Analysis of Grievance Log Posted in July 2017 by Reforestadora de Palma, A.C. (REPSA)

As of September, 2017, two years have passed since the unresolved murder of Rigoberto Lima Choc in the municipality of Sayaxché, Guatemala. Lima Choc’s killing before the Sayaxché courthouse is believed to have been tied to the case that was decided in that courthouse the day before, in which a judge handed down a ruling of “ecocide” and held palm oil company REPSA responsible for toxic palm effluent spills into the Rio Pasion in April and June of 2015. Following the killing, Friends of the Earth U.S. reached out to other civil society organizations to make a joint demand that global agribusiness companies and brands suspend sourcing from REPSA until both the murder case and the effluent spills were thoroughly investigated and resolved. Two years later, Cargill, Wilmar International, and other agribusiness interests and brands have made efforts to work with the company to improve its management of environmental and human rights risks – but there continues to be no resolution of either the murder or the effluent spills, and no company has ended its business relationship with REPSA. Despite high profile pledges to rid their supply chains of exploitation and human rights abuses, both Wilmar International and Cargill have failed, in our view, to take action that corresponds to their duties under international norms guiding business and human rights. This failure reflects also upon the consumer brands that purchase from Wilmar and Cargill, including Nestle, Pepsico, Bimbo, etc, as well as upon the financial interests and shareholders behind these companies.

Following the initial public complaint raised by Friends of the Earth and others in November 2015, both Cargill and Wilmar asked The Forest Trust to lead an investigation and develop an action to bring REPSA into line with their corporate responsibility policies. Following an in-person meeting between Cargill and civil society groups in April 2016, The Forest Trust worked with REPSA to take the first significant public step in addressing the problems with REPSA: Cargill implemented a policy of No Tolerance for Violence, and required REPSA, as its business partner, to do the same. That policy went into effect in August, 2016. Here it is worth noting the rationale behind beginning a process of REPSA’s reform with such a policy: both documented reports and anecdotal evidence point to numerous incidents of harassment, threats, intimidation, persecution, discrimination and incitement toward critics of REPSA in Guatemala. On the part of civil society, it was urgent that a No Tolerance for Violence policy be implemented, both to engage the companies in taking proactive steps towards ending the incidents of harassment and intimidation, and as a precondition for any further action due to the gravity of the concerns.

The context is important: the local communities within REPSA’s sphere of operations in Sayaxché have very longstanding and profound concerns about dispossession of indigenous rights and territories, land tenure conflicts, police and military violence and impunity, systemic exploitation of workers, political corruption, drug trafficking, lack of services, and overall insecurity. It is within this context that the two most fundamental
issues that REPSA has been asked to address – the company's role in and responsibility and accountability for both the April and June 2015 effluent spills and resulting contamination; and its responsibility to take clear remedial action regarding specific acts of violence and intimidation against human rights defenders – have gone unresolved.

The former concern is not one raised solely by Friends of the Earth or other advocacy groups. The Forest Trust’s Year 1 Action Plan Monitoring Report, published in May, 2017, clearly states that REPSA had by that time failed to meet these two fundamental demands and instead decided to respond to civil society’s concerns by addressing other issues within the confines of its facilities and plantations. While REPSA has taken steps to improve working conditions in order to bring them into minimal compliance with global labor rights standards, these improvements do not and cannot replace the need to address the fundamental human rights concerns and grave environmental contamination events of 2015.

To name four major concerns raised in the TFT Monitoring Report:

1) it shows a complete lack of progress by REPSA to investigate and take disciplinary action regarding the kidnapping case (TFT 2017, p. 28);
2) it shows no progress toward stopping the continuous acts of intimidation against human rights activists (TFT 2017, p. 19);
3) the company continues to display a complete lack of transparency and accountability around the June 2015 spill (TFT 2017, p. 39); and,
4) the report documents that REPSA continues to operate without the proper legally required permits, licenses, and FPIC consultations (TFT 2017, p. 35-36)

In late July, 2017, REPSA posted on its website, first in Spanish and then a few days later in English, a Grievance Log. This grievance log included grossly inaccurate information, manipulated video footage, and commentary by people who do not represent the communities and were not present at the events in question. The UN Guiding Principles on Business and Human Rights expect that operational-level grievance mechanisms (Guiding Principle 29) follow specific criteria for effectiveness (outlined in Guiding Principle 31) includes the expectations that mechanisms be legitimate, accessible, predictable, equitable, transparent, rights-compatible, a source of continuous learning, and based on engagement and dialogue. Beyond failing to meet the basic criteria for what a credible grievance mechanism should do, the grievance log posted by REPSA, and subsequently removed, served to undermine trust rather then to reinforce it. Further, it is crucial to understand that accusations such as those that were made within the grievance log, in Guatemala, are often the first step in setting up a legal defamation case against a human rights defender.

REPSA Grievance Log, notes (all notes refer to the archived document, here):

- N.002 (1.) refers to a study that REPSA commissioned by the Society of Biologists of Mexico that supposedly clears REPSA of the contamination of the Pasion River. This document was not independent, and has never been made public. REPSA’s reference to it in the grievance log merely links to Repsa’s own summary of the study, not the study itself. This study’s methodology, analysis, and conclusions have never been inspected by independent scientific experts and no one has been able to scrutinize the integrity and veracity of its claims.
N.002 (1.) refers to an article published in the ContraPoder magazine in April 2016. The article puts forth an unsubstantiated claim that the Pasion River contamination of June 2015 was not the result of REPSA’s actions but due to drug production and processing in the region. This hypothesis is based on a report written by the US Marine Corp on drug trafficking in Sayaxché. Nowhere in that report does it mention the spill in the Pasion River nor does it state that drug processing and production happen in the region. Instead the report states what experts in the drug policy field have documented for many years: that the Sayaxché region is a drug trafficking corridor, NOT a production or processing site.

- N.002 (1.) contains a video in which it states that the Executive Director of CALAS believes that drugs were the reason behind the contamination. To the contrary, the video shows him stating his belief that REPSA most likely contaminated the river.

- N.002 (2.) contains a video in which relatives of the assassinated human rights defender Rigoberto Lima Choc claim that REPSA is not responsible for the murder and then, attack by name a prominent human rights defender. The official murder investigation is still open, and a video of an arbitrary public statement by the victim’s family has no credibility whatsoever in relation to a murder investigation. It is of great concern that the company is publicizing a video in which a prominent human rights defender is publicly defamed, in a country in which such an action can have fatal consequences.

- N.002 (2.): contains a video link that shows the President of the COCODE of Champerico praising REPSA and dismissing suggestions that REPSA is linked to the murder of Rigoberto Lima Choc, and then attacks a prominent human rights defender by name, with dubious statements.

- N.002 (3.) contains the unfounded assertion that the people demanding justice outside the Sayaxché courthouse in September 2015 were inciting violence and wanting to burn down the palm plantations. This assertion mischaracterizes the work of CONDEG, who have never been “systematic opponents of palm oil” as REPSA describes them, but rather a respected civil society organization that has for worked decades to improve worker rights. It is troubling that the video is titled by REPSA as “Saul Paau’s Statement” – insinuating that Saul Paau, a prominent human rights defender, was supporting violence, which he did not and never has. This is incredibly dangerous for Mr. Paau’s safety and can be read as an attempt to create a narrative to bring up spurious criminal charges against Mr. Paau.

- N.002 (3.): description of the actual kidnapping is inaccurate, and a mischaracterization of the facts in the case.

- N.002 (3.) It is a falsehood that REPSA asked for the PDH and the Justice of the Peace to intervene – according to our understanding, the request came from community groups and local human rights organizations. We spoke to the PDH and Justice of the Peace officials who were threatened to be kidnapped and burned alive that same day, as well as to the Minister of the PDH. Both confirmed that they had been invited by the communities, not by the company.

- N.001 (1.) The reason the International Observer Mission did not include a reference to acts of intimidation and threats by the REPSA employees against the delegates was for security. The REPSA employees in the “list of participants” were not invited to the closed-door event, as has been confirmed in writing by the organizers of the International Mission.
- N.001 (1.) REPSA points to a link on the International Mission’s public Facebook page where a partial video of the November 11th event is posted as proof that no interruption or intimidation occurred. The video as posted in fact stops right before the REPSA employees arrived – giving the superficial view that the event in question did not occur. However, it has been made clear that the video was edited at this point to protect the identities of the people being intimidated and threatened. Photos of the event show the presence of these employees, and an unedited video shows the interruption, but has not been made public due to security concerns.

- N.001 (1.) In reference to a video posted of Ezequiel Cruz from CONADUR, Mr. Cruz is misinformed about the International Mission and the issues it is trying to address, and is also not seen as a legitimate voice of the community. Mr. Cruz states that the International Mission delegates and those “supposed” local activists are trying to ruin REPSA’s reputation and misuse financial resources from the international donor community. Mr. Cruz goes so far as to accuse them of working outside the law. These are dangerous statements apparently intended to discredit local organizations. Promoting such accusations could – and in our view, should – be interpreted as a violation of REPSA’s “Policy to Prohibit Violence and Intimidation.”

- N.001 (2.) REPSA states that it is the right of REPSA employees to hold public protests where they defame and attack human rights defenders, as they are exercising their right to Freedom of Expression. Engaging in threats, defamation and incitement to violence are contrary to Freedom of Expression as defined in legal and normative frameworks and are antithetical to the concept of human rights. Legally speaking, it is one thing to make public allegations that a business enterprise is engaged in problematic practices and to seek legal redress; it is quite another to incite violence against an individual.

- N.001 (3.) REPSA challenges the official complaints lodged with the Public Prosecutors Office (MP) by Saul Paau despite the posted documents by first hand witnesses.

- N.001 (4.) The dismissal of the case of intimidation made against a Prensa Libre reporter shows the levels of corruption in the Guatemalan justice sector and suggests the possibility of undue influence that REPSA has on legal investigations. To our knowledge, this case had a substantial amount of proof, photos and video of the acts in question, witnesses, and documentation of a REPSA company truck being driven by REPSA employees, with its full license plate displayed. The lack of progress in the case, and its eventual dismissal, says less about the case itself than it does about the systemic failure of justice in Guatemala.

- N.001 (5.) REPSA dismisses the Amnesty International documentation of the November 11th incidents of intimidation against the International Mission, and provides a blank link. The original link in the Speak Out for Defenders website states that: “The meeting was closed, with participation by invitation only. The representatives of the Commission wanted to present their environmental concerns around La Pasión River and the situation that they face as human rights defenders. A group of people, identified by the human rights defenders in Sayaxché as workers from the REPSA palm oil company, entered the meeting uninvited.”

In light of this analysis, we believe that REPSA has flagrantly and continually flouted its Policy to Prohibit Violence and Intimidation. Multinational agribusiness companies and
downstream brands that wish to comply with global norms as expressed in the UN Guiding Principles on Business and Human Rights should consider suspending sourcing or risk continued exposure to potential environmental crimes and human rights abuses.