



POLITICAL REPRESENTATION & SOCIAL INCLUSION: Colombia Case Study

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INTRODUCTION

The integration of Indigenous and Afro-descendant populations into Latin American systems of political representation is a recent development; the political gains have come gradually over nearly a quarter-century, in a space where economic ones often have not. The new era of democratic freedoms has helped facilitate the formation of race and identity-based civil society groups, spurred in part by recognition and support from international organizations and donors. As self-awareness and the popular and political strength of Indigenous and Afro-descendant groups have grown, various Latin American countries became signatories to international treaties to protect minority rights—and some codified those rights in new constitutions, furthering formal ethnic-based or racial representation in local and national politics. This numerical increase, though, gives rise to the question: to what extent are these representatives effective at successfully advocating the demands of their constituents? Does their participation in elected office contribute to the adoption of policies that serve the interests of those populations?

Americas Society, with support from the Ford Foundation, attempted to answer these questions in a comparative study of Bolivia, Colombia, Ecuador, and Guatemala. What follows is a description of the study undertaken in Colombia.

For the purposes of this study, Indigenous and Afro-Colombian legislators were identified in one of three ways. First, we identified whether the representatives were elected to seats in the Senate and the Chamber of Deputies reserved for Indigenous or Afro-Colombian legislators (available since 1991 for Indigenous representatives and 1993 for their Afro-Colombian counterparts).

Second, for legislators elected to open seats, we relied on information provided by the *Registraduría Nacional del Estado Civil* (National Civil Registry) and the *Consejo Nacional Electoral* (National Electoral Council) on individual representatives and political parties, respectively. The information gathered from these two government entities was cross referenced with the comprehensive voting data from *Congreso Visible*. Specific attention was paid to what political party representatives are affiliated with. Parties were more indicative of Indigenous representatives (all six that were elected to open seats during the three session examined came from Indigenous parties), but less useful for Afro-Colombian legislators (only half of those elected to open seats came from Afro-Colombian parties).

Finally, to supplement this data, we consulted with

various nongovernmental and academic organizations that work directly with Indigenous and Afro-Colombian issues and legislators. The Institute Republican Institute has been working closely with Afro-Colombian legislators and was instrumental in confirming which legislators self-identify. The *Organización Nacional Indígena de Colombia* (National Indigenous Organization of Colombia—ONIC) helped confirm their Indigenous counterparts in the Congress.





COLOMBIA

History: Identity, Social Movements and Political Participation

There are approximately 80 different ethnic groups in Colombia. According to the 2005 Colombian census, Afro-Colombians represent 10.6 percent of the national population, with 4.3 million people identifying themselves as Black (negro), Afro-Colombian, *palenquero*, or *raizale*.¹ Over 1.3 million Colombians identify as Indigenous, representing 3.4 percent of the total population.

Traditionally, these groups remained on the margins of political power, but in the 1980s, Indigenous political movements like *Consejo Regional Indígena del Cauca* (Regional Indigenous Council of Cauca—CRIC) and the *Organización Nacional Indígena de Colombia* (National Indigenous Organization of Colombia—ONIC), and the Afro-Colombian *Movimiento Nacional CIMARRON* (National Movement—CIMARRON), began to mobilize the country's minority population to participate in politics.

To gain formal political access, these ethnic movements allied themselves with the traditional political parties, namely the *Partido Liberal* (Liberal Party). While their relationships with major political parties provided access to legislators, a means to capture voters and, eventually, positions of power, the ethnic or race-based agenda was rarely considered a top legislative priority.

The turning point for Indigenous and Afro-Colombian representation was the new Constitution of 1991, which recognized Colombia as multiethnic and multicultural nation. Despite its smaller overall population, the Indigenous movement was better organized than the Afro-Colombian movement in the 1980s when the constitution was drafted. Two Indigenous leaders, Lorenzo Muelas y Francisco Rojas Birry, were elected to the *Asamblea Nacional Constituyente* (National Constituent Assembly)—the body that crafted the new constitution. Both representatives pushed for the inclusion of provisions that addressed ethnic and race-based interests, like communal land rights and political participation. In the case of the latter, Article 171 of the Constitution created two reserved seats in the Senate for Indigenous representatives elected in national districts, while Article 176 created the possibility of up to five reserved seats for “other ethnic groups” in the Chamber of Deputies. It was not until 1993 that Law 70 created two reserved seats for Afro-Colombians in the Chamber, though they received none in the Senate, and recognized the territorial land rights of this population. Finally, Law 649 of 2001 granted Indigenous representatives an additional seat in the Chamber, giving

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this group a total of 3 seats across both bodies of Congress.²

These institutional mechanisms have meant greater visibility and representation for ethnic minorities. But the ethnically defined seats proved to be a double-edged sword, especially for Afro-Colombian voters and representatives. By establishing specific, designated seats, the Afro-Colombian set-asides encouraged a dangerous level of electoral competition among Afro-related movements and parties resulting in political fragmentation. As a result, it became more difficult to establish a common political agenda among the community.

The more organized Indigenous movement fared better with the backing of established Indigenous social and political movements, particularly under the umbrella of ONIC. *Alianza Social Indígena* (Indigenous Social Alliance—ASI) serves as the unofficial political arm of ONIC and elected the majority of Indigenous representatives to reserved and open seats during 1998 and 2010. *Autoridades Indígenas de Colombia* (Indigenous Authorities of Colombia—AICO) also elected a critical mass of representatives. On the other hand, to promote their own agenda, Afro-Colombian representatives have formed alliances or voting blocs called *bancadas*. Nevertheless, their political weight on ethnic issues is muted by their affiliation to small Afro-Colombian parties that command few votes in the case of reserved seats or, in the case of open seats, major political parties that do not prioritize ethnic issues.

Many of the most effective initiatives that address the social and economic development of Afro-Colombian and Indigenous populations have come from the Executive and Judicial branches. The *Consejo Nacional de Política Económica y Social* (National Council of Economic and Social Policy—CONPES) issues decrees to various ministries that shape Colombia’s domestic spending policy, and some specifically target minority populations. For example, CONPES Document 2773 of 1995 focused on sustainable development of Indigenous communities and Document 3310 of 2004 created an affirmative action policy for Afro-Colombians to increase access to social programs. The *Corte Constitucional* (Constitutional Court) also issued two mandates in

2009—Auto 004 and Auto 005—to evaluate and address the socio-economic conditions of Indigenous and Afro-Colombian populations, respectively.



Representation and Legislation

Colombia's National Congress comprises two bodies: a 102-seat Senate and a 166-seat Chamber of Deputies. The Chamber had 161 seats prior to the 2002 election. We examine three congressional periods to compare how the legislators' numbers and performance, with regard to the introduction and passage of bills, changed over time. The periods chosen include 1998 to 2002, 2002 to 2006, and 2006 to 2010.³ Afro-Colombian representatives were not present in congress from 1998 to 2002 due to a legal dispute over the constitutionality of their reserved seats in the Chamber of Deputies, which is discussed later.

INDIGENOUS REPRESENTATIVES

Thirteen Indigenous representatives served in the Colombian Congress between 1998 and 2010, with all but one coming from Indigenous political parties. Indigenous representatives had two reserved seats in the Senate, and received an additional seat in the Chamber beginning with the 2002 to 2006 congressional session. The level of Indigenous representation decreased over the three sessions examined, reaching its peak in the 1998–2002 Congress.

National Congress, 1998–2002

For the first period, 1998 to 2002, there were four Indigenous representatives in the Colombian Senate, including the two reserved senate seats. There were also two deputies in the Chamber who occupied open seats, as the reserved seat for the Indigenous populations in the Chamber was only instituted for the first time in the following congressional session through Law 649 of 2001.

Francisco Rojas Birry, who had also served as an Indigenous representative in the National Constituent Assembly, was elected to the reserved Indigenous seat in the Senate under the ASI party. ASI also placed two more Indigenous representatives in congress during this period: one representative to an open seat in the Senate, and two to open seats in the Chamber.

From 1998 to 2002, Indigenous representatives sponsored 42 bills. Twenty-four of them were to modify the constitution. As in the following periods, the dominant topic in their legislative agenda was social security (education, health, poverty, housing, protection for senior citizens, etc.). The greater

presence of Indigenous politicians in the Senate led to a greater number of bills introduced related to social issues (57 percent).

Of the 42 bills introduced, 17 related to Indigenous populations and their demands. And of the four total bills that became law, the only one that affected the Indigenous community, presented by Jesús Enrique Piñacué in 1999, guarantees the inclusion of Indigenous Colombians in the government-financed health care system.

FIGURE 2: INDIGENOUS REPRESENTATIVES IN COLOMBIA AND BILLS PROPOSED/PASSED

REPRESENTATIVE CONGRESSIONAL SESSION	NUMBER OF INDIGENOUS REPRESENTATIVES (AND % OF TOTAL)	NUMBER OF BILLS PROPOSED BY INDIGENOUS LEGISLATORS AFFECTING INDIGENOUS COMMUNITIES	NUMBER OF BILLS PROPOSED BY INDIGENOUS LEGISLATORS AFFECTING INDIGENOUS COMMUNITIES THAT WERE APPROVED (AND % OF TOTAL)	HOW INDIGENOUS REPRESENTATIVES VOTED ON BILLS APPROVED	SOURCES/ GENESIS OF BILLS ULTIMATELY APPROVED
National Congress 1998–2002	6 of 263 (2.3%)	17	1 (5.9%)	Not available*	Indigenous representatives (Jesús Enrique Piñacué)
National Congress 2002–2006	4 of 268 (1.5%)	18	0 (0%)	Not available*	Non-ethnic representatives, executive branch, CONPES
National Congress 2006–2010	3 of 268 (1.1%)	12	0 (0%)	Not available*	Non-ethnic representatives, executive branch, Constitutional Court (Auto 004, 2009)

* Nominal voting for representatives is not required under Colombian legislative rules.

National Congress, 2002–2006

Four Indigenous representatives served in this session, including Francisco Rojas Birry, who was re-elected to the reserved Senate seat as a member of the political movement *Huella Ciudadana* (Citizen Footprint). All four Indigenous representatives were elected through minority political parties, while all of the Afro-Colombian representatives during this period came through traditional parties.

The same patterns for the success of Indigenous-related initiatives held as in the the previous session studied, 1998 to 2002. From 2002 to 2006, Indigenous legislators sponsored 41 bills, with 17 coming from the Senate and 24 from the Chamber. Of the 41 bills, four were enacted as laws but none of them related directly to Indigenous issues.

National Congress, 2006–2010

In the last session studied, 2006 to 2010, seven Indigenous and

Afro-Colombian representatives were elected to the Congress. The three Indigenous representatives occupied reserved seats in both chambers, with only Orsinia Polanco Jusayú (*Polo Democrático Alternativo*) coming from a non-Indigenous party. The three Indigenous representatives introduced a total of 31 bills—17 in the Senate and 14 in the Chamber. Their fate was no better than those in previous sessions. None of the 12 bills that were introduced relating to the Indigenous population was signed into law.

AFRO-COLOMBIAN REPRESENTATIVES

For Afro-Colombian representations we focus on two periods: 2002 to 2006 and 2006 to 2010. There were no representatives between 1998 and 2002. This is because in 1996, Fernando Minolta Arboleda, a private citizen, sued the Colombian government, challenging the constitutionality of Article 66 of Law 70, which creates two reserved seats for Afro-Colombian representatives. Arboleda won his case, and the Constitutional Court eliminated the seats during the 1998–2002 session. The seats were reinstated through Law 649 of 2001, which amended Article 176 of the Constitution to explicitly create two seats in the Chamber of Deputies for Afro-Colombians, one seat for Indigenous communities, one for minority political parties, and one for Colombians living abroad. In total, eight Afro-Colombian representatives served during these two sessions; two were elected through small, specifically Afro-Colombian political parties.

FIGURE 3: AFRO-COLOMBIAN REPRESENTATIVES IN COLOMBIA AND BILLS PROPOSED/PASSED

REPRESENTATIVE CONGRESSIONAL SESSION	NUMBER OF AFRO-COLOMBIAN LEGISLATORS (AND % OF TOTAL)	NUMBER OF BILLS PROPOSED BY AFRO-COLOMBIAN LEGISLATORS AFFECTING AFRO-COLOMBIAN COMMUNITIES	NUMBER OF BILLS PROPOSED BY AFRO-COLOMBIAN LEGISLATORS AFFECTING AFRO-COLOMBIAN COMMUNITIES THAT WERE APPROVED (AND % OF TOTAL)	HOW AFRO-COLOMBIAN REPRESENTATIVES VOTED ON BILLS APPROVED	SOURCES/ GENESIS OF BILLS ULTIMATELY APPROVED
National Congress 2002–2006	4 of 268 (1.5%)	10	0 (0%)	Not available*	Non-ethnic representatives, executive branch, CONPES
National Congress 2006–2010	4 of 268 (1.5%)	15	2 (13.3%)	Not available*	Afro-Colombian representatives, Ministry of Culture, Auto 005, 2009

* Nominal voting for representatives is not required under Colombian legislative rules.

2002–2006

Four Afro-Colombian representatives served in this period, including two that

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occupied both reserved seats allotted in the Chamber. Two deputies, Jack Housni Jaller (Liberal Party) and Julio Eugenio Gallardo Archbold (*Movimiento de Integración Regional* (Regional Integration Movement)) served in open seats in the Chamber, and were both re-elected.

Afro-Colombian representatives sponsored 33 bills between 2002 and 2006. Twenty-nine of those were in the Chamber. Of these, 10 were related to the Afro-Colombian community, but none were signed in to laws.

2006-2010

Unlike the previous session, both Afro-Colombian representatives that occupied reserved seats in the Chamber—María Isabel Urrutia Ocoró (*Alianza Social Afrocolombiana*) and Silfredo Morales Altamar (*Afrounínca*)—were elected through Afro-Colombian political parties. Gallardo Archbold was elected to an open seat in the Chamber and newcomer Hemel Hurtado Angulo to an open seat in the Senate. Senator Hurtado Angulo and Deputy Archbold would serve again in the 2010 to 2014 session.

Between 2006 and 2010, Afro-Colombian representatives authored 39 bills, 33 of those coming from the Chamber. Fifteen bills related directly to Afro-Colombian issues and demands, though only two were approved. The first was sponsored by María Isabel Urrutia and coauthored by members of the Liberal Party, Conservative Party, *Partido de la U*, and the *Movimiento de Inclusión y Oportunidades* party. It sought to allocate more federal resources to the *Universidad de la Amazonía* to provide financial aid to low-income students, especially internally displaced peoples and Afro-Colombian and Indigenous students. The other bill was authored by Hemel Hurtado Angulo and recognizes “Petrónio Álvarez” Pacific Music Festival—a celebration of the traditions of Colombia’s largely Afrodescendant Pacific Coast—as a national cultural heritage.

Only three of the bills sponsored by minority representatives between 1998 and 2010 relating specifically to Afro-Colombian and/or Indigenous communities became law. And the only law that had direct policy implications

for these populations was 1999's Law 4203 to address cultural considerations in Social Security health benefits (described below).

While ethnic representatives helped sponsor the legislation above, between 1998 and 2010, non-ethnic representatives actually authored more bills relating to Indigenous and/or Afro-Colombian populations (85 bills by 147 non-ethnic member of congress). Sixteen of those bills (18.8 percent) became laws—the most relevant being: anti-discrimination; the strengthening of ethnic representation in the Chamber of Deputies; and the declaration of Wayuú Indigenous cultural traditions as a Colombian heritage. But most of these 85 bills concentrated on recognition of ethnic celebrations rather than on concrete legal or social policies intended to improve the welfare and inclusion of those populations.

In all of the cases above and more, the support of the executive branch—from individual ministries or the president's office—was instrumental in introducing or promoting individual initiatives.



Unique Representative Laws

Law of Culturally Inclusive Health Care, No. 691, 2001

A total of three bills authored by minority representatives between 1998 and 2010 affecting the Afro-Colombian and/or Indigenous communities became law. The only law that had policy implications for a minority population was Law 691 of 2001, which originated from bill 4203 of 1999, authored by Jesús Enrique Piñacué Achicué of ASI. The purpose of the law is to guarantee the inclusion of Indigenous Colombians in the *Régimen Subsidiado*—the government subsidized health care system. According to the initiative, the State should be in charge of providing health care services according to the particular needs and cultural background of Indigenous communities. These benefits include the basic health care plan (*Plan Obligatorio de Salud*), a food subsidy to be delivered to pregnant women and children and immediate attention given to victims of car accidents and catastrophic events such as natural disasters and forced displacements by armed groups.

Additionally, Indigenous groups were enabled to create *Administradoras Indígenas de Salud* (Indigenous Health Administrators), whose function was to manage the subsidies provided by the State and to coordinate with national and local authorities the implementation of the health care programs. Public

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information that shows the real impact of the initiative is scarce, but the bill has been recognized both by the Constitutional Court and by Indigenous organizations such as CRIC as a key step in the protection of Indigenous rights.

Law of Native Languages, No. 1381, 2010

The ministries and the executive have also been instrumental in introducing and passing legislation affecting minority communities in Colombia. One such bill was introduced in 2009 by the Minister of Culture, Paula Marcela Moreno, the first Afro-Colombian to hold an executive position in the cabinet. The bill ascribed importance to ILO Convention 169, which protects and strengthens ethnic cultural traditions and dialects, and was ratified by Colombia in 1991. The bill also recognized the existence of more than 60 dialects native to the country and included regulations to prohibit cultural discrimination based on language; assured the use of these dialects in the interaction between ethnic communities and the State; created cultural and educational programs to strengthen native dialects; and promoted the diffusion of native dialects through the media. The bill was approved by 65 members of the Senate, including Indigenous Senators Ernesto Ramiro Estacio and Jesús Enrique Piñacué, and it was signed into law by then-President Álvaro Uribe in January 2010.

Law of Anti-Discrimination, No. 1482, 2011

Another piece of legislation of great importance to minority populations is the national law to penalize all forms of racial or sexual discrimination. The law levies prison sentences of one to three years for acts of discrimination on the basis of race, ethnicity, sexual orientation, or nationality, with prison sentences of up to three years. Though similar laws had been proposed by the executive and Afro-Colombian representatives in the past, lack of political will and the inability of ethnic representatives to rally support forced them to be tabled without even reaching the first reading.

The 2011 bill, however, was authored by two non-ethnic representatives

from the Christian *Movimiento Independiente para la Renovación Absoluta* (Independent Movement for Absolute Renovation—MIRA) party: Carlos Alberto Baena and Gloria Stella Díaz. Afro-Colombian representatives Hemel Hurtado, Edinson Delgado and Germán Carlosama were among the 54 senators who voted in favor of the bill. In the summer of 2011, the Colombian Congress approved the antidiscrimination bill, and in November of the same year President Juan Manuel Santos signed it into law.

Previous Consultation, 1997 and 2009

Arguably, one of the most important legislative initiatives in Colombia is the *consulta previa*. Designed to empower local and ethnic communities, the provision was originally approved in 1997 and strengthened in 2009. It requires governmental and private-sector institutions to develop a process of consultation with ethnic communities before the implementation of any economic, environmental, infrastructural or natural resources extraction projects that affect these populations. In March 2011, the Colombian Constitutional Court issued ruling T-129, which recognized *consulta previa* as a fundamental right of minority populations.

Several laws also strengthen its mandate, including: Law 21 of 1991, which ratified the ILO Convention 169; Law 99 of 1993, which establishes that the exploitation of natural resources should not affect the integrity (cultural, social and economic) of Indigenous and Afro-Colombian communities; Decree 1320 of 1998, which regulates the consultation procedure with ethnic groups; and Decree 4530 of 2008, which establishes the functions of various minority groups in the consultation processes. According to these regulations, the Ministry of Justice and the Interior is in charge of verifying the presence of ethnic groups and assuring their participation in the implementation of natural resources extraction projects.



ENDNOTES

- 1 Departamento Administrativo Nacional de Estadística DANE, *Censo General 2005: República de Colombia*, <http://www.dane.gov.co/censo/> (accessed October 19, 2011).
- 2 Laly Catalina Peralta González, "Curules especiales para comunidades negras: ¿realidad o ilusión?," *Revista Estudios Socio-Jurídicos* 7 (2) (July-December 2005): 147-172.
- 3 Though political participation of these groups was institutionalized in the 1991 Constitution, a comprehensive record of the bills introduced by these representatives is only available beginning in 1998.