



POLITICAL REPRESENTATION & SOCIAL INCLUSION: Guatemala Case Study

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INTRODUCTION

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

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

For the purposes of this study, Indigenous legislators were identified in several ways. First, we contacted several representatives via telephone to ascertain whether they self-identify as Indigenous.

For legislators who could not be reached, we consulted their political party or caucus, to determine whether they are affiliated to Indigenous movements or parties within the National Assembly, for example the *Comisión de Pueblos Indígenas del Congreso* (Congressional Commission of Indigenous Peoples). However, this information was not conclusive because the vast majority of legislators were elected through non-Indigenous political parties in the congressional sessions we examined, and even this Commission includes non-Indigenous representatives. We also considered whether representatives sponsored legislation that directly affected the Indigenous community.

To supplement the information above, we also looked to see if representatives wore traditional Indigenous dress, if they have used a dialect of Maya, or Garifuna or Xinca in public discourse. For additional information on individual legislators, we consulted with officials from the National Assembly, the Congressional Commission of Indigenous Peoples and various political parties,

including the *Unidad Nacional de Esperanza* and *Encuentro por Guatemala-Winaq*—the only Indigenous political party.





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.¹ 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,

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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 (<i>Frente Republicano Guatemalteco</i>)
National Assembly 2008–2012	22 of 158 (13.9%)	10	1 (10%)	Not available*	Indigenous representative (<i>Unidad Nacional de la Esperanza</i>)

* 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.² 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.



ENDNOTES

- 1 Roddy Brett, "Los Retos para la Sociedad Civil en la Guatemala Postconflicto," *Red Nicaragüense por la Democracia y el Desarrollo Local*, <http://www.redlocalnicaragua.org> (accessed December 7, 2012).
- 2 Ricardo Tejada Saenz, *Elecciones, participación política y pueblo maya en Guatemala* (Guatemala: Instituto de Gerencia Política, 2005).