

# THE LAW DOES NOT PROTECT THE MOST VULNERABLE WORKING WOMEN

Laura Porras and María Angélica Prada, professors of the Faculty of Jurisprudence of the Universidad del Rosario, devote a large part of their work to the empirical investigation of vulnerable communities, where, by means of different qualitative techniques, they try to understand the real-life situation of the women there. Their conclusion: The Law proves to be useless when it comes to protecting the most vulnerable women. Yet, it is necessary, however.





By: Carolina Lancheros Ruiz  
 Photos: Juan Ramírez, Alberto Sierra

“**A**t times, the Law works more like a sword than a shield”. With that metaphor, Laura Porras, professor of Constitutional and Labor Law at the Faculty of Jurisprudence of the Universidad del Rosario, explains the main interest of her research: The way in which the Law has a disproportionate effect on the most vulnerable people, especially women.

To start with, her work did not give a priority to the study of gender rather than class variables, but 18 months of ethnographic research in the marginal districts of Suba and Ciudad Bolívar in Bogotá led her to think about the way in which inequality hits women harder.

“The conclusion is simple: Poor people have fewer alternatives than rich ones, women have fewer alternatives than men and poor

women have fewer alternatives than wealthy persons (whether they are men or women) and poor men,” she remarks in an essay about reconciling productive and reproductive work on the streets of Bogotá, done in collaboration with Andrés Rodríguez Morales, a student of jurisprudence in his final semester at the university. The article appears in an issue of the magazine *Revista CS*, published by the Social Sciences Department of the Universidad Icesi of Cali, in which 12 Colombian researchers discuss the idea that “the Law is useless when it comes to protecting the most vulnerable women.”

The Labor Law currently in force was not designed for the self-employed, like the street hawkers whom Laura studies, but is drawn from countries which went through a thoroughgoing process of industrialization and not only in Europe. “We have not even gone through a process of industrialization like that in Europe, but we blindly copy their norms,” she points out.

That is why there is a need to understand the current situation of the class of working women in the informal sector, in which around 69% of the workers are self-employed, that is, they do not have a contractual relation of dependence with an employer.

Around 82,000 people work on the streets of Bogotá, of whom nearly 60% are women. Considering that they still bear a heavy burden of tasks in their homes (cleaning, child care, etc.), it is more difficult for them to find the right balance between their domestic and working lives, because “neither the

mechanisms provided by Colombian Labor Law to reconcile the demands of family and work, nor the public offer of assistance are shaped to the hardships of scabbling for a living on the street,” she points out.

For salaried workers or independent ones affiliated to the social security system, the laws on labor provide the right to a paid leave when they are pregnant and during the first months of their baby’s life, and protection from being fired. The Substantive Labor Code also establishes their right to two paid rest periods of 30 minutes during the first six months of the baby’s life and Law 1857 of 2017 requires employers to adjust the working hours of employees so that they can spend more time with members of their families.

Of course, none of that applies to street sellers, whose working day also lasts longer than the standard eight hours of salaried workers, because they can only stop working after they have obtained the money needed for their basic daily subsistence.

Among other reasons, that is why the public offer of assistance in Bogotá does not take the conditions of working on the street into account and “requires conducts which are incompatible with the productive work of women,” Porras adds.

Thus, for example, the institutions which provide care for children in early childhood are only open for eight hours a day. They also insist that it is the mother, in the company of another adult, who should feed the child in the institution when the child does not want to eat and “threaten” to report her to the authorities when she does not follow their rules on the child’s growth and development.

Leaving aside the question of whether the norms provide the ideal conditions for the welfare of the children, such rigidity discourages women who “are on the periphery and not the center of the juridical framework”: That means those who have to leave their jobs in order to feed the child or spend time on non-urgent visits to a health center cannot earn the money they need to provide basic meals for their whole family, for example.

And so in order to care for their children, “the characteristic flexibility of the informal arrangements such working women make with their families or neighbors (especially with regard to their working hours and ways of paying) means that they prefer those informal services to the public offer of assistance, even though the latter not only costs less but is structured around ideals of child-rearing which may be better at developing the full potential of the children,” the research project has found.



Source: *Encuesta Nacional de Uso del Tiempo* (National Survey of the Use of Time).



This study, based on conversations with 13 women who sell on the street and have children under the age of five and the ethnographic work Porras did for her doctorate, confirms that “the Law does not take into account the need to balance productive and reproductive activities on the part of women who work on the street, because they are in a sort of ‘twilight zone’, where the law of the State is less applicable.”

### Invisible work

What happens when your work is not even acknowledged to be that? Professor Laura Porras, who has a doctorate in Law from the University of Ottawa, reviewed the rulings of the Colombian Supreme Court of Justice to determine the degree to which poor women achieve their most basic aspiration: That a judge acknowledges that domestic work or child care is work.

She and her colleague Karena Caselles, who was an auxiliary magistrate in the Labor Division of that Court for eight years and now holds the same post in the Constitutional Court, studied the rulings on that subject which were made over a period of fifty years (from 1948 to 2018). They found 579 in which the Court was asked to declare the existence of a contractual reality, that is, acknowledge a labor relationship independently of whether or not there was a formal contract or the term given to that relationship.

Of those, only five had to do with women whose payment – when they received it – was at most that of the monthly minimum wage and who had a high school diploma. They were women who worked in the countryside, on farms, or who were devoted to domestic work in the homes of families who did not pay them for their services. Only one acknowledged the rights of the woman: One in fifty years.

“In juridical theory, much has been written about the invisible work women do. What we tried to do was to show, through a study of real cases, that what is recognized in theory is also



true for the case of Colombia,” this researcher remarks, who also found that, at a rate of five in 579, the cases of vulnerable women do not even reach high State bodies, like the courts.

### Access to the judicial system is difficult

One of the reasons why those cases do not reach the judiciary has to do with the fact that it is not easy to accede to the courts. “We teach that the *tutela* [a writ for the protection of a citizen’s constitutional rights] was one of the great advances made by the 1991 Constitution, but undertaking it requires a high level of knowledge,” explains María Angélica Prada, professor at the Faculty of Jurisprudence who lectures on “An Introduction to Law and the Theory of Property.”

She too is interested in understanding how the Law affects social relations and lives of persons in highly vulnerable conditions and has spent the past two years on an ethnographic investigation of the popular movements in the informal neighborhoods on the flanks of the *cerros orientales*, the mountains which overlook Bogotá on the east.

“In their struggle to claim their rights, the leaders resort more to the rights of petition, which almost amount to a conversational negotiation between public agencies and the communities,” she explains. She has also found that the representatives of the communities are very committed: “They do a heap of non-paid activities in order to win services and rights for their communities which we, in other sectors of the city, take for granted,” she says.

In that regard, she highlights that it is precisely the people with informal jobs who are able to devote themselves to that, since, due to the flexibility of their working hours, they are able to talk to public officials or comply with the bureaucratic requisites more easily than those who are formally employed.

To that is added the fact that the representatives of those communities tend to be men, because the female leaders, like

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“The law may be a tool for emancipation, but it does not solve all of the problems. However, to attain the equality of women, we are better off with the Law than without it,”  
María Angélica Prada.



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Professor Laura Porras wanted to find out, on the basis of a review of the rulings of the Colombian Supreme Court of Justice, the degree to which poor women achieve their most basic aspirations: That a judge acknowledges that domestic work or child care is work.



other women, are busy with their domestic tasks.

Therefore, “it is very rare that such women can go to the venues of participation because the cost is not only economic, it also implies abandoning the care of their families,” Prada notes, who believes it is remarkable that the leadership undertaken by women is also based on a concern for caretaking: “They have a very maternal role in the community and it is that which makes them feel empowered,” she concludes.

That observation highlights the dilemma of such women: Their work as caretakers makes them powerful, but the fact that they bear the weight of that responsibility makes them vulnerable. What should the Law do to right that imbalance?, the researchers ask. ■