

Complaint from banana workers for violation of rights

*under the framework of the Multiparty Trade Agreement
of Colombia, Ecuador, Peru and the European Union*





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EXECUTIVE SUMMARY

This complaint is motivated by the breach of the obligations related to labor and environmental rights as established in Articles 269, 270 and 277 of Chapter IX on Trade and Sustainable Development of the Multiparty Trade Agreement (MTA, or ACM in Spanish) between the European Union, Colombia, Ecuador and Peru.

- 1. The importance of the banana sector under the MTA framework stems from Ecuador's position as the main global exporter of this fruit whilst the European Union (EU) is its main buyer.** Production and marketing respond to an oligopolistic structure where profits and market control are concentrated in exporters and importers –both with a strong transnational presence– and in European supermarket chains, all of whom are thus co-responsible in generating the conditions for the fulfillment of labor and environmental rights.
- 2. In the banana sector there is a permanent violation of labor rights.** This violation includes: 1) the persistence of informal working relationships; 2) the overexploitation of workers; 3) undue deductions from workers' salaries; 4) a breach of the monthly minimum wage (*salario básico unificado* in Spanish).
- 3. There are reports of regulatory backsliding in labor rights that are in violation of the Ecuadorian Constitution and international agreements.** Three agreements enacted by the Ministry of Labor between 2017 and 2018 (No. MDT-2017-0029, No. MDT-2018-0096 and No. MDT-2018-0074) that regulate "special" contracting methods for "agricultural activities" and for the "banana sector" are in contradiction with Articles 326.7,

326.8, 326.13 and 328 of the Constitution of Ecuador. In addition, interpreted under ILO conventions 87, 98, 144, 111, 110 and 131, they violate the rights to freedom of association, collective bargaining, fair remuneration and minimum wage.

4. **Restrictions on the right to freedom of association.** The Labor Code only recognizes unions for companies with a minimum number of 30 workers. In a country where the productive structure comprises a large number of small and medium enterprises, this provision violates the right to freedom of association. At the same time, companies unlawfully deploy the following tactics in order to avoid the unionization of their workers: 1) keeping a large number of their workers without social security membership, as social security enrollment is the means used to verify the size of the company for recognizing the union's structure; 2) subcontracting of workers in small companies; 3) creation of unions linked to company management; 4) practices of harassment, threats and dismissal of organized workers.

5. **There is evidence of the impairment of the health of the workers, as well as of the inhabitants of the communities and schools surrounding the banana plantations.** Non-compliance is reported with the Health and Safety Regulation for workers and improvement of the working environment with regards to the health facilities that the banana plantations must have based on their number of workers. Similarly, it is reported that the workers and the population surrounding the plantations are exposed to agrochemical products used intensively in banana production which are highly hazardous and toxic. As a result, some workers and nearby residents have diverse symptoms and diseases that are not properly addressed or registered within the health system. The use of these products also represents an impact on the environment.

6. The violations of rights and the negative effects on health have been the object of a series of complaints both nationally and internationally by the Agricultural Banana Workers and Peasants' Trade Union Association (ASTAC).

1. FOUNDATION

On November 11, 2016, Ecuador signed its membership to the Multiparty Trade Agreement (MTA) with the European Union (EU) and its member states, along with Colombia and Peru. This agreement entered into force on January 1, 2017. The document implies obligations for the State Parties which include the promotion of and compliance with international agreements related to labor and environmental rights, included in Chapter IX on Commerce and Sustainable Development.

Despite these commitments, in Ecuador, and specifically within the banana sector, the violation of labor and environmental rights established in Articles 269, 270 and 277 of the MTA is observed. All the supporting documentation in this regard is attached to this complaint¹.

This complaint is based on violations within the banana sector, as Ecuador is the world's leading exporter of this fruit and its primary destination is the EU.

In Ecuador, banana production employs 200,000 people directly and involves up to 2 million people indirectly.² It should also be noted that, due to the territorial extension of the crops and the intensive use of

1 All the information presented herein is part of a more detailed report: *Status of the banana in Ecuador: accumulation, inequality and labor rights*.

2 AEBE (2017). "A look at the Ecuadorian banana sector". At <http://www.aebe.com.ec/2017/09/una-mirada-al-sector-bananero-ecuatoriano/>.

agro-toxins, the population surrounding the banana production areas is also at risk of experiencing ill effects to their health.

2. ACCUMULATION OF WEALTH BY LARGE COMPANIES AND CO-RESPONSIBILITY OF COMPANIES IN THE EUROPEAN UNION

Until 1998, the United States was the largest importer of Ecuadorian bananas. From 1999 to the present day, the European Union has become the main buyer, Germany and Italy in particular, who represent, on average, 63% of total exports to the European Union, according to 2017 data from the Central Bank of Ecuador (BCE).

Since 1997, the price of a box of bananas in Ecuador has been regulated by the Banana Production and Marketing Law; a law that seeks to guarantee the payment of a mandatory minimum price (USD 6.30 in 2019) to producers. However, an Oxfam report ³ shows that only 60% of what is produced is paid for in accordance with the official price, while the remaining percentage is adjusted to the spot price, that is, the seasonal price. Since they are a determining factor in setting the price of bananas, European retail importers and retailers are partially responsible for the banana production chain.

This failure to meet the official price explains how since 2008, the Oxfam report shows the price of bananas sold to supermarket chains such as Edeka, Rewe, Aldi, Schwarz-Gruppe (Lidl, Kaufland) and Metro (Galeria Kaufhof, Real) has fallen lower than the Ecuadorian minimum price, including export and import costs. The pressure exerted by importers and supermarket chains has direct consequences for non-compliance

³ Oxfam (2014). "Bananas at a low price: who pays", page 12. At https://www.oxfam.de/system/files/bananos_a_bajo_precio_version_esp.pdf

with official prices and, in the case of small and medium producers, this drop in the price of a box of bananas helps generate conditions for the breach of labor rights.⁴ In addition, these supermarket chains state to their consumers that they sell products that are produced under a framework of respect for the environment and labor rights; in order to sustain such claims, they must ensure that this is so, otherwise, it would be false advertising.

The BCE data shows that: during the last decade there has been sustained growth of banana exports, both in terms of metric tons and in FOB (free on board) Dollars, without extraordinary growth after the MTA signing.⁵ In addition, it should be emphasized that the sustained growth of this sector does not generate greater contributions to the Ecuadorian state coffers, as since 2016 there has been a reduction in the tax burden. In recent years, the productive structure of the banana sector has been the object of scrutiny from civil society and various organizations (ASTAC, Oxfam, FES-ILDIS, IEE, Ombudsman's Office, among others).

The banana production chain is an oligopolistic structure where a group of companies dominate the relevant sectors of production, circulation⁶ and commercialization of the necessary chemical and technical inputs. An even smaller group controls the marketing of the product. However,

- 4 In this vein, facing the power of the supermarkets, 32 guilds of producers of different sizes wrote a letter of protest in October 2018 addressed to the supermarket chain Aldi for its decision to lower the price of a box of bananas. In the aforementioned letter, the unions stated that these types of measures would force the producers to sell the fruit below the minimum sustainable price established under Ecuadorian law, with the consequences that this reduction entails for the income of the workers and the protection of the environment. See *El Comercio* (2019). "Richard Salazar: A banana price war is coming to the EU for 2019". At <http://www.fruitnet.com/eurofruit/article/176922/ecuador-calls-time-on-banana-price-cuts>.
- 5 For more than forty years, bananas topped the list of the country's non-oil export products; however, in the last two years, this position has been occupied with a slight margin by shrimp. *El Comercio* (2019). At: <https://goo.gl/e2DHYi>
- 6 Baquero, Fernández & Garzón (2004). THE BANANA IN ECUADOR. Market structure and price formation. In: Economy Notes No. 42 Department of Economic Research for the Central Bank of Ecuador.

although the large exporters continue to hold important weight in the commercialization of bananas (holding between 5.5% and 29.4% of the total profit and often simultaneously producing, exporting and/or importing), as already mentioned, nowadays it is the large supermarket chains that set the price.

In the interior of the country, the significant presence of small banana producers is presented as an argument to emphasize that it is an "inclusive economy," upholding the idea of rural development through the banana trade. However, 78% of small producers represent barely 22% of the hectares sown, whilst 4% of large companies have 43%, demonstrating a great concentration of wealth.⁷ This phenomenon is intensified in the case of exporters, where only 10 companies controlled 43.2% of the total number of boxes exported in the first half of 2017.⁸

Rates of productivity fluctuate according to the size of the productive unit, the degree of technicalization and the average productivity. According to the Food and Agriculture Organization of the United Nations (FAO), depending on these factors, in Ecuador, banana plantations require from 0.9 to 5 workers per hectare.⁹ In total, there are 4,473 banana producers in an area of 162,234 hectares.¹⁰ This data allows for an estimation of the average number of workers required in each hacienda and for a comparison of this number with those registered for social security.

It is important to point out the historical presence that banana businessmen have had in Ecuadorian politics, occupying positions of executive and legislative power at the national level and locally in prefectures, mayorships and other state institutions. This presence,

7 Ministry of Agriculture and Livestock (2013). Banana Cadastre.

8 AEBE (2017).

9 FAO (2004). The World Banana Economy 1985 2002. Page 20.

10 Ministry of Agriculture and Livestock (2017).

known as the *corporate capture of the State*, generates a conflict of interest: it could explain the high levels of impunity for non-compliance with regulations and violations of rights. As an example, the Ombudsman's Office at times must repeatedly send requests for information about the banana sector to state institutions, which fail to provide the information requested, although this institution has the legal basis to request information in accordance with Art. 21 of the Organic Law of the Ombudsman's Office.¹¹

3. LABOR EXPLOITATION REGIME AND REGULATORY BACKSLIDING IN THE PROTECTION OF LABOR RIGHTS

About the labor exploitation regime

The study conducted¹² highlights that, in the banana sector, there is a regime of exploitation based on the persistence and naturalization of informal relationships that makes the situation of the workers precarious and reinforces forms of non-full-time employment through:

Irregularities in hiring: Of those surveyed, 68% lacked formal contracts. The spoken agreement becomes a habitual practice that, frequently, is ignored by the employer when an employee is dismissed. In addition, 82% of people who have a written contract do not receive a copy and do not know the mode under which they were hired - the majority find out when they are dismissed.

¹¹ Decision No. 099.2019.DPE.DNDCNA-MP.

¹² Based on the results of a survey conducted for this report, which is representative for the province of Los Ríos, while for Guayas and El Oro it will serve as reference data. The survey is composed of 117 respondents, of whom 80% are men; 75% of respondents fall between the ages of 24 to 50.

Arbitrariness in the methods of payment: Of the workers surveyed, 70.3% do not receive pay slips and are unable to verify how their salaries are calculated or identify overtime and supplementary hours. This last point is of vital importance since, in medium and large sized plantations, 80% of the workers have working days of 10 or more hours. In the same way, 52.3% of workers do not receive the thirteenth month salary; 56% do not receive the fourteenth month salary; 66.5% cannot access their reserve funds; and 69% do not receive vacation time.¹³ In addition, many companies reduce their annual statement of earnings to decrease the mandatory payment of profits to their workers. Finally, some plantations pay salaries through gift cards, which are used to impose the condition that part of the salary is used to make purchases in stores associated with the same company.

Undue deductions from salaries: The tools and work clothes required by law and provided by the companies are deducted from workers' salaries. Additionally, respondents say that "other deductions" are made and they do not know to what they respond or how they are calculated.

Non-compliance with the minimum wage: Payment is made based on work completed or hectares, without a calculation of the time necessary to complete the tasks that, in many cases, require much longer hours and over-exertion by the worker in order to achieve an income close to the minimum wage. Female workers, in particular, are paid using this method: in many cases, based on the argument that their work is "less heavy," they are paid less and are assigned a volume of tasks that cannot be fulfilled in a normal working day, so they do not reach the minimum wage. Similarly, it is common practice to reduce

¹³ Thirteenth and fourteenth month salaries are legislated bonuses that Ecuadorian workers receive once a year. The thirteenth salary is equivalent to one twelfth of the total remuneration received by a worker during a whole year. The fourteenth salary is equivalent to one month minimum wage and it is paid at the beginning of the school year. Workers can choose, however, to receive these Bonuses annually or monthly.

the number of working days as a mechanism to “sanction” workers who complain.

Lack of registration for social security: Only 49% of respondents are registered for social security. This problem has a national correlation since, according to data published in the National Survey of Employment, Underemployment and Unemployment, dated March 2018, 56.9% of employees nationally lacked social security affiliation. It is important to note that, since 2014, the non-registration of workers for social security by employers is punishable under the Organic Comprehensive Criminal Code. In the first instance, the sanction is a fine (Art. 243), but in the case of failure to comply with the affiliation 48 hours after the first notification, a custodial sentence of 3 to 7 days is established (Art 244).

In addition to the survey that supports this complaint, since 2017 there have been official complaints made against at least thirteen plantations for violation of labor rights. Of these complaints, two that illustrate the previous argument are highlighted below:

1. At the end of 2016, the workers of the hacienda “Sitio nuevo,” belonging to the company Manobal, denounced aerial spraying during lunch hours and requested an inspection. During this inspection by representatives of the Ecuadorian Institute of Social Security (IESS) and the Ombudsman, the administrator of the hacienda admitted that 50% of workers were not registered for social security. In turn, the workers indicated that they are forced to pay for their uniforms and work shirts.¹⁴ After the inspection, the company dismissed 21 workers and threatened to “blacklist”¹⁵ any workers who belong to a union.

¹⁴ Accompanying report to IESS and ASTAC on inspection in banana plantation “Sitio nuevo” signed by Abg. Francisco Rodríguez Toaza, a specialist in Human Rights and Rights of Nature. Provincial Delegation of Los Ríos (December 22, 2016).

¹⁵ List with names of “problematic” workers, considered to be a problem because they denounce violations and claim rights or are affiliated to unions. This list circulates among the companies so that the people who are on it are not hired.

2. In December of 2017, a report was made that Maritza Mendoza, a worker at the "Matías" hacienda of the Orodelti company, worked up to 12 hours a day during her lactation period. After making a complaint stating that the law stipulates 6 hours of work and 2 hours of lactation (Article 155 of the Labor Code), the company dismissed her husband and, as she earned according to production, they reduced her working hours, with the result that she only earned USD 45.59 per month, as stated in her pay slip. This action was denounced for being in violation of the ILO Convention 131 on the minimum wage. Three months later, the labor inspectorate reported not having carried out the corresponding inspection due to the lack of a vehicle for making a visit to the plantation.¹⁶

On regulatory backsliding

The promulgation of ministerial agreement No. MDT-2017-0029, dated April 21, 2017, regulates "special" labor relations in the agricultural, livestock and agro-industrial sectors. The ministerial agreement dated May 10, 2018, No. MDT-2018-0096, establishes a "special work contract for part-time activities for the agricultural sector", and No. MDT-2018-0074 establishes a "contract of special work for part-time activities for the banana sector".¹⁷ All these documents represent regulatory backsliding in that, as a whole, they are in contradiction with Articles 326.7, 326.8, 326.13 and 328 of the Constitution of Ecuador. In addition, interpreted in the light of ILO Conventions 87, 98, 144, 111, 110 and 131, they violate the rights to freedom of association, collective bargaining, fair remuneration and the minimum wage. All of these ministerial agreements stipulate that some elements of the

¹⁶ Letter addressed to the Minister of Labor Raúl Ledesma dated March 8, 2018. Entry code: 0016797UIO2018.

¹⁷ Since December 2010, the "reform provision" appended to the Labor Code, which originated from the Organic Code of Production, Trade and Investment (COPCI) and which is still in force today, allows the Ministry of Labor to regulate labor relations outside the scope of the Labor Code: "Reform the Labor Code in the following provisions: 4. Following Article 23 (of the Labor Code), add the following article: Art. 23.1 The Ministry of Labor may regulate special labor relations that are not regulated under this Code, in accordance with the Constitution of the Republic" (Labor Code, 2010: Fifth Transition).

salary and the working day “will be determined by agreement between the parties,” with the parties being the employer and the employee individually, thus eliminating the right to collective bargaining.

The three agreements mentioned, as well as five other agreements enacted simultaneously for other sectors, are characterized by *formalizing labor instability*¹⁸ through temporary contracts, part-time contracts, contracts without a fixed duration and contracts subject to adjustment based, fundamentally, on the will of the business.

For example, these contract methods enable a person to be hired on a part-time basis for only 52 discontinuous days within a year, leaving workers in a situation of job instability and without sufficient income for a decent life. These agreements also do not ensure compliance with minimum weekly rest period of 48 consecutive hours established under ILO Convention 110 and enshrined in the Constitution of Ecuador.

In the words of Raúl Ledesma, the relevant minister at the time of the promulgation of the agreements, these new modalities for labor contracts facilitate the hiring of workers in this part of the country: “There are contracts for the rice sector, palm growers, aquaculture, contracts that we did not have before, that did not allow us to do that job in a visible manner because people were informally hired (without benefits); they were paid for the day and that’s it “ [sic].¹⁹ That is to say, types of work that were previously considered to be insecure jobs are now legalized.

18 The labor instability to which these workers are exposed is evident in Art. 12. of Agreement 0074 and Art. 13 of Agreement 0096 where: “The employer may re-employ the same worker with whom he entered into the ‘Contract for Special Discontinued Work on a Part-time Basis for the Banana Sector,’ for the purpose of which the employer will keep a record of the workers under this contractual method for the fulfillment of banana-related activities”. That is, if the employer so wishes, the same worker can be re-employed; however, there is no obligation to do so, which is why job stability is eliminated.

19 In this regard, see *Expreso* (2018). “Employment is growing in the field, but it is becoming more precarious”. At <https://www.expreso.ec/economia/desempleo-empleo-trabajo-inec-estadisticas-economia-GM2439091>.

These three agreements contravene Article 277 of the MTA, which states: “No Party shall encourage trade or investment by reducing the levels of protection contemplated in its environmental and labor legislation. Consequently, *no Party shall cease to apply, nor shall it in any way nullify its environmental and labor legislation in such a way as to reduce the protection granted in said laws, to encourage trade or investment*” (emphasis added).

4. RESTRICTIONS ON THE RIGHT TO FREEDOM OF ASSOCIATION AND THE TRADE UNION PERSECUTION REGIME

In Ecuador there are several limitations to exercising freedom of association. In the first place, the current Labor Code only recognizes unions by individual company, excluding branch unions, and requiring a minimum of 30 workers belonging to a single employer for the organization of a union (Article 443). This limitation is not a minor one considering the following: First, in 2018 there were 85,677 registered companies, of which 64.5% were micro enterprises with up to 9 workers and 24.9% were small companies with 10 to 49 workers.²⁰ Second, while 5,853 labor associations (trade unions) were registered in 2017, only 2,969 were active.²¹

There is no data on the number of agrarian unions, since the Ministry of Labor does not make this distinction. However, to the low indexes of unionization, it is necessary to add that, in the banana sector, 96% of the workers surveyed stated that the companies do not allow

²⁰ Superintendence of Companies (2018).

²¹ Data from the Ministry of Labor, published in *El Comercio* (2017). “2,969 unions with low representation”. At <https://www.elcomercio.com/actualidad/sindicatos-baja-representacion-ecuador-trabajadores.html>.

unionization, and to uphold this prohibition, they deploy the following actions:

- Maintain a large part of their workers without social security registration. Affiliation is the means used by the Ministry of Labor to verify that a worker pertains to the company when it comes to recognizing the formation of a union.
- In small companies, a subdivision is registered so as not to exceed the necessary number of workers for a union, all of which are nevertheless owned by the same owner.
- Creation of company-managed unions.
- Harassment practices, threats and dismissal of unionized workers.

Below we present in a summarized manner some cases that illustrate the limits placed on unionization:

1. In 2017, the workers of the “Los Alamos” plantation union, owned by Álvaro Noboa, together with the Agricultural, Banana Workers and Peasants’ Trade Union Association (ASTAC), requested an inspection of the hacienda by the Ombudsman’s Office.²² This inspection was attempted, unsuccessfully, on two occasions²³ because the administrators did not allow entry to the inspectors. In retaliation, 10 members of the union were fired.²⁴ Then, under threat of dismissal, the company offered USD 20 to about 200 workers to cancel their union registration. The six workers who refused to sign were fired. These actions were reported; the union did not survive.

22 Decision No. 006, issued within the defense process No. 486-2017.

23 On September 25 and November 28, 2017.

24 Óscar Bagui (General Secretary), Walter Guerrero (Records Clerk), Inés Saltos (Deputy), Magaly Pérez (Deputy for Finance), Luis Riopaz (Press & Marketing Secretary) and Walter Valarezo Macías (Deputy for Press & Marketing).

2. Between October and November 2017, 10 workers were dismissed from the "Matías" hacienda of the Orodelti group for being members of ASTAC. Weeks later, during a visit by the Permanent Committee for the Defense of Human Rights related to another case at the plantation "La Rural," owned by Federico Ponce, the guards claimed to have received from the "Matías" plantation a list with the names of "problematic" workers. This evidence proves the existence of "blacklists" which are used to discriminate against workers. These "blacklists" are punishable by law.
3. In 2017, during an inspection at the "San Jacinto" plantation, belonging to the company Reybanpac, in front of the Ombudsman's Office representative and the labor inspector, Abg. Cristina Cordero, the workers denounced the creation, by the company, of an employer-run union. Despite having only 70 members, this union ordered the deduction of union dues from more than 4,000 workers' salaries.

Similarly, pressures and threats of dismissal against workers belonging to ASTAC have been reported at this plantation. In 2018, the threats were made concrete: in two cases, permission for dismissal was requested from the Ministry of Labor for alleged disciplinary offenses against María Intriago and Flavio Figueroa. Although the Labor Code establishes a maximum of 30 days for the company to notify the Ministry of an offense by a worker, in the first case, the notification arrived after 33 days, and in the second case, after 51 days; that is to say, with a delay of 3 and 22 days with respect to the provisions of the law. The Ministry of Labor ruled in favor of the company in both cases, even though in Figueroa's appeal (whose alleged offense was disrespecting a superior) it was reported that the head of human resources of the company banned the other workers from attending to testify in favor of the respondent, who denied the supposed altercation and stated that the dismissal was due to being a union member.

4. The worker José Sánchez, after being questioned by Abg. José Moreira of the company Reybanpac about his suspected association with ASTAC, was verbally dismissed and prevented from entering the hacienda. This action was reported to the Ministry of Labor. At the hearing, the company denied the dismissal, stating that the worker had resigned. The Labor Inspectorate ignored the complaint and proceeded to file the administrative procedure.²⁵

In November 2018, workers affiliated with ASTAC filed a complaint against Reybanpac for discrimination. The Quevedo prosecutor's office, in breach of its obligations, refused to open the investigation.

Harassment included a death threat received by telephone on February 23, 2018 by Jorge Acosta, coordinator of ASTAC. The incident was reported to the State Attorney General's Office.

All these actions contravene Article 269 of the Multiparty Trade Agreement (MTA), according to which "each party is committed to the promotion and effective application of internationally recognized labor standards in its laws and practices throughout its territory, as they are constituted in the fundamental conventions of the International Labor Organization" These Conventions refer to: (I) freedom of association and the effective recognition of the right to collective bargaining; (II) the elimination of all forms of forced labor; (III) the abolition of child labor; and (IV) the elimination of discrimination with respect to employment and occupation.

²⁵ José Sánchez now suffers from tumors around his throat, an illness product of his work in the banana plantations; it will be very difficult for him to get another job.

5. IMPACTS ON HEALTH AND THE ENVIRONMENT

The health of workers in the banana sector is determined by a combination of social factors, such as the working conditions described, access to basic public services and exposure to pesticides. This exposure also affects people living in the vicinity of the plantations.

According to Ecuador's Health and Safety Regulations, when the number of workers exceeds fifteen, a Safety and Work Hygiene Committee should be created. If there are more than fifty regular workers, there must be an Occupational Health and Safety Technician (SHT). When the number of workers exceeds 100, it is necessary to have a Health and Safety Unit (Art. 14 and 15). However, despite the significant frequency of work accidents –such as cuts with tools on the extremities of the body and poisonous snakebites– most plantations do not have these health and safety services. Of the workers surveyed, 54.3% indicated that their work does not have any type of first aid personnel, and 31.9% are unaware of the existence of Occupational Health and Safety Committees.

In addition to the lack of medical attention is the fact that, in the production of bananas in Ecuador, 26 highly dangerous active ingredients are used –which, according to the Pesticide Action Network, are found in 98 commercial products–, some extremely toxic (IA) and highly toxic (IB) according to the classification of the World Health Organization (WHO).²⁶ Other chemicals that are not considered to be highly dangerous, however, are amongst the chemicals suggested by the United Nations “to be restricted”. Such is the case of captan, endosulfan, paraquat and carbofuran. In the case of paraquat, it must be emphasized that this product is prohibited in the European Union,

²⁶ It should be noted that the categorization by the WHO is based on an individual analysis, and not a study on the dangerousness of combined use of products, as they are used in banana plantations.

but is commonly used in Ecuador. This product causes damage to the mitochondria cells through the production of free radicals and the interruption of important biochemical processes, which can lead to cell death.

The International Code of Conduct for the Management of Pesticides, approved by the member countries of the FAO, urges the prohibition of importing, distributing, selling and purchasing highly dangerous pesticides if: "based on the risk assessment, the risk reduction measures are insufficient to ensure that the product can be handled without unacceptable risks to humans and the environment".²⁷

Banana workers have reported symptoms related to fumigations such as dizziness, headache, fever, burning sensations in the eyes and nose, stomach pain, nausea, and languor. Several have developed chronic diseases such as skin problems, stomach problems, allergies, constant chills, loss of fertility, miscarriages and pregnancies with malformations. These health problems are treated with medical attention from the public health services, where the doctors point out the relationship of these diseases with the work on the plantations and the products that are used there, but in no case do they commit it to writing. In addition, the health system does not have a monitoring system to record the effects on health, in the medium and long term, caused by the use of these products.

Workers are exposed to these products through:

1. **The sheath.** The covers used to protect the banana bunch contain highly dangerous insecticides such as chlorpyrifos. These covers are handled without any protection. Studies conducted in Costa Rica²⁸

²⁷ FAO (2014). The World Banana Economy 1985-2002.

²⁸ Wendel de Joode et al. (2016). "Chlorpyrifos exposure and child neurodevelopment in Costa Rica". Villalobos (2014). "Exposure of banana bagging workers to the chlorpyrifos pesticide used in the protective bag. Talamanca Canton, Limon province". Master's Thesis.

show the effects on health caused by this product. When visiting the areas of the plantations, the remains of these covers can be seen on the sides of the roads with the consequent environmental impact.

2. **The bagging.** This area has a significant presence of women, responsible for ensuring the product is of the quality to be exported. Amongst their tasks, the most vulnerable to the effects of chemical products are: washing clusters, sealing, fumigation, vacuuming and binding. All these tasks are performed without any minimum protection.
3. **Terrestrial fumigations.** In terrestrial fumigations, herbicides such as oxamyl and tertuffe are used, which, in the WHO toxicological classification, are extremely toxic (IA) and highly toxic (IB), respectively. Glyphosate is also used, a chemical that, in 2015, was classified as a “possible carcinogenic to humans” by the International Agency for Research on Cancer, which forms part of the WHO. The carcinogenic function of glyphosate was recognized in the judgment issued by a California court of law against the company Monsanto in 2018.²⁹
4. **Aerial fumigations.** These fumigations are the object of multiple claims filed due to their effects on health. One of the main products used is mancozeb. In 2008, at the request of unions of banana workers and social organizations, the Ombudsman of Ecuador requested a study and, based on the results, in 2012 asked for its use to be prohibited due to the danger it poses. However, its use persists since not only Agrocalidad (Agency for Phytosanitary and

²⁹ This case was celebrated by two special rapporteurs from the United Nations, Hilal Elver (Special Rapporteur on the Right to Food) and Dainius Pūras (Special Rapporteur on the Right to Health), who pointed out that the ruling recognizes the possible correlations between cancer and Monsanto’s herbicides that contain glyphosate and the company’s negligence in not informing users about the risks of cancer.

Animal Health Regulation and Control)³⁰ but also the Ministry of the Environment has ignored the prohibition. In 2013, Agrocalidad organized an International Seminar on the responsible use of mancozeb.³¹

More than 40% of the survey respondents say that fumigations are carried out while they are within the plantations, and that there are few controls that enforce the protection fringe between aerial fumigations, populated areas and watercourses. However, even when the safety area of 200 meters is respected, it is insufficient to prevent damage to the environment and the health of neighboring populations. This damage occurs due to the fact that around 44 aerial fumigations per year are carried out in banana plantations, in which persistent products that can travel long distances are used. This phenomenon, known as drift, produces pollution in areas far away from where the products were applied. Drift in aerial fumigation is even greater because micro drops are dispensed at high speeds, exposed to wind, evaporate and can reach distances of up to 10 km,³² contaminating the environment and neighboring populations to the plantations and violating their constitutional right to "live in a healthy and ecologically balanced environment".³³

In 2009, the current President of the Republic of Ecuador, Lenin Moreno –then Vice President– admitted the existence of a direct relationship between the use of pesticides from agro-industrial exploitation and the increase in disability rates.³⁴

30 Agency in charge of control and regulation for the protection and improvement of animal health, plant health and food safety.

31 International Seminar for the Rational Use of Mancozeb in Agriculture, held on July 30 and 31, 2013, at <http://www.agrocalidad.gob.ec/primer-seminario-internacional-utilizacion-racional-de-mancozeb-en-la-agricultura>.

32 Ecological Action (2001). "Report on the impacts of aerial fumigation in the Colombia Plan".

33 Constitution of the Republic of Ecuador (2008: Art. 14).

34 Under the framework of the presentation of partial results of the research carried out by the Manuela Espejo Solidarity Mission, carried out in the province of Los Ríos in November 2009.

6. ACTIONS TAKEN AND MAIN COMPLAINTS MADE BY ASTAC

YEAR	ACTION	RESPONSE/RESULTS
2007	ASTAC, Network of Pesticides and Alternatives for Latin America (NPALA) reported to the Ombudsman's Office the health effects on people exposed to pesticides in banana production. ³⁵	The Ombudsman requested an expert opinion that confirmed the possibility that pesticides are one of the causes of poisoning in workers. These results led the Ombudsman to order the application of the precautionary principle.
2010	Aerial fumigation workers whose health was affected filed a complaint with the Ombudsman for violation of Human Rights and Nature Rights.	In 2012, an Ombudsman Resolution resolved to apply the precautionary principle and prohibit the use of mancozeb, amongst other recommendations.
2014	The documentation for the legal constitution of ASTAC as a union was presented.	The vice-minister of labor denied the proceeding under the argument that ASTAC workers do not have a dependency relationship with a single employer, as governed by the procedures in Art. 1, 9, 443 and 454 of the Labor Code.

³⁵ Ombudsman's Office, resolution 117-CNDHIG-2008.

YEAR	ACTION	RESPONSE/RESULTS
2015	An extraordinary appeal for review ³⁶ was filed in response to the refusal to recognize ASTAC as a union.	The Ministry of Labor rejected the appeal based on the previous arguments.
	A formal complaint was filed with the ILO against the Government of Ecuador, for breach of ILO Conventions 87, 98, 110 and 141, ratified by Ecuador (case 3 148).	In 2017, the ILO published the interim report No. 381, ³⁷ recommending to the State to review the requirement for a minimum of 30 workers for the constitution of single-company unions, with the objective of not hindering the creation of these organizations, taking into account that the country has a very large proportion of small businesses and the union structure is based on the company union. In addition, the report requested that “the necessary measures be taken to allow, without delay, the registration of ASTAC and, in the meantime, provide the necessary guarantees and protections to its members”.



36 Extraordinary review resource presented through the memoranda: MDT-DSG-2015-10986-EXTERNAL and MDT-DSG-2015-1426-EXTERNAL.

37 Provisional report No. 381, dated March 2017. Case No. 3 148 (Ecuador). Date of submission of the complaint: May 18, 2015.

YEAR	ACTION	RESPONSE/RESULTS
2016	The Court of Justice of Quevedo filed an action for protection against the Minister for Labor for violation of freedom of association. It was noted that the Ministry had recognized the validity of the sectoral trade union model by registering the National Union of Domestic Workers (SINUTRHE) on June 20, 2016.	The Court of Justice of Quevedo declared the protection action inadmissible, due to lack of "territorial jurisdiction".
2018	An unconstitutionality appeal was filed regarding three Ministerial Agreements ³⁸ issued by the Ministry of Labor to "regulate new methods of contracting".	Awaiting resolution by the Constitutional Court.

³⁸ These agreements are Ministerial Agreement No. MDT-2017-0029 dated April 21, 2017, which regulates special labor relations in the agricultural, livestock and agro industrial sector; the Ministerial Agreement dated May 10, 2018 MDT-2018-0096, which establishes a "Special Work Contract for Part-time Activities for the Agricultural Sector"; and MDT-2018-0074, which establishes a "Special Work Contract for Part-time Activities for the Banana Sector".

7. CONCLUSIONS, RECOMMENDATIONS AND DEMANDS

The data presented shows that, despite the fact that the banana sector generates significant wealth and jobs, profits are distributed unevenly, resulting in overexploitation of workers in the context of a permanent violation of labor and environmental rights. Thus, this information shows a co-responsibility of the market and foreign trade in the reproduction of inequality conditions that have consequences in labor and environmental overexploitation. These circumstances contravene the guarantees established by the Constitution of Ecuador, international treaties and domestic legislation. In particular, they contravene the provisions of the MTA signed with the EU, Peru and Colombia, the trade agreement on which this complaint is based.

The violation of rights is the result of a historical structure that generates impunity, of a product of the political power exerted by the big banana companies, and of a permissive institutionalization that naturalizes and even formalizes –by means of ministerial agreements– the precarious forms of labor within the sector and the violation of the right of populations to live in a “healthy and ecologically balanced environment”.³⁹

To ensure sustainable development and respect for human and environmental rights, within the framework of Chapter IX on Trade and Sustainable Development that is part of the Multiparty Trade Agreement (MTA) between the European Union, Colombia, Ecuador and Peru, we urge States and civil society to promote socially and environmentally responsible commerce. To achieve this goal, it is important:

³⁹ Constitution of the Republic of Ecuador (2008: Art. 14).

- (I) To urge the European Union to assume the co-responsibility that is incumbent on European transnational companies and supermarket chains with respect to the official sustainable price for the Ecuadorian box of bananas and in compliance with labor and environmental rights.
- (II) To define concrete, applied sanctions in the face of the international and national obligations that are being ignored.
- (III) That the Ecuadorian State commit itself to an action plan, with goals and a clear and effective calendar, aimed at guaranteeing compliance with labor and environmental rights. This plan must be presented and worked out within the framework of the National Advisory Council.

We recommend that this plan contemplate:

Immediate actions that guarantee rights and commitments

- Declare unconstitutional and repeal the Ministerial Agreements No. MDT-2017-0029, No. MDT-2018-0096 and No. MDT-2018-0074.
- Immediate compliance with labor rights and the affiliation of workers based on the minimum wage, present in national law.
- Suspend the use of highly dangerous products and carry out a study on the effects on health and the environment of the combined use of chemical products in banana plantations.
- Take measures to effectively enforce the protection fringe for aerial fumigation and extend its range from 200 m to 1,000 m.
- Promote a transition towards the use of eco-friendly and/or organic products in banana production.

Actions to strengthen civil society and workers' unions for the demand of rights

- Promote and disseminate the labor and environmental rights contained in Chapter IX of the MTA, in national regulations and in international treaties.
- Carry out the necessary legal reforms to guarantee the right to free unionization based on the productive characteristics of the country, allowing the creation of unions by branch and, in this way, promoting the strengthening of civil society organizations as key stakeholders in the defense of their rights. In this sense, it is imperative to recognize the trade union status of ASTAC based on the history of recognition of the National Union of Domestic Workers (SINUTRHE).

Actions to strengthen the existing institutions in the protection of rights

- Implement measures for the regularization and affiliation of all workers, establishing mechanisms to recognize years of contribution and work completed without the corresponding affiliation.
- Improve labor, environmental, social security and health inspectorates, and establish specific measures in cases of non-compliance with the regulations, guaranteeing the independence of the officials with respect to power groups linked to the production and export of bananas.
- Establish long-term follow-up mechanisms within the health system that help determine the health effects on banana workers and neighboring populations to the plantations; as well as establish forms of prevention and early action.

In order to guarantee that this plan is carried out, the organizations that bring this complaint request: (i) that government consultations be held to discuss violations by Ecuador and transnational corporations of their obligations established in Chapter IX of the Multiparty Trade Agreement; (ii) that a group of experts be established as soon as possible to examine in depth the violations described within this document; (iii) that, if our concerns are confirmed, the European Union will publicly position itself by making the necessary recommendations.

ACRONYMS

MTA:	Multiparty Trade Agreement
ASTAC:	Agricultural, Banana Workers and Peasants' Trade Union Association
BCE:	Central Bank of Ecuador
FAO:	Food and Agriculture Organization of the United Nations
FOB:	Free on Board
IESS:	Ecuadorian Social Security Institute
WHO:	World Health Organization
ILO:	International Labor Organization
NPALA:	Network of Pesticides and Alternatives for Latin America
SHT:	Occupational Health and Safety
SINUTRHE:	National Union of Domestic Workers
EU:	European Union

Friedrich-Ebert-Stiftung (FES-ILDIS) Ecuador

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