WIEGO

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Women in Informal Employment: Globalizing and Organizing

Special Rapporteur Soledad García (left) visits "volunteer" waste pickers at their workplace in Mexico City. Photo credit: Tania Espinosa, WIEGO

Waste Pickers and Human Rights in Latin America

By Tania Espinosa-Sánchez

Waste pickers are among the most vulnerable groups of workers in informal employment and, like other workers, need institutional spaces to demand, protect and defend their labour and human rights.

The International Labour Organization's report on Sustainable Development, Decent Work and Green Jobs suggests that between 15 million and 20 million people work as waste pickers in the informal economy in developing countries, with women making up a significant percentage.[1] The Inter-American Development Bank notes that Latin America has more than four million people whose livelihoods depend on recovering, collecting, transporting and selling recyclable materials.[2]

In Latin America, waste pickers are organized in the Latin American and Caribbean Network of Waste Pickers (LACRE Network), which comprises about 20 national waste picker movements from several countries in the region.

[1] ILO (2013), *Report V: Sustainable development, decent work and green jobs*, International Labour Conference, 102nd Session, 2013, Para. 128, available at: https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_207370.pdf

[2] Inter-American Development Bank (2015), *Solid Waste Management in Latin America and the Caribbean*, p. 2, available at: https://publications.iadb.org/publications/english/document/Solid-Waste-Management-in-Latin-America-and-the-Caribbean.pdf

With support from WIEGO's Law Programme and Organization and Representation Programme, waste pickers in Latin America have – for the first time – found an audience in the Inter-American Commission on Human Rights (IACHR), the highest forum on human rights protection in the Americas. The public hearing was held on 12 July 2023, in the IACHR's 187th Period of Sessions.

This edition of Law & Informality Insights describes WIEGO's strategies to articulate the working conditions of waste pickers as human rights violations and to draw the IACHR's attention to this. The IACHR includes labour rights violations in its work on Economic, Social, Cultural and Environmental Rights. Our strategy comprised: (1) documenting and collecting information; (2) drafting a technical report on human rights; (3) developing popular education learning materials; (4) visits by the IACHR Special Rapporteur on Economic, Social, Cultural and Environmental Rights (REDESCA) to organizations of waste pickers in Peru, Mexico, Costa Rica and Panama; and (5) using annual reports, social networks, press releases and a public hearing to highlight waste pickers' work.

At the start of WIEGO's "Protection of Human Rights of Waste Pickers in Latin America" project, we expected quick results. Instead, it has been a lengthy process and we offer these insights as a source of learning for other movements and occupational groups.

Documenting Systematic Human Rights Violations Against Waste Pickers

The project,[3] which began in 2017, focused on six countries in Latin America: Mexico, Guatemala, Nicaragua, Dominican Republic, Argentina and Uruguay. We visited waste pickers in their places of work – dumpsites, cooperatives' meetings, and on the streets. Through semi-structured interviews with the waste pickers, we learned about their work and working conditions, their interactions with officials and others, their impact on their environment, their day-to-day challenges, and more.

To explain the benefits of belonging to an organization to waste pickers and to encourage them to organize, a LACRE Network member joined us on our visits to dumpsites. This accompaniment was also useful in achieving a shared understanding of the project and its objectives.

We classified the information from this qualitative work to validate our analysis variables. In this we had support from the International Human Rights Clinic at Harvard Law School, which provided desk research for each place we visited.

The data indicated common challenges, including:

- Lack of safe and healthy work conditions.
- Lack of social protection.
- Stigmatization of waste picking and failure to recognize it as work.
- Eviction of waste pickers from their workplaces (dumpsites or streets) .
- Restrictions on their freedom of movement around the city.
- Restrictions on their access to recyclable materials (through legal frameworks and waste management infrastructure).
- Closure of dumpsites without warning.
- Lack of governance in workplaces, which are dominated by third parties that are sometimes linked to organized crime.
- Persecution of or restrictions on waste pickers' organizations (cooperatives, trade unions and other forms of association).
- Lack of recognition of worker status for recyclers who provide public waste management services in the city.
- Government threats to use incineration as an alternative to waste management.
- Replacement and displacement of waste pickers from their work by public or private actors.
- Unlawful use of violence by authorities against waste pickers.
- Waste management public policies for nominal inclusion of waste pickers that prevent them from integrating or advancing in the value chain.

[3] Protection of Human Rights of Waste Pickers in Latin America, available at https://www.wiego.org/waste-pickers-and-human-rights

- Extremely harsh living conditions for waste pickers and their families.
- Tendency to issue circular economy laws that fail to guarantee waste pickers access to recyclable materials, even when they are mentioned.
- Lack of packaging laws that oblige companies to take extended producer responsibility for the recovery of materials and to recognize recyclers in the value chain.
- The big companies that benefit economically from the materials that are reintegrated by recyclers into the value chain do not benefit recyclers to the same extent. They only carry out goodwill programs on an occasional basis.
- Absence of reliable data on waste pickers.

The Right to Work and a Decent Life, and the Duty to Not Discriminate

Based on our research analysis and the descriptive reports from each country, we looked at whether the working conditions of waste pickers could be considered human rights violations. Using the international human rights legal framework as reference, we focused on the right to work (related to the right to fair, equitable and satisfactory working conditions); the right to a decent life (related to the right to social protection) and the duty of non-discrimination; commenting on the countries' human rights duties regarding companies within their territories. As the IACHR's REDESCA notes, "the American States must work to recognize the social, economic, and environmental contributions that waste pickers provide, as well as respecting and guaranteeing their human rights."[4]

The right to work is enshrined in the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador).[5] When referring to the right to work, the Protocol does not distinguish workers in informal employment from those in formal employment, so it is understood that working as a waste picker is equally protected by the Protocol. This interpretation is confirmed by other documents, such as General Comment No. 18 by the United Nations Committee on Economic, Social and Cultural Rights[6] on the Right to Work and the ILO's Recommendation 204[7] on the Transition from the Informal to the Formal Economy, which states that "Members should take measures to achieve decent work and to respect, promote and realize the fundamental principles and rights at work for those in the informal economy."

Additionally, the right to work is intrinsically connected to the right to life. If waste pickers cannot work and have no access to recyclable materials, their income will disappear. Because waste picking is most often a subsistence activity, when the right to work is at risk, the right to life is also at risk.

Article 4 of the American Convention on Human Rights (ACHR) establishes the right to life. It has been interpreted several times in the Inter-American Court of Human Rights (I/A Court H.R.) jurisprudence. The Court has stated that "one of the obligations the State must fulfill as guarantor, to protect and guarantee the right to life, is to create the minimum living conditions for human dignity and to avoid creating any conditions that may hinder or prevent it. To this effect, the State must issue positive and concrete measures to satisfy the right to a decent life, especially for people in vulnerable conditions and at risk who become a priority."[8]

[4] OEA (2023), *REDESCA de la CIDH llama a avanzar en el reconocimiento y protección de los derechos de las personas recicladoras en empleo informal en la región* [IACHR's REDESCA calls for the recognition and protection of waste pickers' rights in informal employment in the region], Press release 1 May 2023, available at: https://www.oas.org/es/CIDH/jsForm/?File=/es/cidh/prensa/comunicados/2023/082.asp

[5] OAS (1988), *Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights: Protocol of San Salvador*, available at: http://www.oas.org/en/sare/social-inclusion/protocol-ssv/docs/protocol-san-salvador-en.pdf

[6] UN Committee on Economic, Social and Cultural Rights (2005), The Right to Work: General comment No. 18, adopted 24 November 2005, available at: http://bit.ly/3DtAk8e

[7] ILO (2015), Recommendation No. 204 concerning the Transition from the Informal to the Formal Economy, adopted 12 June 2015, available at: https://www.ilo.org/ilc/ILCSessions/previous-sessions/104/texts-adopted/WCMS_377774/lang--en/index.htm

[8] Corte Interamericana de Derechos Humanos (2006), *Caso Comunidad indígena Yakye Axa Vs. Paraguay, Sentencia de 6 de febrero de 2006 (Interpretación de la Sentencia de Fondo, Reparaciones y Costas)* [Yakye Axa Indigenous peoples vs. Paraguay, Sentence on 6 February 2006 (Interpretation of judgment of merit, repairs and legal expenses)], Series C No. 142, para 162.

As can be seen from the study, in Latin America, not only do states fail to adopt measures that protect waste pickers, they restrict their access to recyclable materials without providing alternatives that would guarantee a decent livelihood. The press release issued by the IACHR's REDESCA on the 1st of May 2023 makes clear that the American States "must especially bear in mind the important work waste pickers carry out, as well as the vulnerability they live and work in, in a context fraught with discrimination and criminalization of poverty."[9]

Without adequate working conditions, it is almost impossible to overcome poverty. Therefore, states must remove the barriers that prevent people in poverty from participating in productive activities.[10] Additionally, without adequate working conditions it is not possible to have a decent life.

Furthermore, the obligation to respect rights without discrimination is established in Article 1.1 of the ACHR, which states that the parties to the Convention undertake to respect the rights and freedoms recognized therein and to ensure to all persons subject to their jurisdiction the free and whole exercise of those rights and freedoms, without any discrimination related to race, colour, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

Our experience and research shows that the economic status and/or social condition of waste pickers (as workers in informal employment) is a major factor in the discrimination they face from states. This discrimination – in conjunction with other factors – hinders waste pickers' access to the right to work; to fair, equitable and satisfactory working conditions; to social protection and to life.

The Inter-American Court of Human Rights, in the case of Fazenda Brazil Verde v. Brazil, ruled that "it is not enough that States refrain from violating rights; they must adopt positive measures according to the specific protection needs of the subject of law, whether the needs arise from their condition or the specific situation they are in, such as extreme poverty or social exclusion."[11]

Related to the argument expressed above and with regard to business and human rights standards, according to Inter-American jurisprudence (case of the Miskito Divers vs. Honduras) states have an obligation to regulate, monitor and oversee the actions of companies in their territory. If companies displace waste pickers from their access to waste and their livelihoods, states incur international responsibility.

We presented our analysis, "Waste Pickers' Human Rights Situation in Latin America: An Urgent Call for Respect through International Standards," to the IACHR's REDESCA in 2019. This document also describes its drafting process and the relevance of the issue for the region.

The Strength of Popular Education in Learning about Human Rights

One of the project's main concerns was how waste pickers could themselves articulate their poor working conditions as human rights claims. Most waste pickers had to learn that they even enjoyed rights by virtue of their being human although they had never experienced protection of their human rights in their day-to-day lives. In supporting waste pickers to learn about their rights, a challenge was the particular and overly complicated language of law, whether in local constitutions or international treaties.

Using pedagogic strategies that included games and learning materials was essential to explain the complexities of human rights. Our document that articulated waste pickers' working conditions as human rights violations – a long and technical legal document – was translated into a toolkit including a comic, a game of snakes and ladders, and a memory game. The messages in each tool reinforce one another. Along with a guide to identifying rights violations, these

[9] OEA *op cit* note 5.

[10] UN Human Rights Council (2012), *The Guiding Principles on Extreme Poverty and Human Rights*, available at: https://www.ohchr.org/sites/default/files/Documents/Publications/OHCHR_ExtremePovertyandHumanRights_EN.pdf

[11] Corte Interamericana de Derechos Humanos (2016), *Caso Trabajadores de la Hacienda Brasil Verde Vs. Brazil, Sentencia de 20 octubre de 2016 (Excepciones Preliminares, Fondo, Reparaciones y Costas)*, available at: https://www.corteidh.or.cr/docs/casos/articulos/seriec_318_esp.pdf

tools reached a broad audience of people with different educational backgrounds, ages and cultures. We found that presenting information visually, interactively and playfully improved the assimilation and retention of information.

We drew on the ideas of Jacques Delors, who in his book *Learning: The Treasure Within*[12] emphasizes the need to use motivating and engaging teaching tools to build interest in and increase commitment to human rights. Also, Paulo Freire's *Pedagogy of the Oppressed*[13] advocates a teaching approach that actively engages students and promotes critical thinking about rights.

Using the toolkit on waste pickers' rights, several training workshops for waste pickers were carried out in different countries. As well as one held during the LACRE Network's 8th Assembly in 2012, pilot tests were done in Panama, Nicaragua, Dominican Republic, Guatemala, Costa Rica and Mexico. The board games and teaching materials foster active participation by engaging people in practical and dynamic activities where they see themselves reflected. This allows them to experience human rights concepts and principles more personally, furthering their understanding and emotional connections with the issues.

This has helped participants to understand how human rights work in different contexts, promoting critical thinking and applying knowledge to real-life situations.

In Panama, the success of this popular education method could be seen when waste pickers were faced with the threat of closure of the Chiriquí dumpsite. A Panama National Waste Pickers Movement member used the knowledge gained during the human rights workshops to negotiate with the local government and start a conversation with the waste pickers working on the dumpsite to find solutions.

Waste Pickers at the IACHR

While waste pickers were making the human rights perspective their own, WIEGO's Law team focused on highlighting the situation of waste pickers at a strategic forum: the IACHR.

Our main goal was obtaining a public hearing, which took many years to achieve. Along the road, our work on waste pickers' human rights was referred to in the IACHR's 2019 Annual Report. The report discussed waste pickers in Argentina, Mexico, Nicaragua and Uruguay, with the IACHR's REDESCA calling on states to adopt measures to address the situation of waste pickers and acknowledge their social contribution. This mention is important for waste pickers in two critical ways. Firstly, it signified that waste pickers were no longer invisible to the IACHR. And secondly, it changed the narrative about waste pickers, from being labelled criminals to being recognized as workers who contribute to society and whose work deserves to be done with dignity and according to international human rights standards.[14]

Including these paragraphs in the Annual Report also meant that waste pickers in member countries could base their demands on what the REDESCA had published.

Three years later and with COVID-19 restrictions largely behind us, we had the opportunity to leverage another of the REDESCA's mechanisms: visits. In 2022, with the support of WIEGO colleagues in Lima, the Special Rapporteur met with waste pickers from 15 municipalities in Metropolitan Lima, Peru, to discuss their working conditions. Waste pickers themselves presented their situation to the Rapporteur, who visited them while they worked. The mutual awareness that these one-on-one visits brought cannot be overstated; no document could have been as impactful.

With this milestone reached, the expectation was born that the IACHR, by focusing on and advocating for waste pickers, would transform the working lives of at least four million people

[12] Delors, J. (1996), *Learning: The Treasure Within*, Report to UNESCO of the International Commission on Education for the Twenty-first Century (highlights), ED-96/WS/9, available at https://unesdoc.unesco.org/ark:/48223/pf0000109590

[13] Freire, P. (2017), *Pedagogy of the Oppressed*, London: Penguin Classics.

[14] IACHR (2020), Annual Report of the Inter-American Commission on Human Rights 2019: Annual Report of the Special Rapporteurship on Economic, Social, Cultural and Environmental Rights (SRESCER), OEA/Ser.L/V/II. Doc. 5, 24 February 2020, Paragraphs 90, 425, 449 and 607, available at: https://www.oas.org/en/iachr/docs/annual/2019/docs/IA2019REDESCA-en.pdf

Images from the documentary Lxs Rifadxs de la Basura (The Intrepid Waste Pickers). Credits: Aldo Sotelo and Angie Queupumil

in Latin America who have historically been invisible to their governments and societies. This would also serve as groundwork to protect the human rights of waste pickers worldwide.

The Fruits of Persistence and Patience

The documentary Lxs Rifadxs de la Basura (The Intrepid Waste Pickers), which we released in March 2023 as part of our advocacy work for "volunteer" waste pickers in Mexico City, was selected to show at a side event during the IACHR 186th Period of Sessions at UCLA, California. Waste pickers talk about their situation as they are filmed doing their daily work, which convinced the Rapporteur that their rights were being violated.

This paved the way for the Rapporteur to go to Mexico City in April. She visited the waste pickers featured in the documentary at their workplaces and in the city's streets, interviewing them in her extensive research.

The Rapporteur's visit reinforced alliances that we had on the ground, such as that with the Human Rights Commission in Mexico City (CDHCM by its Spanish acronym) and the United Nations Independent Expert on Harmony with Nature, and created the perfect opportunity to state a very clear public message based on legal arguments to establish that waste pickers' situation in Mexico City must change and that the government should undertake a census. The Commission had previously published Recommendation 07/2016, which recognized waste pickers as workers in the city. The visit enabled a round table with the Rapporteur, the CDHCM President, the Independent Expert, and WIEGO. This was the first high-level round table in Mexico City where waste pickers' rights were discussed, confirming waste pickers' status as subjects of law, like any other workers in the country.

During the visits to Costa Rica and Panama, the Rapporteur visited the dumpsites of Turrialba and Cerro Patacón. Local waste pickers groups such as the Costa Rica Waste Pickers Federation, which is still being established, and the Panama National Waste Pickers Movement – that are part of the LACRE Network – made these dumpsite visits possible.

The IACHR's 2022 Annual Report referred to the situation of waste pickers in Chile, Colombia, Guatemala, Mexico, Panama, Peru and Uruguay. It drew on our earlier work with the Rapporteur, who called for the inclusion of waste pickers in public policies, the preservation of their jobs, the protection of their work and

union rights, and their protection under a human rights approach.[15]

On May 1st, International Workers' Day, the Rapporteur said in her press release, "IACHR's REDESCA calls for the recognition and protection of waste pickers' rights in the region": "States are called to adopt special measures to eliminate discrimination on the grounds of informality or poverty status that waste pickers work in, adopting specific measures and policies for further support, union and social security rights for waste pickers according to Inter-American standards on the subject, promoting their effective participation on matters that affect them. Furthermore, we call on States to acknowledge their important contribution to the protection of the environment and the fight against climate change."[16]

With the Rapporteur increasingly exposed to the concerns of waste pickers, we considered it an opportune moment to submit a new application for a public hearing during the 187th Period of Sessions of the IACHR, from July 10-21, 2023, in Washington D.C. In a joint application with the Solidarity Center/ILAW, we secured the hearing to discuss the labour rights of workers in informal employment in the region. WIEGO and the LACRE Network set out the human rights situation of waste pickers in Latin America, enabling the IACHR to hear directly from waste pickers the challenges they face in realizing their human rights in the work they do.

Conclusions

In Latin America, there are at least four million waste pickers and dependants whose governments have yet to ensure the conditions for a decent life by recognizing waste pickers' right to work and, thereby, enabling them to realize all the rights that come with working.

The results of the Protection of Human Rights of Waste Pickers in Latin America project go far beyond the expectations we had for it six years ago at its launch. Our main goal had been to secure a public hearing at the IACHR. On reflection, so many other results were achieved during the project that are equally important and inspire us to continue working to find new advocacy spaces.

From a legal perspective, the legal framework was already in place to throw light on waste pickers' working conditions. It was necessary to connect the law to the facts. That this was yet to be done further confirms how marginalized these vulnerable workers are. As described here, we focused mainly on the right to work and life, and from there we elaborated on the right to fair, equitable and satisfactory working conditions, the right to social protection, the right to equality before the law and the business and human rights standards. From here, we will work on strengthening an intersectional approach.

A key component to connecting rights and facts was following an on-the-ground approach instead of conducting desk research. To gather all the necessary information, it was essential to hear from the people whose rights were being violated. Earlier work with waste pickers in Latin America by WIEGO's Organization and Representation Programme made this approach possible. It enabled the LACRE Network to be at several of the initial visits to waste pickers and also facilitated the REDESCA's visits to waste pickers in several countries, which was fundamental to the project's achievements .

Supporting organization among waste pickers was a major part of the project. Our documentation and highlighting of rights violations helped build momentum for local processes, which then fed into the regional process with the IACHR. Mexico City, where work was already under way to highlight the situation of "voluntary" waste pickers through a documentary, provides a clear example of this. Lxs Rifadxs de la Basura was an extremely useful resource to present at the side event organized

[15] IACHR (2023), VI Annual Report of the Special Rapporteurship on Economic, Social, Cultural and Environmental Rights (REDESCA) of the Inter-American Commission on Human Rights (IACHR), 2022, OEA/SER.L/V/II, Doc. 50, 6 March 2023, Paragraphs 470, 489, 490, 541, 1035, 1036, 1037, 1295, 1418, 1419, 1549, 1773 and 1774, available at: https://www.oas.org/en/iachr/docs/annual/2022/Chapters/IA2022_Anexo_REDESCA_EN.pdf

[16] OEA (2023) *REDESCA de la CIDH llama a avanzar en el reconocimiento y protección de los derechos de las personas recicladoras en empleo informal en la región* [IACHR REDESCA calls for the recognition and protection of waste-pickers' rights in informal employment in the region], Press release 1 May 2023, available at: https://www.oas.org/es/CIDH/jsForm/?File=/es/cidh/prensa/comunicados/2023/082.asp

with the IACHR's REDESCA during the 186th Period of Sessions.

Our alliances with multiple institutions and people strengthened the project. As well as with waste pickers and their organizations, these alliances were with researchers, students, local human rights commissions, human rights experts, allied organizations and the IACHR itself.

An important learning is the value of patience. Six years after starting the project and four years after our first try, we secured the 12 July hearing – for the 187th Period of Sessions. We now aim to continue this work beyond the hearing and will use the lessons to extend the REDESCA's perspective to other occupational groups in Latin America.

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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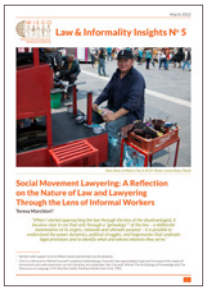

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The Special Rapporteur visited the Cerro Patacón dumpsite in Panama with representatives of the Panama National Movement of Waste Pickers and WIEGO. Credit: Tania Espinosa, WIEGO

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.

For more information, visit the Law programme page at https://www.wiego.org/our-work-impact/core-programmes/law-programme

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Women in Informal Employment: Globalizing and Organizing

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