

# Legislative Malapportionment and Disproportionality: reforms to improve Panama’s democratic governance\*

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**Resumen:** La realidad electoral de la República de Panamá plantea una inefectiva distribución electoral y desproporcionalidades electorales. Dichos fenómenos electorales reflejan distorsiones en las instituciones democráticas panameñas. Por ejemplo, la Asamblea Nacional de Panamá, donde el sistema de elección de diputados no cumple con una representatividad real de los ciudadanos panameños. En el presente ensayo, el autor desarrolla los conceptos de mala distribución y desproporcionalidad electorales con los resultados de las Elecciones Generales de Panamá del año 2019. A su vez, plantea la posibilidad de aumentar el tamaño de los distritos electorales para resolver estas distorsiones del sistema electoral panameño.

**Palabras clave:** Mala distribución electoral, desproporcionalidad, sistemas electorales, distritos electorales, representación democrática, gobierno democrático.

**Abstract:** Panama’s electoral reality demonstrates legislative malapportionment and electoral disproportionality. Those distortions are reflected in Panamanian democratic institutions. For instance, the current composition of Panama’s Legislature does not comply with the standards of citizen representation. In this article, the author discusses the ideas of malapportionment and disproportionality within the Panamanian Electoral System in light of the results of 2019 General Elections. The author also recommends increasing the magnitude and scope of electoral districts.

**Keywords:** Malapportionment, disproportionality, electoral systems, electoral districts, democratic representation, democratic governance.

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## I. Introduction

In Panama, the legislature is one of the less trusted institutions and is a constant focal point for controversy. A large criticism resides on the quality of legislators, clientelism and corruption, and the accurate representation of citizens. This essay will discuss the latter factor through the analysis of two challenges that concern the quality of participation and the fairness of legislative representation in Panama: the so-called ‘malapportionment’ and disproportionality. This article will also argue for the increase of electoral district magnitudes.

Malapportionment refers to the unequal relationship that exists between the percentage of citizens residing in each legislative district and the percentage of elected legislators in it. Malapportionment translates into distortions in the average number of voters for each legislator among the different electoral districts that divide the nation. Disproportionality, as the same word indicates, is the disproportionality between the part of votes and the part of legislative seats obtained by each party. Disproportionality leads to the over-representation of some parties and the under-representation of others with respect to its effective electoral weight. Both phenomena are especially problematic for democratic governance, insofar as they tend to invalidate the fundamental principle according to which each vote should have the same political-electoral weight.

## II. Background and context – Panama’s Democratic and Legislative Outlook

Panama recovered its democracy in 1989, after 21 years of dictatorship rule. Since then, 6 elections have been held, having one of the highest turnout averages in the world (74%), and in each one, the ruling power gave away its mandate to an opposing party. This phenomenon has been carried through peaceful electoral processes, that highlight the health of its democracy. However, the country still faces enduring institutional challenges to fairly represent its citizens.

The political class that has been ruling since the democratic transition is increasingly questioned by a disenchanted and critical citizenship that begins to distrust its elected representatives and perceives corruption as one of the fundamental obstacles to the country's development<sup>1</sup>. Likewise, a growing number of political and social actors denounce a growing inequality in the access and distribution of the positions of popular election, leaving many parties without representation in the National Assembly. Here arise the malaise and risks of ungovernability associated with a latent crisis of traditional parties, political representation and democratic legitimacy in general.

Among the options to improve the performance of a political system are the possibilities offered by the reform of the electoral system. Duverger argues that electoral systems shape the number of parties and therefore the outcomes of democratic processes<sup>2</sup>. Without being the panacea, the set of legal norms that regulate the transformation of votes into mandates of popular representation exerts a great influence on the modalities of partisan competition, the quality of citizen participation, the

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<sup>1</sup>LATINOBAROMETRO, *Informe 2018*. Retrieved on February 10, 2020 from <http://www.latinobarometro.org/lat.jsp>.

<sup>2</sup> DUVERGER, Maurice (1964): “Political Parties: their organization and activity in the modern state”. *Methuen*.

proportionality of political representation and the functioning of the political system in general<sup>3</sup>. Based on the referred rationale, this essay argues for a specific reform to the Panamanian electoral system.

### III. The Panamanian Electoral System – The Legislature

Panama, as well as all Latin American countries, has a presidential system, based on a traditional majoritarian ‘First Past the Post’ model. However, Panama is somehow novel on the composition of the legislature. A unicameral system of 71 seats that are divided between single and multi-member districts. From the referred 71 seats, 26 legislators are elected from single-member districts and the remaining 45 from multi-member districts. Seats are allocated through simple majority rule in single-districts and through a proportional formula in the multi-member districts. In practice, the reduced size of the former imposes very high effective barriers that tend to exclude small parties from legislative representation.

Based on the referred electoral rules, historically, the legislative representation in Panama has been characterized by high and persistent disproportionality, as a result of a hybrid electoral system with a marked majority bias<sup>4</sup>. Although this progressively decreased due to an increasing concentration of the vote and the party system during the last fifteen years, Panama is still amongst the highest electoral malapportionment and disproportionality rated countries in Latin America and the Caribbean.

### IV. Analysis and evidence – Effects of Malapportionment and Disproportionality in Democracy

#### 1. Malapportionment

According to Lijhpart, malapportionment happens when “*the districts have substantially unequal voting populations where malapportioned multimember districts have magnitudes that are no commensurate with their voting populations*”<sup>5</sup>. He argues that it is especially hard to avoid the malapportionment issue in plurality systems with single-member districts, such as Panama, because equal apportionment requires that relatively many small districts be drawn with exactly equal electorates. He proposes that malapportionment is eliminated when elections are conducted with a nationwide upper tier as in Germany and Sweden.

The underlying problem of the referred distortions is based on the rules governing the district’s design. Unlike what usually happens in most contemporary representative democracies, the territorial basis of the legislative districts in Panama does not reside, nor in a national constituency (in which only the president of the republic is elected), nor in the ten provinces and five indigenous regions, not even in the 679 sub-districts that make up the national territory today. This base relies, in an unusual way, on

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<sup>3</sup> LIJHPART, Arend (2012): Patterns of Democracy: “Government Forms and Performance in 36 countries”. *Yale University Press*.

<sup>4</sup> PANAMA’S ELECOTRAL TRIBUNAL *Official Results of 2019 General Elections*. Retrieved on February 13, 2020 from: <https://www.tribunal-electoral.gob.pa/eventos-electorales/elecciones-generales-1994-2019/>.

<sup>5</sup> LIJHPART (2012).

the geographical boundaries of the 81 districts (in which the mayors are elected), whose demographic heterogeneity considerably restricts the room for maneuver, thereby distorting representation in the National Assembly.

A case to illustrate this contrasting phenomenon can be found in the 2019 elections, when Juan Vasquez, a Legislator from San Miguelito, one of the largest districts, had to obtain ten times the votes than Petita Ayarza, a legislator from Guna Yala, one of the smallest. Vasquez obtained 33,393 votes from a multi-member district of 243,978 voters and Ayarza obtained 3,725 votes from a single-member district of 10,141 voters<sup>6</sup>. It is clear that votes in one district have more impact, thus resulting in malapportionment. This contrast is prevalent all over the country and is disrupting the natural representation that the electoral system should provide.

## 2. Disproportionality

There is a close relationship between electoral systems and party systems that depends, fundamentally, on the level of proportionality of the former, which determines its restrictive effects on the latter. As highlighted by the influential work of Taagepara and Shugart, the magnitude of the districts constitutes the key or “decisive” variable of disproportionality, even above the allocation formula, whose specific effects also depend on the number of seats assigned in each constituency<sup>7</sup>.

In Panama, disproportionality has tended to benefit the first, second and third political forces, marginalizing or excluding most of the other parties of the National Assembly. The narrow and limited territorial link that currently characterizes legislative representation in Panama not only has advantages for specific legislators but can also become a constraint for newcomers.

This also contributes to the strengthening and consolidation of traditional parties. If the seats were more proportional, legislators' careers would no longer depend only on their ability to solve specific problems in their respective districts (specifically in single-member districts), but also on their ability to add demands and represent interests at a broader level, to inspect the executive and to legislate. All actions that, as reflected by different surveys, are not being perceived by the majority of the population<sup>8</sup> and are central for democratic governance.

## 3. Effect on the ‘Effective’ Number of Parties

In Latin America, the presidency is the biggest political prize to be won and because only large parties have a chance to win it, these said parties have a considerable advantage over smaller ones, which, in

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<sup>6</sup> PANAMA'S ELECOTRAL TRIBUNAL. *Official Results of 2019 General Elections*.

<sup>7</sup> TAAGEPARA, Rein and SHUGART, Matthew (1989): “Designing electoral systems”. *University of California Irvine*. Retrieved on February 12, 2020 from: <https://escholarship.org/content/qt28t10044/qt28t10044.pdf>.

<sup>8</sup> LATINOBAROMETRO, *Informe 2018*. Retrieved on February 10, 2020 from <http://www.latinobarometro.org/lat.jsp>.

consequence, has an effect on legislative elections. This tendency is especially strong when the presidential election is decided by plurality instead of majority runoff<sup>9</sup>, as is the case of Panama.

To have a legislature that truly represents voters and not the strength of a presidential candidate is vital for its legitimacy and for democracy. In Panama, since 1989 just 3 parties have won the presidency, and naturally have supported the existing disproportionality. In consequence, the majorities in the legislature have come from those parties, and predominantly from 2 main parties (PRD and Panamenista), just with the exception in 2009 of Cambio Democratico, which through an alliance with the Panamenista Party won the election and had a majority in the legislature.

Several parties have failed to survive in the legislature due to the lack of a strong presidential candidate. The number of effective parties illustrates this. Panama currently has 7 political parties registered and 2 in the formation process. In contrast, based on the Laasko theory to determine the number of parties that effectively hold power<sup>10</sup>, considering the number of seats they receive, the country just has 3.68 effective parties. This number illustrates the current inequality between the 3 largest parties and the rest. That is just unfair competition, which is perpetuated by the current district magnitude framework.

## V. Recommendation – Increase district magnitude

Panama has the lowest district magnitude average in Latin America<sup>11</sup>. This is creating malapportionment and disproportionality. A proposal to tackle these challenges is a nationwide district magnitude increase.

The proposal argues for the election of the 71 legislators through 15 multi-member districts divided between the 10 provinces and the 5 indigenous regions of the country and the elimination of single-member districts. This electoral reform will entail that districts would go from the current average of 56,000 voters per legislative district to an average of 200,000.

Malapportionment would be significantly reduced as the unequal relationship between the percentage of citizens residing in each legislative district and the percentage of elected legislators in it will be more equal between the different districts. This would entail the decrease of distortions in the average number of voters for each legislator among the different districts that divide the national territory, such as the one described between San Miguelito and Guna Yala. Additionally, disproportionality would decline substantially as a fair proportion between votes and the legislative seats obtained by each party will be achieved contrasting the current context that is leading towards the over-representation of some parties and the under-representation of others with respect to its effective electoral weight. This approach would produce more balanced effects on legislative representation, the party system and the legitimacy of the political system.

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<sup>9</sup> SHUGART, Matthew and CAREY, John (1992): “Presidents and Assemblies: Constitutional Design and Electoral Dynamics”. *University of California, San Diego*.

<sup>10</sup> LAAKSO, Markku; and TAGGAPERA, Rein (1979): “The “Effective” Number of Parties: “A Measure with Application to West Europe”.

<sup>11</sup> PANAMA’S ELECTORAL TRIBUNAL *Official Results of 2019 General Elections*. Retrieved on February 13, 2020 from: <https://www.tribunal-electoral.gob.pa/eventos-electorales/elecciones-generales-1994-2019/>.

The increase in the magnitude of the districts would bring the legislators closer to the general interests of the nation, without cutting them off from their constituents and extending, in passing, the autonomy, functions, and level of responsibilities of the members of the National Assembly. But above all, the legislators would stop representing mainly localist interests related to the particular concerns and demands of their small constituencies and would also have incentives to reduce the extension of clientelism and represent more general interests related to the problems of the provinces, the regions and the nation.

From the perspective of the electorate, candidates for the legislature would be recruited on a more diverse and broader sociodemographic basis, which would have a positive impact on the competitiveness of their selection, and on the average level of their training, preparation and personal experience. These enhancements will directly tackle the ongoing criticism towards the quality of legislators, the party system and will improve the governance framework.

## **VI. Critique - Increase on electoral campaign costs**

A criticism that this policy could have is that it would have a negative impact on the cost of electoral campaigns, excluding fewer wealthy candidates from the races. However, the increase in electoral spending is due to factors beyond the demographic size of the districts, such as allowing private funding in campaigns or the period of elections, so it can be effectively limited by specific reforms on financing and campaign ceilings.