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## Overview of the Legal Framework for Inclusion of Informal Recyclers in Solid Waste Management in Brazil

During the last two decades, Brazil has moved to replace repressive policies on waste picking with new inclusive policies that give legal backing to redistributive measures and social recognition of informal waste picker organizations. As a result, Brazil has become one of the most progressive countries worldwide in its inclusive policies regarding waste pickers.

Laws at national, state or local levels, decrees, ordinances and regulations form the backbone upon which integrative waste management schemes are built. 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. It also explains the context in which this legal framework emerged in the country. This paper reviews the most important laws at the federal level and also gives examples of the legal body in support of social inclusion of waste pickers at state and municipal levels.



Waste pickers in Brazil advocate for recognition of their cooperatives as service providers in municipal recycling. Source: Fabiana Goulart

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# Evolution of the Legal Framework

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.<sup>2</sup>

The first pieces of legislation in Brazil recognizing the role of informal waste pickers (known in Brazil as *catadores*) 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:

- In 1990, the municipality of **Belo Horizonte** (the capital city of the state of Minas Gerais), included article 151 in its Organic Law (the municipal Constitution). Clause VII of the article states that the collection and sale of recyclables should 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 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, § 1<sup>st</sup> 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 #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**:

- In 2001, in **Minas Gerais State**, the *Conselho de Política Ambiental (COPAM)* which is the Environmental Policy Council<sup>3</sup> issued Resolution #52, which set 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 labour and income alternatives for the barred waste pickers. The latter resolution was formed in response to the demands made by waste pickers to the Minas Gerais Environmental State Secretary during the Second Waste & Citizenship Festival<sup>4</sup> held in Belo Horizonte in 2003. Five years later, the approval and sanction of Law #18031/2008, which institutes the Minas Gerais State Solid Waste Policy, was a significant triumph for the inclusion of waste pickers in the state.

- In 2004 the **Federal District of Brasília** (DF) passed Law #3517/04, recognizing organized waste pickers as the beneficiaries of the waste material generated in state buildings. On July 7, 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, *catador de material reciclável* (collector of recyclables) was included as a profession in the Brazilian Occupation Classification (CBO).<sup>5</sup>

<sup>2</sup> Federal Constitution of the Republic of Brazil. 1988. Art. 30, clause V states: 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.

<sup>3</sup> The Council, created in 1977, is responsible for the formulation and execution of environmental policy in Minas Gerais.

<sup>4</sup> This is a five-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. Financial backing comes from public institutions such as the municipality of Belo Horizonte, Minas Gerais State Secretariat for the Environment and other national ministries.

<sup>5</sup> The job description in the 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." The CBO is the federal system of regulated professions. Professions included at the CBO result in appropriate occupational codes within national survey questionnaires and coding.

## Presidential Decree of 2006, Guaranteeing Access for Waste Pickers to Waste Generated in Federal Buildings

This decree commits state institutions to segregation of waste at source and its donation to waste picker cooperatives and/or associations.

Article 5 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.

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;
- Organizations 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.

Article 6 states that 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.

- On September 6, 2007 the National Solid Waste Policy was sent for Congress's appraisal. This policy makes the generator of waste responsible for the return of recyclables to the productive chain. This increases the volume of recyclables available to waste pickers. The policy was recognized as a big advancement for the MNCR (the National Movement of Waste Pickers) as it made the inclusion of waste pickers 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. Thus what had been a government policy became law. This law offers exceptional recognition to waste pickers.
- There was, however, a last minute maneuver at the Senate House. The clause restricting the use of incineration only as a last resort was omitted. This omission could allow municipalities to use incineration as a quick solution for waste management, thereby taking product and income away from waste pickers. The National Solid Waste Policy was sanctioned by President Lula on August 2. 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. The President's cabinet analyzed the issue. In December 2010, when he signed the regulation decree, President Lula excluded this clause. However, the lobby for waste to energy technologies remains powerful, requiring strong mobilization to fight the adoption of these "magical solutions" that harm the environment as well as the livelihoods of informal recyclers.



**Progressive legislation has boosted the formation of many waste pickers' cooperatives.** Source: Coopcarmo photo library

Listed among the identified activities<sup>6</sup> were functions relating to the collective labour 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 thus can be paid for services rendered, similar to the example of the municipality of Diadema (discussed 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 Fifth Annual Waste and Citizenship Festival held in Belo Horizonte in August 2006, with the participation of waste picker representatives. This decree determined that materials generated in source segregation schemes from all federal public buildings in Brazil, was to be delivered to waste picker organizations. The main objective of the decree was to recognize the labour of waste pickers, and to enable

<sup>6</sup> 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).

<sup>7</sup> 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.

income generation for these workers. The Inter-ministerial Committee for the Social Inclusion of Waste Pickers (CIISC)<sup>7</sup> is responsible for the implementation of the decree, and work has since begun in 12 metropolitan regions identified as priority areas for investment in the 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 income of the members in the MBOs. 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.

## Putting the Legal Framework for Social Inclusion into Context

It is important to put the development of Brazilian legislation regarding social inclusion into context. In particular, the body of legislation relevant to waste pickers came about because this group of workers and their advocates – including sympathetic government officials – took advantage of strategic openings in the political system to push for progressive legislation. In addition, social mobilization of the MBOs of waste pickers was an important driver. Waste pickers in Brazil have been very successful in combining public protest (demonstrations,

marches, and sit-ins) with strategic activism and advocacy (e.g. taking part in committees, liaising with sympathetic public officers). 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 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 Minas Gerais State Waste and Citizenship Forum by organizing a series of debates,

**The National Movement of Waste Pickers in Brazil has been active in organizing public demonstrations and sit-ins to mobilize society towards recognition of their work.** Source: Sonia Dias photo library



public hearings and seminars where the need for an inclusive state policy on SWM was put forward. During these events, waste pickers not only participated in the round table discussions but also organized marches and sit-ins. Debates on the issues also occurred at the second Waste and Citizenship Festival in 2003, where waste pickers targeted the Minas Gerais Environmental State Secretary with their demands. As a result of this mobilization, in late 2003 the state government altered Resolution #52 (which forbade access of waste pickers to open dumps) with Resolution #67, which included the stipulation that when closing a dump, municipalities should create labour and income alternatives for displaced waste pickers. This was the first step towards recognizing the need for social inclusion that was eventually drafted into law.

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, technology, etc.) were discussed and incorporated in the Law Project that informed 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 parliamentary public hearing that was part of the official program of the 2007 Waste and Citizenship Festival. Law #18031/2008, which 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 contains economic incentive mechanisms for municipalities that abide by the law.

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; its representative advises both the Forum and the state representatives of MNCR

**The waste pickers' movement has won the support of the national government in Brazil, including successfully engaging Former President Lula, shown here at the Expocatador event 2010.**

Source: MNCR leader Gil Warley





**Women leaders have been increasingly vocal at the MNCR.**

Source: MNCR leader Gil Warley

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 inclusion of informal workers.

## Conclusion

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.

In 2011, 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 per cent of their gross income to the national fund). This classification would be an enormous benefit to the cooperatives, which are presently obligated to pay 20 per cent of the cooperative's monthly income in taxes, in addition to the 9 per cent 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 social programs such as retirement or 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 organization of these workers in cooperatives and associations. However, most waste pickers continue to work in informal situations, with low levels of organization and poor working conditions. Given that many waste pickers resist organization, what can be done to encourage membership of 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.

The ongoing implementation of progressive, inclusive legislation will depend a great deal on organization among waste pickers, and on the level of social mobilization of their MBOs and supporting NGOs.

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