



NO to labor flexibilization in Ecuador's banana sector! Call for support and solidarity

On August 20, the Asociación Sindical de Trabajadores Agrícolas, Bananeros y Campesinos (ASTAC) [Trade Union Association of Agricultural, Banana and Peasant Workers] filed an appeal of unconstitutionality on three Ministerial Agreements, all promulgated by the Ministry of Labor between April 2017 and May 2018 regarding the regulation of agricultural labor relations in general and the banana sector in particular¹. This set of agreements represents a normative setback in regard to the rights enshrined both in the Constitution of the Republic and in international treaties ratified by Ecuador on issues related to freedom of association, the right to collective bargaining and the right to decent work with access to minimum wage and labor stability.

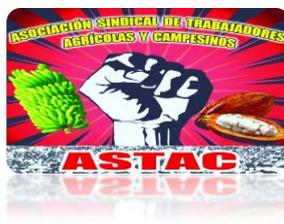
It is important to specify that this normative regression is caused by politics, as banana elites have maintained influence on state decisions to benefit the large economic groups dedicated to export.

As banana production is an intense activity that continuously produces and exports bananas all year round, the minister has approved new hiring modalities - temporary and part-time with a regulation fundamentally linked to company will - that meet the demands of employers and are characterized by their high precariousness. In this sense, ASTAC points out in the lawsuit that these ministerial agreements violate the right to freedom of association, collective bargaining, fair remuneration and minimum wage² as they stipulate that certain elements of wages and working hours "shall be determined by agreement between the parties," the parties being the employer and the employee, leaving out the right to collective bargaining. In this way, an individualization of the working relationship is provoked and the importance of trade union organizations and collective bargaining in determining the relations between employers and workers is ignored. Furthermore, by not respecting minimum wages, workers are left unprotected as the right to fair remuneration may be violated. Consequently, the agreements contradict the State's obligation - in connection with human dignity - to put an end to underemployment, prohibit precariousness and affectation of workers' rights, within the framework of the prohibition of degressivity of rights.

¹ These agreements are **Ministerial Agreement No. MDT-2017-0029**, of April 21, 2017, which regulates special labor relations in the agricultural, livestock and agro industrial sector; **Ministerial Agreement of 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 Discontinuous Part-time Work Contract for the Banana Sector.

² Guaranteed in articles 326.7, 326.8, 326.13 and 328 of the Constitution and in ILO Conventions 87, 98, 144, 111, 110 and 131.

In the modality of the "Special Part-time Discontinuous Work Contract for the Banana Sector", the labor instability to which these workers are exposed is made evident as it only allows a person to work 52 discontinuous days within a year on a part-time basis. In addition, Art. 12. of Agreement 0074 and Art. 13 of Agreement 0096 establish that: "The employer may again summon the same worker with whom he entered into the "Special Part-time Discontinuous Work Contract for the Banana Sector", for which he shall keep a register of workers under this contractual modality, in compliance with banana activities". In other words, these are



contractual provisions that allow the employer to terminate the employment relationship at will, with a minimum time limit. This contractual modality can, and is, used by companies to reduce work hours and thus reduce salary. This situation causes workers to be unable to earn sufficient income for a dignified life.

If we take into account the high percentage of informal workers, the foregoing contract modalities are the perfect tool for employers to continue to not regularize their workers. This endorses a common practice in banana plantations that consists of "quantitative flexibility", or in other words, the enactment of temporary contracts for permanent activities.

The action of unconstitutionality filed against **Ministerial Agreements No. MDT-2017-0029, MDT-2018-0096** and **MDT-2018-0074**, seeks to guarantee the rights of workers in the Ecuadorian banana sector by eliminating them from the regulatory system. For this, it is necessary to provide the Court with as many elements as possible with the aim of aiding its decision.

How can we support this action?

In the event that there is interest in supporting this process, we ask you to send an Amicus Curiae in writing, under Article 12 of the Organic Law of Constitutional Guarantees and Constitutional Control, to the Constitutional Court of Ecuador.

The *Amicus Curiae* (friend of the Court) is a tool that allows for the intervention of third parties interested in the case who can provide an opinion on some point of law or other aspect related to the case, thus collaborate with the Court for a better resolution.

We suggest that the Amicus Curiae may address one or more of the following issues:

- Ensure the right to freedom of association and collective bargaining
- Ensure the right to decent work, which implies access to minimum wage and job stability.
- Describe how this type of legislation has affected workers in other countries

Attached is an example of an Amicus Curiae that you can use as a template to express your support for ASTAC's August 20 appeal for unconstitutionality. We appreciate all your input! Please send signed letters in English or Spanish to the ASTAC e-mail address: astacecuador@gmail.com.



Amicus Curiae Model

Header (Organizational Data)

Constitutional Court of Ecuador

(Name, surname), (profession), (nationality), (domiciled in ...), in accordance with the provisions of Article 12 of the Organic Law of Jurisdictional Guarantees and Constitutional Control, within the cause signed with number 0044-18-IN, I submit the following Amicus Curiae:

The action of unconstitutionality brought against **Ministerial Agreements No. MDT-2017-0029, MDT-2018-0096 and MDT-2018-0074**, seeks to guarantee the rights of workers in the Ecuadorian banana sector. It is essential to guarantee the rights enshrined both in the Constitution of the Republic and in international treaties ratified by Ecuador - such as freedom of association, the right to collective bargaining and the right to decent work, which implies access to a minimum wage and job stability. We wish to express our solidarity and support for the work of defending labor rights in the Ecuadorian banana sector.

(You may write out your contribution here)

My notifications can be sent to the following email address (...)

(SIGNATURE)