Americas Society

POLITICAL REPRESENTATION & SOCIAL INCLUSION:

A Comparative Study of Bolivia, Colombia, Ecuador, and Guatemala

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FOREWORD

Greater recognition of Indigenous and Afro-descendant minorities in Latin America has led to increased levels of formal representation in local and national politics since the early 1990s. But levels of participation still do not reflect the size of individual countries' racial and ethnic populations, and representatives elected to office often struggle to pass legislation that tangibly addresses the demands and needs of these communities. Moreover, a number of factors—from race- and ethnicity-based groups' ability to form alliances with mainstream political parties to the allotment of reserved congressional seats for Afro-descendant and Indigenous representatives—affect the extent to which Indigenous and Afro-descendant representatives have been able to gain access to representative office and effectively sponsor legislation.

Americas Society, with the support of the Ford Foundation, is helping to bring greater attention to the gains and challenges of political representation of previously marginalized communities in the region. In this report we examine the evolution in Indigenous and Afro-descendant political representation over the past two decades—specifically, whether the increase in numbers of Indigenous and Afro-descendant representatives has also led to an increase in policy outcomes that benefit these communities. In addition to our work on political inclusion, we are also conducting research on public-private collaboration to increase labor market access for youth. Both projects are part of the ongoing Americas Society Social Inclusion Program, a multi-year initiative analyzing and fostering discussion around the diverse facets of social inclusion in the hemisphere. This effort includes in-country research, white papers, an inclusion web portal (with dedicated bloggers and social media on inclusion), a forthcoming (Spring 2012) special issue of *Americas Quarterly*, and private roundtable meetings and public conferences.

This white paper presents the findings and conclusions of case-study research in Bolivia, Colombia, Ecuador, and Guatemala. These four countries have sizeable Indigenous and/or Afro-descendant populations, and in each we explore the unique political and social movements and constitutional reforms that paved the way for greater ethnic or racial representation. In total, we examine 12 distinct congressional sessions and two constituent assemblies, both in Ecuador, between 1986 and 2012 to analyze how descriptive and substantive representation and legislation have changed over time.

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INTRODUCTION

The legacies of conquest, slavery, racism, economic inequality, and political exclusion have plagued Latin American politics and economics since independence, creating a vicious cycle that only now—after decades of democratic rights and elections—is beginning to be addressed. Even today, though, poverty lines across the hemisphere still reflect racial and ethnic lines, with Indigenous and Afro-descendant populations over-represented among the poor in Latin America.

The recent gains in the integration of Indigenous and Afro-descendant populations have come in no small measure from the more than two decades of democratic practice that followed the transitions from military rule in the late 1970s through the late 1980s. But they have failed to bring genuine economic integration at a mass level. The new era of democratic freedoms 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 grew, various countries became signatories to international treaties to protect their rights, and some—for example, Colombia (1991), Ecuador (1998 and 2008) and Bolivia (2009)—codified their rights in new constitutions.

Thanks to these movements and better census measurement methods, governments have been able to get more accurate counts of their racial or ethnic populations. In the Central American and Andean countries, the Indigenous make up a significant share of the population: for example, according to Guatemala's 2002 census, 41 percent of its population identifies as Indigenous, with unofficial estimates putting the number as high as 60 percent. In Bolivia, 62 percent self-identify as Indigenous. In Ecuador and Colombia, while Indigenous communities also represent a share of the population (7.0 and 3.4 percent, respectively), these countries also comprise sizeable Afro-descendant populations (7.2 and 10.6 percent, respectively). And in Brazil, some 51 percent of the population self-identified as "black" or "brown" in the 2010 census.

With greater recognition of ethnic populations, the strengthening of civil society movements and—in some cases—the formation of ethnically based political parties, Indigenous and Afro-descendant peoples in Latin America have started to gain formal representation in local and national politics. Much of this was helped by a raft of institutional and legal reforms that came after

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the democratic transitions, including decentralization, opening up of party lists, re-drafting of constitutions and—in some places, such as Colombia—the creation of reserved seats for Indigenous and Afro-descendant peoples. The result has been a groundswell of elected Indigenous and Afro-descendant mayors, municipal councilors, state and national legislators, governors, and—in the cases of Peru and Bolivia—presidents.

The increase, though, raises an important question: to what extent are representatives elected from Indigenous and Afro-descendant communities better at representing the demands of those populations? Does their participation in elected office contribute to the adoption of policies that serve the interests of those populations and peoples?

The issue of symbolic presence in office versus the translation of elected representation into public policy initiatives and outcomes has long been analyzed in political science literature. In 1967 Hanna Pitkin drew a distinction between descriptive representation—the extent to which a representative resembles those being represented (also sometimes referred to as numerical representation)—and substantive representation—the actions taken on behalf of/in the interests of the represented.[1] She claimed that descriptive representation can undermine the accountability of a representative, raising future discussions about whether marginalized groups need representatives specifically from within their groups. Since then, a number of comparative and detailed studies have been conducted looking at substantive representation—particularly of African-Americans and women. With increasing sophistication those studies have looked at the agenda-setting behavior and legislative success of African-Americans and women in state legislatures in the U.S.,[2] women's participation in national legislatures in Latin American and other countries,[3] and women's power in cabinet-level and other executive-branch positions.[4]

In Latin America, however, no one has applied the same type and level of analysis to assess whether the increased numerical representation of Indigenous and Afro-descendants in national legislatures have produced a measureable impact on whether and how those groups' demands appear in policy

debates and policy. This is what we propose to do in this study.

Fortunately, the rich research already conducted on women and African-Americans' substantive representation in the United States and women's substantive representation in national legislatures abroad (for example in the United Kingdom, Rwanda and several Latin American countries) have provided a framework for assessing that of Indigenous and Afro-descendants in Latin America.

In the case of Latin America, there is an additional dimension to take into account. In Latin America, representative democracy has become a contested concept, both ideologically and practically. Political and social movements of the late 1990s and early 2000s have brought into question the efficacy of representative democracy as a means to further social rights and the inclusion of previously excluded groups. For many, the channels of representative democracy are associated with the vestiges of the exclusionary past of elite, European-descendant dominated parties. In countries such as Venezuela, Bolivia and Ecuador, more mass-based forms of political participation, such as plebiscites and popular referenda are seen as the best means to address the policy demands of previously marginalized groups.

We do not intend to enter into a debate about representative or participatory democracy. Whatever the merits of either, the basic fact remains that even in the proclaimed participatory democracies of Venezuela, Bolivia and Ecuador, elected officials continue to participate and are still seen as legitimate representatives of popular demands. How effectively are they performing that function?

Here, external factors—whether in the self-proclaimed participatory democracies or in the more traditional representative democracies—come into play, especially in a region which since the late 1980s has seemed to be in near-constant institutional flux. Among the variables this study will examine that affect the substantive representation of Indigenous and Afro-descendant elected officials will be the power and legacy of civil society groups, electoral laws, ideological and party affiliation, inter- and intra-minority dynamics, international support, and executive–legislative relations.

METHODOLOGY

We selected four countries—Bolivia, Colombia, Ecuador, and Guatemala—to longitudinally and comparatively examine the effect of Indigenous and Afro-descendant representation in national congresses on law and policy. The selection was based on: the existence of a significant Indigenous and Afro-descendant population (with the exception of the latter in Bolivia and Guatemala); a measurable increase in the past two decades in the number of elected representatives from those populations in their national congresses; and the approval of a broad set of legal or constitutional reforms intended to expand political inclusion (Bolivia, 1994 and 2009; Colombia, 1991; Ecuador, 1998 and 2008; and Guatemala, 1997).

In each case the task was to identify the individual Indigenous and Afro-descendant representatives in national legislatures. Given local issues with the subjectivity of ethnic and racial identity and the various means of identification (skin color, culture, language, political identification) we worked with in-country researchers to develop transparent and verifiable means of identifying Indigenous and Afro-descendant legislators, sensitive to local culture and conditions. Those are described in the individual country reports.[5]

In addition to identifying and tracking Indigenous and Afro-descendant legislators, in each country our local researchers provided the following information:

1. An analysis of the recent history of Indigenous and Afro-descendant social and political movements and their evolving relations to politics and the state;

2. The number of bills or policy changes introduced by Indigenous and Afro-descendant representatives and approved by national legislatures;

3. An analysis and description of two to three legislative projects that were approved as law that had direct or indirect implications for Indigenous and/or Afro-descendant issues; and

4. Analysis of external variables (electoral laws, inter-party relations, intra-party and community politics, social movements, international support, executive–legislative relations) that affected the operation and effectiveness of Indigenous and Afro-descendant legislators in national congresses.

PRELIMINARY CONCLUSIONS

While the increased numerical representation of Indigenous and Afro-descendant communities at the national legislative level is unarguably a positive development in the history of racial and ethnic rights, the four case studies presented here suggest that there is a long way to go before greater numbers of Indigenous and Afro-descendant representatives and senators translate into substantive and practical legislative outcomes that benefit their communities. A preliminary overview of our case studies shows that, even with the evolving attitudes and greater recognition of democratic rights in Latin America since the early 1990s, race- and ethnicity-based representation—both descriptive and substantive—has remained stubbornly low. In the most recent legislative sessions in Ecuador and Colombia, Indigenous and Afro-descendants only make up low, single-digit percentages of the legislature, while in Guatemala and Bolivia, the Indigenous legislators currently represent 14 and 25 percent, respectively. But in no country have the levels approached the proportion of that population's presence in society.

Indigenous or Afro-descendant representatives, whether elected from a mainstream political coalition or from an ethnic or race-based party, and whether occupying open or reserved seats, face an uphill battle in achieving substantive policy outcomes favorable to race- and ethnicity-based communities. On the whole, the four countries we studied demonstrated low legislative initiative by the representatives and a low level of success of approval of the bills they sponsored. Indigenous and Afro-descendant representatives tended to be more successful at incorporating their demands into articles of new constitutions than bills during ordinary legislative sessions, and the degree of their legislative success often depended heavily on external variables, such as obligations under international norms (notably, Convention 169 of the International Labour Organization (ILO) on Indigenous and Tribal Peoples), pressure from civil society and support from the executive branch of government.

Furthermore, both Indigenous and Afro-descendant groups have focused on symbolic, and often narrow, legislative goals. For example, in all four countries they have sought the right to prior consultation (*consulta previa*) on the use of natural resources on their lands, and in at least two of the four have battled for formal recognition of plurinationality, respect for Indigenous languages and anti-discrimination measures. In contrast, bills that would address some of the root causes of their communities' social and economic exclusion—such as lack of access to adequate housing, education, health, and

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employment—have rarely been presented by Afro-descendant and Indigenous legislators and even more rarely approved. It is not clear exactly why race- and ethnicity-based representatives have maintained such a comparatively limited agenda, although one can surmise that it may simply reflect their historical struggles for recognition of land rights, languages, and traditional and communal practices within the colonial and post-colonial framework. It may also be due to self-censorship on the part of legislators who anticipate political backlash or opposition from other members of congress, or unwillingness by race- and ethnicity-based political parties to focus on specific policy outcomes out of fear of alienating some constituents while responding to the needs of others. Whatever the reason, the lack of concrete social policy demands by Indigenous and Afro-descendant representatives remains a key barrier to overcoming the many facets of their social and economic exclusion.

COUNTRY CASE STUDIES

Politics in the 1980s and 1990s were marked by shifts in social and political identities and corresponding changes in mobilization. For the first time, Indigenous and Afro-descendant populations formed national, ethnically defined organizations and campaigns to demand recognition and rights. Among these regional efforts, though, Indigenous efforts were better organized, more cohesive and stronger than Afro-descendant mobilization in the region—a comparative advantage that carried over once the movements became more formally institutionalized in the political system.

The political environment and climate of democratic rights created by the transitions to elected governments provided a sustained, supportive framework for these new voices and demands. At the same time, the decision by many groups to resolve political differences democratically and—among the Left—pursue social justice through civil society and the ballot box demonstrated a broad consensus around tactics and strategy.

There was also a newfound awareness and willingness—pride, even—to self-identify among Indigenous and Afro-descendant groups. As a result, new constitutions in Guatemala (1985), Colombia (1991) and Ecuador (1998) incorporated some recognition of the state as a pluri-ethnic entity as did the 1994 constitutional reform in Bolivia. In the Colombian case, the new constitution established special districts and, consequently, seats for minorities (two in the lower house for Afro-descendants and two in the upper house and one in the lower house for Indigenous representatives).

While paths to the world of partisan politics differed by country, the formation of social movements was generally followed in the late 1990s by greater political participation of Indigenous and Afro-descendant movements. In some cases, it came through the formation of ethnically defined parties that drew from social movements; in others it was through the incorporation of social leaders into existing parties. In most it was a combination of both, assisted in part by the weakening of traditional party systems, the constitutional reforms described above and decentralization reforms that established local elections—and strengthened local governments.

The Afro-descendant movement, which we examine in the cases of Colombia and Ecuador, developed later. It suffered from greater fragmentation, a less clearly articulated sense of collective identity and a less coherent set of demands than the Indigenous movement. Indigenous peoples in Ecuador, Bolivia and Colombia have been largely rural; for many of the groups

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that emerged in the late 1980s and 1990s, their popular and political identities were closely bound up with the preservation of cultural and linguistic traditions and tied to ancestral lands. In contrast, Afro-descendants have dispersed across urban and rural communities, with a less ancestral claim to lands and a much more disparate set of demands. As a result of these differences, at the time of constitutional reform in a number of countries, Indigenous peoples had already mobilized sufficiently to participate in the constituent assemblies and help shape the resulting constitutions—reinforcing the difficulty of Afro-descendants to gain formal recognition of their rights and demands.

Bolivia

History: Identity, Social Movements and Political Participation

In Bolivia, income disparities closely follow ethnic and racial lines. According to the 2001 census, while 58.6 percent of Bolivians were in poverty, 90 percent of its Indigenous population fell below the poverty line.

Bolivia did not achieve universal suffrage—and thus the political enfranchisement of Indigenous peoples—until the Bolivian National Revolution of 1952. In the context of the Cold War and the prevailing discourse and ideology of social justice, however, politics and party cleavages in Bolivia—as in most of Latin America—were defined primarily by class struggle instead of ethnic identity. For the Indigenous, political identity was structured more around the peasant agrarian struggle and other forms of labor, such as in natural resource extraction industries, than around ethnicity.

The shifts in identity occurred in the 1970s and 1980s, and were spurred in part by the internal migration of Indigenous peoples from rural areas to urban centers. Census figures confirm a total demographic inversion of Indigenous peoples after 25 years: from 65 percent rural and 35 percent urban in 1976 to 35 percent rural and 65 percent urban in 2001.

The changing ethnic environment shifted Indigenous discourse to a greater emphasis on land rights as a means of preserving cultural heritage, and eroded the foundations of traditional political parties. The nationalist doctrine that since 1952 had been the banner of the *Movimiento Nacional Revolucionario* (National Revolutionary Movement—MNR) party, which had been built on the idea of a class struggle, lost its hold on popular imagination with the rise of ethnic identity.[6] The same was true of other political parties that between 1982 and 1993 had based their identity and mobilization on exploiting class divisions.

In conjunction with the trends in internal migration and ensuing evolution of ideology, social movements emerged during this time—many with outside backing from global multilateral organizations and European nongovernmental organizations—as a tool to mobilize disparate ethnic and labor interests and give political voice to their demands. The most prominent of these movements are: the *Confederación Sindical Única de Trabajadores Campesinos de Bolivia* (Unified Confederation of Rural Workers of Bolivia—CSUTCB); the *Confederación de Pueblos Indígenas de Bolivia* (Confederation of Indigenous Peoples of Bolivia—CIDOB); the *Centro de Estudios Jurídicos*

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e Investigaciones Sociales (Center for Juridical Studies and Social Research—CEJIS), which acts as a pro-Indigenous think-tank; and *Consejo Nacional de Ayllus y Markas del Qullasuyu* (National Council of Ayllus and Markas of Qullasuyu—CONAMAQ).

All of these trends converged into the attention-grabbing 1990 March for Territory and Dignity, organized by CIDOB and other high-profile movements, which demanded protections for Indigenous territories and greater awareness of Indigenous rights. This protest resulted in Bolivia's ratification of the 1991 ILO Convention 169 on Indigenous and Tribal Peoples.

Since first being established, social movements have been a powerful force in Bolivia for generating political action and coalescing around a cause. To further these causes, social movements play a critical role in party formation. Many of the earliest Indigenous representatives, in the 1989–1993 congressional term, belonged to parties that appealed to the Indigenous agenda—including *Movimiento de la Izquierda Revolucionaria* (Movement of the Revolutionary Left—MIR) and *Conciencia de Patria* (Conscience of the Homeland)—but were not founded on an Indigenous ideology. Nevertheless, social movements maintained a politically active—and powerful—role in their national ranks.

Larger, traditional parties began to form pacts with smaller, burgeoning Indigenous and *campesino* parties or appealed to social movements by promising to adopt their agendas. In the 1993 presidential election, Gonzalo Sánchez de Lozada of the MNR party successfully nominated Víctor Hugo Cárdenas, an Aymara leader of the *Movimiento Revolucionario Túpac Katari de Liberación* (Túpac Katari Revolutionary Liberation Movement—MRTKL) party, to run on the vice-presidential ticket.

Yet the majority of Indigenous representation in contemporary Bolivia has occurred under the *Movimiento al Socialismo* (Movement for Socialism—MAS) party banner. Founded in 1995, MAS—though legally a political party led by current President Evo Morales, an Aymara—is a confederation of labor movements (e.g., coca unions, mining unions, and peasant unions), Indigenous

movements (e.g., CSUTCB, CIDOB, and CONAMAQ) and left-leaning intellectuals (e.g., the *comuna* led by the non-Indigenous Vice President Álvaro García Linera). Today, in the 2009–2014 congressional term, all 43 members of the Indigenous delegation are from MAS, with many of them appointed directly by member social movements.

Representation and Legislation

Indigenous political representation has dramatically changed the composition and role of the Bolivian legislative and executive systems. Since the country's transition to democracy in 1982 until 2009, Bolivia's *Congreso Nacional* (National Congress) comprised two bodies: a 130-seat Chamber of Deputies and a 27-seat Senate with three senators from each of Bolivia's nine departments.

The 2009 Constitution changed the name of the legislature to the *Asamblea Legislativa Plurinacional* (Plurinational Legislative Assembly). Although the new constitution kept the bicameral structure of the congress, it altered its numerical composition: it is now a 137-seat Chamber of Deputies with seven reserved seats for race- and ethnicity-based peoples; and a 36-seat Senate with four senators from each of Bolivia's nine departments. The seven reserved seats are apportioned as one for each of the seven departments that have the highest ethnic constituencies; the nominees are appointed by traditional customs but voted on by the entire department.

To examine the patterns of Indigenous Bolivian representation in congress and their effect on legislation and policymaking, we selected four different congressional periods since Bolivia's transition to democracy: 1989–1993, the lowest level of ethnic congressional representation; 1993–1997, the first time in which an Indigenous leader, Víctor Hugo Cárdenas, served as vice president; 2005–2009, President Morales' first term; and 2009–2014, the first congress under the new plurinational constitution, the period with the highest level of ethnic congressional representation and the only period with any Afro-Bolivian representation (one deputy).

Across these four periods, we discovered that, on average, the Indigenous and Afro-Bolivian representatives occupied 12 percent of congressional seats, despite 62 percent of the national population self-identifying as "Indigenous" in the 2001 census. Even in the current congressional term (2009–2014), under the authority of the new constitution, only 25 percent of congressional

> **The level of Indigenous participation in congress has increased quantitatively with each highlighted session, with its highest point achieved in the current Plurinational Legislative Assembly.**

seats are filled by Indigenous or Afro-Bolivian representatives—despite MAS being voted into power by 64 percent of the electorate and with 80-percent support of Indigenous voters. In the context of the new, hyper-ethnically charged Bolivia, this presents somewhat of a paradox.

Given the heterogeneity of the Indigenous population in Bolivia—there are 36 Indigenous languages spoken in a country of nearly 10 million people—it would be a mistake to ascribe MAS as the sole party of Bolivia's Indigenous. In Morales' first election in 2005 and re-election in 2009, the base of the MAS vote was primarily rural, Andean, Aymara, and Quechua—the latter representing the wide majority of Indigenous in the highlands. Over the course of Morales' electoral history since 2005, the correlation between vote and ethnicity on a national level was 0.80. In contrast, the correlation between the MAS vote and the Indigenous in the lowlands—80 percent of whom are Guaraní—was 0.20.[7]

Commitment by the lowlands Indigenous groups to MAS has decreased further in recent months. Many of the lowlands-based Indigenous identify best with CIDOB, which counts the *Asamblea del Pueblo Guaraní* (Assembly of the Guaraní People) within the ranks of its confederation. CIDOB has criticized President Morales for pursuing natural resource extraction projects on traditional Indigenous lands, and actually voted for President Morales' opponent in 2009 in order to prevent Aymara and Quechua leaders from exercising too much political power. MAS won nonetheless, and set aside seats for CIDOB in its legislative delegation in an effort to heal the breach Yet with the fallout of President Morales' decision in 2011 to approve construction of a highway through the protected Indigenous territory known as *Territorio Indígena y Parque Nacional Isiboro-Sécure* (Isiboro-Sécure National Park and Indigenous Territory—TIPNIS)—ignoring the desires of TIPNIS residents and bypassing the constitution—CIDOB ultimately decided in January 2012 to break from MAS. Nevertheless, CIDOB represents a small percentage of MAS membership and President Morales enjoys overall support from highlands-based Indigenous populations, including Aymaras and Quechuas.

The level of Indigenous representation in congress has increased quantitatively with each of our highlighted sessions, with its highest point achieved in the current Plurinational Legislative Assembly. At the same time, the tendency of Indigenous representatives to collectively support legislation that affects Indigenous communities also increased, from 50 percent during the 1989–1993 congressional period—on one Indigenous-impacting bill that was introduced by a non-Indigenous representative—to 100 percent since. This occurred as Indigenous representation and its partisan differentiation increased. Although Indigenous representatives have never formed a *bancada* (caucus), they have tended to vote as a bloc. (See Figure 1)

FIGURE 1: INDIGENOUS REPRESENTATIVES IN BOLIVIA AND BILLS PROPOSED/PASSED

REPRESENTATIVE CONGRESSIONAL SESSION	NUMBER OF INDIGENOUS LEGISLATORS (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 1989–1993	4 of 157 (3%)	1	0 (0%)	Not applicable (The bill never made it to the floor of the legislature)	Not applicable
National Congress 1993–1997	6 of 157 (4%)	1	1 (100%)	100% in favor	Executive branch (Vice President Víctor Hugo Cárdenas)
National Congress 2005–2009	27 of 157 (17%)	4	4 (100%)	100% in favor	Social movements (CEJIS, CSUTCB, CIDOB, CONAMAQ)
Plurinational Legislative Assembly 2009–2014	43 of 173 (25%)	3	2 (67%)	100% in favor	Indigenous and Afro-Bolivian representatives

National Congress, 1989–1993

The only bill proposed by Indigenous representatives in the 1989–1993 period was put forward by CIDOB and was related to the protection of and respect for traditional Indigenous laws. It did not pass the commission in which it was introduced, and thus it was not submitted to the legislature. A large focal point of the Indigenous agenda at this time was related to respect for territorial claims and preservation of Indigenous cultures. To this end, a bill that did pass during the 1989–1993 term was the Environment Law, No. 1333, passed in 1992. Although introduced in the congress by a non-Indigenous representative, Jorge Torres Obleas of the MIR party, this bill was the product of negotiations between then-President Jaime Paz Zamora and CIDOB and CEJIS—the

Indigenous social movements—following the 1990 March for Territory and Dignity. It was another policy outcome that complemented the ratification of ILO Convention 169.

National Congress, 1993–1997

A new congress took office shortly after Law No. 1333 was signed. These legislators, six of whom were Indigenous, approved seven bills affecting Indigenous communities. One of them was the Law of Popular Participation proposed by then-Vice President Cárdenas, a former Indigenous representative from the MRTKL party.

Miguel Urioste, a non-Indigenous deputy of the *Movimiento Bolivia Libre* (Free Bolivia Movement—MBL), introduced a bill in 1996 that proposed reform of Bolivia's distribution of agrarian lands. The legislation created Indigenous-specific territories: *tierras comunitarias de origen* (communal lands of origin). Urioste was aided by outside organizations—CEJIS and Fundación TIERRA, a think-tank allied with MBL—in his legislative effort.

The other five bills approved in this congressional term were five different issues submitted as articles of the larger constitutional reform process of 1994; all of them were submitted by non-Indigenous representatives but each one had been drafted by CEJIS and advocated by CIDOB. The proposals dealt with: Bolivia's multi-ethnic character; individual equality under the law; free interpreters and legal defense for Indigenous peoples; agrarian development for occupants of rural land; and respect for Indigenous practices in their communal lands.

National Congress, 2005–2009

The greatest achievement for Indigenous communities in this period was the passage of an entirely new constitution. The Bolivian Congress continued functioning—ultimately charged with approving the newly drafted constitution before sending it to national referendum—while the constituent assembly drafted the new constitution. Indigenous-oriented social movements—CEJIS, CSUTCB, CIDOB, and CONAMAQ—were responsible for four articles of the new constitution, which we are considering as four separate legislative projects for the purpose of this study. The four articles cover the issues of: equality for all residents of the state (i.e., all genders, all Indigenous nations, and all cultures); a decentralized society with a return to Indigenous self-determination; universal education incorporating discussion of decolonization; and recognition of traditional judicial prerogatives over Indigenous ancestral land.

Plurinational Legislative Assembly, 2009–2014

The current bicameral congress convened mere months after the new constitution was enacted. To date, it has produced three ethnic-oriented laws, all proposed by Indigenous representatives and, in one case, by the sole Afro-Bolivian deputy and two of them approved by both houses and signed by the president. Those two centered on the topics of anti-discrimination and the harmonization of the national justice system with traditional Indigenous judicial norms. The one failed initiative proposed by an Indigenous member dealt with protecting the rights of Indigenous languages.

One other bill addressing Indigenous demands that was passed during this term was introduced by the non-Indigenous Minister of Autonomies Carlos Romero, a MAS leader, former executive director of CEJIS and a member of President Morales' cabinet. His original bill established a new level of governing by granting autonomy to traditional Indigenous communities from the original political divisions of departments, provinces and municipalities. The bill also demonstrated the close working relationship between the MAS-controlled executive and MAS-controlled legislature.

Unique Representative Laws

Across the four highlighted congressional representative periods in this report—1989 to 1993, 1993 to 1997, 2005 to 2009, and 2009 to 2014—a total of nine bills introduced by Indigenous or Afro-Bolivian representatives that promoted Indigenous and minority rights or advocated for equality and plurinationalism became law. These legislative successes are all the more notable because Bolivia's Indigenous representatives have always been in the minority in both houses. Part of this success is due to the activity and strength of pro-Indigenous social movements. As groups like CIDOB, CONAMAQ and CEJIS have become more vocal and powerful, non-Indigenous representatives in the legislative majority have increased their support for ethnic representatives and the issues they espouse. Part of the explanation for party bloc voting also likely stems from the fact that party leaders commit their representatives to a party-line vote.

Law of Popular Participation, No. 1551, 1994

Introduced by Vice President Víctor Hugo Cárdenas, the purpose of the Law of Popular Participation was to promote and consolidate the participation of

> **As groups like CIDOB, CONAMAQ and CEJIS have become more vocal, non-Indigenous representatives in the legislative majority have increased their support for ethnic representatives and issues.**

all Indigenous communities into Bolivia's legal, political and economic fabric. In effect, Law 1551 classified anyone "Indigenous" as a legal subject of attention from the State and promised a more just distribution of public resources.

The law encouraged citizen participation in *organizaciones territoriales de base* (base territorial organizations—OTB)—institutions created to facilitate residents' social control over their territories and criticism of municipal governments. OTBs promoted inclusion of all groups, including Indigenous peoples, into the political system. All six Indigenous representatives voted in favor of the legislation as did 81 non-Indigenous representatives—effectively surpassing the 79 votes needed to pass. President Gonzalo Sánchez de Lozada signed the bill on April 20, 1994.

Prior Consultation, 2009

Among the most significant political reforms for Indigenous demands was the 2009 constitution, the 17th in Bolivia's history, which entered into force in February of that year. The promise of a new constitution that would reflect Bolivia's ethnic diversity and demands was the foundation of Evo Morales' successful presidential campaign in December 2005. Shortly after his inauguration, the president called for an election to select a constituent assembly—which was formally convened by August 2006. This constituent assembly approved the new constitution, which officially changed the definition of the Bolivian political system from a "republic" to a "plurinational state," in December 2007 and was ratified by national referendum in January 2009. The language for the pro-Indigenous clauses of this constitution were motivated by the UN Declaration on the Rights of Indigenous Peoples, which Bolivia adopted in September 2007.

A key right that was fashioned in the 2009 constitution was the concept of *consulta previa* (prior consultation), which is applied in instances of internal jurisdiction of Indigenous communities. *Consulta previa*—appearing in the new, in-force constitution as Article 11, Clause 3 and Article 30, Clause 2, Number 15—obliges the state to call for a referendum to obtain permission

from Indigenous populations relating to the exploitation of natural resources in their protected territories. Both of these articles grant sovereignty to Indigenous ethnicities and raise them to the status of nations, giving them the legal status of self-determination.

Furthermore, the issue of decolonization appears in the new constitution, which prioritizes the culture of "Indigenous and original ancestry" in order for the cultural representation of the state to be fundamentally plurinational in all aspects of social life. The constitution was supported by the entire Indigenous delegation as well as the non-Indigenous allies of Evo Morales.

Law to Combat Racism and All Forms of Discrimination, No. 045, 2010

An important legislative achievement for the traditionally marginalized Indigenous populations and ethnic minorities was the national law to penalize any form of discrimination, particularly racism. Introduced into the Chamber of Deputies by Jorge Medina, Bolivia's only deputy of African descent, Law 045 legislates tolerance toward all communities and penalizes acts of discrimination, levying prison sentences ranging from six months to six years. The entire Indigenous delegation of 43 members voted in favor of the legislation, as did 68 members of MAS. Despite the government opposition bloc voting against the measure, the bill passed on October 8, 2010, and was signed into law that same day by President Morales.

Law of Jurisdictional Delimitation, No. 073, 2010

A longstanding desire of the Indigenous populations was state recognition and legalization for their native judicial practices, many of which preceded Bolivia's colonization and modern founding. The Law of Jurisdictional Delimitation, proposed by Edwin Tupa, an Indigenous representative and head of the MAS delegation, addressed this demand. The law separates Bolivia's judicial recognition into two forms: the ordinary state model and the communal, Indigenous methods of justice. Law 073 harmonizes the penal and administrative codes: if an Indigenous person commits a crime on Indigenous territory, the Indigenous practices apply; however, if this same person commits a crime in non-Indigenous territory, then general jurisdiction takes over. The entire Indigenous and MAS delegation supported this bill; President Evo Morales signed the measure into law on December 29, 2010.

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*.[8] 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 populations 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 Constitution of 1991, which recognized Colombia as multiethnic and multicultural nation. Despite its smaller population, the Indigenous movement was better organized than the Afro-Colombian movement by the early 1990s when the constitution was drafted. Two Indigenous leaders, Lorenzo Muelas and 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, such as 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 the Afro-descendant population. Finally, Law 649 of 2001 granted Indigenous representatives an additional seat in the Chamber,

> **The turning point for Indigenous and Afro-Colombian representation was the Constitution of 1991, which recognized Colombia as a multiethnic and multicultural nation.**

giving this group a total of three seats across both bodies of Congress.[9]

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 electoral competition among Afro-related movements and parties resulting in political fragmentation and marginalization from larger political parties. 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 Politica Economica 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 socioeconomic 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 levels 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 Indigenous 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

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 into law.

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 (*Afrounninca*)—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 Afro-descendant 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

> **While ethnic representatives helped sponsor legislation, non-ethnic representatives authored more bills relating to Indigenous and/or Afro-Colombian peoples between 1998 and 2010.**

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 peoples.

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 in the implementation of the health care programs.

Public 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 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.

> **The support of the executive branch—from individual ministries or the president's office—was instrumental in introducing or promoting individual initiatives.**

Prior Consultation, 1991 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 through Law 21 of 1991, which ratifies ILO Convention 169, and the mechanism for implementation was 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. Originally the practice applied only to Indigenous groups, but was extended to their Afro-Colombian counterparts through Law 70 of 1993 that recognized this population's collective land rights. 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 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 are in charge of verifying the presence of ethnic groups and assuring their participation in the implementation of natural resources extraction projects.

Ecuador

History: Identity, Social Movements and Political Participation

Until the Constitution of 1979, Indigenous people—the majority of whom were illiterate—did not have the right to vote in Ecuador. But beginning in 1980, they began to mobilize. Until the 2000s, the clearest and most powerful manifestation of the political awakening of Ecuador's Indigenous was the *Confederación de Las Nacionalidades Indígenas del Ecuador* (Confederation of Indigenous Nationalities of Ecuador—CONAIE). One of CONAIE's original demands—together with other grassroots organizations—was that the government promote a bilingual intercultural educational system, which it achieved in 1988. Later, CONAIE participated in a series of popular Indigenous uprisings in 1990, 1994, 1996, and 2001—the latter two leading to the replacement of elected presidents—with demands for formal ethnic recognition and recognition of Indigenous civil and collective rights.

However, social pressure was not the only key to opening up space for Indigenous political participation; the reforms of the political system also played a part. International and regional political transformations—including constitutional reforms in Colombia (1991), Peru (1992), Bolivia (1994), and Venezuela (1999)—paved the way for an opening of Ecuador's political system to Indigenous people.[11] In 1994, then-President Sixto Durán Ballén called and secured passage of a referendum on the political participation of independent groups and political movements. As a result, the CONAIE and other social organizations created the *Movimiento de Unidad Plurinacional Pachakutik-Nuevo Pais* (Pachakutik Plurinational Unity Movement-New Country—MUPP-NP, or *Pachakutik*) in 1996, and subsequently, Indigenous evangelical organizations founded the *Amauta Yuyay* party.[12]

The 1998 Constitution ratified the possibility of independent political movements and candidates' electoral participation, along with the formation of political parties. In 1999 the creation of the *Consejo de Desarrollo de las Nacionalidades y Pueblos Del Ecuador* (Council for the Development of the Indigenous Peoples and Nationalities of Ecuador—CODENPE) as a government body charged with Indigenous issues ensured that a portion of the state's economic and technical resources would be earmarked for the promotion of the social and economic development of Indigenous peoples. Later, the 2008 Constitution (Articles 108 and 109) established the right of political movements and parties to compete in elections.

Whether through *Pachakutik*, *Amauta Yuyay* or, more recently, *Alianza Pais*, Indigenous peoples—as part of an ethnic movement—have participated in the political process and elected representatives to congress, constituent assemblies, local governments (prefectures, mayoralties, and city councils), and even the executive branch of government. *Pachakutik* has historically had the greatest success in national legislative and presidential/vice-presidential elections, but today President Rafael Correa's coalition, *Alianza Pais*, competes also for Indigenous votes and support as does *Amauta Yuyay*, a smaller political movement of Indigenous evangelicals, which has generated greater polarization among Indigenous groups and leaders competing for their support.

Afro-Ecuadorians' participation as social and political actors is more recent, beginning approximately 20 years ago. The movement, which coalesced around ethnic-territorial and cultural rights, has rural, ecclesiastic and cultural origins, in addition to an urban base. From the start, it was defined by a set of heterogeneous demands. Various groups sprung up with their own agendas, organizational structures, political and cultural frameworks, and strategies for furthering political recognition and objectives.

In spite of this fragmentation and internal competition, an umbrella organization, the *Consejo de Coordinación del Pueblo Afroecuatoriano* (Coordinating Council of the Afro-Ecuadorian People—COCOPAE), among others, attempted to articulate a broad common agenda and strategy for the Afro-Ecuadorian movement. Sadly, the racially-motivated assassinations in the late 1990s of 17-year-old Patricia Congo and 32-year-old Mireya Congo Palacios (a maid whose attackers included two escort police for the National Congress) and the ensuing public demonstrations and formal complaints to seek justice helped both to bring public awareness to the issues of Afro-Ecuadorians and to forge a common reference point within the movement.

In 1996 Congress passed a bill designating the first Sunday in October the National Day of the Afro-Ecuadorian People, recognizing Alonso de Ilescas as a national black hero and mandating that Afro-Ecuadorian history be included in school curricula. During the Constituent Assembly of 1998, a proposal to recognize the "pueblo negro" was approved, thanks to the support of an Indigenous legislator (Nina Pacari Vega), but lacking initiative by the sole Afro-Ecuadorian member of the Assembly.

In 1998 the Ecuadorian government created by executive decree the *Corporación de Desarrollo Afroecuatoriano* (Corporation for Afro-Ecuadorian Development—CODAE), a not-for-profit government body whose goal

> **Social pressure was not the only key to opening up space for Indigenous political participation; the reforms of the political system also played a part.**

was to further the inclusion and integration of Afro-Ecuadorians into society at large. While an important recognition of Afro-Ecuadorian issues, the organization has struggled with a limited budget and mandate, as well as with divisions with the community it seeks to represent.

For many marginalized groups—the Indigenous, Afro-Ecuadorians, women, labor unions, environmentalists, etc.—President Rafael Correa's election in 2005 signaled a major shift in Ecuador's political landscape. Correa had campaigned on the promise of convoking another constituent assembly to reorganize the Ecuadorian state, and the 2007–2008 Assembly captured the hopes of Indigenous and Afro-Ecuadorian peoples to demand and finally secure full recognition of their rights.

Because of their participation in the 2007-2008 Constituent Assembly (seven representatives were Afro-Ecuadorians) and alliances with other movements, the 2008 Constitution reflected many of the demands of the Afro-Ecuadorian movement, including recognition of Afro-Ecuadorian collective rights and the criminalization of racism and discrimination. After it was drafted, the Afro-Ecuadorian movement supported the referendum to approve it.

Nonetheless, while long fought for, the constitutional guarantees alone have not been sufficient. Prior to and since the approval of the 2008 Constitution, Afro-Ecuadorian movements have had to work to promote the adoption of these guarantees into law and practice. At the local level, groups like the *Federación de Organizaciones y Grupos Negros de Pichincha* (Federation of Black Groups and Organizations of Pichincha—FOGNEP) successfully lobbied for the passage, in July 2007, of affirmative action employment and education laws in the municipality of Quito.

Afro-Ecuadorian movements have also increased their visibility on the national scene. Today there is one Afro-Ecuadorian governor, Roberto Cuero of Guayas province, and to date there have been two Afro-Ecuadorian cabinet-level ministers: Antonio Preciado, Minister of Culture from 2007 to 2008, and Alexandra Ocles, Minister of Peoples, Social Movements and Civic Participation from 2010 to 2011. Yet the movement depends

largely on individual relationships with the state, especially the executive branch, which has taken incremental steps to address its demands.

Representation and Legislation

Since the adoption of its 1979 Constitution, Ecuador has had a unicameral legislature, variously titled. It has held two constituent assemblies in that period, ending with the approval of new constitutions in 1998 and 2008. The 2008 Constitution established the *Asamblea Nacional* (National Assembly) as the national government's sole legsislative body, consisting of 124 members elected through a mixed system and without reserved seats for minority groups. We have focused on four key political moments to analyze the representation of Indigenous peoples and Afro-Ecuadorians in national politics and their effectiveness: the 1996–1998 National Congress; the 1998 Constituent Assembly; the 2007–2008 Constituent Assembly; and the 2009–2013 National Assembly.

INDIGENOUS REPRESENTATION

The 1996–1998 Congress and 1998 Constituent Assembly were the first time in Ecuador's history that Indigenous groups demanded that the state recognize Ecuador's plurinationality as well as Indigenous justice and collective rights. Indigenous representatives historically have tended to come from a limited range of parties. In the 1990s Indigenous interests were largely represented by the CONAIE and its political arm, the MUPP-NP, but by the time of the 2007–2008 Constituent Assembly and elections to the 2009–2013 term, representation of the Indigenous movement had become dispersed among the *Alianza Pais* coalition, *Amauta Yuyay* and other parties in addition to MUPP-NP.

National Congress, 1996–1998

In the 1996–1998 period, only one bill relating to Indigenous communities was introduced—the Creation of the Intercultural University of the Indigenous Nationalities of Ecuador. It failed to pass through the first debate.

Constituent Assembly, 1998

In drawing up the 1998 Constitution, three bills relating to collective rights, plurinationality and land and territory issues were introduced. Only the bill

proposing the incorporation of the collective rights of Indigenous peoples, in accordance with ILO Convention 169, was approved. Implementation, however, has proved elusive. For example, the bill titled "Exercising the Collective Rights of Indigenous Peoples," sponsored by the Indigenous legislator Gilberto Talahua in the 1998–2003 Congress, proposed the creation of autonomous Indigenous governments and the administration of justice in accordance with Indigenous practices. However, it was vetoed in its entirety by the executive.

FIGURE 4: INDIGENOUS REPRESENTATIVES IN ECUADOR AND BILLS PROPOSED/PASSED

REPRESENTATIVE CONGRESSIONAL SESSION	NUMBER OF INDIGENOUS LEGISLATORS (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 1996–1998	4 of 82 (4.9%)	1	0 (0%)	0	Not applicable
Constituent Assembly 1998	3 of 124 (2.4%)	3	1 (33%)	100% in favor	*Pachakutik* bloc-based on ILO 169
Constituent Assembly 2007–2008	4 of 130 (3.1%)	6	6 (100%)	100% in favor	CONAIE, Indigenous legislators
National Assembly 2009–2013	5 of 124 (4.0%)	7	1 (14%)	20% in favor	Indigenous legislator (Pedro de la Cruz, *Alianza Pais*)

Constituent Assembly, 2007–2008

In contrast to its strong role in the 1998 Constitution, during the 2007–2008 Constituent Assembly CONAIE found itself in a moment of instability, internal confrontation and exhaustion.[13] The relationship between CONAIE and other umbrella and grassroots Indigenous organizations—such as the *Federación Nacional de Organizaciones Campesinas Indígenas y Negras* (National Federation of Indigenous, Peasant, and Black Organizations) and the *Federación Ecuatoriana de Indígenas Evangélicos* (Ecuadorian Federation of Evangelical Indigenous) was characterized by rupture and a lack of cooperation. Despite this situation, they introduced and secured approval of six articles in the new constitution: recognition of the plurinational character of the Ecuadorian state; interculturalism; land and territory of the Indigenous peoples; the proclamation of Kichwa

> **In contrast to its role in the 1998 Constitution, during the 2007–2008 Constituent Assembly CONAIE found itself in a moment of instability, internal confrontation and exhaustion.**

as official language of Ecuador (accepted as an official language of intercultural relations); Indigenous justice; and environmental rights.

National Assembly, 2009–2013

In the 2009–2013 session of the National Assembly, Indigenous representatives have so far introduced seven legislative proposals, most of them having to do with formalizing cultural autonomy. One also proposes institutionalizing Indigenous judicial norms and procedures for coordination and cooperation with the existing established justice system. But despite the constitutional endorsement of the topic and the number of Indigenous representatives in congress, only one bill—to recognize food "sovereignty"—has passed (and barely that). The remainder have been "distributed," meaning accepted for debate and introduced to the appropriate committee, but are yet to be debated.

Between 1997 and 2007, three bills relating to Indigenous peoples were introduced by non-Indigenous legislators; none passed. In total, of 15 legislative bills (excluding constitutional projects) proposed by Indigenous legislators during the same period, three were approved: 1) the creation of a fund for development of the Indigenous peoples of Ecuador (1998–2003); 2) the creation of the Intercultural University of the Indigenous Nationalities and Peoples-Amawtay Wasi (2003–2006); and 3) a 1-percent tax on capital outflows abroad (2006–2007).

Two legislative bills affecting Indigenous rights have been introduced by Rafael Correa's government (i.e., 2007 to the present): a bill on water and a bill on mining. Although both adhere in principle to the constitutional norm of respect for environmental rights and prior consultation, under current law they represent a challenge to Indigenous land rights. The bill on mining, for example, mentions the necessity for prior consultation of the Indigenous peoples, but it does not consider such consultation to be binding.[14]

The National Assembly ultimately approved the bill on mining—despite the opposition of Indigenous groups throughout

the country—but it shelved the bill on water until the government could consult with the Indigenous communities.

AFRO-ECUADORIAN REPRESENTATION

The 2007–2008 Constituent Assembly marked the first time Afro-Ecuadorians were visibly present in the political process via the seven representatives they elected to the Assembly (an all-time high) and the 500 witnesses who attended plenary debates and votes. In contrast to its Indigenous counterpart, though, the Afro-Ecuadorian movement has never been able to coalesce within a single political party. Its representatives in the 2007–2008 Assembly and current legislative session came from *Alianza Pais*, *Partido Sociedad Patriotica*, *Movimiento Popular Democrático*, *Partido Roldocista*, and others.

FIGURE 5: AFRO-ECUADORIAN REPRESENTATIVES AND BILLS PROPOSED/PASSED

REPRESENTATIVE CONGRESSIONAL SESSION	NUMBER OF AFRO-ECUADORIAN LEGISLATORS (AND % OF TOTAL)	NUMBER OF BILLS PROPOSED BY AFRO-ECUADORIAN LEGISLATORS AFFECTING AFRO-ECUADORIAN COMMUNITIES	NUMBER OF BILLS PROPOSED BY AFRO-ECUADORIAN LEGISLATORS AFFECTING AFRO-ECUADORIAN COMMUNITIES THAT WERE APPROVED (AND % OF TOTAL)	HOW AFRO-ECUADORIAN REPRESENTATIVES VOTED ON BILLS APPROVED	SOURCES/ GENESIS OF BILLS ULTIMATELY APPROVED
National Congress 1996–1998	0 of 82 (0%)	0	Not applicable	Not applicable	Not applicable
Constituent Assembly 1998	1 of 124 (0.8%)	1	1 (100%)	100% voted not in favor	Indigenous representatives (Nina Pacari)
Constituent Assembly 2007–2008	7 of 130 (5.4%)	1	1 (100%)	100% voted in favor	Indigenous/Afro bloc
National Assembly 2009–2013	2 of 124 (1.6%)	1	0 (0%)	Not applicable	Executive branch (CODAE)

National Congress, 1996–1998

No Afro-Ecuadorian legislators were elected to the 1996–1998 session of Congress.

Constituent Assembly, 1998

The only proposal made during the Constituent Assembly of 1998 that would benefit the Afro-Ecuadorian community was the one made by an Indigenous representative, Nina Pacari Vega (*Pachakutik*), to recognize the "*pueblo negro*."

Members of various Afro-Ecuadorian civil society organizations lobbied assembly members to vote in favor of this recognition.

Constituent Assembly, 2007–2008

Though the high level of representation of the Afro-Ecuadorian community during the 2007–2008 Constituent Assembly has not been reached before or since then, Afro-Ecuadorians were only able to secure passage of one proposal important to them—recognition as subjects deserving of collective rights. Though members of the Assembly initially proposed the article as separate from the corresponding one for Indigenous communities, the final text grouped Indigenous, Afro-Ecuadorians and Montubios (coastal people of mixed-race and Indigenous descent) together in its consideration of subjects eligible for collective rights. That article also criminalized racially-motivated acts of violence—a notable victory for the Afro-Ecuadorian community, if only a symbolic one. It wasn't until a reform to the code on penal procedures was approved—in March 2009—by a legislative commission tasked with handling the transition to the new constitution that the guarantee acquired any practical implications or mechanisms for enforcement. (Incidentally, that reform was proposed by a member of the constituent assembly, Alexandra Ocles, who later became a cabinet-level minister in the government of President Correa.) The constitutional article and reform law together have permitted various victims of violent acts to initiate judicial proceedings against their perpetrators.

National Assembly, 2009–2013

The only bill under consideration in Ecuador's current congressional session that would benefit the Afro-Ecuadorian community is one proposed by CODAE. Titled the Organic Law of the Collective Rights of the Afro-Ecuadorian People, the bill sets out to define the collective rights of Afro-Ecuadorians under the most recent constitution, as well as specify the mechanisms by which they can be upheld.

Unique Representative Laws

Three legislative proposals presented by Indigenous groups encapsulate many of the basic demands that Indigenous communities and organizations have historically made on the Ecuadorian state. These are: 1) recognition of the plurinational character of the Ecuadorian state; 2) official recognition of

> **The 2007–2008 Constituent Assembly marked the first time Afro-Ecuadorians were visibly present in the political process, via seven representatives and 500 witnesses.**

Indigenous territories with their own juridical, political and administrative functions; and 3) the requirement that local communities be consulted before investment in natural resource extraction (*consulta previa*).

The proposal regarding territorial recognition also affects the Afro-Ecuadorian community, as does the ongoing Law of Collective Rights in its various iterations.

Plurinational State, 1998 and 2008

The proposal to declare Ecuador a plurinational state has been a consistent issue in Ecuadorian politics for years, boiling over nationally and publicly in the Indigenous protests of 1990. Conservatives and much of the Ecuadorian political class viewed this proposal with suspicion—if not outright fear—believing it would threaten national unity and balkanize Ecuador. In contrast, many Indigenous believed it would help end discrimination and would "strengthen unity in diversity," as Assemblywoman Nina Pacari Vega said.[15]

Despite the numerous arguments presented by CONAIE and Indigenous assembly members, the 1998 Constituent Assembly settled on calling Ecuador "pluricultural and multiethnic" (Article 1) rather than "plurinational." Indigenous groups got a second try in the 2008 Constituent Assembly, when CONAIE—with the help of assembly members—placed the need for the recognition of the plurinational character of the Ecuadorian state at the center of the debate.

Following a series of deliberations, and with the support of the majority of assembly members of *Alianza Pais*, the concept of plurinationality was accepted as a defining term of the character of the Ecuadorian state. But the assembly members emphasized unity and the predominance of the central state over territorial autonomy while also declaring that the natural resources belonged to the state.

Indigenous Territories, 1998 and 2008

The demand for the formation of territorial districts and state recognition

of Indigenous territories has been among the most important priorities for Indigenous communities. Historically, community, familial and civil disputes have been resolved in the community and in its corresponding territory, at the margins of state law—which rarely has offered solutions. For the Indigenous peoples, the recognition of territorial districts would legitimize their possession of the land and administration of justice, strengthen their cultural identity and guarantee their future and integrity.

The question of the Indigenous territories was incorporated into the Constitution of 1998, and in the 2008 Constitution, these appear as territorial districts. However, these territories are not part of the regular territorial organization of the state and as such lack the same rights, such as access to regional and local public (provincial, canton and parish) budgets.

In October 19, 2010 the National Assembly approved the *Proyecto de Código Orgánico de Organización Territorial, Autonomía y Descentralización* (Constitutional Code of Territorial Organization, Autonomy and Decentralization—COOTAD), a bill that would regulate the specific levels of government and indicating the conditions according to which the Indigenous, Afro-Ecuadorian and coastal territorial districts would be established. The law's objective was "to promote the construction of the plurinational and pluricultural character of the state, as defined in the Constitution, and to recognize the ancestral peoples' forms of self-government."[16] The COOTAD is an important juridical tool that in coming years will enable the Indigenous peoples to form territorial districts and constitute an autonomous Indigenous government capable of resolving communal conflicts and to generate public policies.

Prior Consultation, 2008

In response to Indigenous demands and international law—namely ILO Convention 169—the 2008 Constitution, in Article 57, No. 7, declares the "mandatory" implementation of "prior, free, and informed consultation…on plans and programs of exploration, exploitation, and commercialization of non-renewable resources." Despite this constitutional prescription, Article 408 of the constitution states that the resources of the land, subsoil and water—as well as the biodiversity and its genetic patrimony and the radio-electrical spectrum—are the "inalienable, imprescriptible, and un-seizable property of the state."

The last caveat has led to tensions between the government and Indigenous organizations.[17] From the government's point of view, the consultation should be of an informative nature but not binding, but many representatives of the

Indigenous movement—including the *Pachakutik* bloc—say "the consultation has to be binding" to comply fully with the spirit of the ILO Convention.[18] The articles of Convention 169 specify a process for consultation but do not specifically mandate that the outcomes of that process be binding on governments.[19]

Law of Collective Rights of the Black and Afro-Ecuadorian Peoples, Resolution R-26-117

In 1996 Junior León, an Afro-descendant deputy from Esmeraldas, proposed a bill on the collective rights of Afro-descendants. Debate was postponed indefinitely, and then the resolution *Ley de los Derechos Colectivos de los Pueblos Negros o Afroecuatorianos* was resurrected and approved by the National Congress in the 2003-2007 session—though in a largely symbolic form, with no mechanisms for implementation. In September 2011, CODAE proposed a bill, the *Ley Orgánica de Derechos Colectivos del Pueblo Afroecuatoriano* (Organic Law of the Collective Rights of the Afro-Ecuadorian People), to establish principles and practices to protect the collective rights of the Afro-Ecuadorian people; guarantee their territorial rights; establish the means for the reparation, restitution and compensation in the case of violation of rights; and protect and conserve their environment and the border areas. It would also recognize the material and immaterial cultural patrimony, ancestral wisdom and medicine of the Afro-Ecuadorian people. At the time this report went to press, the bill had not yet been approved for distribution for review by the appropriate congressional committees and National Assembly at large.

Guatemala

History: Identity, Social Movements and Political Participation

Forty-one percent of Guatemalans self-identify as Indigenous, according to the 2002 census conducted by the *Instituto Nacional de Estadísticas* (National Statistics Institute—INE). This number has stayed relatively constant since the 1980s, though the actual Indigenous population is estimated to be closer to 60 percent. The vast majority of the Indigenous community is Maya (39.2 percent), while 0.14 percent are Xinca and 0.04 are Afro-descendant Garifuna.

Guatemala's 36-year-long civil war had a dramatic effect on the participation of the country's Indigenous population in civil society and their role in politics. For example, some of the early efforts at Indigenous organization, such as the *Federación Nacional Campesina* (Guatemalan Federation of Peasants), were created in response to violence. Many others served to group and defend Indigenous communities and formed the basis for later Indigenous political movements.

In 1984, Guatemala held elections to choose a constituent assembly to draw up a new constitution. Its approval in 1985 marked the beginning of Guatemala's transition to democracy. This era gave way to Indigenous popular movements like the *Consejo de Organizaciones Mayas* (Council of Maya Organizations) that demanded recognition of Guatemala's ethnic and cultural diversity, basic human rights and restitution for victims of the civil war.

The negotiation of the peace process in the early 1990s created an opportunity for engagement of various Indigenous organizations in shaping post-war Guatemala. The *Acuerdo de Identidad y Derechos de los Pueblos Indígenas* (Agreement on the Identity and Rights of Indigenous Peoples—AIDPI)—part of the Peace Accords signed by the government, *Unidad Revolucionaria Nacional Guatemalteca* (Guatemalan National Revolutionary Unity—URNG) guerrillas and the United Nations in 1996—recognized Guatemala for the first time as a multiethnic, multilingual and multicultural nation. The following year, the Guatemalan government signed ILO Convention 169 on Indigenous and Tribal Peoples.[20] Many of these legislative victories came about via pressure from the *Coordinadora de Organizaciones del Pueblo Maya de Guatemala* (Coalition of Maya People's Organizations—COPMAGUA), an alliance of more than 200 Indigenous organizations and the first national Indigenous movement. COPMAGUA fought for the constitutional recognition of the Maya people; the legal recognition of Maya forms of organization,

“Guatemala does not have formal laws or policies to promote political Indigenous representation, such as electoral quotas in its political parties or reserved seats in the National Assembly.”

political practices and customary law; participation in state institutions; and the recognition of territorial autonomy on the basis of history and language.[21]

Responding to international pressure, the government of President Álvaro Arzú carried out a popular referendum in 1999 to decide on 47 constitutional reforms that were agreed upon in the Peace Accords. During this process, Indigenous leaders organized to form the *Comisión Indígena para Reformas Constitucionales* (Indigenous Commission for Constitutional Reforms), marking a significant step in national representation of Indigenous communities. The commission proposed 157 distinct reforms, most guaranteeing equal rights for Indigenous populations.

Ultimately, the referendum was divided into four questions that addressed multiculturalism and basic social rights (influenced by the Indigenous Commission) as well as reforms to the executive, legislative and judicial branches. But a mere 18.5 percent of registered voters participated in the referendum and all four questions were voted down. Although President Arzú had publicly supported the referendum, observers and advocates of the reform accused the government of not providing enough information on the complex process and failing to have the information available in Indigenous languages. As a result, the Guatemalan constitution still does not recognize the ethnic diversity of the nation.

The referendum was a centerpiece of the Indigenous movement and the “No” vote robbed it of much of its momentum. As a result, COPMAGUA disintegrated in 2000, and the massive political movements of the previous decade gave way to individual participation of Indigenous group via party politics. Guatemala does not have formal laws or policies to promote political Indigenous representation, such as electoral quotas in its political parties or reserved seats or districts in the National Assembly for Indigenous peoples.

In 2007, *Encuentro por Guatemala* (Encounter for Guatemala—EG) surfaced as the county’s first Indigenous political party. K’iche’ activist and Nobel Peace Prize-winner Rigoberta Menchü was the EG candidate in the presidential election that same year. Though she received only

3 percent of popular vote, her candidacy marked an important step to increase the visibility and representation of Guatemala's Indigenous population. Menchü went on to found another Indigenous party, *Winaq*, in 2008, and the EG–*Winaq* coalition elected four representatives to the 2008–2012 congressional session, one of whom was Indigenous.

Representation and Legislation

Guatemala's unicameral legislature is called the National Assembly. To analyze the representation of Indigenous peoples in the National Assembly, we examine three legislative periods: 1986 to 1991, the first election after the 1985 constitution; 2000 to 2004, the first election after the signing of the 1996 Peace Accords; and 2008 to 2012, the current period and the peak of Indigenous representation to date. The number of deputies serving in the National Assembly has varied over these three congressional periods: 100 in 1986–1991, 113 in 2000–2004, and 158 in 2008–2012.

Since the transition to democracy in 1985, Indigenous peoples have participated in great numbers as voters but in low percentages as candidates for elected office in the national legislature. As the table below shows, over two decades levels of Indigenous participation in Guatemala's legislature rose from 8.0 percent in 1986 to 13.9 percent in 2008.

FIGURE 6: INDIGENOUS REPRESENTATIVES IN GUATEMALA AND BILLS PROPOSED/PASSED

REPRESENTATIVE CONGRESSIONAL SESSION	NUMBER OF INDIGENOUS LEGISLATORS (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 Assembly 1986–1991	8 of 100 (8.0%)	0	0 (0%)	Not available*	Not applicable
National Assembly 2000–2004	13 of 113 (11.5%)	1	1 (100%)	Not available*	Indigenous representatives *(Frente Republicano Guatemalteco)*
National Assembly 2008–2012	22 of 158 (13.9%)	10	1 (10%)	Not available*	Indigenous representative *(Unidad Nacional de la Esperanza)*

* The information on representatives was provided by the *Dirección Legislativa del Congreso* (Congressional Legislative Department), but information on voting records of these representatives was not.

National Assembly, 1986–1991

The first general election under the new constitution was in 1985. Of the 100 representatives elected to the National Assembly, eight were Indigenous (all of them Maya). Seven were part of the *Democracia Cristiana Guatemalteca* (Guatemalan Christian Democracy) party, while only Waldemar Caal Rossi was elected through the *Unión del Centro Nacional* (National Union of the Center) party. Ana María Xuyá Cuxil, elected from the electoral district of Chimaltenango, was the first Indigenous woman to hold the title of deputy.

During this period, no laws affecting the Indigenous community were authored by the eight Indigenous representatives.

National Assembly, 2000–2004

The general election of 1999 was the first after the Peace Accords signed between the government and the URNG in 1996. Thirteen of the 113 congressional seats went to Indigenous representatives (11.5 percent).

Two of the Indigenous deputies were women: Aura Marina Otzoy Colaj, who was re-elected for the second time in the district of Chimaltenango; and Elsa Leonora Cu Isem of the district of Alta Verapaz, who entered the National Assembly as a substitute for the re-elected representative Haroldo Quej Chen. (Quej Chen had been named the Secretary of Environment and Natural Resources, a new ministry created by the government of President Alfonso Portillo.)

During this period, the one bill that was coauthored by Indigenous representatives relating to Indigenous peoples was Decree 19 of 2003, which approved the *Ley de Idiomas* (Law of Languages). The law recognizes 24 Indigenous languages, including 22 of Maya origin as well as Garifuna and Xinca, and acknowledges the importance of these languages in the formation and preservation of distinct Indigenous cultural identities in Guatemala. The bill was coauthored by Haroldo Quej Chen and Romulo Alcaljal Caal of the *Frente Republicano Guatemalteco* (Guatemalan Republican Front—FRG) and is discussed in further detail in the section below.

National Assembly, 2008–2012

In the 2007 election, 22 of 158 congressional seats went to Indigenous representatives (13.9 percent), making this period the highest in terms of Indigenous representation in the legislative system since the transition to democracy. K'iche' deputy Otilia Lux de Coti was the first Indigenous representative to be elected through the EG–*Winaq* Indigenous political coalition. Edgar Dedet

Guzmán is the only representative to self-identify as Garifuna, and there were no Xinca representatives. Eleven of the deputies were elected through the Christian Democrat *Unidad Nacional de la Esperanza* (National Unity of Hope—UNE), the party of former President Álvaro Colom.

In this period, 10 bills were authored by Indigenous deputies pertaining to this community, but the only one signed into law was the bill creating the 2003 *Ley de Generalización de Educación Bilingüe Multicultural e Intercultural* (Law of Generalization of Bilingual, Multicultural and Intercultural Education). The bill was authored by Rosa Elvira Zapeta Osorio of the UNE party who also served on the Congressional Commission on Education, Science and Technology. In recognition of Guatemala's diverse population, the law requires all primary and secondary schools to incorporate a multicultural curriculum and to offer classes in more than one language. The law also mandates that public- and private-sector institutions make a commitment to multiculturalism to make their services more accessible. Given the subjective nature of the law, its impact and enforcement are difficult to measure.

Unique Representative Laws

Law of Mining, Decree 48, 1997

The Law of Mining, Decree 48-1997, regulates general mining operations, including exploration and exploitation. The law originated from the Ministry of Energy and Mines, which is the state body responsible for formulating and coordinating the government's policies, plans and programs in the mining sector and ensuring compliance with all laws and regulations. The Law of Mining regulates the surveying, exploration and exploitation of mining areas, as well as the state policies, protection of human rights, fiscal supervision, and use of resources in those areas.

The law makes no explicit mention of Indigenous populations, despite the fact that many mining projects occur in or around Indigenous communities. However, the Law of Mining requires the state to conduct an environmental impact evaluation prior to awarding a mining license. The evaluation includes a survey of the communities affected by the mining project.

Prior Consultation, 1997

The practice of *consulta previa* began in Guatemala following the ratification of ILO Convention 169 in 1997. More than a decade later, the Law of

Consultation with Indigenous Peoples (Bill 4051), proposed granting more power to Indigenous populations in the consultation process, was introduced in 2009 by seven Indigenous representatives: Rodolfo Moisés Castañón Fuentes, Efraín Asij Chile, Clemente Samines Chalí, Otilia Inés Lux García, Juan Armando Chun Chanchavac, Rosa Elvira Zapeta Osorio, and Oscar Valentín Leal Caal. The bill was approved in the National Assembly but, due to international pressure and lack of political will, has yet to be signed into law by the president.

In the absence of an effective prior consultation mechanism, Indigenous communities have invoked international treaties like ILO Convention 169 to protest mining projects. But Convention 169 requires that governments consult the community affected by the mining project and award fair compensation for damages, but does not give the community power to block the project altogether. The Law of Urban and Rural Councils, Legislative Decree 11-2002, empowers the Indigenous communities' development councils to serve as the mediator during the consultation process, but still does not empower these communities to block projects.

Law of Languages, Decree 19, 2003

Legal recognition of Indigenous languages and cultural tradition was one of the principal demands of the Indigenous political movement. In Guatemala, the 2003 Law of Languages, Decree 19-2003, is a mechanism to enforce Indigenous peoples' constitutional right to practice and maintain their cultural identity in accordance with their values, language and customs. The law originated from the Joint Committee for the Recognition of Indigenous Languages, established in the Peace Accords and consisting of four delegates representing Indigenous peoples: Miguel Santos Hernández Zapeta, Rodrigo Chub Ical, Rutilia Chab, and Gutberto Leiva.[22] The bill was ultimately coauthored and cosponsored by Haroldo Quej Chen and Romulo Alcaljal Caal of the FRG.

The law mandates that all Maya, Garifuna and Xinca languages can be used without restriction in both the public and private spheres that include education, social, economic, political, and cultural settings. Health, education, legal, and security services, as well as all laws and other government documents, must be available in the appropriate 24 recognized languages. According to the law, it is the responsibility of the executive branch to budget for these regulations and enforce them. The law also requires that the government identify any languages in danger of extinction, and take steps to protect and develop these languages. Similar to the Law of Generalization

of Bilingual, Multicultural and Intercultural Education, nine years after its passage the Guatemalan government has yet to develop an effective enforcement mechanism for the requirements established in the Law of Languages.

Law of Educational Promotion against Discrimination, Decree 81, 2002

The Law of Educational Promotion against Discrimination, Decree 81-2002, aims to eliminate discrimination based on ethnicity, race or gender. The authors of the law recognize that stereotypes and prejudice are often derived from a lack of understanding and tolerance about minority culture and identity. To address this pitfall, the law mandates that the Ministry of Education issue educational reforms that focus on respect, tolerance and recognition of Guatemala's multilingual, multicultural and multiethnic population. This reform includes the use of textbooks and other class materials that expose Guatemala's youth to Indigenous history, tradition and religion, among other cultural traits.

The law has clear implications for the Indigenous peoples, though like Colombia's Law of Anti-Discrimination (No. 1482, 2011), Guatemala's anti-discrimination law was authored by a non-minority representative, Zury Ríos-Montt. The Law of Educational Promotion against Discrimination is one of several legislative initiatives undertaken by the National Assembly and the Executive since the early 2000s to address discrimination in Guatemala. For example, Government Agreement 390 of 2002 created the Presidential Commission against Discrimination and Racism against Indigenous Peoples, tasked with creating and enforcing public policies dealing with anti-discrimination. Guatemala's penal code was also reformed to consider acts of discrimination as a crime.

The laws discussed above represent legislative advancements of the Indigenous population's political agenda, particularly antidiscrimination and recognition of languages. But the lack of explicit enforcement mechanisms has tempered these laws' impact in addressing the rights and level of inclusion of Indigenous peoples, and shows one of the persistent shortfalls of Indigenous representation in the National Assembly.

COMPARATIVE ANALYSIS

In terms of the concrete legislative output by Indigenous and Afro-descendant representatives in the cases studied above, several conclusions stand out. First, while there has been a trend toward increased representation of Indigenous and Afro-descendants in national legislatures, it still has not reached proportions that reflect their population in society. This by itself is not surprising; in the United States, for example, representation of women and African-Americans still lags far behind demographics.

Yet, in countries in Latin America where Indigenous peoples represent close to, if not the, majority of the population (i.e., Bolivia and Guatemala), the gap between demography and formal representation is stark, particularly after decades of elections and institutional reforms often intended to increase their participation. Even in Bolivia, only 25 percent of the legislators across both houses of congress are Indigenous in custom, language and self-identification—a number that includes the seven reserved ethnic seats.

Second, even the small increase in Indigenous and Afro-descendant populations in our case-study countries has not resulted in a dramatic increase in legislation or constitutional norms in their favor. Total, across the 12 congressional sessions and two constituent assemblies in the four countries studied, only 22 bills or constitutional articles sponsored by Indigenous or Afro-descendant legislators dealing with issues related to their communities have been approved into law. These low levels do not stem necessarily from open opposition to the initiatives of Indigenous and Afro-descendant initiatives, but are in part related to the low levels of bills presented by the Indigenous and Afro-descendant representatives themselves. In all but the case of Colombia, Indigenous and Afro-descendant legislators or constitutional assembly members were never an engine for race- or ethnicity-based initiatives.

In Bolivia, Indigenous assembly members only presented a total of nine initiatives related to Indigenous communities, of which two failed (giving them a failure rate of 22 percent). In Ecuador, Indigenous representatives launched 17 separate initiatives, with eight ultimately failing (a failure rate of 53 percent); Afro-Ecuadorian assembly members presented three total initiatives with one meeting a legislative dead end (a failure rate of 33 percent). Guatemalan Indigenous legislators presented 11 separate bills related to their community—the bulk of them in the current congressional period; nine of them failed to be passed into law (a failure rate of 81 percent).

Indigenous and Afro-descendant legislators have been most active in

> **In the 12 congressional sessions and two constituent assemblies, only 22 bills sponsored by Indigenous or Afro-descendant legislators dealing with their communities have been approved into law.**

Colombia; there, Indigenous congresspeople presented 47 initiatives from 1998 to 2010 and in the same period Afro-Colombian congresspeople presented 25. The vast majority of those never passed into law, with Indigenous legislative efforts suffering a failure rate of 97 percent and 92 percent of Afro-Colombian initiatives reaching the same end.

The low level of legislative initiative may be the result of subtle political pressures within the congress, or it may reflect self-censorship in promoting bills that are sure to fail. Knowing the reasons is beyond the capacity of this study.

Third, the 15 laws or constitutional norms that were approved in these case-study countries are all remarkably similar. All four cases have a law or constitutional norm related to *consulta previa* (Bolivia, 2009; Colombia, 1991 and 2009; Ecuador, 2008; and Guatemala, 1997). While the law or norm's scope and authority vary (as do mechanisms for implementation), in each case the laws reflect a long-standing demand of Indigenous and Afro-descendant communities to respect the territorial integrity of what they consider their cultural heritage: their land. Two of the countries studied approved anti-discrimination laws (Bolivia, 2010 and Colombia, 2011); two approved constitutions that described the state's plurinational character (Bolivia, 2009 and Ecuador, 2008); two approved laws related to respect for Indigenous languages (Colombia, 2010 and Guatemala, 2003). And while Ecuador established a provision in the 2008 Constitution to recognize and integrate Indigenous justice and laws into the national system, legislation to formally facilitate the bill remains stalled in the National Assembly. In contrast, the Bolivian Plurinational Legislative Assembly passed similar enabling legislation in 2010.

Fourth, what is striking about the laws approved is their narrowness. In contrast to women's or African-American issues examined in other studies on substantive representation, which tended to measure impact of these representatives by their effectiveness on issues of social spending or—in the case of women—women's health care or maternity leave policies—there was a notable lack of laws and constitutional initiatives related to social policy in these

country cases.[23] Instead, the majority of the laws and initiatives identified in this study focused largely on issues of recognition (territorial and language), education and anti-discrimination. Only in Colombia did Indigenous and Afro-Colombian legislators press for a specific change in state policy to permit greater access to health care and pension benefits for Indigenous peoples (Law of Culturally Inclusive Health Care, 2001).

The absence of a social policy agenda for Indigenous and Afro-descendant representatives deserves further exploration. In part, it may reflect—along the lines argued above—a subtle form of self-checking, recognition of the likely opposition of non-Indigenous or Afro-descendant representatives and policy-makers—though this is less likely the case in Bolivia. Arguably, the limited, singular nature of the agenda may also limit the capacity of Indigenous parties such as *Pachakutik* in Ecuador to establish a broad working agenda with other parties, relegating it to the role of spoiler.

Another possible explanation for the narrow agenda of these groups—not mutually exclusive from the previous—is that it reflects the evolution of these peoples and their political movements. Long repressed, many have focused on claims rooted in their history and culture: land, rights, recognition, and respect for internal processes, including justice. It does, though, raise the question, given the sad overlay of poverty and lack of social development of many of these communities, as to how and when these gains will translate into concrete social policy demands (education, health care, pensions) targeting their communities. Such focused social policy efforts are essential to overcome the centuries of economic and social exclusion—but largely appear to be lacking.

Finally, since our cases compare constituent assemblies in Ecuador (1998 and 2007–2008) to congressional periods, one difference between them stands out. Both in terms of representation and effectiveness, Ecuadorian (Afro-descendant and Indigenous) representatives had a better success rate in the translation of their demands into constitutional guarantees. This may, again, reflect the normative and symbolic nature of their agenda until now, which more easily translated into constitutional provisions and norms than legislative changes. But it may also reflect the challenges of legislating for these communities.

Institutions, Election Laws and Outside Actors

Perhaps more than any other political sector, the legislative representation of Indigenous and Afro-descendant groups is strongly linked to international support and the social and the institutional environment in each country. In all four case studies, we discovered that, as social and political identities and movements formed, international actors, civil society, electoral laws (including, but not limited to special reserved seats), and executive–legislative relations shaped and often determined the ability of Indigenous and Afro-descendant representatives to effect their legislative agenda.

International Organizations

In all four case studies, ILO Convention 169 on Indigenous and Tribal Peoples has played a key role in giving legitimacy to Indigenous and Afro-descendant movements and in helping define their specific demands concerning recognition and cultural and land rights.

In the past decade, international donors—from bilateral donors in the OECD countries to not-for-profit donors and nongovernmental organizations—have also increasingly focused on financial, logistical and intellectual support for Indigenous and Afro-descendant movements. This support has helped expand their organizational and mobilizational capacities locally and increase contact support regionally and internationally.

Much of this has focused on the civil-society, nonpartisan component of these movements. One exception has been the International Republican Institute in Colombia, which is working with Afro-Colombian legislators to help establish an Afro-Colombian congressional caucus.

Social Movements

Many of the political parties and representatives described above rode to power on the backs of social movements. How the parties formed in relation to social movements varied—with MAS in Bolivia, for example, serving as a broad, heterogeneous coalition of movements and *Pachakutik* in Ecuador

forming as a political arm of CONAIE. Each path had a different effect on the operation and position of these political representatives. But in every country Indigenous and Afro-descendant social movements cast a long shadow over political representatives from those communities and are critical, if not in the initiation of legislation, then in its success in becoming law, through outside pressure, mobilization and broad political advocacy.

In Bolivia, despite recent signs of splits within the MAS over President Morales' policies in the TIPNIS area, that party remains the primary vehicle for Indigenous political participation. And in matters of successful Indigenous-related legislation, until now supported by social movements, the Indigenous representatives in all four of the periods studied, including in the 2006–2007 Constituent Assembly, have tended to vote as a bloc.

In Colombia, despite the smaller size of the Indigenous population, Indigenous social movements are more organized and better mobilized than their Afro-Colombian counterparts. This likely stems in large part from their geographic concentration in rural areas and more focused political/social agenda compared to the dispersed Afro-Colombian community. It has contributed to a more institutionalized and more coherent partisan voice for the Indigenous community in the political sphere.

In Ecuador, the original union between the civil society group CONAIE and *Pachakutik* has produced tensions with the administration of President Correa, who now seeks to mobilize support of Indigenous through his *Alianza Pais* party. While *Pachakutik* supported President Correa when he first ran for president in 2006—as it did with Lucio Gutiérrez before him—it has since broken with him, splintering the Indigenous political movement and for the first time presenting a challenge to the unitary claims of CONAIE and *Pachakutik* to represent Ecuador's Indigenous peoples. In the 2009–2013 National Assembly, for the first time Indigenous representatives in the assembly failed to vote as a bloc in the approval of an Indigenous-sponsored bill. The vote reflected the fracturing of Indigenous representation in the congress across three parties, as well as the strength of the executive—discussed below.

In Guatemala, social movements have filled the void left by the absence of a national Indigenous party. As a result, social movements still drive much of the—still limited—political voice and agenda of Indigenous peoples in Guatemala. Indigenous representatives to congress have been largely elected through established, non-ethnically based parties.

> **Focused social policy efforts are essential to overcome the centuries of economic and social exclusion—but largely appear to be lacking.**

Electoral Systems

While for Ecuador and Bolivia it is still too early to see how the electoral systems that emerged from their constitutional reform processes will affect party formation, it is clear that in the case of Colombia, the allocation of special, reserved seats for Indigenous or Afro-descendant representatives can be a double-edged sword. Out of the four case-study countries, only Colombia (beginning in 1991) and Bolivia (beginning in 2009) have reserved districts or seats, both described above. For the moment, Bolivia's have given greater weight to Indigenous representation in the lower house of congress, but again it is too early to measure the broader effects on the party system and in the legislative process.

In Colombia, however, the results have been mixed. In the case of the Chamber of Deputies, Afro-Colombian seats, election within national districts has tended to fragment the Afro-Colombian vote, with up to 65 small parties competing for two seats. Two parties (*Afrouninca* and *Alianza Social Afrocolombiana*) have won the seats in the two sessions. In addition, as the seats have created a separate channel for representation of Afro-Colombian interests, there is little incentive for the traditional or national parties to court Afro-Colombian votes. The net result of the fragmentation of Afro-Colombian parties and their distance from national politics has been the legislative marginalization of the caucus in both houses.

Colombian Indigenous representatives—with only one seat in the Chamber and two in the Senate—have fared only slightly better, with one representative from a non-Indigenous party and greater consistency across elections in terms of the parties placing candidates for elections. Not coincidentally, Indigenous and Afro-Colombian representatives have the lowest success rate (though the highest attempt rate) in the approval of their bills.

> **The success of the Indigenous or Afro-descendant agenda in the congress remains highly contingent on the political interest, discretion and agenda of the president and his cabinet.**

Executive–Legislative Relations

Given the hyper-presidentialism that has traditionally characterized Latin American democracy, it is impossible to discuss substantive representation—or any kind of legislative representation for that matter—without bringing in executive–legislative relations. Indeed, in all four cases, the success of the Indigenous or Afro-descendant agenda in the congress remains highly contingent on the political interest, discretion and agenda of the president and his cabinet.

In Bolivia, the president's power and prerogative over legislative activity weighs particularly heavily since President Morales' party held a majority in the constituent assembly and currently enjoys a supermajority in both houses. Consequently, as far as the MAS presents itself—even identifies itself—as an Indigenous party representing Indigenous issues, the executive will continue to drive the agenda, irrespective of the individual interests and activities of Indigenous legislators. Much of Indigenous-related legislative activity under the new constitution has been devoted to the implementation and refining of the norms established in the new constitution.

In Colombia, the executive—either the president or the ministers—have had a hand in each of the laws relating to either Indigenous or Afro-Colombian issues. In the case of the 2010 Law of Native Languages, this came in large part as a result of the initiative of then-Minister of Culture Paula Marcela Moreno, the first Afro-Colombian to occupy a cabinet position in Colombia. Similarly, the 2011 Law of Anti-Discrimination finally came about as a result of President Santos' interest.

In Ecuador under President Correa the importance of the executive is even more obvious and potentially detrimental to the Indigenous agenda. A number of Afro-Ecuadorian leaders and social movements have supported *Alianza Pais*, and their leaders have participated in the Correa government. As a result they were able to achieve one of the most important recent advances for Afro-Ecuadorian rights, a reform of the Code for

Penal Procedures. In contrast, the political rivalry (even battle) between CONAIE/*Pachakutik* and President Correa has paralyzed the assembly's ability to act on a number of efforts necessary to effect Indigenous rights inscribed in the new constitution, including justice reform to recognize Indigenous law and customs and the right to prior consultation.

Further evidence of the importance of executive initiative and support for Indigenous and Afro-descendant rights have been the two constitutional reform processes in Bolivia and Ecuador. While there are a number of criticisms of the constitutions that resulted, in both cases the constituent assemblies that produced them at the time marked a high-water mark for Afro-descendant and Indigenous representation in the political process—and both were convened at the initiative of the executive.

CONCLUSIONS

There is unarguably a mix of factors that explains the increase in Indigenous and Afro-descendant representation and its effectiveness in legislating on behalf of their constituents. The increased representation since the late 1990s has continued the momentum for the passage of laws and policies that many have demanded for decades and even centuries.

As one would expect, however, those laws were not the sole result of Indigenous and Afro-descendant populations reaching elected office. Each one was embedded in a complex series of factors, from international support and recognition, to the support of public awareness brought about by social movements (which in some cases even overshadowed the individual representatives), to the electoral regimes, to the executive. Acknowledging that complexity, the current limitations of the political and social agendas of these groups, and the reality that the most powerful path to effecting legal and policy change may not lie only within the legislative branch, is also to acknowledge the salience and future challenges of expanding substantive representation of race- and ethnicity-based communities in Latin America.

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