

OVERVIEW OF THE LEGAL FRAMEWORK FOR SOCIAL INCLUSION IN SOLID WASTE MANAGEMENT IN BRAZIL¹

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Over the last 15 years, Brazil has moved to replace repressive policies on waste picking with new inclusive policies focused on legal backing, redistributive measures and social recognition of informal waste picker organizations. The result being that Brazil is currently one of the most progressive countries worldwide in its inclusive policies regarding waste pickers.

The intention of this article is to give a brief overview of the legal framework concerning the integration of informal collectors of recyclables (or waste pickers) in solid waste management (SWM) in Brazil.

The Brazilian Constitution (Art. 30, clause V) stipulates that municipalities are responsible for the management of solid waste services. The role of the federal government is the establishment of territorial and environmental guidelines.³

The first body of legislation in Brazil recognizing the role of informal waste pickers (known in Brazil as *catadores*)⁴ occurred at the **municipal level**, in the early 1990s, when the first partnerships between waste picker cooperatives and municipal recycling programs were formed. Some examples are as follows:

- In 1990, the municipality of **Belo Horizonte** (located in the state of Minas Gerais), included article 151 in its Organic Law (the municipal Constitution) which states in clause VII that the collection and sale of recyclables would preferably be done through the work of cooperatives (though preference for working with waste picker cooperatives was not explicitly indicated). One decade later (2000), in recognition of the importance of SWM, Law # 8052/00 created the Department of Social Mobilization

¹ This was drawn mainly from: Trajetórias e Memórias dos Fóruns Lixo e Cidadania no Brasil: Experimentos Singulares de Justiça Social e Governança Participativa. 2009. Dias, S.M. (Tese de Doutorado) Faculdade de Filosofia e Ciências Humanas, Universidade Federal de Minas Gerais. And from: Dias, S.M. & Alves, F.C.G. *Integration of the Informal Recycling Sector in Solid Waste Management in Brazil*. Study prepared Fábio C.G. Alves for the GTZ's sector project "Promotion of concepts for pro-poor and environmentally friendly closed-loop approaches in solid waste management".

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³ Federal Constitution of the Republic of Brazil. 1988. Art. 30, clause V -It is the municipality's responsibility to organize and render, directly or under concession or permission, the public services of local interest, including public transportation, which is essential.

⁴ In Brazil informal waste pickers are called *catador de material reciclável* (collector of recyclables) and its job description at Brazilian Classification of Occupations -CBO is: someone who might collect recyclables in streets or at disposal sites, work as waste sorter and/or other related activities either in cooperatives or junk shops.

of the Belo Horizonte's Urban Cleansing Superintendence responsible for carrying out environmental education programs, including the provision of technical advice to waste picker' organizations.

- In 1990, in **Porto Alegre** (located in the state of Rio Grande do Sul), Law # 234 was passed, instituting the Urban Cleansing Code. Article 14, § 1st of the code states that formally organized waste picker groups that are registered with the Urban Cleansing Department will be the preferred destination for recyclables collected via its municipal recycling scheme.
- In May 2000, **Diadema** (located in the state of São Paulo) instituted Law 1921/00, which names several organizations, including waste picker organizations, as potential partners in municipal recycling programs and as recipients of any revenue generated. Also in 2000, Law N^o 1928/00 was passed authorizing the municipal executive power to enter covenants with waste picker cooperatives. In 2004, Law # 2.336/04 (regulated by Decree # 5.984/05), granted the municipality the ability to contract with waste picker cooperatives, allowing for remuneration for services rendered as part of the municipal recycling scheme.

During the same period, laws acknowledging the role of the informal recyclers were issued at the **State level**, such as:

- In 2001, in Minas Gerais State, COPAM⁵ issued Resolution #52 determining a six-month deadline for the municipalities of Minas Gerais State to upgrade final destinations of waste materials, and to forbid waste pickers access to dumps. At the end of 2003, Resolution #67 was passed, which postponed the Resolution #52 deadline, while proposing to provide labor and income alternatives for the barred waste pickers. This Resolution was formed in response to the demands made by *waste pickers* to the Minas Gerais Environmental State Secretary during the 2nd Waste & Citizenship Festival⁶ held in Belo Horizonte in 2003. *In December 2008 the Law 18031/2008 that institutes the Minas Gerais State Solid Waste Policy was approved, and was sanctioned in January 2009.*
- In 2004 the Federal District of Brasília (DF) passed Law # 3517/04, recognizing organized waste pickers as the beneficiaries of the material generated in state

⁵ The Environmental Policy Council (*Conselho de Política Ambiental – COPAM*), created in 1977 as the Environmental Policy Commission, has been responsible for the formulation and execution of environmental policy in Minas Gerais.

⁶ This is a 5-day annual event organized by the waste pickers association ASMARE and the Waste and Citizenship Forum of Minas Gerais State. Waste pickers and technical staff from NGOs and public officers from all over Brazil come to this event in Belo Horizonte the capital city of Minas Gerais. Financial backing comes from public institutions such as the municipality of Belo Horizonte, Minas Gerais State Secretariat for the Environment and other national ministries.

buildings. On July 7th 2006, the DF government published Law # 3890, which determined the implementation of selective collection in all the administrative regions of DF and, following Law 3517/04, also identified waste picker cooperatives as the destination for collected materials.

Federal legislation also occurred during the same period:

- In 2001, the collection of recyclables (waste picking) was included as a profession in the Brazilian Occupation Classification (CBO). Listed among the identified activities⁷ were functions relating to the collective labor of a cooperative, demonstrating that the profession reached beyond the street collection of recyclables. With this legal recognition as a profession, waste pickers began to appear in official databases making it possible for researchers to monitor the evolution of several aspects of the activity within the profession.
- In 2007, Law # 11.445/07 was passed which established the national guidelines for basic sanitation. Article 57 of this Law (which modifies article 24 of Law # 8.666/93), makes bidding unnecessary for the hiring of membership-based organizations (MBOs) of waste pickers. This means that waste picker associations and cooperatives can be hired directly by municipalities to perform selective waste collection. Waste pickers are thus paid for services rendered, similar to the example of the municipality of Diadema (as per above), but with a different legal framework.
- A further legal instrument that promoted waste picker social inclusion at a federal level was the Presidential Decree 5940/06 which was presented at the 5th Annual Waste & Citizenship Festival held in Belo Horizonte in August 2006, and organized with the participation of waste picker representatives. This Decree determined that a “Solid Waste Selective Collection” was to be implemented in all federal public buildings in Brazil, and that the material generated was to be delivered to waste picker organizations. The main objective of the Decree was to recognize the labor of waste pickers, and to allow for the generation of income for these workers. The Inter-ministerial Committee for the Social Inclusion of Waste pickers (CIISC)⁸ was responsible for the implementation of the decree, and work has since begun in 12 metropolitan regions that were identified as priority areas for investment in the

⁷ Several types of waste picking activities are described in this classification: Scrap iron Picker, Paper or Cardboard Picker, Scrap Picker, Scrap Packager (cooperative) and Scrap Sorter (cooperative).

⁸ The CIISC is composed of representatives from the federal government and the National Movement of Waste pickers. Government organizations represented include the Ministry of Cities, the Ministry of the Social Development, the Special Secretariat for Human Rights, the Ministry of Science and Technology, the Ministry of Development, Industry and Foreign Trade, the Ministry of Education, the Ministry of Environment, the Ministry of Work and Employment, the Ministry of Health, the Presidential Staff Office, the National Economic and the Social Development Bank, and Social Bank - CAIXA.

management and treatment of solid waste by the federal government's Growth Acceleration Plan (PAC). Agreements have been established between the *waste picker* organizations and public institutions whereby access to recyclables is guaranteed. As generators of significant amounts of solid waste, public buildings can greatly increase the MBOs income. In addition, the solidarity decree provides for the promotion of socio-environmental actions that can contribute to the improvement of the cooperative's productive structure.⁹

- On September 6th 2007 the National Solid Waste Policy was sent for Congress appraisal as an Executive Power proposition. This proposition advocates the reverse logistics system, which makes the generator of waste responsible for the return of recyclables to the productive chain after consumption, which, in turn, increases the volume of activity for the waste picker. The proposition was recognized as a big advancement for the MNCR (the National Movement of Waste pickers) as it made the inclusion of waste pickers in the reverse logistics system mandatory. This necessitated the availability of fiscal and financial incentives for the recycling industry, for the development of regional programs in partnership with waste picker organizations, and to facilitate the structuring of these organizations. **After 20 years of debate the National Policy of Solid Waste was finally approved in July 2010.** This Law is outstanding in its recognition of waste pickers, turning what has been a government policy over the years into law. However, it must be mentioned that a last minute maneuver at the Senate House omitted the clause restricting the use of incineration to a "last resort" treatment technology from the final Policy. The Policy was sanctioned by President Lula on August 2nd. During the sanctioning ceremony the MNCR, backed by a technical note issued by the Ministry of the Environment, asked President Lula to veto this alteration when regulating the Policy. This is still to be analysed by the President's cabinet.

PUTTING THE LEGAL FRAMEWORK FOR SOCIAL INCLUSION INTO CONTEXT

It is important to put the existing Brazilian legislation regarding social inclusion into context. In particular, the body of legislation relevant to the waste pickers which has been created as a result of both taking advantage of strategic openings in the political system in order to pass progressive legislation, and the social mobilization of *the MBOs*. Waste pickers in Brazil have been very successful in combining public protest (demonstrations, marches, and sit-ins) with strategic activism and advocacy (taking part in committees, liaison with sympathetic public

⁹ See Annex 1 for more on this decree.

officers, etc.). An excellent example of this process is the social mobilization that led to the approval of the State Policy of Solid Waste in Minas Gerais -Law 18031/2008 (approved in 2008), which illustrates effective strategies to push progressive legislation at the local, regional and national levels:

In 2003 the Minas Gerais State Parliament responded to the demands of the waste picker movement and the State Waste and Citizenship Forum and organized a series of debates, public hearings and seminars where the need for an inclusive state policy on solid waste management (SWM) was put forward. During these events waste pickers not only participated in the round table discussions but also organized marches and sit-ins. The issue was also debated at the Waste and Citizenship Festival. As a result of this mobilization the State Government altered DN 52 (that forbade access of waste pickers to open dumps) by Resolution # 67 at the end of 2003, including the stipulation that when closing a dump municipalities should create labor and income alternatives for displaced waste pickers¹⁰. This addition was made in response to the demands of the waste pickers to the Minas Gerais Environmental State Secretary during the 2nd Waste & Citizenship Festival held in Belo Horizonte in 2003.

In 2005 the State Parliament organized a Legislative Seminar focusing on Solid Waste. The proposals of various working groups (on themes such as social inclusion,¹¹ technology, etc.) were discussed and incorporated in the Law Project for the State Policy. The working groups included representatives from various civil society organizations (waste pickers were represented not only as a national movement but also as members of the Waste and Citizenship Forum), and from the private and public sectors. The waste pickers organized a sit-in at the final public hearing that closed this process.

In 2007 the State Governor sent the Project Law 1269/2007 to the State Parliament during a parliamentarian public hearing that was part of the official program of the 2007 Waste and Citizenship Festival. The Law 18031/2008 that instituted the Minas Gerais State Solid Waste Policy was approved in December 2008, and sanctioned in January 2009. It contains articles dealing explicitly with the social inclusion of waste pickers and with the mechanisms of economic incentives for municipalities abiding by the law.

¹⁰ This was the first move towards recognizing the need for social inclusion that was eventually drafted into law.

¹¹ This working group was coordinated by Sonia Dias – serving at that time as a core-group member of the Minas Gerais State Waste and Citizenship Forum.

The Popular Participation Committee of the Minas Gerais State Parliament chose a Member of Parliament to act as a representative at the State Waste and Citizenship Forum. It is worth mentioning that this committee has been a strategic partner for the waste pickers as its representative advises both the Forum and the state representatives of MNCR on matters regarding legislation. Having members of Parliament sympathetic to the cause of social inclusion has played an important role in opening up channels in the political system. This, combined with the strategically organized activism and advocacy of the waste pickers, accounts for most of the advancements in furthering systems for waste management and waste management informal workers.

FINAL REMARKS

The existence of a body of legislation promoting inclusivity does not guarantee that solid waste management practices in all cities follow the rule of law. However, this body of legislation does indicate that waste pickers have considerable public visibility and recognition. The ongoing implementation of legislation will depend a great deal on the level of social mobilization of waste picker organizations and their supporting NGOs.

At present, legislation regarding social security for waste pickers is the main focus for activists. Discussions are under way within the CIISC regarding the possibility of classifying waste pickers as special social security holders, similar to the traditional handcraft fishermen (who contribute only 2.1% of their gross income). This classification would mean an enormous benefit to the cooperatives, which are presently obligated to pay 20% of the coop's monthly income in taxes, in addition to the 9% paid by each member. High tax rates are one of the main obstacles to the welfare tax payment by the organizations, resulting in waste pickers being excluded from basic rights such as the right to retirement or the right to maternity leave. Last year the Waste and Citizenship Forum of Minas Gerais State lead discussions focused on a special pension scheme, which resulted in a draft Law Project that has been adopted by the MNCR, and which is now being discussed with sympathetic members of the National Parliament. To make this law a reality will require a lot of social mobilization from activists in the coming years.

In recent years Brazil has seen the enactment of laws supporting the social inclusion of waste pickers. Integration of this sector of the informal economy depends on formal organization of these groups as cooperatives and associations. However, most waste pickers continue to work in informal situations, with low organization levels and lack of proper and adequate working

conditions. *Given that many waste pickers resist organization what can be done to encourage membership at MBOs? Will an increase in the amount of financial and technical assistance to MBOs create incentives for new membership in cooperatives and associations? Since all legislation states clearly that support will be given only to cooperatives and associations, how can autonomous waste pickers who prefer to remain outside the cooperative movement be protected from further social exclusion? These questions represent some of the main challenges now.*

APPENDIX 1

DECREE N 5.940 25/10/2006

Syllabus: Determines source segregation of recyclables at all entities of the federal government of Brazil and its donation to waste picker cooperatives and/or associations. It also deliberates on other actions regarding the implementation of the process.

City/UF: Brasília/DF

Ambit: National

Date of issue: 25/10/2006

The content: the decree defines the types of organization (cooperatives and associations of waste pickers) that can register to receive recyclables from federal administration entities and gives instructions on requirements:

- Organizations should be composed exclusively of waste pickers whose living depends solely on this kind of activity;
- Organization should be of a non-profit nature;
- Organizations should have a proper place for sorting and classification of recyclables; and
- Organizations should adopt the system of splitting shares amongst members.

Some articles and their specifications:

Art. 5^o specifies that a committee should be created at each Federal Government facility that is responsible for overseeing the implementation of on-site source segregation, including insuring that recyclables are donated to the waste pickers. The committee should report to the Inter-ministerial Committee for Social Inclusion of Waste pickers twice a year with an assessment on the process.

Art. 6^o – The process of deciding which organizations will be entitled to the donation of recyclables must adhere to the rules of publicity and transparency of the public administration in order to ensure that all waste picker organizations are aware of the selection process.

Normative Act: Decree

Obs: Copy of Decree 5.940/2006 and consultation at the website www.planalto.gov.br. Access in 28/03/2007.