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Women in Informal Employment:
Globalizing and Organizing



*Organized waste pickers in Bogotá, Colombia, go door to door collecting recyclable materials in Puente Aranda.
Credit: Juan Arredondo/Getty Images*

Defending Waste Pickers' Livelihoods: Lessons from Litigation in Latin America

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According to the International Labour Organization, less than 20 per cent of workers who earn a livelihood through waste picking are classified as being in formal employment.² Waste picking involves identifying and collecting recyclables from municipal solid waste and re-deploying those recyclables as a productive input or for personal use. In Latin America, waste picking is a type of labour that families, individuals and organized groups have been undertaking for generations.³ Like other forms of informal employment, waste picking provides an accessible means of subsistence, including for individuals who have been excluded from formal employment on account of their gender, race, caring responsibilities, age, education or other status. Historically, waste picking has also provided a means of subsistence during periods of political disruption or economic uncertainty, when formal employment tends to contract.⁴

Studies have shown that waste picking constitutes a valuable public service and contributes to urban environmental sustainability.⁵ Nevertheless, waste pickers have been stigmatized and socially excluded in many societies.⁶ Often, the language used to describe the work unfairly evokes notions of theft and uncleanness.⁷ Public officials treat waste picking as an illegitimate activity, which

results in police harassment, vigilante violence and legal prohibitions against elements of the work.⁸ Further, as recyclable material has itself become an increasingly valuable commodity, the competition for access to waste has intensified. This has led many municipalities to restrict or even criminalize the retrieval of recyclables, which threatens waste pickers' livelihoods.

It is notable, then, that waste pickers have won several legal actions in Latin America over the past two decades, which have pushed back against the marginalization of their labour. They have done so by partnering with public interest lawyers and other allies and by invoking constitutional rights to affirm the legitimacy of their positions in the waste chain.

This edition of *Law & Informality Insights* reflects on that advocacy in three contexts. The cases included illustrate the types of claims and decisions that helped protect waste picker livelihoods in the region. In the first example, waste pickers from Bogotá, Colombia, brought suit before the national Constitutional Court to challenge their exclusion from waste collection contracts in the city. In the second example, waste pickers contested the closure of a public dumpsite, which provided a source of livelihood for hundreds of recyclers from Cali, Colombia. Lastly, waste pickers in Buenos Aires, Argentina, joined a local legislator in legal action before the Buenos Aires Superior Court. There, they contested punitive municipal ordinances, which prohibited the gathering of recyclables from waste bins in the capital city.

In all the examples, waste pickers or their advocates appealed to constitutional rights, including the rights to work and equality, which legitimized their claims to continued livelihoods even in the absence of labour law protections. Through collaboration with civil society actors and popular movements, waste pickers influenced decision makers and the public. This activism consistently pushed for tangible results that would go beyond mere symbolic gains.

Additionally, elements of the cases made them appropriate vehicles for delivering broader, collective benefits. For example, one court's fidelity to its prior positive reasoning

helped confirm the rights of waste pickers in another part of the country. In that same case, an *amicus curiae* brief successfully persuaded the Court to evaluate the overall waste management system in the city in question. Moreover, in two instances, the litigation led to further deliberation with waste pickers over reform of exclusive waste management systems. Together, the push for broader remedies expanded the impact of the cases, enabling more workers to benefit.

Responding to Separation from the Waste Stream

Challenging Exclusion from Recycling Contracts in Bogotá

The first example case of legal advocacy for waste picker livelihoods arose out of a tendering process that took place in Bogotá in 2002. At the time, an association of waste picker cooperatives intended to bid for a contract providing waste collection services in the city. The network, *Asociación de Recicladores de Bogotá* (ARB), had stepped in to provide such services in 1994 when, in response to the gradual privatization of public services, public waste workers went on strike.⁹ By 2002, however, a national law and local regulations rendered the association ineligible to bid for waste recycling contracts. Under the law and the terms of reference for the tendering process, only stock-owned companies that had provided waste services to large cities in the preceding five years would be able to participate.¹⁰ This regulatory framework effectively excluded waste pickers from the process despite their previous experience collecting and recycling waste in Bogotá.

Working with public interest lawyers, ARB challenged this exclusion in a case before Colombia's Constitutional Court. The network argued that the terms of reference that precluded its participation did not comply with the equality guarantees of the Colombian Constitution. By setting out standards that effectively limited the bidding to privileged operators, the city disadvantaged a vulnerable population.¹¹ They also asserted that the narrow tendering terms infringed on the

waste pickers' right to work, which was guaranteed by the Colombian Constitution.¹²

In 2003, the Constitutional Court ruled in the petitioners' favour. While it did not reach a decision based on the right to work claims,¹³ the Court nevertheless determined that the constitutional guarantee of equality had indeed been infringed. Recognizing waste pickers as a marginalized group that deserved special state protection, the Court ordered the authorities to take affirmative steps to include waste pickers in subsequent bidding processes.¹⁴ Additional litigation pushing for enforcement of the 2003 ruling led to inclusion of thousands of waste pickers in the formal waste management system.¹⁵

Seeking Protection After Eviction from a Dumpsite in Cali

The second case arose out of an eviction of waste pickers from an open-air wasteyard. Local authorities in Cali had been planning to privatize Navarro Dump, one of the city's public dumpsites. In the process, the city had promised to compensate hundreds of waste pickers who relied on earnings from recyclables gathered at the dumpsite. Local agencies had also agreed to facilitate new jobs for them.¹⁶ However, the city did not deliver on its promises. Together with a general prohibition on recycling from garbage containers, which applied nationwide, the closure of the dumpsite threatened the livelihoods of more than 1,000 waste pickers in Cali.¹⁷

In response, affected waste pickers petitioned the Colombian Constitutional Court to protect their constitutional rights. By 2008, the recyclers had filed hundreds of writs seeking to compel the municipality to fulfil its promises.¹⁸ In their petitions, which were enabled by a fast-track constitutional review procedure, waste pickers invoked numerous constitutional rights, including the rights to work, health and social security.¹⁹ Public interest lawyers affiliated with a human rights NGO called CIVISOL submitted an *amicus curiae* brief in support of the petitioners. Aiming to prove that the Constitution's equality guarantees were not fulfilled, the brief argued that evicting the waste pickers from the



ARB members at work in Bogotá.
Credit: Juan Arredondo/Getty Images

dumpsite was only one part of a larger system of exclusion that marginalized waste pickers.²⁰

Once again, the Court ruled in favour of the petitioners. It focused primarily on the right to substantive equality, even though an equality argument had not been expressly raised by the waste pickers themselves.²¹ The Court also addressed the right to work, which is considered a right because of its connection to a dignified life.²² The Court concluded that the city should endeavour to provide alternative livelihoods for those displaced from the site.²³ Cali was also urged to take additional actions to include waste pickers in waste recovery more generally.²⁴

Contesting Recycling Prohibitions in Buenos Aires

Informally employed waste workers in Buenos Aires confronted a different situation. There, waste pickers had been excluded from the waste chain by punitive municipal ordinances.

The ordinances, which were enacted during a prior military dictatorship, prohibited anyone other than contracted firms from collecting, transporting, storing and selling waste.²⁵ In 2002, waste pickers collaborated with a local legislator, Eduardo Valdés, to challenge the regulatory framework in a hearing before the Buenos Aires Superior Court of Justice.²⁶ Testifying at the hearing to support Valdés' action, the waste pickers made the case that restrictions on informal recycling violated the right to work under the national Constitution.²⁷

The tribunal did not have an opportunity to weigh the merits of the claims, however. Facing public pressure and increased media scrutiny, Valdés' fellow lawmakers passed legislation that repealed the ordinances, making the case moot.²⁸ The new legislation, Law 992, officially recognized waste pickers in Buenos Aires as "urban recuperators," paving the way for greater formalization of their work. The Law required that the city consult waste pickers and other stakeholders on the best way to integrate waste pickers into the waste management system. As a result of these dialogues, groups of organized waste pickers were included in the city's official recycling service.²⁹

Arguments, Activism and Remedies

How did waste pickers, who confronted discrimination, displacement and stigmatization of their work in Latin America, manage to succeed in bringing these legal claims? And what factors enabled the individual cases to produce broader outcomes, affecting not only the parties to the case but also other waste workers?

Effective Arguments

First, bringing legal arguments that tied exclusion from the waste stream to constitutional rights proved to be a successful advocacy strategy. In many contexts, lawmakers have not extended the protections of labour law to informally employed workers. In such scenarios, the law does not protect informally employed workers from potential hazards, exploitation and abuse. Gaps in the protection provided by national labour law can also amplify precarity, which manifests in fluctuating working conditions, uncertain income and limited guarantees of work continuity.³⁰ For waste pickers, in particular, denial of access

to the waste stream is a serious threat to a stable livelihood.³¹ In the absence of labour law protections, waste pickers in these cases invoked rights under their national constitutions, to which they were entitled as residents and citizens.

Right to Work

In all the cases, waste pickers argued that their right to work had been infringed. In Buenos Aires, for example, Valdés contended that waste pickers' constitutional right to work was impeded by the city's punitive municipal ordinances, which penalized recycling done by anyone other than contracted firms. In that case, the tribunal did not make a determination on the merits of the argument because legislators agreed to repeal the offending provisions.³²

Similarly, in Bogotá, ARB argued that the city's narrow bidding requirements infringed on its members' right to work. By denying the opportunity to compete for waste contracts, ARB argued, the regulatory framework prevented its members from continuing to undertake their daily labour.³³ There, too, the tribunal did not make a decision on the argument. In that situation, the bidding process had completed by the time of the Colombia Constitutional Court's review. Hence, the Court considered the argument moot.³⁴

In the Cali case, however, the Colombia Constitutional Court agreed that cutting off access to the waste stream was a violation of the right to work. There, the Court determined that a failure to mitigate the effects of closing the Navarro dumpsite greatly constrained waste pickers' livelihoods. Together with constrictions on public recycling and a lack of opportunities in formal employment, removal from the dumpsite prevented waste pickers from work that was necessary to guarantee a life with dignity.³⁵

It is noteworthy that the Colombia Constitutional Court addressed insecurity of livelihood as a violation of the right to work in the Cali case. In cases where formally employed workers are dismissed from their jobs, for example, courts may analyze the injustice of lost work through the lens of due process or judicial protection. There, questions may arise about the arbitrariness of the dismissal or employment arrangements.³⁶ Resolving

such questions under a right to work rationale, as the Colombia Constitutional Court did, strengthens the argument that everyone has a standalone right to continued livelihood, regardless of other entitlements.

Equality

The two Colombia cases also demonstrate the effectiveness of appealing to constitutional equality guarantees. In these cases, either the petitioners or *amicus curiae* argued that waste pickers were treated differently based on their socio-economic status. In the Bogotá case, ARB argued that the city's narrow bidding requirements did not comply with the fundamental right to equality since the tendering requirements favoured powerful economic actors.³⁷

In the Cali case, public interest lawyers acting as *amicus curiae* set out to prove that closure of the Navarro dumpsite was but one element of a system of exclusion that disadvantaged waste pickers.³⁸ Even though the Cali waste pickers themselves did not base their petitions on inequality arguments,³⁹ the Constitutional Court devoted much of its legal analysis to this question.

In response to the situation of both Cali and Bogotá recyclers, the Colombia Constitutional Court referenced an entitlement to substantive equality.⁴⁰ Under the concept of substantive equality, governments must pay special attention to historically marginalized groups because of their situation of disadvantage. To effectuate equality, governments are asked to do more than treat all parties in the same manner. Rather, affirmative action for the marginalized group is required to overcome prior disadvantages or systemic discrimination. Colombia's Constitution expressly requires the state to bring about this type of equality.⁴¹ However, even in jurisdictions where there is no explicit legal guarantee of substantive equality, national and international adjudicators may consider it when interpreting constitutional and human rights provisions.⁴²

Persistent Activism

Second, in each of these cases, social mobilization played a major, complementary role to the legal petitions. In Colombia, waste pickers

collaborated with allies that supported both in-court and out-of-court advocacy. A “group of friends” gave expert advice, which strengthened ARB's engagements with the government, the court and the media.⁴³ ARB also participated in national and international coalitions, which shared resources, strategies and moral support.⁴⁴

In Argentina, during the same period of Valdés' legal action before the Buenos Aires Superior Court, government officials, civil society organizations and academics were lobbying the local legislature. Many of those individuals had gained a political awareness of waste pickers during the country's economic crisis, which was unfolding at that time. When formal employment decreased because of the crisis, formerly middle-class workers had themselves turned to waste picking as a means of survival.⁴⁵ Observers believe that this evolution inspired a greater sense of solidarity—and thus greater civic engagement—in support of the cause.⁴⁶

Grassroots activism also pushed for tangible outcomes. Waste pickers in Bogotá and Cali organized protests, occupied buildings and staged sit-ins to influence public and court opinion.⁴⁷ Following the favourable court decisions, Colombian waste pickers and their allies also initiated successive follow-up lawsuits seeking enforcement of the decisions.⁴⁸

Likewise, waste pickers in Argentina did not see the benefits of Law 992—which was the eventual result of Valdés' legal challenge—without relentless political struggle. Following the passage of Law 992, waste pickers and environmentalists together campaigned for improved recycling systems in Buenos Aires. Subsequently, the city enacted a “zero waste” law, which would promote the separation of waste at the point of disposal.⁴⁹ Waste pickers would then have primary access to pre-sorted recyclables while private enterprises continued to manage non-recyclables.⁵⁰ The benefits of such a system were that it would guarantee inclusion of waste pickers in waste management, reduce health hazards associated with waste separation and provide access to more high-quality recyclables.⁵¹ Execution of the zero waste law came slowly, however, so waste picker organizations and their supporters carried

out a series of public protests over the course of a decade to push for implementation.⁵²

Expansive Remedies

Finally, certain features of the cases facilitated broader, structural impact. As elaborated below, the Constitutional Court of Colombia stayed faithful to its prior positive reasoning, which benefited waste pickers in Bogotá, when it decided that waste pickers elsewhere in the country were also entitled to affirmative actions. Public interest lawyers supplemented the individual petitions of Cali waste pickers through a third-party submission that sought system-wide remedies. Moreover, the Colombian Constitutional Court and the Buenos Aires Superior Court of Justice both ordered local authorities to deliberate with waste pickers on new, inclusive waste management policies. All these features helped extend the benefits of the advocacy to workers who were not direct parties to the case. In this way, the cases eluded some of the potential pitfalls of litigation, which is a type of advocacy that can increase inequality given its individualized nature and inaccessibility to those without resources.⁵³

Extending Good Precedent

In situations where a lawsuit creates precedent that is followed in subsequent judicial decisions, the decision reached in the initial lawsuit can affect similarly situated actors outside of the case.⁵⁴ Theoretically, adherence to precedent can be expected in common law legal systems, whereas, in civil law systems, preceding decisions are not binding by design. In practice, however, adjudicators in both systems retain a level of discretion and some civil law courts are known to follow precedent even when it is not required.⁵⁵

Among our examples, waste pickers in Colombia benefited from that Constitutional Court's adherence to favourable judicial precedent.⁵⁶ When weighing the petitions of waste pickers from Cali in 2009, the Court considered—and ultimately followed—its prior legal reasoning from the 2003 Bogotá case. Based on that reasoning, it concluded that Cali waste pickers were a historically marginalized class that likewise merited affirmative action.⁵⁷ By recognizing an equivalence with its 2003 decision, even beyond what was requested by the

petitioners, the Court effectively extended the impact of the 2003 Bogotá case to waste pickers in an entirely different part of the country.

Pursuing the Public Interest

The ability to litigate on behalf of a collective or in the public interest also provides opportunities to push for wider impact. In some countries, individuals and organizations have standing to bring cases addressing issues in the public interest even if the petitioners themselves have not suffered an injury.⁵⁸ In those jurisdictions, the requested relief is often a policy remedy. In other instances, third party involvement in a case provides the opportunity to seek an outcome that would benefit broader groups of workers.

Public interest lawyers from the NGO CIVISOL sought this outcome in the Cali case when they filed an *amicus curiae* brief to complement the waste pickers' individual petitions. The goal of CIVISOL's intervention was to demonstrate that closure of the Navarro dumpsite was only one aspect of a wider system of exclusion that affected all waste pickers in Cali.⁵⁹ To do this, the lawyers' brief recalled the historical and contemporary socio-economic position of waste pickers in the city. It described how poverty and displacement shaped waste picking, and it addressed the poor working conditions to which waste pickers were subjected.⁶⁰ The Court cited the brief extensively, which suggests that it was persuasive. Responding to some of the lawyers' requests, the Court concluded that Cali's waste management system itself needed changing.⁶¹

Catalyzing Deliberation and Reform

Further, litigation can bring about broader outcomes when governments are ordered to respond to workers as a constituency. Decisions that prompt deliberation and reform as a remedy not only affect parties to the case at hand but also other groups of people not party to the case.⁶² The process of dialogue that results from such an order can further influence public opinion, strengthen movement organizing and instigate institutional change.⁶³

Some of this effect was at play in the Cali case in Colombia. There, the Court did not only require the government to compensate waste pickers who had been evicted from

the city dumpsite. The Court also ordered the government to develop a forum in which waste pickers and the authorities could agree on the best way to formalize waste pickers' work.⁶⁴ What resulted was policy dialogue that would affect all waste pickers in the city.⁶⁵

While not a court decision in itself, Law 992 in Argentina—which was the legislative outcome of Valdés' Superior Court case—had a similar effect. The law established a series of dialogues and public hearings, which were forums to aid in determining the path for including waste pickers in the waste management system.⁶⁶ Through those forums, waste pickers were able to advocate for recycling plants, for transportation and for entitlements to social security, all of which were necessary for a sustainable livelihood.⁶⁷

Conclusion

While legal advocacy produced concrete victories in each of the cases, it is also clear that the litigation was not without limits. Each case resulted in the inclusion of some, but not all, waste pickers into waste management plans in Colombia and Argentina. For those who were included, the remuneration certainly increased their income. However, the payments received remained below an amount necessary to meet all needs. Waste pickers continued to fight social stigmatization and displacement. In addition, as recyclable material has become an increasingly valuable commodity, attempts to restrict access to the waste stream have persisted.

Nevertheless, the cases highlight the role that the law can play in affirming the legitimacy of informal employment. Even in the absence of labour law protections, constitutional norms provide for a right to livelihood and a right to government measures that would bring about substantive equality. Conducting smart legal advocacy, mobilizing allies and pushing for collective, system-changing remedies is a way to translate those norms into a perceivable reality.

Endnotes

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- ² Federico Parra, *The Struggle of Waste Pickers in Colombia: From Being Considered Trash, to Being Recognised as Workers*, 15 *Anti-Trafficking Review* 122, 123 (2020).
- ³ See Chris Birkbeck, *Self-Employed Proletarians in an Informal Economy: The Case of Cali's Garbage Dump*, 6 *World Development* 1173, 1174-1178 (1978).
- ⁴ See Martha Chen, *Informal Employment and Development: Patterns of Inclusion and Exclusion*, 26 *The European Journal of Development Research* 397, 399 (2014).
- ⁵ See Sonia Maria Dias, *Waste Pickers and Cities*, 28 *Environment and Urbanization* 1, 3-5 (2016).
- ⁶ Parra, *supra* note 2, at 123-126.
- ⁷ See Manuel Rosaldo, *Revolution in the Garbage Dump: The Political and Economic Foundations of the Colombian Recycler Movement*, 1986-2011, 63 *Social Problems* 351, 360 (2016); Marta Marello & Ann Helwege, *Solid Waste Management and Social Inclusion of Wastepickers: Opportunities and Challenges*, 45 *Latin American Perspectives* 108, 111; César Rodríguez Garavito, *En Busca de Alternativas Económicas en Tiempos de Globalización: El Caso de las Cooperativas de Recicladores de Basura en Colombia*, in *Emancipación Social Y Violencia En Colombia* 411, 422 (Boaventura de Sousa Santos and Mauricio García Villegas eds., 2004).
- ⁸ See Rodríguez Garavito, *supra* note 7, at 429-30; Martin Medina, *Waste Picker Cooperatives in Developing Countries*, in *Membership-Based Organizations of the Poor* 105, 111 (Martha Chen et al. eds., 2007).
- ⁹ Rosaldo, *supra* note 7, at 363.
- ¹⁰ Melanie Samson, WIEGO, *Refusing to Be Cast Aside: Waste Pickers Organising Around the World* 67-68 (2009); Rosaldo, *supra* note 7, at 365.
- ¹¹ *Id.*
- ¹² Constitutional Court [C.C.], Judgment T-724/03, Aug. 20, 2002, Background, para. 1.
- ¹³ Judgment T-724/03, *supra* note 12, Decision.
- ¹⁴ *Id.*, Considerations and Rationale, paras. 11-12.
- ¹⁵ Rosaldo, *supra* note 7, at 352; Marello & Helwege, *supra* note 7, at 117.
- ¹⁶ C.C., Judgment T-291/09, Apr. 23, 2009, Background, para. 1.
- ¹⁷ *Id.*
- ¹⁸ *Id.*
- ¹⁹ *Id.*
- ²⁰ *Id.*, Considerations and Rationale, para. 8.
- ²¹ Judgment T-291/09, *supra* note 16, Considerations and Rationale, para. 2.
- ²² *Id.*, paras. 2, 9. The same is true at the international level. See UN Committee on Economic, Social and Cultural Rights, General Comment No. 18, E/C.12/GC/18 (Feb. 6, 2006), paras. 1, 31.
- ²³ Sentencia T-291/09, *supra* note 16, Consideraciones y Fundamentos, para. 3.
- ²⁴ *Id.*
- ²⁵ Pablo J. Schamber, WIEGO, *Proceso de integración de los cartoneros de la Ciudad Autónoma de Buenos Aires. Del reconocimiento a la gestión de Centros Verdes y la recolección selectiva* 1-2 (2012); Marello and Helwege, *supra* note 7, at 112.
- ²⁶ Valdés had standing to bring the action because of a provision of Buenos Aires law, which enabled anyone to seek a declaratory judgement about the constitutionality of city laws and regulations. See Law No. 402, Nov. 17, 2000, art. 18. Those who are legislators are also required to show that they have attempted to bring the law into compliance with the Constitution through their legislative activities.
- Buenos Aires Superior Court of Justice [T.S.J.], Action for Declaration of Unconstitutionality 5640/07, Mar. 19, 2008. To qualify for his action, Valdés presented several bills that he had proposed—without success—to repeal the offending ordinances. T.S.J., Action for Declaration of Unconstitutionality 2660/03, Nov. 2, 2004.
- ²⁷ See T.S.J., *Audiencia Pública: "Valdés Eduardo Félix c/ GCBA s/ Acción Declarativa de Inconstitucionalidad"*, YouTube (Nov. 2, 2012), <https://www.youtube.com/watch?v=N5nfgTQZJRY>.
- ²⁸ Jessica R. Koebs, *The Participation of Cartoneros in the Planning and Implementation of Law 992 54-56 (2004)* (MA thesis, Georgetown University) (on file with author); T.S.J., Action for Declaration of Unconstitutionality 1542/02, Feb. 12, 2003, Decision, para. 6, Rationale.
- ²⁹ Schamber, *supra* note 25, at 1; Carolina Ana Sternberg, *From "Cartoneros" to "Recolectores Urbanos": The Changing Rhetoric and Urban Waste Management Policies in Neoliberal Buenos Aires*, 48 *Geoforum* 187, 191-192 (2013); Ricardo A. Gutiérrez, *A Troubled Collaboration: Cartoneros and the PRO Administrations in Buenos Aires*, 62 *Latin American Politics and Society* 97, 102-03 (2020).
- ³⁰ See Marello and Helwege, *supra* note 7, at 111; Minhaj Mahmud et al., *What Aspects of Formality Do Workers Value? Evidence from a Choice Experiment in Bangladesh*, 35 *World Bank Economic Review* 303 (2020).
- ³¹ Marello and Helwege, *supra* note 7, at 111.
- ³² Action for Declaration of Unconstitutionality 1542/02, *supra* note 28, Decision, para. 6, Rationale.
- ³³ Judgment T-724/03, *supra* note 12, Background, para. 1.
- ³⁴ *Id.*, Decision.
- ³⁵ Judgment T-291/09, *supra* note 16, Considerations and Rationale, para. 8.
- ³⁶ Until recently, the Inter-American Court of Human Rights has taken this approach to work continuity cases. See Flávia Piovesan, *Ius Constitutionale Commune en América Latina: Context, Challenges and Perspectives*, in *Transformative Constitutionalism in Latin America: The Emergence of a New Ius Commune* 60 (Armin von Bogdandy et al. eds., 2017) (citing *Baena Ricardo and Others v. Panama*, where the Court decided that the dismissal of 270 striking public employees was done arbitrarily and without adequate process and *Aguado-Alfaro and Others v. Peru*, where the Court decided similarly on behalf of congressional workers); see also *Acevedo-Jaramillo v. Peru*, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 144, para. 2 (Feb. 7, 2006) (deciding that the right to judicial protection was implicated when the city of Lima failed to reinstate striking employees, contrary to prior court judgments).
- ³⁷ Judgment T-724/03, *supra* note 12, Background, para. 1.
- ³⁸ Samson, *supra* note 10, 69-71; Judgment T-291/09, *supra* note 16, Considerations and Rationale, para. 8.
- ³⁹ Judgment T-291/09, *supra* note 16, Considerations and Rationale, para. 2.
- ⁴⁰ See *Id.*, paras. 3-5; Judgment T-724/03, *supra* note 12, Considerations and Rationale, paras. 7-8.
- ⁴¹ Colombian Constitution, art. 13 (2).
- ⁴² See Sandra Fredman, *Substantive Equality Revisited*, 14 *International Journal of Constitutional Law* 712 (2016) (citing different terminology that signals similar reasoning, such as the recognition of 'unfair discrimination', 'disparate impact', and 'indirect discrimination', as well as the provision of 'reasonable accommodation' and 'temporary special measures').
- ⁴³ Olga Abizaid, ARB: *Fighting for an Inclusive Model for Recycling in Bogotá* 11 (WIEGO, 2015).
- ⁴⁴ See Samson, *supra* note 10, at 44-47.
- ⁴⁵ See Koebs, *supra* note 28, at 38-39; Jessica Koebs, *El Empowerment de los Cartoneros de Buenos Aires y Su Emergencia Como Actores Sociales durante la Crisis Argentina de 2002*, in *Recicloscopio: Miradas sobre recuperadores urbanos de residuos de América Latina* 191 (Pablo J. Schamber & Francisco M. Suárez eds., 2007).

- ⁴⁶ See Schamber, *supra* note 25, at 14; Koebs, *supra* note 45, at 187; Sternberg, *supra* note 29, at 189.
- ⁴⁷ See Parra, *supra* note 2, at 130; Rosaldo, *supra* note 7, at 366-367.
- ⁴⁸ See, e.g., C.C., July 30, 2010, Auto 268/10; C.C., Dec. 19, 2011, Auto 275/11; C.C., Nov. 28, 2014, Auto 366/14; C.C., Dec. 15, 2015, Auto 587/15.
- ⁴⁹ Gutiérrez, *supra* note 29, at 105-106.
- ⁵⁰ *Id.*
- ⁵¹ *Id.* at 106 (describing high-quality recycling material as one benefit of the two-track approach).
- ⁵² *Id.* at 107.
- ⁵³ Even laws with redistributive goals, such as laws containing social rights protections, can give rise to litigation that ultimately advantages privileged parties. Studies examining rights-based litigation in Brazil, Colombia, Argentina and Hungary have shown that, without collective remedies, cases asserting social rights can paradoxically accrue more benefits to middle class and wealthy individuals. See Ole Frithjof Norheim & Siri Gloppen, *Litigating for Medicines: How to Assess Impact on Health Outcomes?* in *Litigating Health Rights: Can Courts Bring More Justice to Health?* (Alicia Ely Yamin & Siri Gloppen eds., 2011); Virgílio Afonso Da Silva & Fernanda Vargas Terrazas, *Claiming the Right to Health in Brazilian Courts: The Exclusion of the Already Excluded?* 36 *Law and Social Inquiry* 825 (2011); Luiz Motta Ferraz, *Harming the Poor Through Social Rights Litigation: Lessons from Brazil*, 89 *TEX. L. REV.* 1643, 1661 (2011); David Landau, *The Reality of Social Rights Enforcement*, 53 *Harvard International Law Journal* 189 (2012).
- ⁵⁴ Daniel M. Brinks & Varun Gauri, *The Law's Majestic Equality? The Distributive Impact of Judicializing Social and Economic Rights*, 12 *Perspectives on Politics* 375, 379-384 (2014).
- ⁵⁵ *Id.*, at 379-380 (citing Argentina as a jurisdiction where lawyers engage in strategic litigation because of its courts' adherence to precedent).
- ⁵⁶ The Bogotá and Cali waste picker cases landed in a period when the Colombia Constitutional Court was gradually developing a tradition of being guided by *stare decisis*. See generally, Michael Cruz-Rodríguez, *La Construcción Judicial del Stare Decisis en Colombia (1991-2018)*, 9 *Latin American Law Review* 73 (2022). Cf. Rodrigo Camarena González, *From Jurisprudence Constante to Stare Decisis: the Migration of the Doctrine of Precedent to Civil Law Constitutionalism*, 7 *Transnational Legal Theory* 257, 264 (2016) (suggesting that the Court had consolidated the concept of *stare decisis* by 2001).
- ⁵⁷ See Judgment T-291/09, *supra* note 16, Considerations and Rationale, paras. 3, 4, 5, 7.
- ⁵⁸ Brinks & Gauri, *supra* note 54, at 379 (providing India as an example of a country where litigation in the public interest is a feature); Otto Spikers, *Public Interest Litigation Before Domestic Courts in The Netherlands on the Basis of International Law: Article 3:305a Dutch Civil Code*, *EJIL: TALK!* (Mar. 6, 2020), <https://www.ejiltalk.org/public-interest-litigation-before-domestic-courts-in-the-netherlands-on-the-basis-of-international-law-article-3305a-dutch-civil-code/> (explaining that the Netherlands has become a centre of international public interest litigation because of a provision of the Dutch Civil Code, which enables foundations to litigate on behalf of the public).
- ⁵⁹ Samson, *supra* note 10, at 69-71.
- ⁶⁰ Judgment T-291/09, *supra* note 16, Considerations and Rationale, para. 8.
- ⁶¹ Likewise, in the Bogotá case, the Ombudsman's Office intervened to emphasize that waste pickers were a particularly marginalized group to whom the government owed specific duties. Judgment T-724/03, *supra* note 12, Background, para. 8.
- ⁶² Natalia Angel-Cabo, *The Constitution and the City: Reflections on Judicial Experimentalism through an Urban Lens*, in *European Yearbook of Constitutional Law* 157, 159-163 (Hirsch Ballin et al. eds., 2021).

⁶³ *Id.*

⁶⁴ *Id.* at 177.

⁶⁵ See *id.* at 178-180.

⁶⁶ See generally Koebs, *supra* note 28.

⁶⁷ Schamber, *supra* note 25, at 15, 18; Gutiérrez, *supra* note 29, at 112-113; Marelló & Helwege, *supra* note 7, at 117.

About Law & Informality Insights

Law & Informality Insights reflect on our work supporting informal worker organizations to know, use and shape the law, and analyze statutory developments, law-making processes and jurisprudence that impact informal workers and their advocacy strategies. In 2019 they replaced our legal briefs.

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*Waste picker Ana Cecilia Martínez works at the ARB's collection centre, La Pensilvania, in Bogotá.
Credit: Juan Arredondo/Getty Images*

WIEGO's Law Programme strives to see a world in which:

- international instruments, national and local laws and regulations recognize, include and protect the rights and work of informal workers; and
- informal workers know, use and shape the law to realize secure livelihoods and labour rights. To advance these goals, we seek three mutually reinforcing outcomes at both global and national levels:

Outcome 1: Membership-based organizations of informal workers are better able to use the law (including international legal instruments and administrative justice) in their advocacy strategies.

Outcome 2: Legal and civil society organizations support the recognition, inclusion and protection of informal employment in law and policy at local, international and global levels.

Outcome 3: Legal scholars and labour lawyers advocate for informal workers in their scholarship and in policy contexts.

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