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ECUADOR ACCESSION TO THE EU'S FREE TRADE AGREEMENT WITH COLOMBIA AND PERU: FREEDOM OF ASSOCIATION IS NOT OPTIONAL

On 11 November 2016, the EU, its member states, Ecuador, Colombia and Peru signed the protocol of **accession of Ecuador to the EU's free trade agreement with Colombia and Peru**. The goal is to finalize all the remaining procedural steps before the end of the year so as to allow for provisional application of the agreement from 1 January 2017.

The [agreement](#) includes a **Trade and Sustainable Development chapter** (Chapter IX), where it is indicated, among others, that “*each Party commits to the promotion and effective implementation in its laws and practice and in its whole territory of internationally recognized **core labor standards as contained in the fundamental Conventions of the International Labour Organization...***” such as **the freedom of association and the right to collective bargaining conventions (ILO Conventions N. 87 and N. 98)**. On this point, Commissioner Cecilia Malmström had already highlighted that “***new trade and investment framework needs to be complemented by solid and enforceable domestic policies, including on labour rights, human rights and environmental protection***”.

With this in mind, and taking into account that the European Parliament – whose consent is a mandatory component in the completion of the ratification process of the protocol of accession - will have its final discussion on the topic in the plenary session taking place on the week of December 12th, the undersigning national and European organizations:

- **Call on the Members of the European Parliament, the European Commission and EU member states in their different capacities to urge the Government of Ecuador (GoE) to take rapid and concrete steps towards the full realization of the right to freedom of association and to organize before the EU's free trade agreement with Ecuador enters into force.**
- **Ask that the EU's free trade agreement with Ecuador is linked to the full respect – by the GoE – of ILO Core Labour Standards.**
- **Urge the set-up of a transparent and participatory implementation, monitoring and follow-up system of the agreement and namely of its sustainable development obligations.**

Indeed, as highlighted by the [ITUC survey of violations of trade unions rights](#), there are still many legal obstacles that put at stake the full realization of the freedom of association and the right to organize.

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Among others:

- 1) **Barriers to the Establishment of Organizations:** Excessive representativity or minimum number of members required for the establishment of a union: the Labour Code establishes that a minimum of 30 workers is required to form a union or a works council. The ILO considers this number to be excessive. In addition, to form a works council, the approval of 50 per cent plus one of the workforce is required. If the works council has more members than the union, the latter has no power in the workplace (Labour Code, Art. 450, 459 and 466).
- 2) **Restrictions on Workers' Right to Form and Join Organizations of their own Choosing:** Single trade union system imposed by law and/or a system banning or limiting organizing at a certain level (enterprise, industry and/or sector, regional and/or territorial, national). For all industrial relations matters in state institutions, the Constitution establishes that employees shall be represented by only one organization (Constitution of the Republic of Ecuador, Art. 326.9).
- 3) **Barriers to the Recognition of Collective Bargaining Agents - Excessive requirements in respect to trade unions' representativity or minimum number of members required to bargain collectively; Minority trade union organizations including not more than 50 per cent of the workers subject to the Labour Code cannot negotiate, on their own or jointly, on behalf of their own members (Labour Code, Art. 229, paragraph 2).**

Moreover, the trade union ASTAC's (*Asociación sindical de trabajadores agrícolas y campesinos*) has denounced and put to the attention of the International community (including the ILO and the EU) the **GoE's practice in the banana sector that strongly limits Freedom of Association and the right to organize in the sector.** Indeed, ASTAC was created in February 2014, when a workers constitutive assembly decided the creation of the rural workers trade union. **Nevertheless, at today, the association has seen denied the right to register as a workers' organization. The justification used by the Government has been the fact that workers have multiple employers.** In other terms, the GoE practice, in the banana sector, is to recognize associations of workers where employed by one employer only. *De facto*, this is putting at stake the possibility to build a sectoral banana trade union. And even the trade unions organized by workers from one employer only do not survive long due to anti-union practices like bribing, intimidating etc.

This practice seems to be specific to the banana sector that it is the driver of Ecuador's economy. Indeed, in **the country there are positive experiences of sectoral workers organizations that bring together workers even when they have multiple employers. This is the case for example of the domestic workers trade union (*Asociación de mujeres trabajadoras remuneradas del hogar*) that have been (rightly) officially recognized even if their workers have multiple employers¹.**

¹According to national labor law a trade union can only be organized with minimum 30 workers from only one employer. This has been observed several times by the ILO but Ecuadorian Government has not taken action to reduce the number or expand

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This clear limitation of the rights to organize in the banana sector has been the object of a complaint submitted to the ILO in 2015. In the complaint ASTAC demands that the GoE respects and implements international labor law and namely ILO conventions 087 (freedom of association), 098 (collective bargaining), and 141 (on rural workers).

The GoE action in this direction would be coherent with the GoE leading role within the UN Intergovernmental working group meeting on Transnational Corporations (TNCs) and Other Business Enterprises (OBEs) that, in November, proposed the adoption of a new binding treaty on Business and Human Rights reaffirming the commitment to issues related to access to remedy. **The credibility of this very positive stand would be challenged if the GoE would remain silent to the requests to remove the existing legal barriers that would allow ASTAC to register as a trade union and to organize workers in the rural sector in Ecuador.**

At the same time, the EU position that “new trade and investment framework needs to be complemented by solid and enforceable domestic policies, including on labor rights, human rights and environmental protection” would be challenged if no concrete steps were taken to strongly encourage the GoE to walk the talk.

the possibility to organize to workers from several employers. In the case of the domestic workers, the government made an exception because for them it is impossible to gather 30 workers from one employer.

Ecuador accession to the EU's free trade agreement with Colombia and Peru:
Freedom of Association is not optional