gerson Ochaeta of MARN

<sup>35</sup> Interview with Leslie Ojeda del CONAP

<sup>36</sup> Article from e-magazine Nomada: "REPSA: el historial de una empresa investigada por ecocidio." Available at <https://www.plazapublica.com.gt/content/repasa-el-historia-de-una-empresa-investigada-por-ecocidio>

*the river water to their greenhouses or for watering the palm trees, and the rivers are drying up. In the 48 years I have lived here, I have never seen river levels so low. The watering holes in our pasturelands have dried up and that has never happened before. They took down too many trees, and now they are using too much water.*"<sup>37</sup>

The state of emergency was used mostly to issue bans and warnings about using water from La Pasión River. But the Guatemalan government did not adequately address the needs of the people in the area, especially their health needs. In spite of the multiple and complex issues that must be addressed in the municipality of Sayaxché to ensure that people can exercise their rights to health and food, the population remains in a situation of health and nutritional emergency with a clear lack of specialized professionals to assist them.

## **ii) Violation of Labor Rights**

Labor conflicts have been a continuous problem since the company set up shop in the area. For the last six years, CONDEG has been leading the work of defending labor rights in the region of the northern corridor (*Franja Transversal del Norte*). It has followed several conflicts and has been able to achieve some improvements in working conditions. However, the conflicts are recurring and have remained an open wound. *"We have pressured a lot for labor rights to be respected, but they haven't allowed it. Now since there is so much pressure at work and workers are being fired frequently, people don't want to risk organizing in any way. The company keeps black lists on their work and other activities, and they communicate this information to other businesses so they won't hire these people."*<sup>38</sup>

The primary complaints of the workers have to do how REPSA has gotten around paying minimum wage; how contractors linked to the company are subcontracting temporary workers; and that contractors are harassing workers in multiple ways. *"It's a lie that they pay everyone minimum wage. I know people who get Q800, but they don't allow anyone to report it, because they are hired by the job or for a few days at a time at a rate of Q65 per day. It's hard to investigate the subcontractors, because they are bussed in directly from other regions, they work for three or four months, and then they leave. They sleep on boards in large open sheds, and they don't get adequate food. Besides that, their shifts are longer than eight hours a day."*<sup>39</sup>

CONDEG's work includes pressuring the government to assume its responsibility in the labor arena. To do so, it has had a line of work directly with the Ministry of Labor over two administrations. However, in spite of its efforts to reach agreements for better working conditions, companies are constantly violating worker rights. This is in clear contradiction to the labor-related commitments of the Central America Free Trade Agreement (CAFTA). The Office of the UN High Commissioner for Human Rights (OHCHR) has accompanied labor rights cases since 2012, but it is also seeing strong resistance to respecting the law

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<sup>37</sup> Interview with Américo González López, Mayor of the Manos Unidas Cooperative.

<sup>38</sup> Interview with Hermelindo Asi Mó from CONDEG

<sup>39</sup> Interview with Lorenzo Pérez of CONDEG

and helping to investigate complaints. *"REPSA is highly competitive and they could promote better working conditions for their workers, but they don't do it. They could pay more, but because of the weakness of government institutions, they do not ensure compliance and there are frequent complaints of abuse."*<sup>40</sup>

The OHCHR has also recorded numerous complaints of labor rights violations from oil palm workers:

Reports presented to the OHCHR in October and December 2014 and May 2015 indicate in particular: a) non-compliance with minimum wage and/or other benefits, b) wage payment conditioned on meeting excessive goals fixed unilaterally by management, c) lack of remunerated vacation pay, d) limited access to IGSS benefits (national social security system), e) wage discrimination against women for work performed for no wages or for tiny amounts, f) third party contracting without contracts or written agreement, g) abuse of the initial trial period to avoid paying benefits, h) mass layoffs of workers, i) lack of tools and equipment for occupational health and safety.<sup>41</sup>

### **iii) Impact on the Communities' Right to Livelihood and Food**

The quality of the water is a big question for people in the area, and here they have asked for specialized professional intervention. The diets of area families have changed drastically in just one year as a direct result of the contamination of the river. Communities do not know if the fish they are catching and eating now are free of contaminants. The people with the most purchasing power have changed their diets to eat more chicken and beef; but the poorest, who are the majority, are still having to eat fish. *"Now the people who have more money are eating chicken and a little more beef. The poorer families still have to eat fish from the river, though in much smaller quantities, only once a week."*<sup>42</sup>

It is clear that the State is permitting people who depend on fishing to go back to their daily labor without any particular follow-up. So far, no chemical analyses have been done to test the level of contamination in river animals that later become part of the human diet. *"A stream was contaminated where I live, and so we asked the Commission for the Defense of Life and Nature to get involved and help denounce the contamination. The Fisherman's Association wants to sell its fish, so they don't want to say it's contaminated. But the color and odor of the river has changed."*<sup>43</sup>

One year after the spill, the aquatic wildlife has yet to recover. One of the most frequent reports is that the decrease in the number of fish is causing a huge impact on the population's ability to eat. *"We used to be able to fish about 20 pounds of fish two or three times a week, and we would set aside about two pounds for our own consumption. The rest we sold in nearby markets or in the community at about Q7 per pound. Three of us used to spend about four hours a day fishing. We were able to catch a lot of*

<sup>40</sup> Interview with OHCHR personnel.

<sup>41</sup> OHCHR. Press conference on the contamination of La Pasión River. Presentation of findings. July 21, 2015.

<sup>42</sup> Resident participating in the meeting of the Commission for the Defense of Life and Nature

<sup>43</sup> Ibidem.

varieties, for example: bass, olotes, mojarra, pozolanas, urucos, cherlas, tamboya, crabs, conchs, turtles, and shrimp. Now there isn't much variety. We spend five or more hours fishing and we bring in only about 3 pounds, that is pretty much just for our consumption. A lot of people won't buy it, because they think it's contaminated."<sup>44</sup>

"Fishermen used to catch about 20 pounds of fish, now they only catch 5-8 pounds a day."<sup>45</sup>

The population is also being forced to adapt their livelihoods because of the contamination. "We never had problems getting enough food. The river's color has changed a lot and it still smells bad. When it rains, it turns black because that's when the palm waste gets in. It used to be that a whole family would go fishing and the children would swim while we washed clothes."<sup>46</sup> One change that has been tried in various ways has been the introduction of new livestock species, but it hasn't met with much success. "When we try to raise our own chicken, they die very quickly because they get sick. It is very expensive to raise animals and that's why people don't want to take the risk to buy for breeding purposes. The animals eat a lot. They get sick. And besides, you have to have a big space to raise them."<sup>47</sup>

The contamination has also affected people's food consumption in the sense that large parts of the palm fields are fumigated with herbicides and insecticides, and this has harmed some of the plant and animal species in the area, which used to be known for its great biodiversity. "The vegetation has changed a lot. We used to eat yerba mora and bledos that grew all over the place very easily around here. But they started to disappear in the last few years. The oil palm companies have burned a lot of their land to clear the brush off, and they fumigate with herbicides. We used to have a lot of animals that we could hunt: wild pigs, pacas, armadillos, iguanas, deer.. but we haven't seen them for some years. We could say that we used to eat well--three times a day--but not anymore."<sup>48</sup>

We also don't know what kind of harm occurs when skin comes into contact with the water in the river and the streams. People complain of an increase in skin disorders, eye problems, respiratory issues, and gastrointestinal disorders. Families prioritize well water for drinking, but not for bathing, which they still do with river water. The weakness of the current health system in the municipality means that these maladies are not formally diagnosed.

#### **iv) Influence on Community Structures for Political Representation**

The fact is that the performance of palm oil companies has been denounced and questioned on multiple topics in various spaces for social representation, and this opens up another area of conflict where municipal authorities begin to act in favor of the oil palm companies. Among the people interviewed in Sayaxché, there is a perception that current municipal authorities--especially those in Community Development Councils (COCODEs)-- are intervening in community political spaces to favor the election

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<sup>44</sup> Fisherman Miguel Luis Chicaj, Caserío Arroyo Santa Marta El Mico

<sup>45</sup> Interview with Américo González López, Mayor of Manos Unidas Cooperative

<sup>46</sup> Ibidem.

<sup>47</sup> Fisherman Miguel Luis Chicaj, Caserío Arroyo Santa Marta El Mico.

<sup>48</sup> Ibidem.

of people who are linked to the palm oil companies and to displace the leaders who are more critical of the impact of palm oil production. However, it also seems that when the new leaders do not take on a critical role, they are being rejected by the communities. *"Many communities do not go to the municipal meetings, in fact the company tries to keep them from going. They have formed another group to get us out of COCODE and for the last three months they have been occupying the position, and not calling meetings. In July they diverted a creek that went through the community of Santa Rosa and the COCODE didn't say anything about it. So, the people [the COCODE council reps] feel loyal to the company and they don't say anything or confront the company when they violate our rights."*<sup>49</sup>

It is clear that the oil palm companies' presence and their actions have divided the society into two very different sides. This creates a risk of social conflict that is expressed at different levels and becomes more complicated when there is no presence of the State as the body that should take the lead in enforcing regulations and guaranteeing clear rules for all involved people and organizations. *"The population has become more dependent on the company. Now, you can basically find two groups: those whose income depends on the oil palm companies and a decreasing number of people who still make their living from small farming and fishing activities. This is what defines the current disputes. The entire population has been harmed, but there are a lot of divisions."*<sup>50</sup>

One of the main goals of former mayor Rodrigo Pop was to make the palm companies pay their IUSI taxes, but he did not succeed. Little by little, he yielded ground to the agenda promoted by the palm companies. The Palmas de Sayaxché consortium that REPSA belongs to along with other palm companies in the region joined the Guatemalan Army and Chamber of Agriculture in supporting the municipality's soccer team and promoting other activities like the maintenance of schools and health clinics.<sup>51</sup> *"The current mayor has said that people need to pay [their taxes] but he doesn't say anything about the companies. Some farms are paying the IUSI, but it's voluntary so we don't know if they are paying what they should."*<sup>52</sup>

## **v) Obstruction of Justice**

When Judge Karla Hernández gave the order to shut down the company as a precaution so that the necessary investigation could be done to determine the possible link between the spill and the fish kill, REPSA's strategy was to obstruct the process. Of course, if they were sure they weren't responsible for the contamination, they might have been interested in demonstrating that, and the case would have been resolved for them. *"Once CALAS, CODISRA, and local organizations filed their legal complaints, and CONAP also, and they got the ruling for the closure, the company strategy was to impede process. It began a systematic attack against the judge even in the hearing itself. It seems that the judge played it safe and even though she could have sanctioned them for their actions, she didn't. After the ruling to*

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<sup>49</sup> Anonymous community leader.

<sup>50</sup> Interview with Laura Hurtado, Director of Action Aid.

<sup>51</sup> Electronic article: Luis Solano, "Palma Africana: la farsa de la Responsabilidad Social Empresarial." Available at: <https://cmiguate.org/palma-africana-la-farsa-de-la-responsabilidad-social-empresarial/>

<sup>52</sup> Interview with Américo González López, Mayor of the Manos Unidas Cooperative.



*close the company for six months, the company filed five amparos, including some that were filed by workers.*"<sup>53</sup>

REPSA fought for Judge Hernández to be removed from the case, and the case has not advanced since October 2015. There are clear indications of influence peddling with the court of Petén. *"For example, they would file an amparo in the morning, and by the afternoon, a decision had already been made in favor of the amparo, which is completely unusual in the justice system. When we saw this, we did not want to litigate the case in Petén, and we took on a strategy of peaceful resistance in legal matters."*<sup>54</sup>

The involvement of State entities like CONAP, MP, and MARN has been seen as a significant step forward. However, ten months have gone by with no further progress on the case. It is not yet known whether the new administration will maintain the same positions. *"One very important thing is that a temporary Court on the Environment and Environmental Crimes was created in Petén. The judge is specialized, independent, and has political support. The State has complied with its functions, though we will have to wait for them to call us to the first declaration to see if they really follow up. The most relevant thing about this government is that the Minister of MARN, after saying he was committed to the water issue, has been seen in photos at REPSA events."*<sup>55</sup>

The fact that five *amparos* were filed on behalf of the company at a time of ecological crisis in which the lives of thousands of people were at risk shows bad-faith litigation in that they were not arguing against a particular procedure as much as they were trying to bog down the process. *"They have the right to defend themselves, but they are making excessive use of the amparo remedies in order to keep the preventive measures from going into effect. If the company is closed temporarily, this is preventive measure, not a punitive one. It is a principle of 'environmental law' that is called 'precautorio,' which indicates that any action that may be causing damage to the environment must be halted in order to investigate what is really happening. You don't need to present evidence for this. Operations are stopped, evidence is gathered, and once the truth has been established, they can either resume operations or not."*<sup>56</sup>

CALAS appealed the first *amparo* and CONAP appealed another one, and the Constitutional Court declared it admissible. This means that it's possible that the court process could move forward again later in 2016. However, more than one year after the fish kill, it may be difficult to find evidence that links the contamination of the river to the company's poor environmental management practices, since tests related to water quality toxicity may be less reliable. Yet, it is still important for relevant government agencies to do the appropriate investigation in a fair and transparent manner.

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<sup>53</sup> Interview with Rafael Maldonado of CALAS.

<sup>54</sup> Ibidem.

<sup>55</sup> Ibidem.

<sup>56</sup> Ibidem.

### 3.3. REPSA's Strategy for Exercising Influence

The conflicts that have arisen since REPSA's arrival in 1999 give us a glimpse into the company's strategy to gain influence in order to reach its objectives. At least three phases of conflict occurred as the company consolidated its presence in the area. During the first phase, when the objective was to install and expand the physical facilities, it sought to acquire land and looked for intermediaries who would use aggressive tactics to push small producers off the land. This phase happened at the same time that the company was making its environmental justification, in the sense that it said it was seeking to reforest large areas that had been deforested.

In the consolidation phase, REPSA developed the infrastructure and maintenance processes necessary for its first crops. Once again, it sought the support of external actors, this time, contractors who brought in workers from other regions in inhumane conditions to tend to the first crops. Multiple labor and wage related abuses occurred, and the company blocked attempts at unionization. It also sought to build relationships with the Municipality of Sayaxché, by providing small amounts of support for various items--even though it continued its strategy of evading the IUSI property tax.<sup>57</sup>

The most recent phase was shaped by the contamination of the river and is aimed at consolidating local power by neutralizing expressions of discontent and denunciation. Its most tangible expression is the consolidation of an alliance with local residents to occupy local power structures, specifically the Consejos Comunitarios de Desarrollo, which had taken critical position, especially after the ecological disaster.

Some community activists interviewed believe that REPSA is trying to ensure the continuation of its activities by using a strategy that combines public relations activities with legal actions at various points in time. Its effort to position itself in the social imagination of the nearby communities is aimed at consolidating the idea that it is the only option for development in the region. This means that the communities and municipal authorities must accept that the impacts of company activities are natural and even necessary for the development of the region. And in case anyone should question this logic, it launches a media campaign to defame the opposition. As a complement, legal actions are aimed at defending the methods of their production activities at all costs, even when labor or environmental legislation are being violated. In this sense, it is deemed more effective to keep numerous legal processes open than to actually comply with the regulations in force. This strategy has been possible because of State's permissiveness in tolerating the abuses of highly structured and consolidated economic powers.

While REPSA is a relatively new company, it is simply one more expression of a long tradition in which corporations have been able to make large profits with the political support of the State of Guatemala. Their strategies are not new, nor are their political relationships coincidental. *"The corporation has almost all the power and it tries to keep it by promoting division and exploiting weaknesses in municipal*

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<sup>57</sup> Op cit. Solano

*entities and in the central government itself. It establishes a presence and provides some support for the community, which is only symbolic but which is still valued by people, and this opens up the door for becoming an important actor in the region.*"<sup>58</sup>

Since it began its presence in the area, REPSA has kept open channels of communication that look like friendly and accessible channels. However, if you look elsewhere, you can see a much more aggressive tendency to mix actions of intimidation with those of social defamation. *"After the meeting with Cargill, it has changed its methods, but not its overall goal. It has dedicated itself to defaming community leaders. It has denounced people and organizations. It says the ecocide never happened, that everything is normal, and that it has met with certain people when it really hasn't. It attacks those of us who are defending natural resources and human rights. It pays for local PR spots on the radio, on cable television, and on social media. It says it is using best practices and it tries to influence local journalists.*"<sup>59</sup>

Given the larger context of social conflict and divisiveness Sayaché, the lack of proper follow-up by State authorities to the systematic defamation of activists can have serious consequences that endanger the safety and wellbeing of human rights defenders. *"If they hadn't known who we were, they would not have taken us in and held us against our will, but since our photos had been circulating, people recognized us even though only one of us is from the region. The company tries to get its workers involved in acts of violence, in order to distance itself from its responsibilities. Many things must be investigated, but they are not. They wanted us to talk with the PDH Human Rights Ombudsman's office, the National System for Dialogue, and the OHCHR to get them to nullify the order to close the company."* It is clear there is an intention to manipulate workers of the company through information that harms the physical integrity and dignity of people who are doing the work of promoting human rights.

### **3.4 REPSA's Sustainability Progress Reports**

Since the launch of its sustainability policy in 2016, REPSA has issued two progress reports.

In October 2016, REPSA published its first progress report on the Sustainability Action Plan 2016-2017, covering the period of May - August 2016. In it, it looked at six objectives:<sup>60</sup>

- 1. "Clear values and corporate-level policies on responsible production/operations are developed and understood by our stakeholders."**

REPSA reports that it has already written a Draft Policy on Responsible Palm Oil Production and that it has shared it with employees, clients, and stakeholders. Among the stakeholders, it mentions the

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<sup>58</sup> Interview with Laura Hurtado.

<sup>59</sup> Interview with Saúl Paau.

<sup>60</sup> REPSA, Progress Report, Sustainability Action Plan 2016-2017, Period of May - August 2016, available at <http://repsaguatemala.com/wp-content/uploads/2016/09/REPSA-Progress-Report-Sustainability-Action-Plan-MAY-AUG-2016-SEP23.pdf>

governor of El Petén, the mayor of Sayaxché, officials from the Ministry of Health, from CONAP, and "other national and international stakeholders." It also held a workshop with senior and mid-level employees. However, it does not mention the communities that have denounced the ecocide as one of its stakeholder groups, nor does it mention representatives of the Community Development Councils (COCODES). While the policy has been published on its webpage, there is no mechanism identified where one might make observations about it.

## **2. "Human rights (local communities, civil society, workers, and other stakeholders) and the law are fully respected."**

REPSA indicates that with the support of international NGOs and input from national NGOs and local communities, it is working to develop an ongoing system for stakeholder engagement. It also says it is committed to "identifying, reducing, and managing" impacts and conflicts in a transparent way and that it plans to have an "enhanced grievance diagnostic process." However, many community stakeholders see no indication of any real progress made in this area; rather, the underlying social conflict associated with the spill continues to be ignored and community and civil society groups that have been involved in that conflict continue to be marginalized.

REPSA reports that with the support of KPMG Guatemala, it will carry out an independent assessment of REPSA's labor practices and policies.<sup>61</sup> The expected start date for that was supposed to be October 2016 but has now been delayed; yet if this is to be a truly independent assessment, it will be important for them to contact organizations that have participated in multiple initiatives to support labor conflict resolution, such as CONDEG and OHCHR. In addition, due to reports that REPSA has blocked worker efforts to form a union, it will be important for the consulting group to call for labor organizing to be allowed.

REPSA also indicates that it is investing in the development of support infrastructure for its workers, specifically housing and potable water, and that it is exploring supplementary channels for employees to file grievances. These aspects would be strengthened if its system were to be transparent and include the participation of union representatives.

REPSA states that its Policy to Prohibit Violence and Intimidation is being implemented with the goal of preventing "unacceptable behavior" on the part of their employees. However, this policy has not been disseminated through the media outlets that REPSA usually uses.

## **3. "The company is transparent with stakeholders about its policies, plans, grievances, and operations"**

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<sup>61</sup> KPMG Guatemala is a firm that does accounting audits as well as consulting on organizational climate and human resources. It is unclear as to whether the proposed process will have a human rights tie-in, though that should be priority.

As its main progress made in the area of transparency, REPSA mentions that it has launched a website and disseminated information about its policies with its stakeholders. It is essential to recognize that stakeholders should not only be identified as those who have economic interests. They must also include the communities that are socially and environmentally affected by company activities and the social organizations that have been organizing around these issues, such as the Commission for the Defense of Life and Nature.

#### **4. "Protect and Restore Key Conservation Values"**

REPSA reports on reforestation activities and says it will be able to reforest 150 hectares between 2015 and 2017. This would be an important step. It should follow advice and guidance from the National Council on Protected Areas, CONAP, in order to ensure that the appropriate measures are taken. This information should also be validated in structures for local political participation in order to ensure its veracity. However, given the fact that REPSA has still not finished the process of formalizing its Environmental Impact Study; that it has not complied with the requirements of the law in this regard; and that it has obstructed processes for monitoring its production activities; mistrust of company activities persists.

#### **5. "Environmental impacts are minimized and managed effectively"**

REPSA reports that in order to mitigate the impacts of the "climatic event" that occurred on the La Pasión River, it has made a major investment in its ponding systems, and now has a "Policy on Zero Effluent Discharge." While not directly recognizing responsibility for the ecocide, it is implicitly noting the relationship between the two topics [the event and the ponds]. However, it does not yet have a transparent process to verify that these actions have actually taken place, especially important as this is the point of primary concern for the impacted communities. REPSA also indicates that it has hired the services of an independent NGO to study the events that occurred in la Pasión River. However the results of that study are not yet public.

#### **6. "Shared values are created with local communities and others"**

REPSA states that it has been in dialogue with the governor of El Petén, the Mayor of Sayaxché, and local leaders about "better leveraging" the Governance and Development Pact. It also reports on some activities and projects it has implemented in some communities. However, it does not provide information on initiatives to communicate with all of the local communities, especially through the System of the Municipal Development Councils, COMUDE.

In early 2017, REPSA released its second sustainability progress report where it provides some updates in regard to its sustainability commitments in the areas highlighted above. While there have been some indications of progress on areas such as building water purification systems for workers, the most important issues remain unaddressed. In particular:

- REPSA does not acknowledge or address the spill which had devastating consequences on the local communities and the local ecology, and makes no mention of working with local stakeholders to provide remedy for the adverse impacts.
- The Environmental Impact Assessment (EIA) studies which apparently have been submitted to MARN for approval have not been disclosed and there was no public consultation in the preparation of the EIA. These are critical steps for both ensuring transparency and for ensuring stakeholder engagement, and are in fact required by law in Guatemala (even though the law may not be enforced).
- In order for REPSA's commitment to engaging stakeholders in a dialogue process to be credible, it needs to be built on meaningful acknowledgment of past harms along with a concerted commitment to address those harms. This is a prerequisite to any kind of a credible stakeholder dialogue process. Furthermore, REPSA has not made efforts to engage those local civil society groups that have been demanding accountability for the June 2015 spill and some local civil society groups feel that the company has instead sidelined them.

## 4. Conclusions and Recommendations

The case of ecocide in the La Pasión River in the municipality of Sayaxché has exposed the socioeconomic impact of African palm cultivation. Efforts to investigate and establish accountability for parties responsible for the ecocide have been obstructed by the REPSA through repeated judicial appeals. However, inspections conducted thus far indicate the link that exists between deficiencies in the management of palm waste and the contamination of water sources. They also indicate that contamination levels in the river continue to be high, which has led to a situation in which one year after the disaster, the wildlife has not yet been able to recover. This has had a negative impact on the diets and the health of over 20 communities.

There is also evidence to suggest that REPSA has created a climate of fear and exacerbated conflict in the region as several individuals and community groups were intimidated when efforts were being made to close REPSA temporarily and conduct a proper investigation to respond to the demands of the affected communities. There have been new allegations of intimidation since the initial research was completed - in November 2016, communities/individuals alleged that REPSA employees were involved in intimidation against community activists.<sup>62</sup> In this situation, there is a latent risk that more conflict could occur that will further jeopardize the lives of those who are simply exercising their legitimate right to demand justice. The State must take responsibility for guaranteeing the communities' ability to exercise their civil and political rights and for guaranteeing their safety.

The actions that buyers like Cargill and Wilmar have required of REPSA are a positive step forward. However, there is more to do to drive real change in the company's operations and practices. REPSA's actions need to go beyond the level of "statements" and should be accompanied by meaningful reforms to build legitimate and transparent mechanisms to verify their compliance. A follow-up plan should also be implemented in which the company is accountable to the State of Guatemala and to the communities in the Municipality of Sayaxché.

There is also an onus on State agencies to fulfill their responsibilities. The State has not taken sufficient measures to guarantee the affected communities' right to health and food. There is an urgent need for a technical study to identify the impact of the contamination of the food system of the region. Preventive steps must be taken along with actions to mitigate and make reparations for the harm done. These emergency actions must be taken immediately and not wait for the judicial process to be concluded. It is also clear that legitimate processes to demand justice for the ecocide have been obstructed by the defamation campaign against leaders. This increases the situation of risk that human rights defenders are facing in the region. The State of Guatemala should intervene immediately with an investigation to identify and ensure accountability for the spill.

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<sup>62</sup><http://speakout4defenders.com/en/single/5848a2eade7ed16d3aba18a6/>

## Recommendations

Global traders like Cargill and Wilmar who have a commitment to achieving a fully traceable and sustainable palm oil supply chain and other industry stakeholders have a role to play in ensuring their suppliers like REPSA are genuinely compliant with their commitment and in facilitating a more sustainable palm oil sector in Guatemala more generally. While the initial actions taken by these companies are a step in the right direction, meaningful reform entails the following:

- 1) Requiring that REPSA implement truly legitimate mechanisms for stakeholder engagement that are recognized by the communities. Credible stakeholder engagement processes should strengthen local governance structures and uphold human rights norms. The process should involve all actors, including communities that are socially and environmentally affected by the company's activities and civil society organizations that have been demanding justice for the toxic spill, such as the Commission for the Defense of Life and Nature. Acknowledgment of the environmental and social impacts of the ecocide that occurred in 2015 along with a commitment to remedy those impacts are necessary prerequisites for such stakeholder engagement.
- 2) Requiring an independent and transparent process to monitor and validate REPSA's progress in translating its sustainable palm oil policy and zero tolerance to violence policy into practice. As of now, there are clear inconsistencies between the claims set out in REPSA's policy and progress update and the human rights and environmental violations the communities are facing. Processes that rely solely on certification by bodies like the RSPO will be insufficient.
- 3) In order to ensure genuine reform, REPSA needs to go beyond the parameters of the conventional corporate sustainability approach that is geared more towards public relations and address the root problems of social and ecological conflict and violence that is endemic in the context of Guatemala. This entails engaging with other industry partners and stakeholders in the Sayaxché region, including affected communities, in a process of regional dialogue in a manner that builds trust across different stakeholder groups.