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# Report Evaluation Mission Coca-Cola bottling plants in Colombia (30 June–11 July 2008)

## Background

The Coca-Cola management and the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) jointly requested the International Labour Office (ILO), in 2006, to carry out an evaluation Mission of conditions of work and labour relations in certain Coca-Cola bottling plants in Colombia. This request was endorsed by the International Organisation of Employers (IOE) and the International Trade Union Confederation (ITUC). The Office held relevant consultations with the Colombian authorities and the national employers' and workers' organizations concerned. The organizations consulted expressed their agreement to the Mission and were duly informed of the date when it would take place ([Annex I](#)).

Following a thorough review of the request and taking into account the agreement expressed by the interested parties, the ILO decided to undertake the Mission. The decision was taken in 2006. However, the Mission could only take place between June and July 2008 due to various matters related to Colombia in the framework of the ILO, among them the adoption of the Tripartite Agreement on Freedom of Association and Democracy (June 2006) and the High Level Mission related to that Agreement (November 2007). The 2008 Mission can be said to be another step forward in the actions taken by the ILO to identify new areas of technical cooperation.

It should be borne in mind that the results of the Mission do not pre-judge the inspection functions which are the responsibility of Colombia's labour administration or the functions specific to the normal or special control bodies of the International Labour Organization (ILO), and neither should they take precedence over such functions.

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However, where appropriate, mention will be made of the comments of the ordinary or special supervisory bodies of the ILO, citing the public documents in which they appear.

The results of the Mission are set out in the following report. The introduction to the report (Part I) sets out the Mission objectives, its composition and method of work. Part II contains an analysis of conditions of work and labour in the plants. Part III is an evaluation of labour relations. Part IV presents an evaluation of occupational safety, health and environmental conditions. Part V covers labour inspection and the activities of the labour administration, and includes a reference to the legal action that, in general, is pending at each plant. Finally, the conclusions of the Mission are set out in Part VI.

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## **I. Introduction**

### **I.1. Objectives**

1. The Mission objective consisted of evaluating conditions of work and labour relations in the Coca-Cola bottling plants which had been selected.

### **I.2. Composition of the Mission**

2. The Mission comprised six senior officials of the International Labour Office ([Annex II](#)), who acted independently, objectively and in conformity with the principles of the International Labour Organization. The officials in question are specialists in the technical areas in which assessments were carried out or specialists in employers' and workers' activities. It should be noted that the employers' activities specialist expressed his disagreement with certain observations in the report and with the associated conclusions.

### **I.3. Method of work**

3. As indicated in the letter sent to the Government and social partners in Colombia ([Annex I](#)), the visits were made without prior notice. To facilitate the gathering of the necessary information, a questionnaire was prepared covering the following areas: conditions of work; labour relations; health, safety and environment; and labour administration and justice ([Annex III](#) [available in Spanish only]).
4. Each of the visits took the following form: first, a meeting was held with the representatives of the plants and the representatives of unionized workers and workers who had signed up to the collective accord. The purpose of this meeting was to present the questionnaire to them and examine the most important issues in each plant. In general, the representatives of the plants, trade unions and the accord provided the requested information orally or in writing and, in some cases, provided documentation which

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supported and amplified their comments.<sup>1</sup> Given its nature, the Mission cannot demand evidence in the legal or administrative sense of the term. In the majority of cases, the disputable assertions were made in the presence of the interested parties. Nevertheless, the Mission endeavoured for its part to obtain indications which allowed it to obtain assurance as to the veracity of the information. At the end of this first meeting, a visit was made to the plant and its departments. The Mission then met with the workers' safety and health officers, including members of the Joint Occupational Health Committee (COPASO)<sup>2</sup>, and it also interviewed separately the representatives of the trade unions and the workers belonging to the accord. The visit ended with a final meeting with the company representatives, essentially to receive documentation ([Annex IV](#) [available in Spanish only]),<sup>3</sup> a meeting also attended by the workers' representatives.

5. In addition to the questionnaire, another tool used was a matrix of indicators which provided a very approximate description of the conditions of employment and work. The definition and selection of each indicator took into account Colombian Labour legislation and International Labour Conventions ratified by Colombia.

#### **I.4. Plants selected**

6. To obtain a representative sample of the sector, the selection was based on the following criteria: number of workers, representation of the various trade unions, the existence of collective agreements or accords, or both, and facility of access. It was also taken into account that the bottling plants belonged to various corporations (FEMSA, INDEGA, EMBOROMAN, BADUR, S.A).

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<sup>1</sup> The FEMSA Corporation, which covers various bottling plants in Colombia, provided a document entitled *Operating report, July 2008*, which provides information and figures on the various subjects addressed. This document is cited frequently throughout this report. SINALTRAINAL and SINTRAINDEGA sent various documents, which included the replies to the questionnaire.

<sup>2</sup> Resolution No. 02013, of 6 June 1986, regulating the organization and functioning of Industrial Medical, Hygiene and Safety Workplace Committees (now Joint Occupational Health Committee).

<sup>3</sup> The list of documents received in this annex is selective and as indicative as possible, taking into account the volume of documentation received, which was not always relevant to the Mission objectives.

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## **I.5. Organization of work and production and operating processes**

7. The majority of plants visited applied a system of division of labour which distinguishes between production processes as such (i.e. manufacture and bottling) and so-called operating processes (i.e. packaging, handling, pre-sales, distribution and sales).
8. According to the information provided, until the mid-nineties, the majority of plants <sup>4</sup> had a lineal process which linked manufacturing with distribution and marketing of the product. Subsequently, the corporations which managed the Coca-Cola bottling plants in Colombia decided to split into two what until then had been a single process of production, packaging, distribution and sales of the drinks by workers employed directly by the plant. This single process has only been retained in the Carepa-Urabá plant in Antioquia. <sup>5</sup>
9. The impact of this disaggregation on conditions of work and labour relations is seen very differently by the company representatives and those of the workers. Indeed, new employment relationships have emerged between the company and the workers, and a clear difference has been established between directly employed workers (in the Coca-Cola bottling plants they are called company workers) and workers in an outsourced relationship.

## **I.6. Regulation of conditions of work**

### ***I.6.1. Collective agreements and accords***

10. Colombian legislation recognizes the existence of two legal instruments which regulate labour relations: collective agreements and collective accords. The collective agreement “is concluded between one or more employers or employers’ associations and one or more trade unions or trade union federations, to fix the conditions governing contracts of

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<sup>4</sup> Then under the management of PANAMCO COLOMBIA, S.A.

<sup>5</sup> From the information received, everything goes to suggest that, insofar as the object of the company is the production, distribution and sale of the drinks it makes, these processes should be considered as a single unit without any disaggregation, as happened in practice for a long time.

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employment during its term”.<sup>6</sup> On the other hand, collective accords agreed “(...) between employers and non-unionized workers are governed by the provisions of Titles II and III, chapter I, part two of the Substantive Labour Code, but only apply to those who sign or subsequently adhere to them”.<sup>7</sup>

- 11.** In all the plants visited there are collective agreements and accords, with the exception of Barranquilla and Carepa-Urabá, where there are only collective agreements.

### ***1.6.2. Labour regulations and maintenance of order in the establishment***

- 12.** Colombian legislation defines labour regulations as “the set of laws which determine the conditions to which the employer and his workers must submit in the provision of service”<sup>8</sup>. The regulations “form part of the individual contract of employment of each of the workers in the establishment concerned, except as otherwise stipulated which, however, may only be favourable to the worker”;<sup>9</sup> such regulations are mandatory in commercial companies with over five (5) permanent workers, in industrial companies with over ten (10) or agricultural, livestock or forestry companies with over twenty (20).<sup>10</sup>

- 13.** In each of the plants visited there are Internal Labour and Maintenance of Order Regulations (RIT). The Mission did not receive specific comments on these regulations, but it was informed that on 19 April 2004, the trade union SINTRAINDEGA submitted to the Ministry of Social Protection an “appeal for restitution and a supplementary appeal against Resolution No. 01184 of 24 March 2004”, which approved them.<sup>11</sup>

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<sup>6</sup> Substantive Labour Code (CST): section 467.

<sup>7</sup> CST: section 481. It is important to note that from now on, according to this and following sections of the CST, collective accords may only be concluded in cases where the trade union membership is not more than one third of the workers.

<sup>8</sup> CST: section 104.

<sup>9</sup> CST: section 107.

<sup>10</sup> CST: section 105.

<sup>11</sup> In this appeal, it is alleged that the RIT presented for its approval do not comply with the requirements of section 108 of the CST. The trade union alleges that some of its provisions,

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### **I.6.3. Codes of ethics**

14. COCA-COLA-FEMSA adopted a Code of Business Ethics which sets out the company policies on human resources, relations with suppliers and what the Code calls “general ethical standards”. This Code was prepared unilaterally by the company.

### **I.6.4. Other corporate instruments**

15. Among the other corporate instruments which govern the plants, mention should be made of the “Recruitment and selection manual”, the “FEMSA GROUP human resources policies and guidelines” and the “DILO complaints system policy”.

## **II. Conditions of employment and work**

### **II.1. Directly employed workers and external workers (outsourcing)**

16. As mentioned above, the splitting of the production and operating processes had a crucial impact on the method of contracting workers in the majority of the plants visited.

17. Workers who provide their services in production processes generally have a direct employment relationship with the company and their conditions of work are regulated by collective agreements, collective accords or other rules such as internal labour regulations.

18. Workers who provide their services in the operating processes very often do not have a direct employment relationship with the company although, as indicated above, some activities which are carried on in this context are inherent to its objectives. This is the case of tasks relating to the packaging of products, handling of the products and some related to maintenance of the company’s machinery. In these cases, it is customary to use workers contracted through external agencies under a contract established and regulated by national legislation. For the distribution, pre-sales and sales of products, the company in many

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moreover, “would be contrary to the collective agreement and the legal order itself” and was thus a violation of that provision.

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cases concludes contracts of a commercial character with its former employees who become “cessionaires”. The company considers these workers to be commercial agents (subject to a contract of that nature). For their part, the concessionaires contract workers who assist them in carrying out their tasks and are dependent on them. According to the trade union representatives, this situation has been accompanied by precariousness of conditions of employment and work of these workers and, at the same time, considerable repercussions on labour relations, such as the decline in the number of trade union members and weakening of collective bargaining.<sup>12</sup>

19. Outsourcing,<sup>13</sup> which also affects the production process, occurs through contractors, subcontractors, service providers, temporary employment agencies<sup>14</sup> or associated work cooperatives.<sup>15</sup> Given the problems arising from outsourcing, especially in areas where the nature of the work appears to constitute part of a whole (production, distribution and sales), it is not surprising that this subject was raised in all the plants visited and that, generally speaking, it was this matter that resulted in the most exchanges between the

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<sup>12</sup> It is worth mentioning that the supervisory bodies referred to this situation, which is fairly widespread in the country, considering the situation in the country. GB.295/8/1: *Mission report Colombia (24-29 October 2005)*; page 221, paragraph 138, the Committee of Experts on the Application of Conventions and Recommendations (CEACR) recalled in its comments “The use of various contractual arrangements, such as associated work cooperatives and service, civil or commercial contracts to cover what are in practice employment relationships which are used to carry out functions or work within the normal activities of the establishment and under which workers are not allowed to establish or join trade unions”, indicating that “when workers in cooperatives or those covered by other types of civil or commercial contracts have to perform work within the normal activities of the establishment in the context of a relationship of subordination, they should be considered as employees in a real employment relationship and should therefore enjoy the right to join trade unions”. ILC, *Report of the Committee on the Application of Conventions and Recommendations*, Report III (Part 1 A), 95th session, 2006, page 72.

<sup>13</sup> This means a triangular relationship which involves a worker who provides services in a company, but is not the employee of that company but of an external company, whether a temporary employment agency, a contractor or associated work cooperative. As indicated, this type of contracting and its various forms are regulated in Colombian legislation.

<sup>14</sup> Act 50 of 1990 (*Official Journal No. 39,618*, 1 January 1991), section 71: “A temporary employment agency is one which contracts the provision of services with third party recipients to collaborate temporarily in their activities, through their labour provided by natural persons, contracted directly by the temporary employment agency which has the character of their employer”.

<sup>15</sup> According to section 1 of Decree 468 of 1990, “associated work cooperatives are not-for-profit associative companies which combine the personal work of their associates and their economic inputs to produce goods, execute works or provide services”.



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various sectors interviewed and the members of the Mission. This in itself justifies the comparatively large space devoted to this topic in the report.

20. The unionized workers in general, and the workers covered by the collective accord who were interviewed by the Mission, did not dispute the fact that the distribution of the product, including shipping, handling and route planning is an integral part of the bottling process and sale of beverages. They argue that outsourcing is merely a phenomenon derived from the express refusal of the company to maintain the unity of production, distribution and sales.

### **II.1.1. Company workers**

21. The methods of contracting direct employees of the company (company workers) are established by collective agreement or collective accord, where they exist, and in principle do not seem to give rise to major problems.

### **II.1.2. External or contract workers**

22. It should be cautioned, first and foremost, that this report does not examine the situation of contract workers who provide services that are ancillary to the company's main purpose, such as, for example, those who work in security services, cleaning, canteens (called "casinos" in Colombia) and, in some cases, maintenance.
23. Outsourcing is widespread in packaging and shipping of products.<sup>16</sup> The same situation is seen in the case of those engaged in distribution and sale of the products. It can be clearly seen in the Bogota North, Bogota South, Cali, Medellin and Barranquilla plants.

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<sup>16</sup> In its *Operating Report, July 2008*, the company states that: "The service companies with which we contract services or processes are independent in the performance of their activities and the management of their employees. The control exercised by the company over the services provided to it and entry of external workers to its premises includes, where applicable, control of the list of employees of the service companies".

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24. A representative of the collective accord said that in the Bogota North plant, <sup>17</sup> 70 per cent of the operating staff is outsourced, having been contracted through associated work cooperatives or temporary employment agencies. In the distribution area, 85 per cent of the workers have been outsourced. In the Bogota South plant, outsourcing involves 81 per cent of the workers<sup>18</sup>, despite the fact that the tasks of marketing and final sales carried out by them are inherent to the company's turnover. In this and other plants which were also visited, a significant number of the workers employed in these tasks had until fairly recently been direct employees of the company. <sup>19</sup>

25. In the Cali plant, over 60 per cent of the workforce (i.e. 120 workers) are apparently affected by outsourcing. The workers who exercise activities in the fields of distribution and sales of products have a commercial type relationship with the company, i.e. a contract for the sale of the product. <sup>20</sup> Those who work under contracts of this kind are called "cessionaires". <sup>21</sup> For the company, the relationship established with them is of a commercial, not an employment, nature. However, it is important to underline that it often happens that concessionaires do not possess their own vehicle for the distribution and sale

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<sup>17</sup> The total number of company workers in the Bogota North plant – which accounts for 56 per cent of the country's total production volume – according to data provided by the company in its *Operating Report, July 2008*, is 494, a figure that includes administrative posts. According to a report submitted to the Mission by the trade union SINTRAINDEGA dated 8 July 2008, at the Bogota North plant, of a total of 1,740 people, 1,405 are subcontracted (80.7 per cent) and just 335 are direct employees. This last figure corresponds exclusively to workers in operational units.

<sup>18</sup> According to data submitted to the Mission by SINTRAINDEGA, of 419 people, 76 are company workers and 343 are subcontracted. This figure, once again, corresponds exclusively to personnel in operational units.

<sup>19</sup> According to the trade union representatives, "It all started with Act No. 50 which legalized outsourcing companies which had a strong impact on the exercise of freedom of association". Act No. 50 of 1990 which introduced amendments to the Substantive Labour Code and other provisions (*Official Journal* no. 39,618, of 1 January 1991).

<sup>20</sup> The sales concession contract provides in its first clause: "Purpose: the company undertakes to grant the concessionaire a concession to allow him to acquire and sell, but not exclusively, certain agreed quantities of the products and the concessionaire undertakes to acquire from and pay the company for such quantities of products to sell them, exclusively, and to ensure the competitiveness of the products and the brand image (...)".

<sup>21</sup> The term "cessionaire" is used for those persons who receive a "concession" for the distribution and sale of drinks produced by the Coca-Cola plants. It should be noted, however, that these "cessionaires" are often ex-employees of the company itself.

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of the products, but have to hire it from the company.<sup>22</sup> It should be added that the company defines the distribution routes for the products.<sup>23</sup>

**26.** In the Barranquilla plant owned by Embotelladora Román (EMBOROMAN), the collective agreement signed by the trade unions SINALTRAINAL<sup>24</sup> and SINALTRAINBEC for the period 2007–2009 sets out a specific arrangement for so-called company routes whereby 10 direct employees of the company, protected by the collective agreement, distribute the products. Parallel to that are the so-called licence routes, operated by 187 workers linked to the company by a concession arrangement and who are not covered by the collective agreement. The plant managers said that in many cases the “concessionaires” receive the vehicle, owned by the company, under “a motor vehicle lease contract”.<sup>25</sup> The company determines how the brand is used, the logos and images which it imposes on the “concessionaire”.<sup>26</sup> Furthermore, the company sells to the

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<sup>22</sup> The contract of the concession for resale provides in clause three: “Amount of lease and method of payment of the model vehicle lease contract - the lessee shall pay daily to the lessor, as consideration for the use of the movable asset, a variable amount for each day that the leased vehicle is used, which shall be the result of multiplying the number of cases of product purchased from the lessor by the value stated in the company policies, depending on the method of distribution concerned”.

<sup>23</sup> Clause 6.3 of the model contract of a concession for resale establishes the following obligation for the company: “To suggest to the concessionaire routes for the distribution and resale of products with a view to reducing costs and expenses inherent in the concessionaire’s operation and make the distribution and resale of the products more efficient”.

<sup>24</sup> The representatives of this union stated that, by a national directive of its organization, it had decided not to participate officially in the interviews with the Mission because it had not received a reply to the complaint it had submitted to the ILO against the Coca-Cola bottler. However, some representatives and officials of the organization attended the first meeting held by the Mission at the plant on 3 July 2008. At the final meeting of the Mission, held in Bogota on 11 July 2008, the President of SINALTRAINAL reiterated that the union had allowed its affiliates to maintain informal contacts with the Mission and reserved the right to submit additional information at a later date, as in fact they did.

<sup>25</sup> Under clause five (use of the asset) in the contract of concession for resale, “the lessee shall use the motor vehicle leased by the lessor solely and exclusively for the distribution of the products produced and/or marketed by the lessor”. Further, clause eight, grounds for termination, expressly includes “termination of the contract of concession for resale of the products concluded between the lessee and the lessor”.

<sup>26</sup> In the same vein, the contract of concession for resale provides in clause four: “Brands - the company grants the concessionaire free authorization to use the product brands, limited to the vehicle(s), property and/or assets which the concessionaire uses for the resale of the products, under the terms and conditions determined by the company as owner or licensee of the brands. Any use of the brands as set out in this contract shall be subject to the prior approval of the company and in all cases must always use the designs, specifications, parameters and standards determined by it. The

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cessionaires the uniforms that they and the staff hired by them must wear, in the manner prescribed by it, for the loading and unloading of products during distribution and sale. Company workers, on the other hand, receive these items free of charge from the company.

- 27.** The trade union SINTRAINDEGA, which has the largest membership in the plant,<sup>27</sup> indicated that the transport sector (fleet) is completely outsourced as is virtually all the sales sector.
- 28.** The representatives of the unionized workers and those covered by the collective accord all talked about the precarious conditions of work of contract workers, in terms of both individual and collective rights. The company representatives said that the “cessionaires” were subject to strict contractual requirements<sup>28</sup> and had to submit to audits, which include verification of payment of wages, and contributions to social security and occupational risk insurance, to ensure that the rights of outsourced workers were not violated.<sup>29</sup> They also indicated that the amounts of remuneration and other benefits of concessionaire’s staff are included in the costs of the contract of concession for resale, including expenses incurred by the transporter under that heading.
- 29.** In the Medellin plant, the trade unions representatives recognized that the company management was concerned to control the work of concessionaires more closely. This policy could be explained by the fact that, under Colombian law, the beneficiary company

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cessionaire authorizes the company to place or install logos and images with the brands on the vehicle(s) concerned, without any consideration with respect thereto”.

<sup>27</sup> It has 131 members, i.e. 42 per cent of the payroll.

<sup>28</sup> The Code of Ethics, Chapter V (V 2.1, V 2.2 and V.2.3) regulates the company’s relations with its suppliers of goods and services.

<sup>29</sup> The company representatives pointed out that they had detected cases of non-compliance with those requirements and that, consequently, certain contracts with concessionaires or outsourced companies had been cancelled.

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is jointly liable for the obligations initially incumbent on the contractor, subcontractor or intermediary.<sup>30</sup>

**30.** The phenomenon of outsourcing has been growing in operating processes and is extending to production processes. In the latter, temporary workers are used to replace temporarily workers on leave or to cope with increases in production. This is one of the cases of contracting through temporary employment agencies allowed under Act 50 of 1990.<sup>31</sup> The company representatives indicated in this respect that the respective judicial authorities had repeatedly held this practice to be legal, as it was allowed in national legislation.

**31.** According to the company representatives,<sup>32</sup> the number of temporary workers employed directly by the company increased considerably in each of the plants visited, especially in the manufacturing area, and the trade union representatives corroborated this. In the Cali plant (INDEGA), during the past year 26 temporary or subcontracted workers were added to the workforce. In the Barranquilla plant, 12 temporary workers joined the workforce in 2006 and a further 70 temporary workers did so in 2007. In the latter plant, the increase in sales allowed an increase in the number of fixed workers. Transport and distribution of the products continue to be wholly or partly carried out by direct employees of the company, which shows that these activities are not always carried out under a concession<sup>33</sup> and that this does not necessarily have to be the case.

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<sup>30</sup> CST: section 34 (Independent contractors), section 35 (Simple intermediary) and section 36 (Partnerships).

<sup>31</sup> Sections 77.1, 77.2 and 77.3.

<sup>32</sup> In the Bogota North plant, several temporary workers have been included in the workforce in the last four years. According to the representatives of SINTRAINDEGA, the union with the largest membership in the plant, at the same time over 80 workers were dismissed, it being claimed that they were not direct employees of the company but of others.

<sup>33</sup> According to information provided to the Mission, a similar situation exists in the Cartagena and Montería plants, which could not be visited.

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32. In the Carepa plant, the collective agreement provides that “the company undertakes not to outsource current routes operated by workers covered by the agreement”.<sup>34</sup>

## **II.2 Form of payment of wages, working time, rest, holidays and leave (other than in the exercise of trade union rights)**

33. In general terms, everything suggests that conditions of work applicable to direct employees are duly respected, to the extent that they are regulated by legal instruments, collective agreements or accords.

34. With regard to the administration of the company payroll, i.e. full payment of wages at intervals laid down by law, collective agreement or accord, payment of wages in a form which ensures that they are enjoyed in full, respect for the working time regime (eight hours per day and 48 hours per week)<sup>35</sup> and rest, no comments or complaints were made which might suggest problems of compliance. However, some trade union officials said that there was a perceptible unease among workers concerning regional wage differentials. Whatever the case may be, and by way of information, in the companies managed by FEMSA, and according to data provided by them, the minimum wage is 2.5 times the national minimum wage and its workers earn 19 wages per year. According to information given by the company, the workers receive a certain amount of assistance, in addition to their salaries, for the benefit of their families. Both the remuneration and the extent and nature of the assistance can be verified in the collective agreements and accords that govern each case.

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<sup>34</sup> Collective agreement (of 10 March 2008 in effect from 16 February 2008 to 15 February 2010) between Empresa Bebidas y Alimentos de Urabá S.A and the National Union of Beverages Industry Workers of Colombia (SICO), section 46. The Mission was informed that the plant has 11 distribution vehicles (lorries) under the direct control of the company and one operating under a concession arrangement covering the various distribution routes.

<sup>35</sup> Working time in the INDEGA and Barranquilla plants (EMBOROMAN) is eight hours per day and 48 hours per week as laid down in section 8 of the Internal Labour Regulations (RIT). In the Carepa-Urabá plant, the working day is also eight hours.

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35. On the other hand, the conditions of work of workers who provide their services via one of the outsourcing methods are not normally governed by the legal instruments or agreements in effect in the company and may be, comparatively, inferior to those of company workers. These workers receive wages that are proportionally lower and work longer hours (from 18 to 24 on shift work). In this regard, the representatives of the three trade unions of the Bogota South plant <sup>36</sup> indicated that “concessionaires” and pre-sales staff were only paid on a piecework basis, which would be a violation of the provisions of the country’s labour legislation. <sup>37</sup>
36. According to the trade union representatives (Bogota South), the conditions of work of pre-sales staff <sup>38</sup> are clearly disadvantageous in comparison with those of direct employees, as they are required to pay the assigned pre-sales rates which may be deducted from their earnings. For its part, the company representation maintained that the pre-sales model it applied was not specific to the Coca-Cola company but common to the entire bottling company sector.
37. The same trade union representatives said that they had complained of problems relating to wages received by contract workers compared with those paid to company workers. They stressed that the company’s objective was the manufacture and sale of soft drinks, i.e. the final placement of the product in the market and thus all persons involved in the process should be company workers.

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<sup>36</sup> SINALTRAINAL, USITRAG and SINTRAINDEGA.

<sup>37</sup> CST: section 132 : “The employer and the worker may freely agree wages in various forms, by unit of time, job or **piecework** and by task, etc., **but always respecting the legal minimum wage or that fixed in accords, collective agreements and by arbitration**” (our emphasis).

<sup>38</sup> Pre-sales begins with a product offer until an order is confirmed.

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### **II.3. Duration of the employment relationship, stability, staff turnover, probationary period, promotions and upgrading**

- 38.** With regard to the establishment of the employment relationship, everything seems to indicate that the contract of employment of direct employees (company workers) is normally for an indefinite term.<sup>39</sup> In the Carepa plant, the situation in this regard is no different. What is different there is that there are no contract workers in the most sensitive area, distribution, as the collective agreement expressly prohibits it.
- 39.** In the case of direct employees, the average length of service is fairly long, and this was highlighted among the company representatives and the union leaders.<sup>40</sup> This means that the turnover rate (entrants to leavers) of employees is low despite the incorporation of technological innovations in the production processes.<sup>41</sup>
- 40.** The situation of workers who provide services in the operating process is different, since they are employed by outsourced companies which subcontract their services to the

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<sup>39</sup> See *Operating report (FEMSA), July 2008*. The employment contract model provided by the company to the Mission states that the contract is for an indefinite period, with a probationary period of two months “and, on completion of the latter, the contract will have the duration set out at the beginning” (Two - Probationary period and duration). CST: Section 47.1: “An employment contract which does not stipulate a fixed term or the duration of which is not determine by the work or the nature of the labour contracted, and which does not relate to occasional or casual work, shall be a contract for an indefinite term”.

<sup>40</sup> According to data provided by the company, in the Barranquilla plant the average length of service is 11.9 years. In the Bogota North plant, out of a total of 494 recognized direct employees, 359 have over eight years’ service and the average is 15.02 years. In the Cali plant, out of a total of 193 recognized direct employees, 122 have over eight years’ service and the average is 13.94 years. In the Medellin plant, out of a total of 274 recognized direct employees, 188 have over eight years’ service and the average is 15 years. In the Bogota South plant, out of 83 direct employees, 34 have between 10 and 15 years’ service and 11 even have over 30 years. In Carepa-Urabá, lastly, 33 per cent of workers have over eight years’ service and 25 per cent have between five and eight years.

<sup>41</sup> In the Bogota North plant (INDEGA), the turnover rate was 4.47 per cent in 2005 and 4.75 per cent in 2006 and rose to 7.46 per cent in 2007, out of a total of some 496 direct employees in that year. In the Bogota South plant (INDEGA), the turnover rate, calculated for a smaller number of workers, was lower: 2.74 per cent in 2005, 1.33 per cent in 2006 and 1.32 per cent in 2007, out of a total of 76 direct employees in that year. In the Cali plant (INDEGA), the rates were 4.48 per cent in 2005, 5.11 per cent in 2006 and 5.61 per cent in 2007, out of an approximate total of 196 direct employees in that year. In the Medellin plant (INDEGA), the turnover rate jumped visibly to 6.04 per cent in 2005, 8.06 per cent in 2006 and 10.36 per cent in 2007, out of an estimated total of 275 direct employees in that year. In the Barranquilla plant (EMBOROMAN), the turnover rate rose from 5.61 per cent in 2005, to 6.41 per cent in 2006 and 14.53 per cent in 2007 out of an approximate total of 258 workers, which is the highest turnover rate in the five plants under consideration.



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company. The company did not provide data for these and the Mission was unable to establish contact with the contract workers.<sup>42</sup>

- 41.** With regard to policies on promotion and upgrading, the evaluation by the workers' representatives and the company management was generally different. The leaders of the collective accord who were interviewed at the Bogota North plant said that there was no policy of promotion and upgrading based on training. It should be noted that the size of the Carepa-Urabá plant could justify the absence of such a policy. In the Barranquilla plant (EMBOROMAN), the company representatives stressed that in the past three years, there had been several promotions and upgrades, in particular to fill staff needs created by the opening of a new production line. On the other hand, the SINALTRAINBEC representatives reported that the company had changed job titles in order to evade the requirement to consult the union prior to filling them. The enterprise argued that the change affected the technical profile of the job, and not only its title. It was also indicated that the collective agreement did not specifically cover this question.<sup>43</sup> It is a case of shifting, the company representatives concluded, from an empirical to a technical approach through a process which came to be termed "professionalization of the post".
- 42.** Once again in this area, neither the company nor the workers' representatives referred to the situation of contract workers, thus suggesting that the companies do not have a clear policy in this respect, since the services that they subcontract are generally of a temporary character.
- 43.** According to the instruments which regulate recruitment conditions, company workers are subject to a probationary period. According to the data provided by the company, the number of workers who continue beyond the probationary period and join the payroll is

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<sup>42</sup> In the Barranquilla plant (EMBOROMAN), the SINALTRAINBEC representatives indicated that they had invited some concessionaires to participate in the interviews, but they had declined the invitation alleging possible reprisals.

<sup>43</sup> Indeed, the collective agreement in force in EMBOROMAN does not contain a specific provision on selection criteria in cases where the job profile is modified.

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very high: in the last three years, the percentage was 99.7 per cent in Barranquilla and 100 per cent in Bogota North, Bogota South, Cali and Medellin. <sup>44</sup>

44. The stability of company workers coincides with a high number of temporary workers, who are linked to the company through triangular employment relationships, usually established through temporary employment agencies. According to the *Operating report, July 2008*: “All these positions are in line with the grounds allowed by the Act and fall within the authorized parameters (replacements, holidays, production peaks, etc. ) and in no case exceed one year in the same replacement”.

45. The Mission cannot help but note the considerable increase in the number of contract workers over a period of five years, in particular in operating processes and certain industrial maintenance engineering services. Practically all the area of packaging, handling, distribution, pre-sales and sales is outsourced. Even though the company representatives indicated that outsourcing is a normal practice in this branch of the industry and is in line with the current legal framework in Colombia, the Mission again recalls the comments of the supervisory bodies in this respect.

#### **II.4. Fundamental rights – non-discrimination and equality of treatment, minimum and maximum age of employment**

46. The company representatives said that only workers aged over 18 years are employed, which was confirmed by the relevant documentation. <sup>45</sup>

47. The Mission interviewed the company representatives to ascertain whether they exercised any control of suppliers of raw materials (such as sugar) to ensure that they did not use child labour. In the Cali plant, the manager indicated that their suppliers should not use child labour (for example, during the harvest for the sugar mill that supplies sugar to the

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<sup>44</sup> In the Bogota South plant, 13 workers between 2005 and 2007, and 104 in Bogota North.

<sup>45</sup> *Operating report, July 2008*. The reply was the same for each plant visited, which suggested that it is indeed company policy.

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bottling plant), but that the enterprise did not yet exercise oversight over this issue. Nevertheless, in this case, as in others, the representatives of the enterprise expressed an interest in carrying out such checks in the future.

48. With respect to the principle of non-discrimination, it appears that no action by the company has indicated any type of discrimination in pre-recruitment processes.<sup>46</sup> The INDEGA collective agreement (2006–2008), section 19, regulates the priority for filling vacancies,<sup>47</sup> while section 20 does the same for promotions and upgrades.<sup>48</sup> The Code of Corporate Business Ethics (COCA-COLA FEMSA) provides in its Chapter IV: “In Coca-Cola FEMSA, we recognize the dignity of persons and respect their liberty and private life” (IV.1). (...) “No one shall suffer discrimination on grounds of sex, marital status, age, religion, race, physical capacity, political preference or social class” (IV.2). The trade union representatives reported practices of anti-trade union discrimination and even persecution.

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<sup>46</sup> “Pre-recruitment discrimination” is the term used in the questionnaire.

<sup>47</sup> “Priority in filling vacancies. When a vacancy occurs in the company and it is to be filled, consideration shall be given in filling them to the children of former employees who are in receipt of a retirement pension, or of workers who died while employed by the company, provided that they satisfy the requirements of the post”.

<sup>48</sup> “Vacancies and upgrades. In the case of filling vacancies of a permanent character in posts in the plant, classified as directly or indirectly related to production, the company shall inform the union and shall post on notice boards the occurrence of these vacancies so that workers who wish to apply and who satisfy the necessary conditions to carry out the work efficiently can apply...”. The collective agreement governing the Barranquilla plant (EMBOROMAN), section 9, contains a highly detailed system for replacements, upgrades and priorities for filling vacancies.

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### **III. Labour relations**

#### **III.1. Freedom of association; collective agreements and collective accords.**

##### ***III.1.1. Trade union organization***

**49.** The complexity of labour relations in the Coca-Cola bottling plants in Colombia in large measure reflect the complexity of these relations at the national level. On the one hand, there are a considerable number of trade unions. On the other, some national or regional unions play a role which sometimes goes beyond defence of the specific interests of their members in the plants and also play an active part in socio-political actions at the sectoral and/or national level.<sup>49</sup>

**50.** The proliferation of trade unions is reflected in the organizations present in the plants visited. Depending on the plant concerned, it ranged from five (5) unions in the Bogota North plant<sup>50</sup> to one (1) in the Carepa-Urabá plant.<sup>51</sup> Some plants have a considerable number of members, while in others there is only one.<sup>52</sup> There are three national trade unions for the industry (SINALTRAINAL, SINALTRAINBEC and SICO), with members in other bottling plants and the food industry, and company unions (SINTRAINDEGA, USITRAG-SINTIGAL, SINALTRAPACOL and ASONTRAGASEOSAS).

**51.** Alongside the workers organized in unions, there are so-called “accord workers”. These workers have no permanent organization as such, but they do participate in defining working conditions where an accord exists. Among the accord workers, the most visible

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<sup>49</sup> Given the climate of violence from which the country has suffered for many years, and of which trade union officials were often the victims, including attempts on the life and safety of many of them, for all manner of reasons, there is a defensive and conflictual attitude in some trade union circles which has not helped dialogue and cooperation.

<sup>50</sup> SINALTRAINAL, USITRAG/SINTIGAL, SINTRAINDEGA, SINALTRAPACOL.

<sup>51</sup> SICO, SECCIONAL CAREPA.

<sup>52</sup> In any event, the law and practice in Colombia do not preclude membership of more than one union.

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are the “accord leaders”. There is no clear procedure for appointing these officials. In some plants they form part of the management team of the enterprise itself.

- 52.** It would appear that this duality generates a certain amount of competition between the unionized workers and those who initially signed or subsequently joined the collective accord, where it exists. A number of representatives of the unions in the plants visited said that there was a tendency to encourage workers to leave the unions and join the ranks of the accord workers. This kind of situation is not exclusive to the enterprise, much less an isolated case, and the ILO’s regular supervisory bodies have commented on it in the context of the country as a whole.<sup>53</sup>
- 53.** The Mission found that the situation varied from one plant to another. The Bogota North plant, the largest in the country and the biggest producer in terms of box units (it supplies the Capital and dependent areas and accounts for 56 per cent of total domestic output), has 354 company workers, of whom 136 are unionized (covered by the collective agreement and distributed among the three unions established in the plant)<sup>54</sup> and 202 are covered by the accord. A further 15 are executive staff or hold positions of trust.
- 54.** In the Bogota South plant, 83 company workers are under the collective accord and a mere 36 are members of unions. Of the latter, nine belong to SINALTRAINAL, 12 to SINTRAINDEGA and 15 to USITRAG.
- 55.** In the Medellin plant there are 274 company workers, who are engaged in manufacturing (164) and commerce/operations (110), of whom 82 are members of SINALTRAINAL and

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<sup>53</sup> “*The Committee observes that, according to the information gathered by the high-level tripartite visit, it is frequently the case in practice that workers who are members of a trade union organization are encouraged to disaffiliate from it and to sign a collective accord (the members of a trade union cannot sign collective accords), thereby bringing the number of members below the level of one-third of the workers in the enterprise.*” ILC, Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 1 A), 95<sup>th</sup> Session, 2006, page 74.

<sup>54</sup> 131 workers belong to SINTRAINDEGA, 2 to USITRAG (1 officer and 1 member) and 2 to SINALTRAINAL. According to section 356.b of the CST, they are “industry unions or unions representing a branch of economic activity”. However, SINTRAINDEGA is not a signatory to the collective agreement.

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185 are under the accord. The remainder are covered by neither, in that they are deemed to hold top management posts or positions of trust.

- 56.** In this plant (Medellin), the trade union representatives (SINALTRAINAL) expressed the view that “incoming workers were indirectly discouraged from joining the union”. The glaring disparity in numbers between the union members (82) and the members of the collective accord (185) suggests that this could be the case. According to the representatives, union membership has fallen largely because so many workers do not participate in the union’s actions, or at least some of them. They refer in particular to the fact that some union officials put into practice the “Don’t drink Coca-Cola” or similar slogans which are reproduced on T-shirts and shirts that they wear even in the plant.
- 57.** The number of unionized workers at the Medellin plant has nevertheless remained stable in the last few years, with approximately 30 per cent of the workers being unionized. Proportionally, this is above the national average. At the same time, it should be noted that the number of workers affiliated to the collective accord (up to 185) has risen significantly. In 2007, 32 company workers joined the plant who are now affiliated to the accord.
- 58.** According to the union representatives, new workers at the Medellin plant were advised not to join the union straight away.
- 59.** The Cali plant employs 198 people (company workers), 175 of whom are affiliated to the accord and a mere 13 to the union, SINALTRAINAL.
- 60.** According to the union representatives at the Cali plant, the membership of the union, which is an industry union, has fallen markedly in the last few years. They believe that a significant number of workers gave up membership either because of arrangements with the enterprise or because they left the enterprise owing to mass dismissals. At the same

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time, say the union representatives, the fall in membership is also the result of a policy that favours workers' opting to "belong" to the accord instead of joining the union.<sup>55</sup>

61. The claim that there were mass dismissals was confirmed by the representatives of the accord workers, who stated that these occurred when the plant belonged to the PANAMCO corporation. However, they and the union representatives agree that such practices have ceased. In any event, in this plant as in others, the workers dismissed have taken legal action claiming reinstatement.
62. The Barranquilla plant, where there is no collective accord, has 234 workers, of whom 51 (accounting for 21 per cent of the payroll) belong to the two unions established in the enterprise (23 to SINALTRAINAL and 28 to SINALTRAINBEC ). They are covered by a collective agreement of their own.
63. The Carepa plant likewise has no collective accord. Of the plant's 70 company workers,<sup>56</sup> 40 are members of the union SICO.

### **III.1.2. Union membership and outsourcing**

64. As mentioned earlier, the Mission found that there appears to be a link between outsourcing and the fall in union membership and/or the fact that these workers do not organize.
65. One union representative (SINTRAINDEGA), from the Bogota South plant, said that "with the company's hiring system, the union is destined to disappear (...). In the space of one year we have lost 100 members". USITRAG, for its part, said: "The main problem is that very few have a direct relationship with the enterprise. This is due to the way in which

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<sup>55</sup> It should be pointed out that the CEACR, in view of the trend observed country-wide, asked the Government "to take measures to guarantee that collective accords are not used to undermine the position of trade union organizations and the possibility in practice to conclude collective agreements with them." *ILC, Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 1 A), 95th Session, 2006, page 74.*

<sup>56</sup> 20 work in production, 29 in sales (27 company workers and 2 SENA) and 21 in administration (including 1 SENA).

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the enterprise hires workers who provide certain services; the problem is the high incidence of subcontracting. Because of this workers are unable to organize and the future of the union is in danger”.

66. The SINALTRAINAL representatives in the same plant agreed, observing that “Union membership has been decimated as a result of various ploys used by the enterprise such as the reinforcement of the accord. All the unions are dwindling because the enterprise is standing in their way”.
67. It is worth mentioning by way of an example that the Medellin plant has 223 contract workers performing services in pre-sales or general handling operations (organizing bottling and repackaging of products for sales promotions, for example). It has 426 persons working in distribution: 151 concessionaires (27 with their own vehicles, the remainder renting from the company) plus their 275 employees. None of these workers are members of the union established in the enterprise.
68. At the Barranquilla plant, there are between 114 and 150 contract workers employed under some form of outsourcing arrangement. This number does not include the 56 transport concessionaires, who, together with their 187 helpers, make up a total of 337 contract workers as compared to 234 company workers. These workers are not organized and belong to none of the unions established in the plant.
69. It should be pointed out that at the Carepa plant, the collective agreement bans the hiring of contract workers in the area known as operation, distribution and sales.

### ***III.1.3. Collective bargaining***

70. Both the collective agreement and the accord in force in the enterprise are periodically renegotiated. It is interesting to note, however, that the accord, in the plants where it exists, is normally negotiated before the collective agreement. As already noted, there is virtually no difference between the two instruments. But it must be borne in mind that negotiating



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the collective accord first and thereby fixing wages, pay increases, and other conditions, will naturally affect future negotiations on the collective agreement. What is more, wage increases obtained under the accord will take effect earlier, placing workers under the collective agreement at a disadvantage,<sup>57</sup> although it is true that increases obtained under the collective agreement apply retroactively to the workers covered by the agreement.

71. The 25 accord leaders who take part in negotiating the accord are frequently called on by the enterprise to deal with various issues. The documents provided to the Mission included notices sent out for such purposes on company-headed notepaper signed by managers or representatives of the enterprise.<sup>58</sup>

### **III.2. Conditions for exercising freedom of association: Trade union privileges**

72. In the bottling plants visited, there were reportedly restrictions on the exercise of freedom of association. But at the same time, it was noted that slogans displayed by some unionized workers on their work clothes in connection with grievances against the enterprise were tolerated.<sup>59</sup>

73. The restrictions in question were to be seen in areas such as training, facilities for exercising trade union rights or, more importantly, the attitudes of enterprise

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<sup>57</sup> It should be noted that the Committee of Experts on the Application of Conventions and Recommendations commented, in the light of tendencies in the country : “*The Committee observes that, under section 481 ff. of the Substantive Labour Code, collective accords may only be concluded in cases where the membership of the trade union does not include over one third of the workers [...] The Committee emphasizes that direct negotiations with workers should only be possible in the absence of trade union organizations.*” ILC, Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 1 A), 97th Session, 2008, page 96.

<sup>58</sup> The accord leaders explained to the Mission that working conditions in the enterprise are excellent. The accord is 100 per cent favourable to the workers. Workers on fixed contracts enjoy great stability and are well paid (19 wages per year, including bonuses). For example, when the accord was last negotiated, the accord leaders’ proposal for a pay rise was equivalent to the CPI + 0.5 per cent and the enterprise accepted 6.2 per cent. However, the accord representatives in the Bogotá-North plant said that the accord leaders cannot discuss pay rises.

<sup>59</sup> The accord representatives, for their part, objected to the fact that some unionized workers displayed “Don’t drink Coca-Cola” or other such slogans on their shirts or T-shirts, even in the plant.

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representatives in the various plants regarding trade union action and respect for union activities in the plants and for trade union privileges.

**74.** Training for leaders, including training on negotiating techniques, is planned by the enterprise, which organizes courses and appoints trainers. Preference is shown to accord leaders and affiliates as regards access to the training. Training usually includes public speaking and leadership. Nothing suggests that for workers under the accord training is autonomous. The enterprise representatives confirmed that they promote and organize training programmes for accord workers and their leaders. At the Cali plant the Mission was told that the training programmes are based on the results of surveys on the organizational climate designed by the enterprise itself. It is thus the workers who set priorities, which the enterprise then ensures are reflected in the training programmes. This policy of setting training priorities applies in all plants of the enterprise.

**75.** At the same time, all the trade union representatives who commented on the subject said that they had never participated in any joint activities with accord members and that it is the enterprise that determines who will take part in them.. According to the union representatives at the Cali plant (SINALTRAINAL), the training programmes offered by the enterprise for the accord workers are “a means of dividing the workers”.

**76.** Furthermore, the accord workers are provided with premises and transport for meetings and various activities in the plants or coordination activities between plants at country level. Union meetings or assemblies on plant premises, by contrast, are banned by the regulations (this was confirmed by the managers and several accord leaders, as well as the unions interviewed).<sup>60</sup>

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<sup>60</sup> There is no express ban in the regulations governing the plants visited. However, when several of the provisions are read in conjunction (including Regulation 66 (7), (8), (18), (23), (27), (44) and (53) on special prohibitions applying to the workers), it can be inferred that there are serious restrictions on the exercise by union officials of trade union activities as such. See the regulations of PANAMCO COLOMBIA, SA. and those of EMBOTELLADORA ROMAN, SA.

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77. Although this is the case in virtually all the plants, it is worth pointing out that at the Medellin plant, the accord representatives confirmed that the union cannot hold meetings on enterprise premises owing to serious restrictions laid down in the rules. They added that they themselves were allowed to hold meetings with accord workers to keep them up to date, for example on progress or agreements achieved with the enterprise. According to information they themselves provided, the accord leaders meet once a month with the primary groups.
78. On the other hand, the union representatives at the Medellin plant acknowledge that trade union privileges are respected, including union leave.
79. The USITRAG union leader at the Bogota North plant <sup>61</sup> told the Mission that “as soon as a worker joins the company he’s told not to join the union”. He nonetheless stated that since the FEMSA corporation had taken over management of the plant, respect for trade union rights had improved and there was more tolerance.
80. The representatives of SINTRAINDEGA<sup>62</sup> said that there are serious difficulties in carrying out trade union activities. According to them, Coca-Cola currently has some 80 court cases against it filed by workers seeking reinstatement. They mentioned instances of workers being dismissed more than once: they return to work on court order only to be dismissed again. In their view, many of the dismissals are actually for ant-union reasons. <sup>63</sup>

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<sup>61</sup> The union leader of this organization had been dismissed and, the Mission was told, received a financial offer from the Enterprise to accept voluntary retirement, which he had refused. Following a three-year court case he was reinstated.

<sup>62</sup> This is a new organization, which is none the less the most representative in the Bogotá-North plant (131 members). As already noted, it has not signed the collective agreement in force. Its chairman is not currently a worker at the enterprise, having been dismissed as soon as his trade union immunity was lifted. He has filed for protection under the Constitution seeking the quashing of the decision.

<sup>63</sup> The documentation supplied refers to what is proportionally a very large number, particularly in Bogotá, of labour claims in the ordinary courts brought on trade union grounds or for protection of freedom of association including, depending on the case, “lifting of immunity”, “reinstatement” or “leave to dismiss”. There are nine such cases among the 19 judicial actions recorded in Bogotá (North and South), and seven of them pertain to claims to reinstatement filed by officials of the SINTRA KOF union, all between 2007 and 2008.

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- 81.** The SINTRAINDEGA representatives emphasized the fact that the enterprise encourages workers to leave the union. They said that the atmosphere at work was very bad and that union activities met with harassment. Furthermore, “the enterprise has used the CCTV system to film union members and has ordered monitoring of union leaders, even outside the enterprise”. Similarly, union representatives (SINALTRAINAL) at the Cali plant reported harassment by the enterprise in their home neighbourhoods as well as at work. This had recently (23 June 2008) prompted correspondence between the union and the enterprise<sup>64</sup> in which the latter emphatically denied the claim.
- 82.** At the Bogota South plant, where a number of unions are established (SINTRAINDEGA, SINALTRAINAL and USITRAG), tensions between unions and enterprise is more apparent. Everything seemed to indicate that this was in part due to the enterprise representatives’ attitude to the unions. It was clear to the Mission that there were marked differences between the trade union representatives and the accord leaders.
- 83.** The union representatives at this plant (Bogota South) were emphatic about a number of problems. They raised them at a joint meeting with representatives of the enterprise, and separately on another occasion. They asserted that the enterprise was obstructing recognition of their trade union immunity, that workers who had negotiated the collective agreement were dismissed in breach of their right to due process,<sup>65</sup> and that pay had been withheld from some union members.
- 84.** The enterprise representatives in general, and at the Bogota South plant in particular, said that it was company policy to respect the collective rights of the workers. They denied that there were “blacklists” and said that if they maintained that assertion, the union representatives should produce reliable evidence or at least some credible indications.

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<sup>64</sup> Copies of these letters were shown to the Mission.

<sup>65</sup> They indicated that two union officials had had to file for constitutional protection seeking reinstatement in their posts, though one of them had been reinstated earlier following a court order. The Mission was also told that they had filed a criminal complaint for abduction with the Bogota South Prosecutor’s Office.

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They denied withholding pay, as the union representatives had asserted, and said that in the event of a dispute, proceedings were not closed until the arbitration board ruled.

- 85.** The SINTRAINDEGA representative endorsed the view that the atmosphere at work had greatly deteriorated. He said that there was a lack of dialogue, confirmed that there was monitoring of union officials and alleged that there had been assaults.<sup>66</sup> A SINALTRAINAL representative underlined the fact that there was no respect for trade union immunity in the enterprise.
- 86.** The enterprise representative reiterated that it was not unaware or indifferent to the problem of safety for union officials and that there were workers at Coca-Cola – and union leaders – who even received protection from the State.<sup>67</sup>
- 87.** At the separate meetings with the representatives of each of the three unions, the union leaders reaffirmed the claims referred to above. Those of SINTRAINDEGA again brought up the dismissal of workers covered by trade union immunity and objected that union officials were given no facilities to conduct their activities. They stressed the fact that the enterprise had withheld pay from the union’s chairman and had chosen to dismiss temporary workers when they tried to exercise their right to organize. They said that although they are covered by the collective agreement they cannot take part in administering it because, not having signed it, they are not parties to it, which means that the union officials have no immunity. It should be noted in connection with this comment made by the union officials that according to Colombian law, “The following are covered

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<sup>66</sup> They cited as an example the fact that a union official had been harassed and shots fired into the air to intimidate him. In similar occurrences other workers had been taken to the Criminal Investigation Directorate (DIJIN). According to the same union representatives, other workers at Coca-Cola de Colombia had likewise suffered harassment.

<sup>67</sup> It should be pointed out that given the climate of violence in the country which has affected trade union leaders in particular, the State has put in place an extensive system of protection for union leaders. The measures adopted for this purpose have been commented on by the ILO’s supervisory bodies: GB.295/8/1, *Mission report Colombia*, page 207, para. 133; GB.301/17/12, para. 21; ILC, Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 1 A), 95<sup>th</sup> Session, 2006, page 71; ILC, Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 1 A), 97<sup>th</sup> Session, 2008, page 95.

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by trade union immunity: (a) the founders of a trade union, from the day of its constitution until two months after its entry in the trade union register, but for no more than six months; (b) workers joining the union before its registration, who shall have the same length of coverage as the founders; (c) the members of the executive board and the executive subcommittees of any trade union, federation or confederation, without exceeding five regular and five alternate members thereof, and the members of branch committees, without exceeding one regular and one alternate member thereof. Such cover shall be effective for the duration of the term of office plus six months; (d) two members of the statutory claims committee – of which there shall be no more than one per enterprise - appointed by the trade unions, federations and confederations, for the same length of time as the executive board plus six months; there shall not be more than one statutory claims committee in an enterprise. Such committee shall be appointed by the trade union with the largest membership (...).”<sup>68</sup>

**88.** The SINALTRAINAL representatives reported trade union harassment, citing as evidence the lack of union leave because applications are not duly processed. They also objected that there is wage discrimination to the detriment of organized workers, and reported threats or assaults on the physical integrity of union leaders. However, they did not in this case produce supporting documentation or other conclusive evidence in support of these claims.

**89.** The Mission was able to note that some workers at the Bogota North and Bogota South plants unrestrainedly displayed messages printed on T-shirts worn over their uniforms which called on the enterprise to make severance payments and condemned “anti-union harassment in the enterprise”.

**90.** The union representatives at the Barranquilla plant (SINALTRAINBEC) said that the workers are afraid to demand respect for their rights or to join the union. However, they

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<sup>68</sup> Substantive Labour Code, section 406. *Amended. Act 584 of 2000, section 12.*

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acknowledged that a few workers had joined recently, in all probability to take advantage of the housing loan scheme provided in the collective agreement.

**91.** The situation is different at the Carepa plant and would appear to be exceptional, comparatively speaking. Of the 70 company workers at the plant, 40 are members of the Carepa branch of SICO.<sup>69</sup> The representatives said that more workers were joining. They pointed out, however, that union membership still carries some risk of stigmatization,<sup>70</sup> but conceded that there had been significant progress. The representatives both of the enterprise and of the union acknowledged that there is a climate of mutual respect.

**92.** The union leaders at the Carepa plant, who are largely young and include a number of university graduates, said that the enterprise has changed its policy towards the union. From a period of open confrontation, it has advanced to an attitude of ongoing dialogue. All the union officials are granted union leave. The union has no legal action pending against the enterprise. Pay scales, for example, have gradually improved, and as a rule the union is consulted about improvements in supplementary benefits such as the housing allowance. The union leaders made the point that they have kept a sense of proportion as to what claims are reasonable bearing in mind the size of the enterprise and the volume of the market it supplies.

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<sup>69</sup> A union “representing an industry or branch of economic activity” and a signatory of the collective agreement in force in the plant. It is affiliated to UNAC, a Colombian member of the International Union of Food Workers (IUF). In 2000, the statutory requirement of 25 workers in order to found a union branch was met. Since then, a further 15 members have joined.

<sup>70</sup> During the period of greatest violence in Colombia, in this plant two SINALTRAINAL (the union which at the time represented the workers at this plant) union leaders were murdered. Neither the perpetrators nor the motives have been determined and there are conflicting versions. In any event, as a result SINALTRAINAL lost its presence in the plant, (including its premises, which it is still claiming) to the union currently established there (SICO). On the matter of the abovementioned violence, the union leaders systematically declined to comment, hinting that they had no wish to revisit the past.

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## **IV. Safety, health and the working environment**

### **IV.1. Occupational safety and health (OSH) policy**

- 93.** At all the Coca-Cola plants visited in Colombia, there is a general occupational safety and health (OSH) policy which is in effect and applied at all operational units of Coca-Cola FEMSA throughout the country. This also applies to the independent plant at Carepa. The policy and its various implementing instruments are periodically reviewed and updated. At the Bogota South plant, for example, it was noted that the current policy would be reviewed by 13 May 2010.
- 94.** This policy is reflected in the internal plant safety and health regulations (*Reglamento de Trabajo, Higiene y Seguridad Industrial*, or *Reglamento Interno de Trabajo, Higiene y Salud Laboral* as they are called at the Barranquilla plant). These regulations are disseminated through notice boards that are accessible to workers and in free leaflets.
- 95.** The policy is applied at different levels. It is applied at managerial level in the form of annual programmes. At the level of professional specialists, it is implemented through the everyday work of one or more specialists with degrees or postgraduate qualifications who are responsible for planning, organizing and implementing a range of initiatives and activities. It is also implemented jointly by the occupational safety and health committees (COPASOs).
- 96.** The business of implementing the policy and its associated programmes is the responsibility of professional occupational health specialists in the establishments and of the members of the COPASOs who provide their own specific input. It also takes into account suggestions made by workers themselves through “suggestions” boxes or in complaints, as well as the regular medical reports and the input provided by prevention experts employed by the occupational risk insurers of the establishments concerned.



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97. Monitoring and assessment of the impact of the policy and its associated programmes on health, safety and the overall quality of working life is based on a number of different indicators.<sup>71</sup>

## **IV.2. The enterprise and implementation of OSH legislation**

98. Colombian legislation on occupational safety and health and on the working environment and conditions is detailed and extensive. Decree No. 614 of 1984 establishes the foundations for the organization and administration of occupational health in Colombia. Section 28 of that Decree provides for the establishment of occupational safety and health programmes that should be implemented in enterprises (including programmes on preventive medicine, and on occupational safety and health, as well as COPASO programmes). Resolution No. 2013 of 6 June 1986 governs the organization and operation of the COPASOs at the work place, and Act No. 1010 of 2006 concerns workplace harassment.

99. On the basis of interviews with COPASO members and with trade union and accord worker representatives, the Mission formed the impression that, despite the existence of divergent views on the effective implementation of the policy and compliance with the relevant regulations, there is a high degree of compliance with the legislation in force, and that the company is making considerable efforts to ensure compliance, even if – as is suggested below – this has been in response to the fatal accidents that have occurred in recent years.

## **IV.3. Joint occupational safety and health management committees (COPASOs)**

100. The membership of the “COPASOs”, which are an essential tool in the area of occupational safety and health in enterprises, is generally determined by national

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<sup>71</sup> Coca-Cola FEMSA, *Seguridad y salud 2008*, Vols. I and II.

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legislation. Depending on the size of the workforce, the COPASOs have two or three principal members and the same numbers of substitute members representing the enterprise, with an equal number of workers' representatives. The term of office of COPASO members is two years.

**101.** Certain committees are in turn organized in independent subcommittees that deal, for example, with specific issues relating to accident investigation, dissemination of internal safety and health programmes and rules, and tasks relating to workplace inspection. Other COPASOs have subcommittees for investigation, promotion and dissemination. The Bogota South plant, for example, has three independent committees that deal with accident investigation, dissemination and inspection.

**102.** The COPASOs meet weekly or monthly, depending on the plant, and can be convened in emergencies. COPASO members at different plants have indicated that, in addition to monitoring workstations they receive proposals from workers themselves and information on incidents and recorded accidents for the purpose of identifying potential problems.

**103.** As regards the links between the COPASOs and their members with other internal and external bodies responsible for occupational safety and health and related matters, the members of the Carepa plant, for example, have indicated that they are given an opportunity to study the reports by occupational medicine specialists on workers' general health, including the results of noise level surveys in production areas, audiometric studies, and the relevant conclusions and recommendations. They indicate also that these reports are referred to the company's health-care providers, and that they are assisted by the prevention experts of the relevant occupational risk insurer.

**104.** The members of the COPASOs in many of the plants visited have stated that, in order to disseminate information on the activities of these bodies and the results of their work, they are communicated via the Intranet and through notice boards at the plants. The Mission

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noted that in a number of cases, the information was very general in nature, and considered that this medium was not being used in the fullest possible way.

- 105.** The workers' representatives expressed diverging views on the working of the COPASOs in the last three years. At the Medellin plant, the unionized workers in SINALTRAINAL have indicated that at their plant the COPASO did not represent them. In this regard, they have alleged that there were flaws in the procedure for electing the members of that body.<sup>72</sup> According to these union representatives, the COPASO, as it currently exists and operates at the plant, is not strictly speaking the body required by legislation. In their view, it merely implements the company's own plan, and that on a hypothetical scale of 5, it would rate only a "2".
- 106.** At the Barranquilla plant, the representatives of SINALTRAINEC expressed the view that the COPASO functions effectively and that in recent years, safety at the company has greatly improved.<sup>73</sup>
- 107.** At the Bogota North plant, a representative of SINTIGAL emphasized that safety had improved by 200 per cent over the last two or three years, following accidents at the plant. At the Bogota South plant, the COPASO, in operation since May 2008, covers the Manantial plants, the central office, and the Bogota North and South distributors. The workers' representatives expressed no opinion as to whether or not it was operating effectively.
- 108.** At the Cali plant, SINALTRAINAL representatives said that they were not represented on the plant's COPASO because they did not have access to it. They emphasized that they had

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<sup>72</sup> According to SINTRAINAL, it was not possible to present a collective list for the purpose of applying for membership because the company's recent call to elect new members of the COPASO had, disregarding previous tradition and practice, stipulated a requirement for individual candidates. It should be pointed out in this regard that, in principle, according to the regulations in force, there does not appear to be an explicit requirement either to present a collective list or, on the contrary, to nominate individual candidates for these elections.

<sup>73</sup> It should be noted that in 2007, two fatal accidents occurred at the Bogotá North plant. Both the company and the workers' representatives (unionized and non-unionized) agreed that as a result of these accidents, the company had put much effort into improving safety measures.

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received an invitation to participate in the COPASO at the time of the Mission's visit. At the same plant, on the other hand, workers covered by the collective accord told the Mission that the COPASO were not up to strength and that when elections were held workers found it difficult to stand for election to that body.

#### **IV.4. Occupational safety and health training programmes**

- 109.** In the case of establishments that come under the FEMSA Corporation, the general occupational safety and health policy is implemented through an annual Operational Occupational Safety and Health Plan. The plan comprises a wide range of programmes that are implemented through meetings of the entire workforce, workers who may require training on the procedures involved in their particular tasks or who may be subjected to specific risks or hazards in the course of their work. At FEMSA plants, other occupational health programmes are provided for members of the Quality Management Committees.
- 110.** The frequency of training meetings for the different target groups varies according to requirements. Such training events are spread over the course of the year.
- 111.** Responsibility for developing programmes is sometimes entrusted to specialists employed by the establishment, and sometimes to other specialists employed by occupational risk insurers or professionals hired for specific activities.
- 112.** The Operational Plan includes training activities for members of the COPASOs. For example, at the Bogota North plant, the training includes presentations on accident statistics for the year 2007; information activities on identifying hazards and potentially hazardous behaviour; presentations on the Company Emergency Plan; a course on general aspects of high-risk work; another course on the management and prevention of hearing loss; and practical activities on fire prevention and on personal protective equipment.
- 113.** The programmes carried out in this area are subject to internal assessment. For example, in the Medellin plant the Mission was given a document with tables summarizing the

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“Operational occupational safety and health Plan (Manufactura-KOF Colombia 2008)”.

Similar audits are carried out in other plants owned by the company.

- 114.** All the evidence suggests that these training activities are targeted at company workers. No mention was made during the interviews of any training programmes intended for contract workers, with the notable exception of the Barranquilla plant.<sup>74</sup>

#### **IV.5. Assessment of safety facilities and equipment**

- 115.** As has been stated, some of the visits to plants were devoted to production facilities, storage areas, and workers’ welfare services at work sites and associated facilities. During these visits, the Mission was accompanied by representatives of the company and of the workers.

- 116.** It was noted that the buildings and their main components (floors, walls/partitions, doors and windows, and roofs) were in good condition. In the great majority of the plants, there was a careful demarcation on the ground of various walkways, passages and zones for the movement of workers and equipment used for moving material. Signs and notices above ground level were also adequate. In FEMSA plants, as already indicated, warning and direction signs in areas crossed by vehicles had been improved as a result of the accidents that had taken place in the Bogota North plant.

- 117.** As regards physical hazards, the Mission noted that the continuous high level of noise was the most significant negative factor in virtually all the plants visited.<sup>75</sup> It was noted in the plants that the workers used hearing protection, in some cases double protection with both ear plugs and external ear protectors.<sup>76</sup>

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<sup>74</sup> At this plant, activities are provided for contract workers using the specific safety and health manual for the tasks in question.

<sup>75</sup> At the Carepa plant, according to the findings of an occupational health expert set out in a report on noise levels in 2006, continuous noise varied between 80 dBA (in the industrial workshop with machinery shut down) and 94.8 dBA (in the washing machinery area).

<sup>76</sup> The report presented by FEMSA emphasizes that 95 per cent of staff said that they were exposed to continuous noise; 79 per cent had been exposed to such noise for more than five years; 5 per cent

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- 118.** Among other environmental factors at the plants, the Mission, without carrying out any measurements, noted that natural lighting is sufficient during the hours of daylight, while adequate artificial lighting is provided in workstations that require it (for example, at the quality control points where full and empty receptacles are checked).
- 119.** In virtually all the plants visited, there is clear compliance with current regulations on the provision of safety guards on machinery and warning signs/posters indicating specific localized hazards. One exception was the case of the Carepa plant, where, for example, the bottle washing machine lacked safety guards around certain moving parts.
- 120.** Similarly, plants in general are equipped with fire extinguishers, medicine chests, stretchers and other equipment for the emergency teams and with equipment for washing eyes and carrying out emergency showers. The Mission saw no other equipment at the Carepa bottling plant. It may exist, but was not in evidence from an initial visual inspection.

#### **IV.6. Occupational accident insurance and compensation**

- 121.** Insurance for workers is provided by one of the occupational risk insurance providers in accordance with official regulations and with the terms of the collective agreement or accord in force in each plant. FEMSA has chosen SURATEP for this purpose, while the Carepa plant is affiliated to COLMENA.
- 122.** Outsourced workers (under any of the arrangements mentioned above) are provided with insurance under the terms of the contracts for services concluded with the bottling or distribution plants. The Mission was provided with examples of these contracts.

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of staff covered by the survey were thought to be suffering from acoustic trauma (according to the ELI index); 11 per cent had an A rating on the SAL scale, corresponding to “normal hearing”, and 89 per cent a rating corresponding to “good hearing”. In the Carepa plant, the last medical audiometric report notes that three workers who were suffering suspected acoustic trauma needed to use double hearing protection.

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**123.** In general, and in the light of the information provided by those responsible for dealing with emergency situations, the treatment available in the event of accidents and injuries can draw on adequate resources to deal with them. However, a trade union representative of SINALTRAINAL at the Cali bottling plant informed the Mission that when four contract workers suffered injuries, certified by doctors, as a result of movement of goods, they were dismissed two days later.

#### **IV.7. Statistics of occupational accidents and diseases**

**124.** The results of the Operational Plans in force and applied in the bottling and distribution plants can be assessed through an analysis of, among other data, indicators of accident frequency, severity, and types of incapacitating injuries, which provide a means of gauging overall safety and health.

**125.** If we consider the evolution of those indicators over the last three years, we note that they have increased in some plants (the Bogota South distribution plant <sup>77</sup>), while in others there is fluctuation (the Medellin plant <sup>78</sup>). In yet others, the indicators exhibit a declining trend (Barranquilla <sup>79</sup>).

**126.** The Carepa bottling and distribution plant in addition provided the Mission with information on accidents in the different sections of the plant, with details regarding parts

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<sup>77</sup> The absolute number of accidents grew from 1.33 per month (2006 average) to an average of 2.16 per month in 2007, and again to an average of 3.66 per month in the first six months of 2008.

<sup>78</sup> These indicators are 22.92 for 2006, 15.64 in 2007, and 20.73 for the first six months of 2008. At the same plant, the incapacitating injuries indicator was 4.86 in 2006; 2.70 in 2007 and 6.82 in 2008. This means that during the period considered, the indicator rose significantly. The “severity” indicator was 175.84 in 2006; 120.04 in 2007 and 304.7 in the first six months of 2008. This indicator also fluctuates during the first of these periods, with an increase in 2008.

<sup>79</sup> Indicators for the Barranquilla plant, according to data given to the Mission, were as follows: in 2006, the frequency indicator was 7.62; in 2007, it fell to 5.44, and in the first six months of 2008 it rose to 7.71. The evidence is thus that there was no fall in those indicators during the period. As regards the incapacitating injuries indicator, it was 0.504 in 2006; 0.63 in 2007 and in 2008 it fell to 0.418. There thus appears to have been a declining trend in 2008, with a decline of 30 per cent compared to the previous year.

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of the body affected and the locations where they occurred.<sup>80</sup> As regards epidemiological surveillance, the Carepa plant was the only one to provide the Mission with interesting data.<sup>81</sup>

**127.** The Mission had no statistics on the Bogota North and Cali plants. In the case of Bogota North, however, as indicated above, both the enterprise and the workers' representatives reported two fatal accidents at the plant. One of them was caused by the removal of a safety guard from a machine. Another factor, according to the workers, may have been the productivity system which incited competition between work teams. At the same plant, SINTRAINDEGA reported three accidents: the one referred to above, another involving a worker crushed by two trucks, and another caused by excessive speed of a service lift.

#### **IV.8. Social responsibility in occupational safety and health**

**128.** The Mission also gave some attention to ways of expanding occupational safety and health activities beyond the enterprises themselves, for example by exploring the possibility of establishing health programmes for workers' families. FEMSA has a number of such programmes in its plants.<sup>82</sup>

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<sup>80</sup> During the period January to June 2008, there were nine accidents in the production area and 14 in the sales area. In the same period, there were three accidents involving injury to workers' hands. In 2007, 30 per cent of accidents occurred outside the production areas and storage facilities. They resulted in 117 days of incapacity (of a total of 151 lost during the year).

<sup>81</sup> According to the most recent medical reports, 34 per cent of workers suffer from refraction defects (myopia, hypermetropia or astigmatism); 64 per cent are overweight; 14 per cent suffer from varicose veins; 9 per cent suffer from arterial hypertension; 36 per cent have inadequate abdominal musculature, with the risk of lower back pain; seven cases of osteomuscular pathology were found; 13 per cent of patients examined have umbilical hernias; 4 per cent have dermatitis; 9 per cent are smokers; and 95 per cent use hearing protection.

<sup>82</sup> One example is the "Staying Safe" (*Andando Seguro*) Programme. This was launched in September 2007 at the Cali Plant. Its aim is to encourage safe behaviour among all employees and is also directed at workers' families. It comprises, among other things promotional and awareness-raising activities in safety and health, including "Talking about safety", "I take care for their sake", and "Let's not let it happen!". The Mission was not given data on the results of these initiatives. The Barranquilla plant for its part has the "Good Neighbours" Programme, which works with the local community. In 2007, a range of activities was carried out. In 2008, the Programme is targeted at students of the *Las Nieves* senior school. This involves the donation of computers, talks on drug addiction and sex, and activities by the Health Team.



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- 129.** Other health programmes or services intended for workers, over and above those required by law, such as preventive services, company physicians, health insurance and life insurance, are offered to workers under the terms of the relevant collective agreement or accord.
- 130.** In all these cases, according to the information received, the programmes are intended to benefit company workers; they do not cover contract workers.
- 131.** In the plants visited, no evidence was seen of special facilities such as ramps, parking places, specially adapted toilet facilities, or signalling systems for workers with impaired vision or other temporary or permanent disabilities. Nor was any information given on the existence of prevention and treatment programmes for persons suffering from alcohol or drug dependency, or of any initiatives to deal with problems associated with smoking, or programmes for workers with HIV/AIDS.
- 132.** As regards violence at work, at the Medellin plant, Chapter XV<sup>83</sup> of the Internal Regulations (sections 83 and 84) provides mechanisms for the prevention of abuse and internal procedures for resolving such problems.

## **V. Labour administration and courts**

### **V.1. Labour administration and inspection**

- 133.** Overseeing the application of national labour legislation and regulations governing conditions of work and employment in enterprises is, of course, the responsibility of the State. The latter carries out these functions through the competent labour administration bodies, in particular the labour inspectorate. The Mission therefore repeatedly asked the Ministry of Social Protection to provide any information regarding answers to the

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<sup>83</sup> “Means of preventing abuse at work and internal settlement procedures”; inclusion of this chapter in the internal regulations was agreed by the Ministry of Social Protection in orders 356 (INDEGA/PANAMCO COLOMBIA S.A.) and 354 (EMBOROMAN S.A.). In each case the terms of Chapter XV bring the internal regulations into line with Act No. 1010 of 2006, which introduced measures to prevent, correct and punish harassment at work (*Diario Oficial* No. 46,160, 23 January 2006).

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questions contained in the questionnaire which had been made available to it in good time. Unfortunately, it received no response. This part of the report is therefore based on information obtained during visits to the plants selected.

**134.** According to the information given by company representatives and workers, all the evidence suggests that, but for one exception, there have in recent years been no labour inspection visits to the plants concerned.<sup>84</sup> The Mission is thus unable to go into any greater detail in this matter.

## **V.2. Labour courts**

**135.** As regards actual court cases against the enterprise, a number are still in progress. Although in terms of the number of cases the rate of litigation is not high, it is still, taking into account the size of the plants concerned and the number of workers they employ, significant in terms of substance and type, owing to the nature of the allegations in a number of the cases. A significant number of cases concern violations of the fundamental right of freedom of association in its various forms and have even given rise in a number of cases to constitutional tutela (legal protection) proceedings, instigated by the trade unions and their officials.<sup>85</sup> With regard to the ordinary labour proceedings still under way concerning all the plants visited, two (2) out of three (3) cases under way in the Barranquilla plant relate to the defence of freedom of association, as does one case in Bogota (North and South) (out of the nineteen (19) cases mentioned); no such action is being taken in Cali or Carepa, but six (6) out of thirty-two (32) cases under way in Medellin relate to freedom of association, which is thus proportionally accounts for most

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<sup>84</sup> The operational report in July 2008 indicates that except for the Barranquilla plant, where one labour inspection visit took place “at the request of the parties concerned”, and which is still subject to resolution by the Ministry, there have been no more visits to the plants in question. The reason for the request for such a visit at the Barranquilla plant was a complaint concerning the system of leave. Representatives of the company told the Mission that in 2000 an inspection had been made to the Barranquilla plant in connection with the review of the system of partial payments.

<sup>85</sup> The company’s report states that “In 19 of the 20 *tutela* actions initiated in the last three years throughout the country, the Colombian courts considered that there had been no violation of fundamental rights.” No further information is given on the grounds for these actions or on the background to them.

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cases.<sup>86</sup> This means that freedom of association is one of the most common grounds for legal action.

**136.** According to the report submitted by the company, there are two other common reasons for litigation. On the one hand, there are the cases relating to the employment nature of the relationships created by some form of intermediary or subcontracting arrangement<sup>87</sup>. On the other, there are those that arise from the termination of employment. Other common grounds for legal action are wage adjustments and the payment of social benefits.

**137.** The number of labour disputes brought before the courts at the plants visited by the Mission is not high in terms of their number. However, given the nature of the alleged violations in many cases relating to failure to allow the exercise of freedom of association, they may reflect a climate of tension in the labour relations between the union representatives and the enterprise. That tension is worse at certain plants. In others, as the report shows, the evidence suggests that relations are more harmonious, and based on better understanding and collaboration between the enterprise and workers' representatives. The Mission considers that the attitude of the representatives of the directly employed workers and the accord workers and of the plant managers is crucial to building a harmonious labour relations climate.

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<sup>86</sup> See *Operating report*, July 2008.

<sup>87</sup> The overview of complaints for 2008 in the *Operating report*, July 2008, under the heading "reality contract" (*contrato realidad*), states that this is a general principle guiding the interpretation and application of Colombian labour law. It is of course universal as well, and is articulated in the following terms in the Employment Relationship Recommendation, 2006 (No. 198): "II. DETERMINATION OF THE EXISTENCE OF AN EMPLOYMENT RELATIONSHIP. 9. For the purposes of the national policy of protection for workers in an employment relationship, *the determination of the existence of such a relationship should be guided primarily by the facts relating to the performance of work and the remuneration of the worker, notwithstanding how the relationship is characterized in any contrary arrangement, contractual or otherwise, that may have been agreed between the parties.*" (Italics added.)

## **VI. Conclusions**

**138.** The members of the Mission would like to express their deep appreciation to the Government for the assistance given in carrying it out. They also wish to express their gratitude to the representatives of the enterprise, in particular the managers of the plants visited, and to the various trade union and accord workers' representatives, for their willingness to participate and their spirit of dialogue and collaboration, which was reflected not only in the open and frank exchanges but also by the documentation made available to the Mission. This enabled the Mission to acquire a broad overview of the different topics of the assessment exercise. We would also like to thank the national leadership of the employers (the ANDI) and of the principal trade union federations (the CUT, CTC and CGT) for their support and their willingness to engage in dialogue.

**139.** It is recalled that the principal areas of assessment were working conditions, labour relations, and occupational safety and health. It should be noted that as regards working conditions, and in particular observance of the fundamental rights at work with regard to not using child labour, equality and non-discrimination, the company has made major efforts to ensure that the terms and conditions laid down in the relevant agreements and accords are adhered to. Similarly, it has implemented programmes and plans designed to strengthen measures in relation to occupational safety and health and worker training in that area. As regards labour relations, it was observed that the impact of subcontracting arrangements affecting a large number of workers working directly or indirectly for the company, even if such relationships are in conformity with national labour legislation, has direct repercussions on the nature of labour relations in the enterprise. For this reason, the report has given a detailed account of this situation, and these conclusions therefore focus closely on this issue, which elicited the greatest amount of discussion between the different groups interviewed and the members of the Mission. This explains the comparatively large proportion of the report devoted to this topic.

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- 140.** The conclusions set out in this report should be examined in the light of what has been reported here in relation to each of the plants visited. It is for this reason that the information provided, despite not always being supported by verifiable information, has been included in the report, sometimes in a lot of detail, so that not only the events but also the context in which they took place can as far as possible be taken into account.
- 141.** The contractual arrangements and the working conditions they entail are determined largely by the organization of work within the enterprise. In this case, production activities are separated from the so-called operation processes, so while some workers are directly linked to the enterprise (company employees), others have an outsourced or “triangular” relationship. The company employees are generally engaged in activities linked to production while contract workers provide their services in operation processes (involving the packing, storage, distribution, pre-sale and sale of products). This separation reportedly dates largely from the 1990s. Until then, the two processes were combined, which meant that contractual arrangements and working conditions were, in general, the same for everyone.
- 142.** Without wishing to question in any way the company’s decision to separate the production process, and the contractual outsourcing that this has entailed which has been implemented in accordance with national legislation, that decision has affected a significant number of workers (in some of the plants visited, the majority of workers were engaged in operational processes), not only in terms of the nature of the employment relationship under which they provide their services (often outsourced) but also in terms of their working conditions and the manner in which they organize to defend their interests.<sup>88</sup> While it is true, according to the information provided by the enterprise, that some elements of control are

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<sup>88</sup> Although it was noted that, according to the enterprise, the separation of processes and the trend towards outsourced recruitment was a common practice in the enterprises in the sector, it is recalled that the supervisory bodies of the ILO have noted the negative effects of this practice and its tendency to become widespread. See in this regard: ILC: Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 1A), 95th Session, 2006, p. 80. The Government itself admitted that this was the case with the associated labour cooperatives. See GB.295/8/1: Mission report Colombia (24–29 October 2005), p. 192, para. 16.

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provided by the “concession” contracts and the corporate code of ethics in the specific case of employees in product sales and distribution, this is not always the case for workers engaged in the operation process (packing, storage and distribution of products). Therefore, the enterprise should consider ways to ensure more appropriate contractual conditions for workers engaged in activities relating to the enterprise’s objectives, so that their working conditions are comparable to those of the directly employed workers.

**143.** It would appear that working conditions regulated by the instruments in force in the enterprise (collective agreement or accord) are in general duly applied to workers who have a direct employment relationship with the enterprise. This is the case in particular with regard to respect for fundamental rights concerning the prohibition of child labour and the principles of equality and non-discrimination. The same does not apply, however, to workers whose employment relationship has been outsourced. Outsourcing has had an impact in the broad sector of operational processes and it has also been progressively extended to production processes (a fact that is acknowledged by the enterprise). The working conditions of contract workers should therefore be examined closely to ensure that they are appropriate, particularly in the production and operation areas, which, by their nature, are specific to the objectives of the enterprise (maintenance of machinery, packaging, handling and distribution of products).

**144.** Certain observations in the area of labour relations and the information obtained suggest that this is the area in which greater efforts should be made to improve relations between the enterprise and the workers.

**145.** While the Internal Regulations prevent trade unions from conducting union activities or having premises within the enterprise itself, the parties to the accord and those overseeing it, by contrast, plainly receive different kinds of support for carrying out their activities within the enterprise (such as training and information activities and meetings). As the local trade union representatives have indicated – and there is some evidence supporting this, as has already been indicated – there is a tendency to encourage workers to sign the

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accord and even to leave the unions.<sup>89</sup> The enterprise should carefully review its approach and practice in order to guarantee workers the right to freely make decisions about whether or not to join a union. Likewise, it should ensure that unionized workers and union officials are treated fairly and are provided with the means to carry out their activities within the enterprise. It should also avoid any measures that might be understood as an incitement for workers to sign the accord instead of joining a union.

**146.** On the other hand, the Mission noted that there was tolerance on the part of the enterprise towards specific claims made by the unionized workers at the various plant facilities, in respect of their individual rights under the collective agreement or their collective rights relating to the exercise of freedom of association. However, this attitude was not equally prevalent at all the plants visited. The enterprise should therefore review its approach and practice with regard to the respect of trade union rights, to ensure that these rights are guaranteed in all the plants within the enterprise.

**147.** The outsourcing of certain areas of the operation processes and, increasingly, of the production processes themselves, makes it difficult for the workers concerned to form or join unions. This is particularly true for workers who are recruited through associated labour cooperatives. The enterprise should accordingly give careful consideration to the measures needed to alter its recruitment processes, in order to limit the number of contract workers engaged in those fields of activity and prevent any curtailment of the workers' freedom to organize.<sup>90</sup>

**148.** It was observed that by directly or indirectly favouring negotiation on working conditions with workers covered by the accord, in plants where it is in force, the enterprise restricts full exercise of the freedom to bargain collectively. In negotiations, the enterprise should therefore provide the representatives of unionized workers with full guarantees with regard

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<sup>89</sup> See also in this regard: GB.295/8/1, Mission report Colombia (24–29 October 2005), pp. 208–209, paras 138 and 139.

<sup>90</sup> See: ILC: Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 1A), 95th Session, 2006, p. 72.

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to exercising their legitimate right to collective representation, and should give them the same treatment as it affords to the representatives of accord workers, in particular with regard to the timing of negotiations on the collective accord, so as not to give undue priority to the latter over negotiations on the collective agreement.<sup>91</sup>

**149.** Exercise of the rights deriving from the trade union immunity (*fuero sindical*) laid down in Colombian law is essential to ensuring that workers enjoy the other collective rights. Consequently, and on the strength of other evidence that came to light, the enterprise should adopt appropriate measures to ensure full respect for the trade union immunity of the officials of the workers' unions and hence for the exercise of the rights concomitant to the right to organize.

**150.** With regard to health at work, it is acknowledged that virtually all the plants have established policies to provide adequate safety and health conditions for the workers of the enterprise. It was nevertheless felt that there are a number of areas, mentioned below, that warrant careful consideration by the enterprise concerned with a view to taking steps to rectify certain aspects which, in the medium or long term, might affect workers' safety and health.

**151.** To this end, appropriate measures should be adopted to enable the joint bodies provided for in law (the COPASOs) to be constituted and to operate properly in order to carry out the mandate entrusted to them.

**152.** From the standpoint of labour relations, more effective use should be made of the existing joint bodies set up under the law (COPASOs) to allow them to play a more prominent role in improving safety and health conditions for workers.

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<sup>91</sup> See: ILC: Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part IA), 97th Session, 2008, p. 98. See also: GB.295/8/1, Mission report Colombia (24-29 October, 2005), p. 209, para. 140.



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- 153.** Despite the existence of well defined occupational health policies, the plans, programmes and bodies set up by law or policy are only partially accomplishing their tasks. Trends in the last three years in the indicators showing the seriousness, frequency and number of injuries causing incapacity have fluctuated in some cases and risen in others. The enterprise should therefore take appropriate steps to ensure that the occupational safety policy and the plans and programmes deriving from it achieve their objectives and are effectively applied. Full participation by the workers' representatives is also essential to attaining this goal.
- 154.** While it is acknowledged that the enterprise has a well defined occupational safety and health policy, and that efforts are being made to implement it satisfactorily, the epidemiological reports provided suggest that a safety culture has not been sufficiently developed to reduce accident rates. Actions, initiatives and proposals therefore need to focus more on a culture of prevention and on an analysis of incidents and accidents using a "causal tree". It is also felt that there should be greater encouragement for workers to participate. Their views should be listened to and attention should be paid to "unsafe working conditions" instead of focusing on "individual unsafe conduct".
- 155.** Although not very significant in terms of numbers, the claims brought before Colombian courts are bound to be a matter of concern, given that many of them allege violations of freedom of association in its various forms. This appears to reflect the general state of labour relations in the enterprise which is more worrying in some plants than in others. It is therefore felt that both the enterprise and the organizations of the workers (unionized and accord) should look for appropriate mechanisms allowing the climate of labour relations to be improved in the enterprise in general and in certain plants in particular.
- 156.** Similarly, any measures aimed at the improvement of workers' contractual arrangements and working conditions, the building of industrial relations and the adoption of measures in the area of occupational safety and health should be taken by the enterprise in consultation and in constant dialogue with the representatives of the trade unions and the workers

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covered by the accord. Once again, a clear commitment of this kind on the part of the management of the enterprise would be a decisive contribution to the improvement of the labour climate.

**157.** Lastly, as the information requested from the Ministry of Social Protection was not forthcoming, it was not possible to form a complete overview of the presence of the labour administration and the fulfilment of its duties and, more specifically, of the labour inspection services. In the last three years, virtually none of the plants visited appears to have been seen by the labour inspectorate. A greater government presence in the carrying out of these functions could contribute to improving the climate of labour relations and working conditions in the enterprise, including in the area of occupational health. Similarly, inspection visits would contribute to an improvement in the observance of national legislation in regard to the recruitment of workers under outsourcing arrangements, the working conditions applicable to these workers, and their exercise of freedom of association.

**158.** As noted in paragraph 2 of this report, the employers' activities specialist has expressed different views on some issues in this report and does not associate himself with the conclusions.

Geneva, 3 October 2008