

## **Waste Pickers' Recognition as Public Waste Managers in Colombia**

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### **Introduction**

Public waste management has become a critical issue globally, in that it has to face the most devastating externalities of the model of capitalist development. Extractive-based and industrial production systems of production, as well as the increasing consumption practices of our societies are yet to be balanced with new consumption practices, responsible forms of disposing waste forms and an adequate management of waste.

In the world important social segments of the population –who are poor– have found a livelihood in the recuperation of solid waste disposed on the streets or open dumps. The population of waste pickers has increased and waste picking has become the last alternative of decent work for a large number of people. They are the last link in the recycling value chain: they recuperate a significant amount of recyclable materials to reincorporate them into the production cycle.

Colombia is no exemption. Like in other Latin American countries, there are important processes of organization of waste pickers in Colombia's main cities. Particularly, in the city of Bogota the struggle of organized waste pickers for the right to remain and grow in the occupation had led to a public reconceptualization of waste issues within policy circles. Their influence in public policies has forced a process of paradigm change for waste management: From a transportation and burial-centred model that profited from increased production of waste to a development to a development model based on shared responsibilities among the different actors in the production waste chain. The latter recognizes waste pickers as part of the solution, because of their role in the recycling value chain.

This paradigm shift is grounded on the Constitutional Court's rulings and has begun to materialize within the Municipal Development Plan. Among other things, the plan proposes regaining public control over the collection and final disposal of waste. However, to date this shift of paradigm has just begun and is facing the resistance of city residents to assume responsibility over waste management and to recognize waste pickers. The plan is also facing resistance from political coalitions that defend and share the transportation and burial-centred model, managed by private firms, that has prevailed for two decades.

Although it is still too early to evaluate the process, a first assessment illustrates profound social transformations with regards to questions about shared responsibilities in waste management, the recognition of sectors of the urban poor as managers of "the public", and the mechanisms that the state can use to develop redistributive policies in the area of waste management.

This document seeks to present this preliminary assessment.

## **Context**

Colombia's capital city, Bogota, has 7,363,000 inhabitants according to the 2005 Census. Bogota is home of the country's important industrial, financial and education sectors. In fact, it represents 25% of Colombia's national GDP—a percentage that is correlated also to the amount of waste it produces daily.

Bogota only has one public final disposal system. This landfill receives an average of 6000 tonnes daily, which are currently collected and transported by one waste collection and transportation public company (52%), and four private companies (48%)—these four companies held the oligopoly of waste collection in the city between the 1990s until December 2012.

The city has been divided in six large areas of exclusive services (Áreas de servicio exclusivo, ASEs) for the procurement of collection services. ASEs are given in concession to collection service providers. In addition to the collection and transportation services, the companies must also provide complementary cleansing services, namely: cleansing and sweeping of the streets, cleaning bridges and monuments, lawn mowing and tree pruning. Recycling was mentioned as a complementary activity to the cleansing service in the national decree on waste management. In practice, however, the companies in charge of collecting and transporting waste in the city were prohibited from undertaking recycling activities.

The city has not had a system of waste separation at source. This lack of habits to separate waste at the source is an illustration of a model that does not assign responsibilities to anyone within the waste management chain. The only responsibility for the cleansing companies is to ensure that the "area is clean."

These companies are remunerated according to the fee structure determined at the national level. This structure establishes how to measure direct and indirect costs of collection, transportation and disposal services. The use of this equation allows the determination or modification of price ceilings for the services provider to the end user or consumer.

In this system, known as "regulated freedom", the government's regulatory agency establishes only the criteria and methodology to be used—in this case by the companies providing the public service. These companies, in turn, can determine the maximum price ceiling to be charged to the users. And, in effect, 78% of the cleansing service providers have charged the maximum price they were allowed to charge, without providing the exact records of the amount of waste collected, transported and disposed.

The costs of collecting, transporting and disposing of waste are transferred to the users via a monthly fee. This fee is different for residential and business/industrial areas. The latter are, in turn, divided by big and small waste producers.

It's important to underscore the following: in Bogota, the collection and transportation service providers do not have to pay the municipality for the final disposal of waste in the landfill. These costs are included in the cleansing fee and are charged to the end users. Hence, there is no real incentive to reduce waste production for the service provider, and therefore, for recycling. Using Sheinberg (2012)

typology, in this vicious circle the amount of waste disposed in the landfill is irrelevant to the cost structure because the costs of managing the landfill are conceived both in a proportional manner to those services, and also as additional costs to those of collecting and transporting waste; and, as was mentioned before, they are charged to the end user.

In Bogota's case, the remuneration system to the cleansing service providers is characterized by two features: on one hand, each operator has an area of exclusive service. On the other, waste production in terms of volume and type is also determined by a socio-spatial segregation, where the areas with higher incomes located in the northwest parts of the city have the largest production of non-organic waste, and the areas in the south of the city, with medium and low income levels tend to produce more organic waste. This implies that the payment capacity of the end users is different and leads to a differentiated structure of operation costs depending of the service area in question. Because of that, a system of cross subsidies was designed whereby high-income sectors of the population have a surcharge that subsidizes the medium-to-low and low income sectors of the population. This is in addition to a system that redistributes in percentage terms the fee according to the type of area of exclusive services in question.

The underlying logic of the waste management model in Bogota –and by default, the whole country– has privileged waste collection, transportation and final disposal by incorporated firms.

Coalitions between private companies providing waste collection and transportation services and the executive and legislative powers at the national and municipal levels (in the case of Bogota) are evident in the back and forth movement in the last two decades between senior officers from these firms to decision-making positions in this themes within government. Only recently has the anticorruption code begun to take action in this matter.

These coalitions share the deep belief that, using Sabatier's terms (1993), the nature of the waste problem is a sanitary issue and should be resolved within the framework of privatization of the provision of services in the profitability niches of "the public."

In line with the notion of "policy drivers (or controlling drivers)" introduced by Wilson (2007), it could be argued that the issue of waste has been problematized by the national and municipal administrations as an issue of public health, but above all it has been determined by the financial and economic sustainability factors of the provision of the service.

And following this argument, the underlying ideas on how to make this process sustainable saw privatization as the solution. Once the topic has been framed in the realm of the market, the meaning of sustainability is actually defined in terms of profitability.

Hence, even if the Constitution contemplates alternatives for the provision of services, namely by community organizations, the law that regulates public services in Colombia and the normative decrees on cleansing services have preferred incorporated firms as public service providers and also in the award of public bids.

These decisions for decades rendered other forms of waste management invisible, namely those linked to recycling, and managed by informal actors like the waste pickers.

### **Recycling Value Chain: The Subsystem of Recycling Waste**

To date, the issue of recycling has not been addressed in this description of the public system of waste management in the city of Bogota. And maybe this omission may give the unsuspecting reader the idea that the city lacks waste recycling systems.

But this is far from true. Regardless of the lack of recognition, for more than 50 years, the city's waste pickers have undertaken the collection of waste, including glass, paper and paper products, metals and plastics that have been deposited in waste bags and bins disposed in public spaces by city residents. To do that, they go around the streets of the city, using carts –and up to 2013, with animal-pulled carts– before the collection truck from the cleansing companies goes by. They take the recuperated and sorted materials to private warehouses and collection centres to sell them. The amount of money they receive is consistent with market prices for recyclables and the discounts proper of the intermediary chain.

More than 13,500 waste pickers in Bogota initiate the waste recycling cycle, reintroducing recyclable materials into the recycling value chain. Their work allows the operation of over 1,500 recycling warehouses, and feeds the industrial monopoly that re-uses glass, the metal monopoly, the paper and cardboard oligopoly and the multiple manufacturing industries and re-users of plastic in Colombia. It is estimated that waste pickers divert from the landfill 1,200 tonnes of recyclable materials daily.

Until recently, the informal subsystem of recycling and the formal system of waste collection and transportation had coexisted in relative harmony, in that the former system led by waste pickers was not recognized. However, each tonne of recyclable materials that was recuperated and transported by waste pickers created “savings” for the private providers hired to collect and transport waste in terms of the number of vehicles needed to provide cleansing services in certain areas within the city...*these savings were not passed on to the municipality or the end users.*

### **A Collection and Burial Model vs. An Inclusive Recycling model**

Despite the routine interaction between both systems, the regulatory framework on waste management both in Colombia and Bogota has, in the attempt to consolidate the waste collection, transport and burial model handled by private enterprises, ended up affecting an increasing number of groups whose survival depends on the recycling productive niche of waste management. Among those groups are waste pickers.

Waste pickers that had started to organize themselves since the second half of the 1980s, were forced to start responding to each of these legislative setbacks. To do that, they resorted to various strategies (e.g., mobilizations and awareness campaigns in media, among others). They have also engaged in legal actions to demand their rights with the advice of, and support from non-governmental organizations (NGOs) and ad hoc professionals.

These actions have resulted in at least seven rulings and orders from the Constitutional Court of Colombia since 2003 protecting the rights of waste pickers.

The combination of these constitutional pronouncements has led today to a new paradigm in waste management both in Bogota and Colombia: one that is based in recycling of materials as an alternative to final disposition. More importantly, the recycling component is in the hands of waste pickers.

The pronouncements of the Court go even further. It orders municipal authorities to undertake affirmative actions to enable waste pickers participate as public service providers of cleansing services in the components of collection, transportation and recycling of materials. And more importantly, the Court orders the remuneration of waste pickers in recognition of their role as providers of a public service.

If we take a look at the evolution over time of the legislation on waste management in Colombia, we can clearly see how the laws and regulations tended ignore waste pickers, and constituted a key threat to this population in that they excluded waste pickers from engaging in activities related to recycling. A historical analysis is useful to understand how, through legal actions, waste pickers have been able to create jurisprudence to defend their rights, and also to change the waste management paradigm at the national and local level.

“Colombia’s Waste Pickers’ Actions to Defend their Rights in Response to the Legal Framework”

Year	Institutional/Normative Framework	Legal Strategy	Court Ruling	Results
2002	The national government established that waste belonged to the government, and that the latter ceded it to the private companies providing public cleansing services (Decree 1713, Art. 28)	Legal action in defence of the right to work	Regulatory Decree 1505 (2003)	The government was forced to substitute the wording of the decree, changing the reference of “ownership of waste” to “responsibility for waste”. Article 28 was revoked.
2003	The regulation of the figure of Authorized Organizations within Act 142 of 1994 and its regulatory decree 411 from 2000 prohibited waste pickers from working in municipalities with over 8,000 inhabitants	Filed an application for unconstitutionality	C-741 (2003)	The Constitutional Court established that waste pickers could work in all municipalities in Colombia. It also challenged the belief private provision of

				services meant efficiency
2003	Tendering process of 2002. The municipal government refused <i>de facto</i> the inclusion of waste pickers in waste management	Filed a writ of protection of the principle of legitimate expectations and in defence of their minimum subsistence	Writ of protection of fundamental rights T-724 (2003)	The Court ordered municipal authorities to develop a series of affirmative actions to reduce waste pickers vulnerability and to prepare them to participate in equal conditions in the next tendering process for cleansing services in Bogota
2003	"Ban of animal-pulled vehicles on the streets". National Transit Code	Filed a writ of protection of the principle of legitimate expectations and in defence of their minimum subsistence	C-355 (2003)	The government was ordered to remove that article and was encouraged to commence a negotiated, gradual and programmed substitution of such vehicles.
2008	The National Act 1259 from the Environment Ministry established a ban in the extraction of waste from bags disposed in public spaces, the transportation of waste in inadequate vehicles, and its commercialization in inadequate conditions	Legal action to enforce rights	C-793 (2009)	The Court established that such legislation could not be enforced in detriment of waste pickers
2009	Cali's municipal authority decided to stop sending waste to the open dump that up to that point had been receiving daily waste	Filed a writ of protection of the right to work, minimum subsistence, and the principle of	Writ of protection of fundamental rights T-297 (2009)	It orders all municipal authorities to develop an integral process to enable social

	produced in the city	legitimate expectations		and economic inclusion of waste pickers
2010	The Special Administrative Unit of Public Services (Bogota) decides to open a tendering process for the operation of the Doña Juana Landfill	Negotiation process, followed by pressures to the municipality. Legal action arguing contempt of court against the municipality based on the orders stated under the writ of protection ruling T-724	Order 268 (2010)	Ordered the inclusion of a recycling component in the site of final disposition. It also ordered that the private company who won the tendering process had to work hand in hand with organized waste pickers
2011	Tendering process of waste collection and transportation services in Bogota	Legal action arguing that the terms of the tendering process implied a contempt of court of rulings T-724 and T-291	Order 183 (August 2011)  Order 275 (December 2011)	Order 275 demands the structural integration of waste pickers in waste management, and noteworthy, their remuneration for services rendered in areas related to recycling

**Source:** Updated version of the table presented in Fernández and Parra (2012), included in Parra (forthcoming).

### **Order 275 of 2011: Recognition, Support for Organizing, and Remuneration**

When analyzing the timeline of this struggle for the protection of rights, it is important to concentrate in the last part, namely Order 275. Especial emphasis is placed in the Constitutional Court's Order 275 because it combines all the Court's previous rulings and orders and articulates them in order to delineate guidelines for a recycling operating model with inclusion.

In general terms, Order 275 demands municipal authorities to develop affirmative structural (non-welfare) actions to enable waste pickers to acquire skills, as well as organizational and entrepreneurial capacities to be in better conditions to provide cleansing services. The underlying logic is that by ensuring that waste pickers' participation in the system is remunerated –for procuring services of collection, transportation and recycling of materials– they are able to overcome their condition of poverty and vulnerability.

The main points of this court ruling directed at municipal authorities are summarized below:

- Update (adjustment) of existing waste pickers' census in order to define and characterize the universe of beneficiaries of the affirmative actions to be put in place, preventing also opportunist groups from benefitting from them.
- The definition of a scheme of special parameters with regards to the operation of "...recycling services, treatment and recycling of waste, as well as the way in which such processes should be remunerated" (Order 725, numeral 11). These parameters are to be reflected in the fee structure. With this the Court pushes for a shift toward the recognition of waste pickers and towards recycling in all the municipalities of the country.
- The operationalization of the figure of "authorized organizations" to include waste pickers. This figure, that is included in the Constitution and is fully regulated, allows community sectors to organize under not-for profit associations of the solidarity economy to provide public services. In this case, waste pickers' organizations can use this figure to provide cleansing public services in the areas of collection, transportation and recycling.
- Develop processes that establish, "...as much as possible, separation at source from the users in the Capital City of the Republic." (Order 275, numeral 116).

These rulings by the Constitutional Court are formulated in terms of rights, and Bogota's current administration, led by Mayor Gustavo Petro (before he was dismissed) faces the challenge of trickle them down into public policies, plans and programmes that will result in a functional operation recycling model for the city. This is precisely one of the most complex issues in this theme.

### **Gustavo Petro's Proposal for Inclusion: Between Recognition and the Substitution of the Pre-existing Recycling Subsystem**

The first action showing the municipality's understanding of the court orders was the inclusion of the issue within the Development Plan "Bogotá Humana 2012-2016" with the creation of a Zero Waste programme. This programme seeks the adaptation of the city to climate change, and the harmonization of city's policies to principles of conservation and environment promotion, that would generate shared responsibilities in this area among the city residents.

The programmatic and model of operation approaches were included in the document titled "Inclusion Plan for Waste Pickers". This document, as well as the administration's subsequent actions, illustrate the tension that exists between the desire to start from scratch, ignoring the recycling value chain and the role of waste pickers in it, and the recognition of the existing recycling chain –its logic and mode of operation– and of the existence of waste pickers as a starting point to make improvements and gradual changes.

Despite the formulation of an Inclusion Plan, the plan has not been implemented and has suffered multiple modifications. We can, hence, say that there are a number of actions that aim at fulfilling the Constitutional Court's orders of inclusion, and that there is no recycling model for Bogota.

Below are the actions/formulations proposed by the municipal government that sought, on one hand, to substitute the pre-existing recycling subsystem, and on the other, the actions that were grounded on the recognition of that subsystem.

Substitution/Reformulation	Acknowledgement/Strengthening
	Census of waste pickers in Bogota that enumerated waste pickers in the places where they worked collecting, transporting and commercializing
	Promotion of separation at source and of the role of the waste picker
<u>Proposal</u> to create Authorized Waste Pickers' Associations (ORAs, by their acronym in Spanish) ignoring existing organizations	
<u>Proposal</u> to regulate private recycling warehouses that if applied would have left only 60 out of the existing 1,500 in business, hence threatening to collapse the supply system of recyclable materials	Relaxation of the regularization process of private warehouses, and the authorization of 250 of these to function as authorized centres for weighing recyclable materials.
<u>Proposal</u> to create 60 public collection centres as the only authored weighing centres	Installation of five public weighing centres in addition to the 250 private warehouses authorized to perform this task
<u>Proposal</u> to create 180 recycling routes to be managed by the ORAs, ignoring the territoriality practices of waste pickers	
Proposal to create six recycling industrial parks, ignoring the market of recyclable materials, and industrial dynamics in this area within the country	
	Substitution of animal-pulled vehicles with motorized vehicles with similar load capacity or business plans and seed capital related to their work
	Individual bi-monthly remuneration for 4,000 waste pickers. These waste pickers are included in the census and have a bank account. They take permanently their materials to the authorized warehouses so that the quantities of recuperated materials are recorded.
To date, the administration does not have a programme of organizational or entrepreneurial strengthening for waste pickers	

As is evident in the table above, the actions –some of them contradictory– reflect the lack of definition of a recycling model, as well as the uncertainty with regards to the place that waste pickers and their organizations occupy within that model.

The municipal administration has not yet defined what would mean to formalize the informal sector. For some within the municipality that means the establishment of a formal employee-employer relationship, mediated through a contract. In this vision, waste pickers would become employees of the collection of recyclables service.

For other sectors within the municipality, formalization would mean the modernization and economization of the procurement of recycling services. In this case, the goal would be to look for economies of scale through the use of collection and recycling technologies that would make the use of intensive labour –that characterizes the current model– redundant.

Despite these contradictions, this administration is the first one in 20 years to show political will for the inclusion and recognition of waste pickers. And it should be underscored that the decision to register and remunerate waste pickers for every kilogram of materials collected has become a structural action that has significantly benefitted the living conditions of the households of the waste pickers that benefit from the program. This experience also opens the door for other waste pickers in Colombia to demand the same treatment from their municipal authorities.

### **The Destitution of the Current Mayor: Free Competition or Regaining Public Control over the Procurement of Public Services**

The administration also considered necessary regaining public control of the procurement of waste collection and transportation services. In December 2012 it decided not to continue the relationship with the four service providers that had been providing the services for over 20 years. To do so, it argued the high costs of the service, as well as governance difficulties to control this oligopoly, that Petro qualified as “cleansing mafia.”

The transition from the private provision of the serviced to public hands was characterized by collection problems; some partly due to failures to foresee some operation aspects of the service, but mostly, because the private collection companies sabotaged the collection days before the public company started to operate. Media reporting of the situation was disproportionate.

For the General Attorney the question of free competition is an end in itself that needs to be protected as a right. This was evident in the argument he provided to sustain the mayor’s removal from office; in his thesis the market should be in charge of organizing the provision of public services. Other opinions with regards to who should provide public services (Writ of protection ruling T-741 of 2003), including the thesis from the Constitutional Court, state that free competition in a means to achieve efficiencies, but not an end in itself. Furthermore, being an incorporated firm does not necessarily mean that the firm is efficient; hence, being a public firm does not necessarily mean that the firm is inefficient...

This experience shows the power that the political coalitions between private companies and the government, and their political resources to maintain a collection and burial model that is highly profitable for these companies, regardless of the negative the environmental, social and economic impacts of this model to the citizenry in Bogota. They also illustrate the crisis of the Social Rule of Law to protect the public: the interests of small rent-seeking groups prevail over the common wellbeing.

The capacity to lead (or not) the fate of a society is being disputed between two competing logics. One, where incorporated firms are given priority as public service providers and are chosen through market principles like public tenders, namely one that is based on economic principles. And another where the emergence of the figure of Authorized Organization returns the provision and administration of public goods to organized communities, namely one that appeals to a rights perspective.

Finally, it must be said that the case of waste picker is especial, because they provide a public service even though they are part of the informal sector. Each tonne of recyclable materials recuperated, transported and recycled by waste pickers is a tonne of waste that the public service of collection, transportation and disposal does not have to process. We can thus also assert that waste pickers can overcome their conditions of poverty and vulnerability if the governments recognize, promote and remunerate them as public waste managers in their municipal contexts.

Up to February 2014, the Mayor was still in office due to a number of actions of writ of protection filed in his defence. The Superior Tribunal of Cundinamarca, a high instance in the judiciary, had suspended the Attorney General's decision, but the latter was resuscitated with the pronouncement of the Council of State ratifying the faculty of the Office of the Attorney General to remove from office elected public officials. Moreover, there is also a process to revoke his mandate pushed by sectors of the opposition.....

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