

Panel B: Access to Justice: Bridging the Gap between Principle and Practice

"Broadening Access to Organizations of the Poor: Strengthening NPOs through Constitutional justice (The Case of the ARB)"

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Who were the disadvantaged in this case?

Waste recyclers (usually families with children) live in extreme poverty. They survive by collecting garbage, which they use, if they can, to satisfy their own needs. The remainder of the trash is separated, classified and sold to industrial recyclers. Usually they earn less than a dollar a day for this extremely hard work, and they subsist on the waste of society. In 1996, a study conducted by Colombia's Ombudsman Office of the nation's five largest cities found that 14% of waste recyclers were between 8 and 18 years old. 69 % of these had been surviving from this activity for more than a year, 22 % were illiterate, 65% had left school to work, and only 13% were currently enrolled in school. Children waste recyclers earn an average of 15 to 45 dollars per month and 58 % of them contribute some or all of this money to the household.

After a general strike of Bogotá's cleaning and waste management services, the Administration of Bogotá issued an urgent appeal to the recyclers to help the city manage its waste disposal. The Waste Recyclers organized themselves in response to the city's plea and helped mitigate what could have been a major sanitary problem. After demonstrating such successful organizational capabilities, the recyclers boosted their cooperative movement and started preparing to participate in the upcoming bidding process for municipal cleaning and waste management services. Their entry into the business market, and subsequent competition in the bidding process required two constitutional actions to remove impediments preventing the recyclers from acting as entrepreneurs and, moreover, exploring their human rights to sustenance and livelihood.

What was the innovation, and how did it improve access?

In reforming its waste management system, the City of Bogotá intended to select six organizations responsible for cleaning and sanitation services through a process of competitive bidding. The recyclers had already organized the *Asociación de Recicladores de Bogotá (ARB)*, a registered and accredited association with strategic partnerships to investors that gave the recyclers the financial backing necessary to put in a bid for contracts with the city. The ARB is a non-profit organization serving as an umbrella group for 25 individual waste recycler cooperatives. The ARB began its work as a public service provider by contracting with neighboring municipalities or the city of Bogotá. However, there were a number of legal and administrative impediments preventing the ARB from entering the business sector in the capital city itself, which had to be overcome by two separate constitutional actions. The first was a constitutional review of the law impeding access to market, and the second was a Writ of

Human Rights Protection regarding the lack of substantial competitive opportunities for the organized poor in the bidding process.

First, according to Colombian Law 142/94, access to the public service market was limited to stock corporations (which are for-profit organizations) or to industrial and commercial enterprises of the State. In practice, this provision prevented the ARB — an association of non-profit and solidarity economy cooperatives — from extending its waste management activities from smaller municipalities into Bogotá or other major Colombian cities. Naturally, these smaller municipal contracts were less lucrative than those available in Bogotá itself, perpetuating the ARB member organizations' marginal livelihoods. What is more, this law privatized the recycling activity which has been the Waste Recyclers' only means of subsistence in the city for the past 50 years. Underlying this legislation is the assumption that profit-making organizations must be more effective than non-profits, and that non-profits occupy themselves with community building for the poor and should not be interested in big markets or substantial amounts of money. This provision has subsequently been declared unconstitutional, and its terms have been reinterpreted.

A second legal impediment to the recyclers' livelihoods was a National Decree signed in 2002, which determined that all garbage and waste, once outside the house or building of the citizens who produced it, was no longer municipal property but was the private property of the corporation holding waste management concessions. The waste recyclers' extremely marginal *modus vivendi* was thereby not only disregarded, but was moreover criminalized. While no charges were ever brought against waste recyclers for collecting garbage, this Decree threatened their livelihoods and caused considerable psychological stress and anxiety. The provision was derogated.

A third obstacle only emerged once the terms for Bogotá's waste management bidding process were published. The demands placed by the Administration on contractors bidding for disposal rights were so narrow that the ARB was deprived of the opportunity even to compete in the bidding process. The Constitutional Court concurred with the ARB's claims and furthermore recognized the need for affirmative action to encourage the entrance of waste recycler cooperatives into the industry of municipal cleaning and waste management.

What were the obstacles you encountered?

Because the Waste Recyclers suffered from systemic exclusion due to a grid of failures, it was extremely difficult to prove discrimination in ordinary tribunals. To overcome this obstacle, we were forced to find a multilateral strategy of argumentation based on rules and principles, a tactic that was required a great deal of time, effort, and sincere commitment.

What were the results of the innovation?

By taking a constitutional approach and emphasizing the right to equal treatment of for-profit and non-profit organizations under the law, ARB's lawyers paved the way for recognition of waste recycler cooperatives as important market actors in Colombia. In filing a Writ of Human Rights Protection, the ARB used legal means to challenge the City of Bogotá's unfairly exclusionary bidding process. In this case, the Constitutional Court became an important means of recourse for a disadvantaged group seeking access to their basic human rights.

Adriana Ruiz-Restrepo has a consultancy firm on law, governance, and social innovation in Bogotá, Colombia. She has extensive experience in grassroots and civil society organizations both within Colombia and internationally. In addition to her work in Colombia, Ms. Ruiz-Restrepo is currently a consultant on public law and civil society for the Secretariat of the High Commission for Legal Empowerment of the Poor, a global independent organization co-chaired by Madeleine Albright and Hernando de Soto, and endorsed by the United Nations. In this capacity, she is also responsible for overseeing national consultations on legal empowerment of the poor in 25 countries around the world. Before joining the Commission, she was a consultant and National Project Coordinator for the United Nations Office on Drugs and Crime (UNODC) Pilot Project in the Americas for Combating Trafficking in Human Beings. As Project Coordinator, Ms. Ruiz-Restrepo negotiated and advanced the implementation in Colombia of the UN's protocols for ending the exploitation and trafficking of people, and especially of women and children. She has also worked with a range of civil society groups focusing on social justice for the disadvantaged in Colombia and abroad. She has presented and written widely on civil society and the law. In addition to her post-graduate studies in Political Science and Administrative Law, Ms. Ruiz-Restrepo is pursuing a PhD. at Paris II (Panthéon-Assas) University and is studying NGOs in International Development and Advocacy and Public Policy for Social Change as a non-degree student at the New School for Social Research in New York. She also holds a law degree from Los Andes University in Bogotá.