

# PANAMA IN TRANSITION: THE ROAD TO DEMOCRATIC LEGITIMACY

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*No one is born a good citizen; no nation is born a democracy. Rather, both are processes that continue to evolve over a lifetime.*

— Kofi Annan

## **Introduction**

Because a democracy is a government run by the people, the people must have confidence that their government correctly represents their individual interests. As Aristotle argued, “If liberty and equality, as is thought by some, are chiefly to be found in democracy, they will be best attained when all persons alike share in the government to the utmost.” (Gowdy) In simpler terms, Aristotle is discussing the desirability of an equal distribution of power among citizens for a successful democracy.

The United States is a nation that prides itself on its alignment with democratic principles. Over the past 200 years, the United States claims to have created a system in which power lies directly in its citizens, giving each and every

person an equal voice. At the same time, the nation’s history clearly demonstrates that the road to democracy is a long process of constant trial and transition.

Panama began a similar transition towards democracy, starting roughly twenty years ago. (Furlong, p. 21) In analyzing Panamanian democracy in the long run, a country like the United States may serve as a good example because of its long-term progress; however, in the short run, looking at younger democracies will help one to more effectively evaluate how Panama can continue to make immediate progress.

Chile, like Panama, reinstated democracy roughly twenty years ago. (“The Politics of Policy...” p. 158) Although Panama and Chile share many similarities, Chile is more readily

acclimating to democratic ideals. What is the cause of the fundamental differences between these two fledgling democracies? What characteristics of Chilean democracy might Panama find useful? Where does Panama lie in the democratic process, and how can it continue to move forward? In this article, I examine Panama's democratic progress, looking at both the successes and the obstacles that confront Panama today. I include a look at Panamanian institutions according to the Inter-American Development Bank's definition of democracy and also a look at the relative successes of Chilean democracy. In this way the issues that Panamanians face can be identified and possible solutions suggested.

### Panama vs. Latin America: A Political Comparison

Certainly a lack of government accountability hinders democratic governance. An Inter-American Development Bank (IDB) report on Latin American democracies, "The Politics of Policy: Economic and Social Progress in Latin America," concludes that in order to prop-

erly analyze democratic transition to more legitimate and accountable institutions and leaders, both institutions and policies must be considered as two inseparable units. The IDB report further argues that, because of the links between policies and institutions, neither can be looked at independently. Rather, policies and institutions need to be examined together, both in structure and operation. (p. 257)

Figure 1, taken from the IDB report, refers to the efficiency of government: i.e., its ability to govern effectively. This in turn directly correlates with how successful a government is in demanding accountability. The figure displays the link between political institutions, policy-making processes, and policy outcomes among various countries in Latin America. On the left-hand side of the table, the countries are grouped by their Policy Index level. This index is based largely on how policies represent the public interest, focusing specifically on the areas of implementation and enforcement. ("The Politics of Policy...", p. 152) Chile is the only country that has a "very high" policy index. Panama resides with several other countries in the "low" policy index category.<sup>1</sup>

**Figure 1**  
**Political Institutions and the Qualities of Policies**

Country (by Policy Index Level)	Congress Capabilities Index	Judicial Independence	Party System Institutionalization	Party System Nationalization	Programmatic Parties	Development of Civil Service
<b>Very High</b>						
Chile	High	4.60	65	.90	8.00	.59
<b>High</b>						
Brazil	High	3.90	59	.64	2.00	.68
Mexico	Medium	3.30	67	.78	2.00	.40
<b>Medium</b>						
Bolivia	Medium	1.70	56	.71	0.00	.24
Peru	Low	1.90	53	.50	0.00	.16
<b>Low</b>						
Nicaragua	Medium	1.60	70	.88	8.00	.19
Panama	Medium	2.20	67	.78	0.00	.08

Source: Inter-American Development Bank, "The Politics of Policy..." 2006, p. 152.

<sup>1</sup>Not all countries in the IDB report are included in Figure 1.

In its discussion of effective political processes, the IDB notes that there are three fundamental features of effective government: legislatures with strong policymaking capabilities, an independent judiciary, and well-institutionalized political parties. (“The Politics of Policy...,” p. 9) This is reflected by the several measures of political and institutional variables across the top of Figure 1. According to the IDB, the Congress Capabilities Index measures the strength of congressional committees, public confidence in the congress as an institution, the level of education and technical expertise of the legislators, and the extent to which the congress is a desirable place for legislators, both as a good working environment and in terms of effectiveness. (“The Politics of Policy...,” p. 141) Judicial Independence measures the ability and quality of enforcement of prior political and policy decisions as reflected in the country’s constitution and laws. Thus a strong judiciary plays an independent role in monitoring the constitutionality of the executive and legislative branches of government. (“The Politics of Policy...,” p. 147) Party System Institutionalization, Party System Nationalization, and Programmatic Parties measure the quality of party functionality to accurately and correctly represent citizens and their interests. (“The Politics of Policy...,” p. 142)

Referring still to Figure 1, Chile and Panama are similar in only one aspect, Party System Institutionalization, which is a consequence of both countries’ status as fledgling democracies. As both democracies grow older, time will help establish more institutionalized political parties. The large differences between the two democracies are explained by other key characteristics. These are characteristics that can be changed and modified in the short run. Both Party System Nationalization and Programmatic Parties explain the efficiency of political parties. Chile scored a significantly higher rating on both indices, suggesting that government discourse is largely affected by the strength of political parties. Chile has a high Congress Capability Index as well, in comparison to Panama’s “medium” score, displaying the relative strength of the Chilean legislative branch in its integral role as a decision maker. Another key difference is the significant

disparity in the Judicial Independence Index; Chile received a score of 4.6 in comparison to Panama’s score of 2.0 (on a 7 point scale).

Panama’s relatively low score, both overall and across most individual categories, is affected by its lack of the three key features of effective governance in its early transitional stages. (“The Politics of Policy...,” p. 9) Assessing where Panama lies in accordance with these three features will explain why Panamanian government lacks legitimacy and accountability.

### **Panama’s Condition: An Overview of Political Constraints**

Many would argue that Panamanian democracy was hindered from the beginning. After the 1989 United States invasion to oust General Manuel Noriega from his military rule, the U.S. worked with Panama to establish a democratic government. (Furlong, p. 20) Initially, the U.S. appointed Guillermo Endara to the presidential office under the presumption that he and his government would serve in the early stages of democratic transition, both rewriting the constitution, which had originally been drawn up and implemented in 1972 during military rule by General Omar Torrijos, and running a democratic election. (Furlong, p. 24) However, this is not what happened. Not only did Endara and his government fear losing power if an election were called, but powerful and wealthy political leaders also decided that it was in “the best interest of the country” to keep the authoritarian constitution intact, working instead to create a more democratic constitution through amendments and reform. (Furlong, p. 24)

The people of Panama remained skeptical about government policy and procedure as a result. Voters had not elected Guillermo Endara, so how was he any different than Noriega? In addition, the constitution had not changed, because of the interests of a powerful minority. How could governance change if democratic ideals and every individual person’s interest were not at the forefront of the debate? Miguel Antonio Bernal, a Panamanian political scientist, argued, “If a new constitution is not written, then democracy will be threatened

from the start.” (Furlong, p. 24) A new constitution would serve as an equalizer, because it would be in the best interest of every citizen, not just a few.

Although an authoritarian constitution can hinder democratic effectiveness (Bernal’s fear), all hope is not lost. Chilean democracy has prospered despite its own authoritarian constitution. Both the Panamanian and Chilean constitutions established a strong executive branch, but Chilean democracy has nonetheless successfully embodied the three fundamental features of government: effective political parties, legislatures with strong policymaking capabilities, and an independent judiciary.

### **Effective Political Parties**

Effective political parties are perhaps the most fundamental necessity in developing an efficient and accountable democracy. (“The Politics of Policy...,” p. 9) Political parties must have an established framework and platform, enabling the party to be programmatic, institutionalized, and national. Programmatic parties are solid, well-defined political group entities, focused on the long-term ideals and reputation of the party rather than the individual member politicians. This means that it is the party that is the bargainer because it is the party that holds the long-term investment. Politicians who might otherwise seek individual interests must now work within the party’s framework and be accountable to the real player, the political party to which they belong. (“The Politics of Policy...,” p. 142) As noted earlier, the largest disparity between Panama and Chile is the Programmatic Party Index score. Chile scored an 8.0 (very high) compared to Panama’s score of 0.0 (very low).

In Panama, the lack of programmatic parties is clearly demonstrated by the behavior of former president Marea Moscoso and its political consequences. Moscoso, a member of the Partida Arnulfista (PA), granted asylum (a controversial act) to accused Cuban terrorist Luis Posada Carilles, resulting in allegations that this was to her personal financial benefit. In addition, there were also allegations about the misuse of government funding when an esti-

mated \$400 million went missing. (Gaskell, p. 1) With the PA’s reputation now tarnished, Guillermo Endara, after earlier serving as Panama’s president representing the PA party, changed his PA affiliation and ran under the Solidaridad Party in the 2004 presidential election.<sup>2</sup> When asked about his new affiliation, he argued that it was due to differences between him and Moscoso. His party shift suggests that in Panama political party affiliation currently has more to do with personal winning strategy than it has to do with party position and platform. (Alcantara and Espindola, p. 533)

In essence, to bring about long-lasting effective policy-making, in the long term the individuals in government are less important than is the party needing to advance its identity throughout time. (“The Politics of Policy...,” p. 144) In these early stages of Panama’s transition to democracy, there has not been an ability to create and sustain such institutionalized political parties with programmatic capabilities.

### **Legislative Power**

Legislative power is another fundamental key to establishing how efficiently a government functions. Although both the Panamanian and Chilean executive branches of government are very strong because of their constitutionally defined powers, the Chilean system still has a strong legislative branch as well, whereas Panama’s is much weaker.<sup>3</sup>

Panama is split into nine provinces with forty-one different legislative districts. For up to 30,000 constituents in a district there is one elected representative, and for each additional 10,000 people in a district another legislative candidate is elected. There are twenty-seven representatives from single-member districts and fifty-one multi-member district representatives. (Singer, p. 637) Urban areas are typically multi-member districts due to their higher population densities; rural areas, however, are usually single-member districts. Eric

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<sup>2</sup>The Solidaridad Party affiliates itself with the PRD, the PA’s primary opposition.

<sup>3</sup>In terms of Congressional Effectiveness, Panama scored a 1.8, while Chile scored a 3.7, one of the highest scores in Latin America. See Figure 1.

Jackson, editor of the *Panama News*, notes that the mixture between single-member and multi-member districts is problematic. He adds that, because of multi-member districts, urban slums (which otherwise would be large enough to have their own representative) are often drawn into districts that strongly represent aristocratic interests and thereby lose much of their identity in terms of direct representation. (Jackson, May 17, 2006)

Chile's legislative districts, in contrast, are created using a proportional-representation electoral system. The districts are "bi-nominal," which means that two seats are elected from every district. ("The Politics of Policy...", p. 161) The coalition/parties that receive the two highest shares of the votes each win one of two seats available in each district; however, if the first-place coalition/party wins by more than a two-to-one ratio, then it can take both seats. In this regard, if the top vote-getter gets twice as many votes as its opponent, then it will win all of the district seats. This inherently creates very strong coalition incentives. ("The Politics of Policy...", p. 161) The coalition incentive is important because it is the coalition that wins the election rather than the individual, thus allowing political parties to become more programmatic and less individualistic. ("The Politics of Policy...", p. 161)

In Chile, by way of contrast with Panama, the difficulty of winning an election and the possibility for "career-legislators" create a strong and more independent legislative branch. Legislators are held accountable for their actions not by the president, but by their party coalition and most importantly by their constituents. ("The Politics of Policy...", p. 162) This creates a system in which legislators are more likely to respond to their constituents. In Chile 60 percent of legislative incumbents were re-elected in the 2004 election, compared to the 17 percent of incumbents who won in the 2005 Panamanian election. ("The Politics of Policy...", p. 162) The high Chilean win rate for incumbents allows many legislators to build careers in government. ("Politics of Policy," p. 162) As individual legislators work to successfully lengthen their careers, they have to prove their loyalty and accountability to their constituents. Furthermore, as Chilean legislators must first

be selected from their political party coalition, the legislators are also held accountable by the party. Panama's lack of such an incentive to create coalitions or to work towards re-election negatively affects the efficiency of government.

The Panamanian government's lack of cohesiveness is due to concurrent executive and legislative elections, in which every five years the entire legislature along with the position of president are up for re-election.<sup>4</sup> Considering the low incumbent win rate and the inability of the president to run for two consecutive terms, any cohesiveness of government is completely lost every five years as nearly every elected member of government is new. This lack of cohesiveness hinders government progress in two ways. First, the constant arrival of new politicians in government creates an inherent instability in government institutions. How can civilian issues be adequately addressed when legislators have to constantly keep starting anew? Secondly, what is the motivation for legislators or the president to satisfy the public if they know that their chances of re-election are slim?

## Judicial Independence

In terms of promoting democratic effectiveness by holding government institutions accountable, the IDB recognizes the critical role that the judicial branch plays. As the IDB report states, "The judiciary is the most obvious enforcer in the political system." ("The Politics of Policy...", p. 146) Keeping in mind the inseparable link between policies and institutions, the role of the judiciary as the primary enforcer of the political system plays a crucial role in establishing effectiveness in governance. The 2006 Index of Economic Freedom and the U.S. State Department 2005 Human Rights Report have both argued that Panama is "mostly free," (Kane et al., p. 1) because of problems within the judicial system. These problems specifically pertain to harsh prison conditions and judicial corruption. ("Panama: Country Reports...")

There are systematic problems regarding

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<sup>4</sup>Presidents cannot run for immediate re-election. They must sit out one five-year term before running for re-election.

enforcement of laws and policies on all judicial levels, especially because judges are appointed using a top-down appointment system. The Supreme Court justices, consisting of nine individuals appointed by the president and confirmed by the legislature, appoint the Superior Tribunal judges. The Superior Tribunal judges appoint the Circuit and Municipal judges. (Hibbitts, p. 1) As Hibbitts explains, this top-down appointment approach creates a system “which lends itself to political tinkering and undue interference by higher-level judges in lower-level cases in which they often have no jurisdiction.” (Hibbitts, p. 1) Lower level courts are categorized by rampant allegations of arbitrary judicial decision making. (Kane et al., p. 1) To complicate things further, there are instances in which local courts are run and operated by judges and lawyers who are serving without the qualifications to do so, severely hindering due process of law. (Kane et al., p. 1) Lower courts have also been accused of non-existent appeal procedures, and there have been instances of affluent defendants paying fines while poorer defendants go to jail for the same offenses. (Hibbitts, p. 1)

On a larger scale, perhaps the most pressing issue that Panama faces in regard to its judiciary is its lack of independence. As the IDB report states, an independent judiciary can be a great facilitator, by monitoring politicians and government officials and holding them to their commitments and by enforcing constitutional law and procedure. (“The Politics of Policy...,” p. 9)

Panama’s Supreme Court justices are appointed to serve ten-year terms. (Hibbitts, p. 5) With judicial tenure lasting only ten years, judges are more likely to be influenced by political leaders. When Supreme Court judges are constantly changing, the lack of job security creates a dependence on politicians holding office, especially the president. (“The Politics of Policy...,” p. 147) Life-long terms would create more job security, allowing judges to be more concerned with the law as opposed to their popularity among politicians and government officials, inherently creating more accountability. (“The Politics of Policy...,” p. 86)

Chile exemplifies a Latin American country that has been able to further promote judi-

cial independence by virtue of its recent implementation of life-long terms for the judiciary. As a result, Chile’s Judicial Independence Index of 4.6 is the second highest in Latin America. (“The Politics of Policy...,” pp. 86–99) Panama might well consider emulating Chile’s approach if it wishes to strengthen its judicial system at this level.

## **Demanding Accountability**

Keeping in mind the three essential components of effective democracy — a strong legislature, institutionalized political parties, and an independent judiciary — it is necessary to return to the essence of what it means to be a democracy. Although these three components contribute to creating a more accountable democracy, this only occurs when the power of the democracy is distributed equally among the citizens. The people must be responsible for demanding and working towards implementing these three components. Citizens are empowered in a democracy only when they start taking personal responsibility and accountability for their government and its actions. Without personal accountability and the desire to work towards change, however, the situation will remain static. The limited information presented by the Panamanian press to its citizens is a specific example of an issue that limits civilian empowerment. Panamanians must demand press accountability in order to effectively work towards change.

## **Freedom of the Press**

Unfortunately, only about five percent of the Panamanian population reads the newspaper, hindering democratic empowerment because of the strong correlation between knowledge and power. Many would say that June 29, 2005, marked a historic day for Panamanian journalists. On this day “gag laws,” which criminalized negative press coverage of public officials and wealthy citizens, were finally repealed. In 2006, however, the government worked behind closed doors to pass legislation working against the repeal as President Martin Torrijos and his Executive Council held meetings to revise Panama’s penal code. (Ornstein,

p. 1) In March 2007 these new penal code provisions passed through the legislature. These provisions included shorter sentences for corrupt officials and new laws against freedom of the press. (Ornstein, p. 1) Jackson argues that the penal code revision known as *injuria* “strengthens immunity from investigation or prosecution for acts of corruption by politicians and judges... [and] doubles prison time for journalists who write true stories that embarrass the rich and powerful....” (Jackson, February 4–17) The revisions, for example, will make it easier for General Noriega (if he returns from his U.S. prison later this year) to be a free man, although he has been convicted of several crimes and faces sentences of 64 years behind bars. (Ornstein, p. 1)

Panamanian law also hinders the freedom of reporting in inadvertent ways. Not only has strict anti-press legislation resulted in the prosecution of journalists who violate these restraints, but it has also consequently created a press where journalists practice self-censorship. As Jackson explains, “In a country where one-third of journalists have faced criminal defamation prosecutions, self-censorship has become rampant.” (“Americas 2001: Panama,” p. 1) In addition, Panama has a law prohibiting full-time professors from having other jobs. Miguel Antonio Bernal, a full-time professor at the University of Panama, is known for his outspoken attacks against the government. This law, however, is an attempt to try to silence opposition voices, like Bernal’s or those of other academics who might wish to serve as public intellectuals. This explains why Bernal is banned from writing in almost every national newspaper and why officials have threatened multiple times to remove his radio show from the air. (Bernal) Eric Jackson, owner and editor of the *Panama News*, an independent news reporting service, has openly discussed the government’s control over the newspapers and the TV stations. He too has faced attacks. His controversial *Panama News* web page was hacked into in an attempt to shut it down in early 2007. (Jackson, March 4–17) Fear of criminal prosecution has led to an environment far from conducive to a free press, in turn leading to self-censorship in journalistic practice. Many journalists who have sought to work openly in the

face of the legislation have suffered for their efforts.

The lack of freedom of the press has direct and significant consequence when it comes to working towards reform and demanding more from the government. Given its overall democratic ranking, it is no surprise that Chile has one of the freest presses in Latin America, while Panama is still in transition toward freer media coverage, as is the case in many Latin American countries. (“The Politics of Policy...,” p. 104)

### **Some Negative Consequences of Panama’s Fledgling Status**

Since 1989 there have been many problems due to Panama’s struggle as a fledgling democracy. The Panamanian government has suffered greatly in the eyes of its citizens as a result of the misbehavior of public officials who have shown little accountability. A few of the more egregious examples include the following. At the presidential level, Torrijos failed to make his campaign finance money public, a clear violation of the Law of Transparency.<sup>5</sup> (Gaskell, p. 5) A congressman admitted publicly to receiving bribes for his approval of government contracts and for his vote for specific Supreme Court nominees. (Bussey, p. 1) At the judicial level an individual faced allegations naming him a “fake judge” who falsely claimed to have studied and graduated from the Law School of the National University of Colombia. (Jackson, “High Court Ruling...”) In early 2006 a diploma scandal was uncovered involving the University of Panama and the issuing of thousands of fraudulent diplomas. (Gaskell, pp. 1–6) As Panama progresses toward a more advanced state of democracy, hopefully government accountability will increase and individual interests will be overpowered by the public good.

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<sup>5</sup>The Law of Transparency, which was implemented on January 22, 2002, states: “Government bodies have the obligation to publish regulations, general policies, and strategic plans, internal procedure manuals, and descriptions of organizational structures. A code of ethics requires that all senior government officials publish declarations of their financial holdings, conflicts of interests and other information for anti-corruption purposes.” (B-5 freedom info.org/countries/panama)

## Solutions

The obvious solution to Panama's current limited state of democracy is to implement the features of effective governance discussed above, while also creating a stronger press. It is, however, important to remember that Panama's emergence as a democracy is very recent, and that emergence itself is an important first step necessary to establishing a freer and more equal state. Although Panama is still in an early stage of transition, there are urgent problems to be addressed. Panamanians superficially concern

themselves with the issue of corruption, but they must stop accepting it simply as the way things are. Robert Taylor quotes Eric Jackson as stating that "there is no feeling of revolution in the streets," despite people's dissatisfaction with the status quo. (Taylor, p. 1) Panamanians need to establish their rule of law together, for each citizen must share in the government. As we are again reminded by Kofi Annan, democracy is an evolving process. In this light, Panama's democratic status should not be one that harbors frustration, but rather hope and high aspirations for a brighter future.

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