

Heineken

Overview of controversial business practices in 2010



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SOMO

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Introduction

This company profile has been drafted by SOMO (Centre for Research on Multinational Corporations) and provides an overview of controversial business practices that occurred or were addressed in 2010. In the context of the upcoming annual general meetings (AGMs) of shareholders of Heineken, this overview aims to provide additional information to shareholders and other stakeholders of Heineken regarding outstanding CSR issues. By highlighting such issues, the overview can be used to identify areas of the company's corporate responsibility policies and practices that need improvement and to formulate a more informed assessment of a company's corporate responsibility performance.

The range of sustainability and corporate responsibility issues included in this overview is broadly based on issues and principles that are present in global normative standards for responsible business behaviour, such as the OECD Guidelines for Multinational Enterprises. Rather than an exhaustive analysis of Heineken's corporate responsibility policies, operational aspects of corporate responsibility management, implementation systems, reporting and transparency, or total performance on any issue, the overview provides a description of a limited number of corporate responsibility-related issues and cases that might merit further attention or reflection. Heineken's positive sustainability achievements in 2010 are not addressed here. Information on positive achievements can usually be found in a company's annual and/or sustainability report and on the company's website.

The research methodology for this overview primarily involved desk research methods, relying on information from SOMO's global network of civil society organisations, the company's own website and publications, media reports, and company information databases. All sources are cited in footnotes in the text. As per SOMO's standard research methodology, Heineken was informed about the research in advance and was given two weeks to review a draft report and provide comments and corrections of any factual errors in the draft version prior to publication. Heineken made use of this opportunity and provided SOMO with a response which has been taken into account in the final text of this overview.

This company profile is part of a joint project of SOMO and the VBDO (Dutch Association of Investors for Sustainable Development – *Vereniging van Beleggers voor Duurzame Ontwikkeling*).

About SOMO

SOMO is an independent, non-profit research and network organisation working on social, ecological and economic issues related to sustainable development. Since 1973, the organisation has been investigating multinational corporations and the consequences of their activities for people and the environment around the world. SOMO supports social organisations by providing training, coordinating networks and generating and disseminating knowledge on multinational corporations in a context of international production, trade, financing and regulation.

Construction of the Rayados Football Stadium in La Pastora Park

Summary

The Mexican company Femsá, whose beer operations were acquired by Heineken in 2010, is planning to build a football stadium in La Pastora Park in Monterrey, Mexico. Consequences of this construction would be biodiversity loss, deterioration of soil and water quality in the park, elevated contamination levels, and more. Furthermore, local citizens' collectives and environmentalist groups claim that the stadium, which is a private enterprise, will be built on public property so that the future costs for decommissioning will have to be borne by the state. With the construction of the football stadium in La Pastora park, Femsá may risk breaching the sustainability criteria on environmental care and community involvement laid down in the OECD guidelines, the UN Global Compact, the UN CEO Water Mandate and Femsá's own sustainability scheme. Although Heineken is not legally responsible for the building of the Rayados football stadium, it is a stakeholder with high commercial interests in the matter, its vice president is at the same time CEO of Femsá, and Heineken and Femsá are linked through Femsá's high percentage of shares in the Heineken Holding. Therefore, the business relationship between Heineken and Femsá is such that Heineken has a responsibility to avoid causing or contributing to the adverse impacts of the project, to which it is associated through its commercial interests and its business relationship.

Context

In January 2010, Heineken purchased the beer selling operations of Mexico's most important beverage company, the Fomento Económico Mexicano, S.A.B. de C.V. (Femsá). These operations consist mainly of the Mexican brewery Cuauhtémoc Moctezuma (CM) and the Brazilian Kaiser Cerveza (now Heineken Brazil). In return for the deal, Femsá received 20% of the shares in Heineken Holding, becoming the largest shareholder after the Heineken family.

One of Femsá's subsidiaries, namely Desarrollo Deportivo y Comercial, is planning to build a football stadium with a capacity of 55,000 seats and 5,000 parking lots in La Pastora Park, located in the municipality of Guadalupe which is part of the metropolitan area of Monterrey. Monterrey is the second largest city in Mexico and La Pastora is the biggest recreational green area of the city. The football stadium would occupy 20% of the park's surface, 26 hectares of the total 130 ha. The stadium is to host the Monterrey Rayados soccer club, currently the national champion and owned since 2006 by Femsá itself. Since the acquisition of Cuauhtémoc Moctezuma, Heineken is sponsor of Monterrey Rayados.¹ Upon completion, Heineken will enjoy the exclusive rights of selling its beverages in the stadium. As José Antonio Fernández Carbajal, CEO of Femsá and Vice Chairman of the Board of Heineken put it, it will be a 'very beer-like stadium.'²

¹ 'Mega proyecto para Rayados', Vanguardia, 13 January 2010, http://www.vanguardia.com.mx/mega_proyecto_para_rayados-452275.html (08/04/2011)

² Ibid.

The state of Nuevo León is to invest 500 million Mexican Pesos (MXN) (approximately 42 million US Dollars - USD) in infrastructure and roads in and surrounding the park and another 200 million MXN (USD17 million) in the park itself. Femsa is investing USD180 million.³ Femsa gets to own and use the stadium for 60 years, after which the stadium reverts back to the state. According to the official documentation, the stadium is to be used for 18 matches and 2 concerts/events a year.⁴

Monterrey is the most contaminated city of Mexico and in the summer temperatures can reach as high as 45 degrees Celsius. La Pastora is the biggest park and forest in the city and the river La Silla runs through it. The park is currently made up of a large forest, a lake, ponds, a zoo and an amusement park.

In February 2010 Profepa, the federal environmental prosecutor closed down the planned area of the stadium because the preliminary excavations and the clearing of the terrain were being carried out before a permit was obtained from Semarnat, the Ministry of the Environment and Natural Resources. Geoimsa, the company which has carried out the excavation works for Femsa has been fined and obliged to replant trees in the Cumbres de Monterrey National Park just outside Monterrey. Although work since then has been halted and the construction of the stadium has not yet started, in February 2011 Femsa requested the missing permits from Semarnat.

Controversies

The environmental impact assessment carried out for the plan recognises 46 adverse effects and 9 beneficial impacts of the project. The adverse effects include deterioration in the quality of the underground as well as the surface waters of the park (the river La Silla), the composition and topography of the land, the livelihoods of different plant and animal species in the park and socio-economic effects like noise and public health concerns. The beneficial impacts mainly consist of job creation, aesthetic qualities for the park and some recuperation of the flora and fauna of the park with the construction of green areas around the stadium.

Femsa will have ownership of the stadium for 60 years, which is supported by the fact that the costs for building and maintaining the stadium will be recovered in 60 years. According to state jurisdiction, public property can be leased to private actors for a maximum period of 30 years, which may be extended by another 30 when, according to economic circumstances the project is only viable with an extended period.⁵ However, other stakeholders claim that the costs for the stadium could be recovered in much less time, approximately 18 years, but that to reach these figures Femsa only uses the income generated by the sale of the 5,000 VIP tickets and sky boxes per event in the stadium.⁶ Moreover, after 60 years a stadium would probably be at the end of its use, thus the decommissioning and deconstructing costs for the project would have to be borne by the state.

According to environmentalist groups, the project endangers the 52 types of flora and the 107 types of fauna living in the area. The project would also require chopping down 12 ha of forest which now functions as the 'natural lungs' of the city. This should also be viewed in the perspective of

³ Femsa announced in 2008 to invest MXN2,000 million in the project. In its cash flow analysis it mentions USD180 million. Femsa press release 8 September 2008, <http://www.femsa.com/es/press/news/construir-femsa-estadio.htm> (10/02/2011)

⁴ Documentation prepared by Desarrollo Deportivo y Comercial, subsidiary of Femsa.

⁵ Ley de Administración Financiera para el Estado de Nuevo Leon, art 93, http://www.nl.gob.mx/pics/pages/tr_itif_base/Ley_de_Administracion_Financiera_para_Estado_de_Nuevo_Leon.pdf (10/02/2011)

⁶ 'Gobierno y diputados no le quieren quedar mal a Femsa', http://www.youtube.com/watch?v=JVTULclZi_U (04/02/2011)

deforestation in the region, which is happening at the highest rate in Latin America and the Caribbean at the moment.⁷

In September 2008, when the construction of the stadium was announced, the creation of the *Nuevo Parque Ecológico La Pastora* (La Pastora New Ecological Park) was also made public. With this act La Pastora Park was declared a natural reserve (*área natural protegida - ANP*). However, the area of the ANP excludes the area where the stadium is planned to be built within the park.⁸ Moreover, the foundation of the newly created Nuevo Parque Ecológico La Pastora, which oversees the management and the usage of the park, also announced its new president: José Antonio Fernández Carbajal, CEO of Femsa and Vice Chairman of the Board of Heineken Holding. While the park and the stadium are two different projects, there is clearly a conflict of interest at hand with Femsa's CEO being the president of the park's foundation.

The Environmental Law of Nuevo León regulates the management and use of the ANPs in the state.⁹ It specifies the conditions under which construction activities can be carried out, as well as which activities are prohibited in and around a natural reserve. These include soil and water contamination and the removal of the ground. Although the stadium would not be located in ANP La Pastora, but just outside of it, construction works and use of the facility would require some soil removal and would lead to water contamination. Also the construction infrastructure surrounding the stadium would cause damage to the natural reserve. Furthermore, the law stipulates that only those activities can be carried out in and surrounding the ANP which have been undertaken or supported by the communities living in or near the natural reserve.

A third-party environmental impact assessment commissioned by the Citizens' Collective in Defence of La Pastora (*Colectivo Ciudadano en Defensa de la Pastora*) pointed out that from an urban planning point of view, the stadium in the park is not being planned in the right location. There is no adequate public transportation infrastructure (metro) near the park, nor are there any plans to build such infrastructure, which would mean that to see sport events most of the spectators would have to travel by car, resulting in elevated emission levels and the need for expansion of parking facilities in the park.

Normative/legal standards violated

By building the new Rayados stadium in the La Pastora Park in Monterrey, Femsa risks breaching the following standards, principles and policies:

- ❑ **Femsa's own sustainability scheme**, which has four core values, two of which are community engagement: encouraging 'education and productivity, quality of life in the communities surrounding our facilities' and environmental care: 'mitigation of climatic change, availability of drinking water for our communities, reforestation.'¹⁰

⁷ 'Advances in environmentally sustainable development in Latin America and the Caribbean' (Santiago: United Nations' Economic Commission for Latin America and the Caribbean (ECLAC), January 2010, <http://www.eclac.cl/publicaciones/xml/2/38502/2009-697-ODM-7-WEB.pdf> (04/02/2011)

⁸ A. Hernandez, 'Nuevo Parque Ecológico La Pastora', Reporte Indigo website, no date, <http://www.reportebrainmedia.com/blog/nuevo-parque-ecologico-la-pastora> (04/02/2011)

⁹ Ley ambiental del estado de Nuevo León, <http://www.ciza.mx/apps/site/files/lanl.pdf> (10/02/2011)

¹⁰ Femsa website, Social responsibility, 'A longstanding commitment to responsible operation', <http://www.femsa.com/en/social/> (04/02/2011)

- ❑ Principles 7 and 8 of the United Nations **Global Compact**, which both Femsa and Heineken are signatories of. Principle 7 stating that ‘businesses should support a precautionary approach to environmental challenges’ and principle 8 stating that companies should ‘undertake initiatives to promote greater environmental responsibility.’
- ❑ The **OECD Guidelines for Multinational Enterprises**, chapter V. Environment: provision 2 states that companies should a) provide the public [...] with adequate and timely information on the potential environment, health and safety impacts of the activities and b) engage in adequate and timely communication and consultation with the communities directly affected by the environmental, health and safety policies of the enterprise.
- ❑ The **UN CEO Water Mandate**, which has guidelines on community engagement, states that companies supporting the initiative should ‘be active members of the local community, and encourage or provide support to local government, groups and initiatives seeking to advance the water and sanitation agendas.’¹¹
- ❑ Principle 13 of the **Guiding Principles on Business and Human Rights (Protect, Respect and Remedy Framework)** developed by the UN Special Representative of the Secretary-General on the issue of human rights and transnational corporations, John Ruggie, which states that business enterprises ‘should seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts. [...] Business enterprises may be involved with adverse human rights impacts either through their own activities or as a result of their business relationships with other parties. [...] Its ‘business relationships’ are understood to include relationships with business partners, entities in its value chain, and any other non-State or State entity directly linked to its business operations, products or services.’¹²

Response of the company

In May 2010, when the issue received publicity in the Netherlands, Heineken reacted as follows in one of the country’s main daily newspapers: ‘Femsa is known for its positive role in social development in Mexico and we are confident that any environmental concerns associated with the project will be dealt with carefully by Femsa.’¹³

Commenting upon a draft version of this report, Heineken stated the following: ‘*The building of the Rayados Football Stadium is a project that is 100% designed by, planned by and owned by Femsa. [...] Neither Heineken nor its Mexican subsidiary Cuauhtémoc Moctezuma are or can be involved in any aspect of the project. [...] Given the above information we believe your [SOMO’s] assessment of the Stadium project as a controversial business practice for Heineken is incorrect.*’¹⁴

SOMO argues that although Heineken is legally not responsible for the building of the Rayados football stadium, it does have a responsibility to avoid causing or contributing to adverse human rights

¹¹ UN CEO Water Mandate, http://www.unglobalcompact.org/docs/news_events/8.1/Ceo_water_mandate.pdf (23/02/2011) Since 2009 Heineken is a signatory of the UN CEO Water Mandate, Heineken CSR Report 2009, p 6.

¹² John Ruggie, ‘Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework’, 21 March 2011, Advanced Edited Version, p. 14, <http://www.business-humanrights.org/media/documents/ruggie/ruggie-guiding-principles-21-mar-2011.pdf> (11/04/2011) Although the UN Human Rights Council has not yet adopted the Guiding Principles, they are already regarded an important frame of reference defining corporate responsibility.

¹³ ‘Heineken criticised for football stadium’ [*Kritiek op Heineken om voetbalstadion*], NRC Handelsblad, 14 May 2010, http://vorige.nrc.nl/economie/article2543965.ece/Kritiek_op_Heineken_om_voetbalstadion (04/02/2011)

¹⁴ Heineken’s response to a draft version of this document. Email received 4 April 2011.

and environmental impacts related to the project. Heineken's non-legal involvement in the stadium consists of the following:

- ❑ Through its subsidiary Cuauhtémoc Moctezuma, Heineken is the sponsor of the Rayados football team, which will be playing in the stadium.
- ❑ Femsas is the owner of the Rayados football team. Not only is Femsas the second largest shareholder of Heineken, its CEO José Antonio Fernández Carbajal, who is one of the main promoters of the stadium, is Vice Chairman of the Board of Heineken Holding.
- ❑ Heineken has a commercial interest in the stadium, as it will be a property exclusively selling this company's beverages.

As Michiel Herkemij, CEO of Heineken Mexico put it: *'We are very enthusiastic about the stadium, Heineken and Femsas are one family. José Antonio [Fernández Carbajal] is the second shareholder, he is Heineken's second, we are a very good family'*.¹⁵

¹⁵ 'El Presidente sí quiere el estadio, dice FEMSA', Milenio, 23 March 2011, <http://impreso.milenio.com/node/8932674> (13/04/2011)

Trade Union Freedom at Cuauhtémoc Moctezuma Breweries

Summary

The rights of employees to form or join an independent trade union in most of Heineken's Cuauhtémoc Moctezuma breweries in Mexico are in danger of being breached. Most of the trade unions operating at the production facilities are so-called yellow unions, which lack independence and are being controlled by company management. These unions provide the fewest economic benefits for employees, there is no collective bargaining on behalf of workers and employees are not involved in the (re-)election of union leaders. By operating in a country where such practices are widespread, Heineken risks operating in violation of several guidelines and conventions on the freedom of association and collective bargaining, including the UN's Global Compact, the OECD Guidelines and several ILO core conventions. Furthermore, independent research by a Mexican NGO indeed indicates that concerns in this area do exist at the Cuauhtémoc Moctezuma breweries.

Context

In January 2010, Heineken bought Femsa's beer selling activities, which in Mexico consisted of the Cuauhtémoc Moctezuma (CM) breweries. This overview describes the labour relations at the CM breweries at the time that Heineken just recently had taken over its operations in Mexico (2010). When reference is made to 'Femsa's breweries', this is referring to the CM group of companies.

In Mexico there are generally three types of trade unions which can be distinguished. First, there are independent unions, with workers who are free in their choice to join (or not to join) the union, where collective agreements are negotiated on behalf of the members and where union leaders are elected democratically. Second, there are the so-called phantom unions, which only exist on paper. In case of a phantom union, upon contracting, all employees are automatically affiliated to the union often without even knowing about the existence of the union. Phantom unions are set up by company management in order to prevent employees from joining independent unions. And third, yellow unions, which are positioned between the phantom and the independent unions: they have a regular trade union structure, but are controlled by company management.¹⁶ Yellow unions are the most prevalent among the unions operating at the CM breweries in Mexico.

Role of Cuauhtémoc Moctezuma

In June 2010, FNV Bondgenoten and the Mexican NGO Centro de Investigación Laboral y Asesoría Sindical (CILAS) published a report on trade union freedom at Dutch multinational companies in Mexico. The research included aspects of freedom of association and collective bargaining at the Cuauhtémoc Moctezuma group companies, a subsidiary of Heineken. The findings in this overview are based on the 2010 CILAS report.¹⁷

¹⁶ In Mexico, the term *sindicato blanco* (white union) is used to denote unions controlled by company management.

¹⁷ L. Bueno Rodríguez (coord.), 'Freedom of association and collective bargaining at Dutch companies in Mexico' (CILAS, June 2010), <http://tradeunionfreedom.fnvcompanymonitor.nl/research-reports/mexico-report.php> (09/03/2011)

Trade unions at the various breweries of CM form a heterogeneous group. The degree of unionisation and the independence enjoyed by the unions has been determined by the history of each production plant. The oldest union in the Cuauhtémoc Moctezuma group is the one at the production location in Orizaba, which among the investigated unions is the only one operating independently. At the other (yellow) unions, the following issues have been identified:

- ❑ The collective agreements between the union and the company provide the fewest economic benefits for the employees concerned. Pay at production sites is low and other benefits like savings funds, year-end bonuses and Sunday pay rates are set at the legal minimum established by Mexican labour law.
- ❑ Employees have very little information about the structure and functioning of the trade union and are hardly ever involved in the election or re-election of union leaders.
- ❑ Yellow unions negotiate collective agreements with the company that are based on standard contracts or templates. This is proven by the fact that these agreements are exactly the same as collective agreements at other companies. The use of such contracts indicates that there is no form of collective bargaining at all, as there is no development or extension of the clauses and benefits for the employees over time.

Normative/legal standards potentially violated

By having production locations in Mexico, where the aforementioned issues are well-known and common problems with regards to trade union freedom, Heineken is at risk of denying its workers the right of being autonomously and legitimately represented by a trade union. In doing so, the company may be violating the following standards and guidelines:

- ❑ Heineken is a signatory of the United Nations **Global Compact**. Principle 3 of the Global Compact states that 'businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining.'¹⁸
- ❑ Heineken's **Code of Business Conduct** refers to the Universal Declaration of Human Rights and declares that 'Heineken supports fundamental human rights in line with the legitimate role of business. It secures the human rights of its employees within its facilities.'¹⁹ The right to the freedom of association is considered a basic human right.
- ❑ Chapter IV of the **OECD Guidelines for Multinational Enterprises** states that companies should 'respect the right of their employees to be represented by trade unions and other *bona fide* representatives of employees, and engage in constructive negotiations, either individually or through employers' associations.' Moreover, that these companies should 'enable authorised representatives of their employees to negotiate on collective bargaining or labour-management relations issues.'²⁰
- ❑ Several **ILO Core Conventions** establish workers' rights to freely form a trade union, join an already existing one or engage in collective bargaining agreements with their employer.²¹

¹⁸ Global Compact website, About us, The ten principles, 'Global Compact Principle Three', <http://www.unglobalcompact.org/AboutTheGC/TheTenPrinciples/principle3.html> (10/03/2011)

¹⁹ Heineken Code of Business Conduct, p. 7, <http://www.heinekeninternational.com/content/live/files/downloads/CorporateResponsibility/COBC%20Management%20Primer.pdf> (12/04/2011)

²⁰ OECD Guidelines, chapter IV, 1 a) and 8.

²¹ ILO conventions C87 and C98.

The case of trade unions being controlled by company management is not a new or unknown issue in Mexico. As research has shown, Heineken is one of the several multinational companies operating in Mexico that face this problem.²² Despite the fact that Heineken is a fairly new participant on the Mexican market, having bought Femsa's beer production activities in 2010, the company should make sure that unionisation rights of its employees are respected at all production facilities.

Response of the company

Commenting upon a draft version of this overview, Heineken states that during a due diligence process which was carried out in 2009, before acquiring the beer operations of Femsa, there was no evidence of violation of the principle of trade union freedom or any other basic human rights. Furthermore, Heineken stated that at CM *'more than 6,900 employees are members of a union [...], which include 2 major (CONASIM and CTM-STIE) [...] and another 5 fully independent and real trade unions.'* Moreover, according to Heineken, CM does not have so-called 'standard contracts' and all the unions at the breweries operate democratically. As a concluding remark, Heineken states that *'this report was compiled without any contact with either Heineken or CM to obtain valid and real data or to assess the validity of the claims. [...] We therefore do not see this CILAS report as a correct basis on which SOMO or any other organisation is able to draw conclusions.'*²³

CILAS was originally commissioned by FNV Bondgenoten (the largest Dutch trade union) to assess the situation of the freedom of association at several Dutch multinational companies operating in Mexico. The research was aimed at getting an initial picture of the situation, after which a dialogue can be established between the companies, trade unions and other stakeholders. The 2010 CILAS report marks the first step in this process.

The mere fact that various trade unions exist at the CM breweries and that several thousand employees are unionised does not necessarily mean that proper conditions for the freedom of association and collective bargaining are ensured. Especially in a country like Mexico, where the limitation of trade union rights has a longstanding tradition and where these practices are widespread, Heineken cannot distance itself from these problems and should take extra care in ensuring that workers' rights are not being violated.

²² The 2010 CILAS study has identified several other multinational companies with yellow or phantom trade unions, just as earlier SOMO study on the electronics industry in Mexico. F. Weyzig, 'Trade union situation at Sanmina SCI Systems de México', SOMO, July 2008, http://somo.nl/publications-nl/Publication_2584-nl

²³ Heineken's response to a draft version of this document. Email received 4 April 2011.