

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

By Sonia Dias²

Brazil has experienced a trend towards replacement of repressive policies on waste picking to adoption of inclusive policies focused on legal backing, redistributive measures and social recognition of informal recyclers' organizations in the last 15 years. This makes Brazil one of the most progressive countries towards this sector. This brief article intends to give an overview of the legal framework concerning the integration of informal collectors of recyclables in solid waste management (SWM) in Brazil.

Brazilian Constitution (Art. 30, clause V) stipulates that municipalities are responsible for the management of solid waste services. The role of the national state is the establishment of territorial and environmental guidelines³.

The first body of legal framework recognizing the role of informal recyclers (known as *catadores*⁴) in Brazil was elaborated at the **local level**, in the early years of the 1990's,

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

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

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

when the first partnerships with cooperatives started within municipal recycling programmes, as can be seen from the examples of some cities below:

- In 1990, the municipality of **Belo Horizonte** (Minas Gerais State - South-east), included in its Organic Law (the municipal Constitution) an article 151, clause VII, stating that the collection and sale of recyclables would be preferably done through the work of cooperatives (though not making it explicit that would be from *catadores'* cooperatives). About a decade later (2000), recognizing the importance of SWM, Law # 8052/00 creates the Department of Social Mobilization of the Belo Horizonte's Urban Cleansing Superintendency responsible for carrying out environmental education programmes and having, also, as one of its responsibilities the provision of technical advice to *catadores'* organizations.
- In 1990, in **Porto Alegre** (Rio Grande do Sul State - South), Law # 234, which instituted the Urban Cleansing Code, stated in its article 14, § 1st, that the recyclables collected via its municipal recycling scheme should be destined preferably to formally organized *catadores'* groups registered on the Urban Cleansing Department.
- In May 2000, **Diadema** (São Paulo State - South-east) instituted Law 1921/00 which mentions *catadores'* organizations, along with other organizations, as priority for the establishment of partnerships and opens the possibility that revenue generated could be destined to these very organizations. Still in 2000, Law Nº 1928/00 was passed authorizing the municipal executive power to celebrate Covenants with the *catadores'* cooperative. In 2004, Law # 2.336/04, regulated by the Decree # 5.984/05, which allows signing of contracts with cooperatives for remuneration for services rendered at the municipal recycling scheme.

At **State level**, laws acknowledging the role of the informal recyclers began to be issued such as:

- In 2001, in Minas Gerais State, COPAM⁵ issued Resolution 52 determining a six-month deadline for the municipalities of Minas Gerais state to upgrade final destination of wastes, and, also, forbidding *catadores*' access to dumps. The deadline was postponed by Resolution # 67 in the end of 2003, in which it was added that the municipality should create labour and income alternatives for the *catadores* withdrawn from open dumps. This addition occurred as an answer to the demands made by the *catadores* to the Minas Gerais Environmental State Secretary during the 2nd Waste & Citizenship Festival⁶ held in Belo Horizonte in 2003. In December 2008 the Law 18031/2008 that institutes the Minas Gerais State SW Policy was approved and sanctioned in January 2009.
- The Federal District of Brasília (DF) in the Law # 3517/04, which recognizes organized *catadores* as the beneficiaries of the material generated in the state buildings. Still in DF, two years later, in July 7th 2006, the government published the Law # 3890, which determines the implementation of selective collection in all the administrative regions of DF and, following Law 3517/04, also dictates the destination of the materials to the *catadores*.

At the Federal level:

- In 2001, there was the inclusion of collection of recyclables as profession in the Brazilian Occupation Classification (CBO). Among the classified activities⁷, there are functions related to the collective labour of a cooperative, which shows that the profession goes beyond street collection of recyclables. With this legal recognition as a

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

⁶ This is a 5 days annual event organized by the *catadores* association ASMARE and the Waste and Citizenship Forum of Minas Gerais State. *Catadores* and technical staff from NGOs and public officers from all over Brazil come to this event in Belo Horizonte the capital city of Minas Gerais. Financial backing comes from different sources within public institutions such as the municipality of Belo Horizonte; Minas Gerais State Secretariat for the Environment and national ministries.

⁷ It is described in this classification the several types of picking activities: Scrap iron Picker, Paper or Cardboard Picker, Scrap Picker, Scrap Packager (cooperative) and Scrap Sorter (cooperative).

profession the *catadores* started to appear in official databases making it possible now for researchers to monitor the evolution of the activity in a number of aspects.

- In 2007, **Law # 11.445/07** was passed which establishes the national guidelines for basic sanitation. This Law, in its article 57, modifies article 24 of Law # 8.666/93, making bidding unnecessary for the hiring of MBOs of *catadores*. This means that *catadores'* associations and cooperatives can be hired by the municipalities to perform selective waste collection, and thus be paid for the service rendered, as occurs in Diadema, but with a different legal framework.
- A further legal instrument which promotes *catadores'* social inclusion was the **Presidential Decree 5940/06** which was presented on the 5th Waste & Citizenship Festival held in Belo Horizonte (in August 2006) and had participation of *catadores'* representatives in its elaboration. This Decree determines that a "Solidarity Selective Collection" is to be implemented in all federal public buildings (throughout the whole country) and the material generated be destined to *catadores'* organizations. The main objective of the Decree is the generation of labour and income for *catadores*. The Inter-ministerial Committee for the Social Inclusion of *Catadores* (CIISC⁸) is responsible for its implementation; which started on 12 metropolitan regions deemed priority for the investment in the management and treatment of solid waste by the federal government's Growth Acceleration Plan (PAC). Like big private generators public buildings can, with the destination of its material, greatly increase the MBOs income. An agreement is established between the *catadores'* organization and the public institution whereby access to recyclables are guaranteed. Besides that the solidarity decree makes room for the promotion of socio-environmental actions that can contribute to the improvement of the cooperative's productive structure⁹.

⁸ The CIISC is composed of federal government's institutions and has also representation of the National Movement of Catadores. These are the government organizations that integrates it: Ministry of Cities, Ministry of the Social Development, Special Secretariat for Human Rights, Ministry of Science and Technology, Ministry of Development, Industry and Foreign Trade, Ministry of Education, Ministry of Environment, Ministry of Work and Employment, Ministry of Health, Presidential Staff Office, National Economic and Social Development Bank, Social Bank - CAIXA and National Catadores' Movement.

⁹ See annex 1 for more on this decree.

- In September 6th 2007, after a number of other projects with the same subject, the ~~National Solid Waste Policy~~ was sent for Congress appraisal as an Executive Power proposition. This proposition advocates the reverse logistics system, which makes the generator responsible for the destination of the product after the consumption, ensuring the return of recyclables to the productive chain and the increase of waste picker activity¹⁰. The proposition was recognized as a big advancement by MNCR (the national movement of *catadores*) as it will make it mandatory **inclusion of *catadores* in the reverse logistics system.** For that, fiscal and financial incentives must be made available for recycling industries and for the development of regional programs in partnership with *catadores*' organizations, as well as financial support funds for the structuring of these organizations. **After 20 years of debate the National Policy of Solid Wastes was finally approved in July 2010.** This Law is outstanding in the level of recognition of waste pickers turning what has been a government policy over the years into a State policy. However, it must be mentioned that a last minute manoeuvre at the Senate House left out of the Policy a statement that conditioned the use of incineration as a last resource treatment technology. The MNCR has asked President Lula to veto this alteration. The Policy was sanctioned by the President on 2nd August. The Ministry of the Environment backed the MNCR request by issuing a technical note to the Chief Lula's Cabinet to subsidize the Regulation of the National Policy.

Legal Framework for Social Inclusion into Context

It is important to put the existing legal framework focused on social inclusion in Brazil into context. The legislative body that has emerged in Brazil geared to social inclusion of *catadores* is both a result of strategic openings in the political system to pass progressive legislation and the social mobilization of *the* MBOs. *Catadores* in Brazil have been very successful to couple traditional mass struggle (public demonstrations, marches, protests and sit-ins) actions with strategic actions (taking part in committees, articulation of

¹⁰ According to the Urban Environment and Water Resources Secretary of the Environment Ministry, Deputy Luciano Zica.

support within sympathetic public officers etc). Let us take as an example of social mobilization the process that led to the approval of the State Policy of Solid Waste in Minas Gerais - Law 18031/2008 - approved in 2008 – which illustrate strategies adopted to push progressive legislation at the local, sub-national and national levels.

In 2003 the Minas Gerais State Parliament responded to the demands of the *catadores*' movement and the State Waste and Citizenship Forum and organized a series of debates, public hearings and seminars where the need for an inclusive state policy on SWM was put forward. During these events *catadores* not only participated in the round table discussions but also organized marches and sit-ins. The issue was also debated at the Waste and Citizenship Festival. As a result of this mobilization the State Government altered DN 52 (that forbade access of *catadores* to open dumps) by Resolution # 67 in the end of 2003, in which it was added that when closing an open dump municipalities should create labour and income alternatives for the *catadores* withdrawn from the dumps¹¹. This addition occurred as an answer to the demands made by the *catadores* to the Minas Gerais Environmental State Secretary during the 2nd Waste & Citizenship Festival held in Belo Horizonte in 2003.

In 2005 the State Parliament organized a Legislative Seminar focused on Solid Wastes and the proposals of various working groups (on themes such as social inclusion¹²; technology etc) were discussed and incorporated in the Law Project for the State Policy. The working groups were formed by representatives of various organizations from civil society (*catadores* were represented not only as a national movement but also as members of the Waste and Citizenship Forum), private sector and the public sector. The *catadores* organized a sit-in at the final public hearing that closed this process.

¹¹ This was the first move towards recognizing the need for social inclusion later to be furthered in the future Law.

¹² This working group was coordinated by Sonia Dias – serving at that time as a core-group member of the Minas Gerais State Waste and Citizenship Fórum.

In 2007 the State Governor sent to the State Parliament the Project Law 1269/2007. This was done in a public hearing at the Parliament as part of the official programme of the 2007 edition of the Waste and Citizenship Festival. In December 2008 the Law 18031/2008 that institutes the Minas Gerais State SW Policy was approved and sanctioned in January 2009. It contains explicit articles dealing with social inclusion of *catadores* and also economical mechanisms of incentives for municipalities abiding the law.

The Minas Gerais State Parliament has a Popular Participation Committee which has chosen a member of Parliament to act as a representative at the State Waste and Citizenship Forum. It is worth mentioning that this committee has been a strategic partner for the *catadores* as its representative advises both the Forum and the state representatives of MNCR on matters regarding legislation.

Therefore, having members of Parliament sympathetic to the cause of social inclusion has played an important role opening up channels in the political system plus strong organization of *catadores* accounts for most of the advancements in furthering waste and citizenship.

Final Remarks:

The existence of a body of legislation for inclusivity is not a guarantee that solid waste management in most cities are abiding to the law but it indicates that *catadores* have sufficient public visibility and recognition. The implementation of legislation depends a great deal on the level of social mobilization of organizations of *catadores* and their supporting NGOs.

At present, legislation regarding social security for *catadores* has been the main focus for activists. Discussions are under way, within the CIISC, as to the possibility of the *catadores* to be classified as special social security holders, similar to the traditional handcraft

fishermen who contribute with only 2,1% of their gross income. That would mean an enormous benefit for the cooperatives which nowadays in order to fulfill its tax duties must pay 20% of the coop's monthly income added to the 9% paid by each member. Such a high tax value is one of the main obstacles to the welfare tax payment by the organizations. This means that *catadores* up to now have been excluded from the right to retirement and maternity leave for example. Last year the Waste and Citizenship Forum of Minas Gerais State lead the process of discussion for a special pension scheme which resulted in a draft of a Law Project which has been adopted by the MNCR and is now being discussed with sympathetic members of the National Parliament. To make this a reality will require a lot of social mobilization from activists in the next coming years.

Summing up Brazil has seen in the last years the enactment of laws aiming at *catadores'* inclusion which means that integration of the informal sector depends on them being formally organized as cooperatives/associations.

However, knowing that most *catadores* are in informal situations, with low organization levels and lack of proper and adequate working conditions, some questions arise: given the fact that many *catadores* resist organization what can be done to increase membership at MBOs? Will an increase on the amount of financial resources and technical assistance to MBOs necessarily help in creating indirect incentives to attract new members for the cooperatives and associations? Since *all the legislation states clearly that support will be given only to cooperatives and associations how to tackle the issue of autonomous waste picking activities in a way that do not create further social exclusion for those who choose to remain outside of the cooperatives movement?* This is one of our main challenges now.

Annex 1

DECREE N 5.940 25/10/2006

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

City/UF: Brasília/DF

Ambit: National

Date of issue: 25/10/2006

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

- ✓ Organizations should be composed of exclusively of *catadores* who live on earn a living solely on this kind of activity;
- ✓ Organization should be of a non-profit nature;
- ✓ Organizations should have a proper place for sorting, classification of recyclables;
- ✓ Organizations should adopt the system of splitting shares amongst members.

Some articles and its specifications:

Art. 5^o specifies that a committee should be created at each entity from the Federal Government with the responsibility of overseeing the process of implementing the source segregation at the buildings. Its responsibility is: implement and monitor source segregation amongst the workers of the entity and to make sure this is donated to organizations of *catadores*. The committee should report to the Inter-ministerial Committee for Social Inclusion of *catadores* twice a year with an assessment on the process.

Art. 6º – The process of deciding which organization Will be entitled with the donation of recyclables must abide to the rules of publicity and transparency of the public administration as to ensure that all organizations of *catadores* are aware of the selection and habilitation process.

Normativ Act: Decree

Obs: Copy of Decree 5.940/2006 and consultation at the website www.planalto.gov.br .

Acess in 28/03/2007.