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**REPSA/HAME Group’s response to the “Open Letter to Multinationals Resuming Palm Oil Sourcing from REPSA in Sayaxché, Guatemala,” is misleading and fails to take responsibility for the environmental disaster and rights violations caused by the company.**

On the 10th of June 2021, an [Open Letter](#) was sent to multinationals resuming palm oil sourcing from Reforestadora de Palma S.A. (REPSA) in Sayaxché, in the Petén department of Guatemala. This letter by a coalition of NGOs raised the alarm on decisions made by Cargill, Nestlé and potentially other consumer goods manufacturers and agri-business traders to resume sourcing from REPSA, despite the failure of REPSA and its parent company HAME<sup>1</sup> to consult with and adequately address the grievances of civil society and indigenous communities affected by ecocide, intimidation, and human rights violations.

According to the [responses](#) issued by REPSA and these multinational buyers, REPSA claims to have resolved the issues stemming from two spills from its crude palm oil plant that led to the ecological disaster on the Pasión River in 2015, which harmed the livelihoods and access to water of dozens of communities in addition to causing lasting damage to the ecosystem, killing as many of 40-70 metric tons of fish, and reportedly also causing death among reptiles and mammals over more than a 100 km section of the river. In fact, these issues have not been resolved.

Legal action taken by civil society against REPSA in 2015 as a result of the disaster led to a court order temporarily closing its plant. In the aftermath of this injunction, company managers, security guards and other employees engaged in organized violent protest against the court. The protesters were given material support (transport and meals) apparently by other local businesses that work with REPSA, although REPSA denies any involvement. The violent demonstrations included the illegal detention of 3 civil society leaders from the organization CONDEG (National Council of Displaced Peoples – Guatemala), for an entire day. REPSA employees brought ropes and gasoline to the place where the civil society leaders were held and threatened to burn them

<sup>1</sup> Reforestadora de Palma S.A. (REPSA), and its parent company HAME and the Olmeca Group.

alive. The three defenders who had been illegally detained, Lorenzo Pérez Mendoza, Hermelindo Asig Mó, and Manuel Pérez Ordóñez were finally released after the judge agreed to review the order halting company operations. On this same day a REPSA critic Rigoberto Lima was shot in a professional style assassination, and in spite of arrests of the alleged shooters, the mastermind and motive behind the shooting remain in doubt, as does the independence of the criminal investigation.

CONDEG remains dissatisfied with REPSA and its parent company HAME's response to their illegal detention of their staff by REPSA employees and/or contractors. It is crucial for the prevention of future incidents that the company take responsibility for the incident involving the detention and threats to CONDEG leaders and the escalation of violence in the region caused by the company's activities.

CONDEG continues to work to protect the rights of REPSA workers who cannot use the company's grievance procedures because of fear of reprisals. CONDEG has noted that while they are able to communicate complaints to REPSA, the company refuses to acknowledge and address the underlying abuses committed by its labor contractors and does not provide lasting solutions, and its personnel and contractors take actions which perpetuate a sense of intimidation in the surrounding communities.

As we noted in our previous statement, UN Special Rapporteurs for Human Rights said in a 2020 letter to the Guatemalan government that the contracting and labor practices of REPSA could be "indicators of human trafficking and forced labor and other severe forms of labor exploitation." REPSA and its buyers have not responded to these allegations of human rights violations affecting their largely indigenous workers.

Guatemalan media has [reported](#) that the lack of resolution of the Pasión River case in the courts in 2021 is due to the continual delay tactics and intimidation with REPSA/HAME reportedly demanding recusals of judges and changes in venue.

The impacts of the HAME group of companies have not been limited to the ecocide and violence of 2015 and 2016 in the northern Peten region. Reporting in [February](#) and [July](#) 2021 documented the negative impact of HAME on additional communities in several parts of Guatemala. The expansion of palm oil has resulted in the loss of lands and territories of Indigenous Peoples, the depletion and rechanneling of rivers causing both [loss of water](#) access and [flooding](#). The company's actions cause negative impacts on human rights to food and health of indigenous communities across their area of operations.

Palm oil buyers should not source from jurisdictions where human rights and territorial rights of indigenous communities and peoples are not respected, protected and enforced by the state. This also extends to the companies they are sourcing from who have a history of violating these rights. Palm oil buyers, their suppliers and financiers have an obligation to clearly demonstrate human rights are being respected, protected and observed. Human rights abuse and land dispossession is a systemic problem across the palm oil cultivating regions of Guatemala. The [criminalisation of four indigenous human rights defenders, given](#) a suspended four-year sentence on the 22nd of

November 2021, along with the [violent displacement of Maya Q'eqchi' community "Palestina" in Chinebal](#), El Estor on the 16<sup>th</sup> of November 2021 are further indications that human rights violations in the sector are ongoing and endemic.

As we mentioned in our previous letter, over 40 Guatemalan civil society organizations signed a statement in 2021 protesting the widespread violation of human rights, women's rights, worker's rights, and indigenous peoples' rights to territory, land and water. The statement singles out the failure to settle or make reparations in the Pasión River case in particular. As such, the Pasión River / REPSA case is an emblematic one that, if addressed by value chain actors in a fair, effective, and just manner, has the potential to set important precedents in best practice in the agri-commodity sector across the region and internationally.

Consultation with a small number of community leaders in the context of an enormous power imbalance is not sufficient to provide effective and fair redress in this global supply chain case. As Guatemala's largest palm oil enterprise, and as the party responsible for the Pasión River disaster, REPSA/HAME should agree to participate in consultations with national, regional, and local human rights organizations and leaders representing all communities across their areas of operations, so that indigenous communities are not isolated from one another, and both the company and the state can hear the full extent of the human rights, including indigenous peoples' rights, that need to be addressed. CONDEG learned of several reported "community consultations" regarding the grievances and damage caused by the ecocide, but these were organized without sufficient advance notice so that as a practical matter there was not sufficient time for communities' preparation and participation.

[Cargill](#), [Nestlé](#), [Unilever](#), [Mondelēz](#), [AAK](#), [Oleofinos](#), and [Ferrero](#) have all issued statements confirming their decisions to resume sourcing from REPSA/HAME, or the resumption of sourcing by their suppliers. Each company has failed to reconsider their decisions based on the evidence presented in the open letter and the recommendation made to suspend sourcing from REPSA until an independent third-party verification process could demonstrate that it had met a set of minimum requirements outlined in the previous letter and re-iterated below. A dossier detailing ongoing and unresolved malpractice which supports the decisions to maintain suspension of the Group HAME/REPSA is included in ANNEX 1.

The position taken by Cargill, AAK and Oleofinos, three of the biggest processors sourcing from the region, is in contrast to [Wilmar](#) that claims to have maintained a suspension on REPSA. [Colgate-Palmolive](#) states that REPSA remains on its No-buy list and [Mars](#) confirmed that REPSA/HAME is not supplying palm oil to its Tier 1 suppliers.

In response to the open letter, [Ferrero](#) put on-hold, with immediate effect, its palm oil sourcing from Grupo Olmeca companies and started to assess the company's performance against its supplier requirements. It stated that it accepts the participation of independent third-party verification observers to assess REPSA's progress. Three months later, Ferrero resumed sourcing and has not undertaken an adequate investigation and third-party verification of the performance of Grupo Olmeca. Instead, Ferrero has relied on engagement solely with Grupo Olmeca and second-party audits that have been conducted to date by other NGOs that have

potential conflicts of interests as they work for the company. Ferrero's decision to resume sourcing from Grupo Olmeca in October raises serious questions about the credibility of its human rights due diligence systems and mechanisms to investigate grievances and undertake independent verification of fulfillment of human rights requirements in its published policies.

**These decisions indicate that Cargill, Nestlé, Unilever, Mondelēz, AAK, Oleofinos and Ferrero have defective and inadequate human rights due diligence systems, grievance mechanisms, and procedures used in response to non-compliance cases and to protect Human Rights Defenders against ongoing intimidation by their current or past suppliers.**

[PepsiCo](#) claims to have ended direct and indirect sourcing in 2017 and 2019, but its direct suppliers AAK and Oleofinos, have confirmed that they have resumed sourcing from REPSA and Grupo Olmeca. Procter and Gamble's sourcing documents reveal that it has sourced palm oil from REPSA in the past; yet P&G failed to issue a public response to this case showing once again that the global 'personal care' business lacks adequate policies and procedures to respect human rights.

Each company has failed to meet the minimum requirements set out in the June 2021 letter, namely, to suspend sourcing from REPSA until an independent third-party verification process could demonstrate that it had met a set of minimum requirements to do the following:

- Halt intimidation of environmental and human rights defenders.
- Conduct a transparent and fully independent investigation to uncover and address any involvement of REPSA management in the illegal detention of Hermelindo Asig Mó, Lorenzo Pérez Mendoza and Manuel Pérez Ordoñez, on 18 September 2015; and the escalation of violence that included the murder of Rigoberto Lima Choc that day.
- Address company responsibility for the contamination of the Pasión River, which had devastating consequences on the environment, public health, and the social fabric of the surrounding communities.
- Begin the process of meaningfully acknowledging past harms and unresolved grievances as well as ensuring an effective grievance mechanism for future problems.
- Demonstrate a concerted commitment to provide remedy to local stakeholders for the adverse impacts of the spill and irresponsible palm oil production practices, including exploitative working conditions.

**The undersigned CSOs maintain our call on Cargill, AAK, Oleofinos, Nestlé, Unilever, Mondelēz, Ferrero, PepsiCo, Procter and Gamble and other palm oil buyers regionally and globally to:**

- 1. Reinstate and continue the suspension of sourcing from REPSA until the judicial process has reached a satisfactory conclusion regarding the case of ecocide.**

2. Fully disclose and explain their process of ongoing supply chain due diligence with regard to REPSA and its third-party suppliers and business partners, with particular attention to due diligence to protect and uphold human rights and the environment, including protection of human rights defenders.
3. Accept the undertaking of a thorough, objective and transparent independent investigation into the complaints represented in ongoing reports of human rights violations and environmental damage in REPSA operations and supply chains.
4. Initiate a process of serious and responsible dialogue to reach agreements for verifiable and practical solutions with impacted communities and Guatemalan civil society organizations, including national human rights organizations and CSOs working in the region, including the participation of independent observers to address the distinct issues involved in the complaints of the communities and agricultural workers taking into account the letter from the UN Human Rights Rapporteurs and the civil society statement.
5. Repair and redress the environmental and economic damage done in the affected communities.

Yours sincerely,

1. Rainforest Action Network
2. Friends of the Earth US
3. ActionAid USA
4. Forest People's Programme
5. Profundo
6. Water Justice and Gender
7. Global Justice Ecology Project
8. Biofuelwatch
9. Milieudefensie - Friends of the Earth Netherlands
10. Greenpeace USA
11. Protection International
12. MayanWhitewater
13. Instituto Maira
14. Liza Grandia, Associate Professor, University of California
15. Environmental Network for Central America

## **ANNEX 1. Dossier outlining ongoing and unresolved malpractice in relation to REPSA's operations**

Multinational corporations must consider the following points that support decisions to maintain suspension of the Group HAME/REPSA:

1. REPSA's failure to consult:
  - While REPSA has had communication with CONDEG, it has not engaged in a dialogue on the basis of righting the wrongs committed.
  - REPSA and its customers have categorically failed to consult the Comisión por La Vida y la Defensa de la Naturaleza, the organization that first raised concerns about the Río Pasió ecocide in 2015, and in which Rigoberto Lima Choc was a leader.
  - Similarly REPSA has not had meaningful consultation with communities along the over 100 kilometers of the Pasió River affected by the environmental disaster. For such a consultation to be meaningful it would have to begin with recognizing the fact, based on all the evidence including the [study from the US EPA](#), that the company caused the disaster. A meaningful consultation would need to involve independent experts to establish the number of affected communities and families who depend upon the river for water and for livelihoods and the extent of the damage to livelihoods and the environment, and the disease and other suffering caused by pollution and loss of access to water.
  - REPSA must recognize that provision of minor benefits to some communities or community leaders is not indicative of adequate consultation or addressing grievances, nor does it constitute provision of remedy nor lower the risk of additional incidents.
  - REPSA needs to create the conditions for a broad civil society and indigenous peoples' consultation across the territories in which it operates.
2. REPSA's failure to end intimidation.
  - In recent years workers have shared grievances with CONDEG and have asked the civil society organization to bring them before REPSA, because workers report experiencing reprisals from local managers after complaints. Workers remain afraid to use the official grievance channels, because of the behavior of managers and labor contractors.
  - REPSA demands for recusal and attempts to intimidate the judiciary in the Pasió River case, and its continued legal tactics and delays continue this posture and have not allowed resolution of the case.
3. Misleading and inaccurate aspects of [REPSA's response to the open letter](#):
  - REPSA claims that it was not linked to the illegal detention and threats against the lives of the CONDEG leaders based on the fact that the State did not ultimately charge the company. CONDEG has valid grounds for considering that REPSA orchestrated the violence or was linked either directly or indirectly, because (a) it

involved senior staff and security personnel from the company; (b) transportation and food was provided in an organised fashion. REPSA's refusal to acknowledge and address the violence undermines the basis for meaningful dialogue and indicates that fundamental changes have not occurred.

- REPSA has given its suppliers the false impression that the case of the murder of Lima Choc has been resolved, but the motive and the mastermind behind Choc's killing have not been established.
- REPSA has employed tactics aimed at delaying and extending the Pasión River legal case, in spite of the evidence against the company, including the EPA study as well as eyewitness accounts. Rather than working with communities to assess the damage and work toward settlements, the company has demanded recusals and venue changes, tactics designed to embroil the case for lengthy periods of time before it is eventually dismissed and justice for the communities is denied.
- The responses published by REPSA and its clients report that organizations such as Earthworm and Proforest have advised their clients to resume sourcing from REPSA. While REPSA has [reported](#) NGO participation in an external audit to its Grievance Mechanism conducted by Earthworm Foundation, it is our view that REPSA is misusing its meetings with the local staff of international NGOs to portray itself as a company that has an effective framework for remedy and addressing grievances and has made sufficient progress for multinational companies to resume sourcing. The undersigned organizations have a clear and divergent view—[as outlined above](#)—REPSA has not adequately addressed harmful impacts and the grievances raised against the company [since 2015](#). Further third-party verified progress is needed prior to the resumption of sourcing.
- REPSA's misuse of the term 'third-party' verification is also misleading. REPSA incorrectly refers to Earthworm as being a provider of [third-party](#) verification that validates its progress and identifies opportunity areas. Earthworm is an NGO who has been providing services to, and is directly paid for by, REPSA and can only be considered a second party. Third-party verification is conducted by an independent organization that provides no other services to the company.