Panama

Self-rule

Institutional depth and policy scope

Panama is an ethnically diverse state with a population of 3.45 million in 2010. Intermediate governance consists of ten *provincias* (provinces) alongside three indigenous *comarcas* (areas) with the status of a *provincia*--Emberá-Wouna'an, Kuna Yala, and Ngöbe-Buglé—and two Kuna indigenous *comarcas* with the status of *distritos* (municipal districts)—Madugandí in the *provincia* Panamá and Wargandí in the *provincia* Darién. A contested process of acknowledging the communal land rights of indigenous communities outside the comarcas has been underway for decades and remains unresolved. We score the five areas as special regions. *Distritos*, with an average population of just below 55,000, constitute the highest tier of local government.

The *comarcas* were created early in the twentieth century as protected indigenous territories. There is no unified legal definition of a *comarca*; the status of each is defined by its organic charter (Jordan-Ramos 2010). Kuna Yala (formerly San Blas) was created in 1870 under expanded borders. The Kuna Yala *comarca* had originally recognized land ownership rights for the indigenous people, but when the territory was split between Panama and Colombia in 1903, the law was discontinued. Emberá-Wouna'an was created in 1983, Kuna de Madugandí in 1996, Ngöbe-Buglé in 1997, and Wargandí in 2000. The Ngöbe, the Buglé, the Emberá, the Wouna'an, and the Kuna are all distinct ethnic groups.[1]

Panama was governed under two constitutions during this period—1946 and 1972. The 1972 military constitution has been amended several times, most recently in 2004. In the early decades national governance was unstable and frequent changes in government leadership were common, including a long stretch of military rule from 1968 to 1989. Initially the military suspended civil liberties, but in 1972 it put in place a new constitution. The constitutional *actos reformatorios* of 1978 legalized political parties, and presidential elections took place that year, followed by competitive legislative elections in 1980. However, from 1983 until 1989, the military took back the reins. When military ruler Noriega nullified the results of the 1989 elections, the United States deposed the dictator, and paved the way for the elected president Guillermo Endara to take office.

Under the 1946 constitution, *provincias* were deconcentrated with an appointed *intendente* (mayor), renamed *gobernador* (governor) from 1972, who answered to the central executive (C 1946, Title VIII; C 1972, Art. 204). The 1972 constitution created the institution of the

[1] In 2005 a legislative proposal (Law 19) was put forth to create the *comarca* Naso Tjër Di in Bocas del Toro *provincia,* but it has not yet become law.

consultative *consejo provincial* (provincial council), which is composed of municipal executives plus any members that the national legislator chooses to include (Art. 205).

The 1983 constitution introduces some provincial autonomy. The *consejos* can elect their own president and junta (Board of Directors) (C 1983 Art. 251); the presidents serve as members of the *consejo general del estado* (general council of the state) (Art. 196); and they can propose national laws (Art. 159.b). Executive power is now to some extent shared, though the dominant player remains the centrally-appointed governor and his staff. The governor is required to consult the council, report on matters of interest to the province, including local government, and conduct studies when requested by the council (Art. 252). *Provincias* do not control their institutional set up, though they must be consulted on boundary changes. For the first time provincial competences were specified (Art. 252), though these remain relatively weak. The core concerns economic development and public investment.

Councils do not have legislative authority; they draft an annual plan of public works, investment and services in their province which they submit to the governor and the national executive, and they monitor its execution. So they have initiative and oversight rights, but no decision rights, over economic development, and limited resources mean that their policy footprint remains modest (IADB 2003: 3).[β] The 2004 constitutional reform expanded their role marginally, and the 2009 *Ley de Descentralización de la Administración Pública* (Public Administration Decentralization Law 37), which set out a framework for multilevel governance on economic planning, emphasizes local over provincial government. Provinces score 1 on institutional depth and 0 on policy scope for 1950-1982, and 2 and 1 from 1983.

Indigenous territories have been recognized in Panama longer than in many other Latin American countries. The 1972 constitution requires the central government to establish *comarcas* for indigenous groups, and Article 123 guarantees the indigenous communities the reserve territories and collective property necessary for economic well being (Horton 2006: 838). The constitution also protects indigenous languages and identity and bilingual education for indigenous children (Wickstrom 2003).

The oldest *comarca* is Kuna, whose territory was first called San Blas and then Kuna Yala. The Kuna live in the archipelago formed by 365 islands off the Atlantic coast. The municipal *comarcas* of Wargandí and Madugandí are also Kuna, but were recognized later.[2] The *carta orgánica* (statute) for San Blas was approved in 1945, though its borders and administration were not formalized until 1953, when a law gives the *comarca* an *intendente* with the status of a centrally appointed governor (Law 16, Art. 3). The traditional system of chiefs was recognized. The highest authority in the *comarca* is the *Congreso General Kuna* (Kuna General Congress), composed of local representatives. Public security, own institutional set up, trade agreements

[2] In April 2003, a meeting of representatives of the 68 Kuna communities in Kuna Yala, Kuna de Madugandí, and Kuna de Wargandí, declared their desire to unite the three *comarcas* but the Panamanian government rebuked them.

with foreign countries, and community decision making follow traditional norms, and these were codified in the *carta orgánica* approved by the central government in 1945. In matters of natural resource and territorial control, the Kuna have established firmer authority than other groups, in part because of more powerful political mobilization.

The second *comarca*, Emberá-Wouna'an, was recognized in 1983. The largest group, the Ngöbe-Buglé, which accounts for almost two thirds of Panama's indigenous population, has a long history of conflict with the central government over natural resource control and territorial boundaries, which delayed recognition to 1997 (Law 10) (Jordan-Ramos 2010: 198).

The *comarcas* have their own institutional and representative structure and have some policy autonomy, which varies by statute. Indigenous regulations cannot contradict the constitution, but indigenous institutions have full authority in their territory. The coordinating role of national ministries is similar to that for the provinces and the *intendente* (or gobernador) in the *comarca* plays the same role as a provincial governor.

Land, natural resource extraction, and economic development constitute the core of comarca competence. All *cartas orgánicas* grandfather in the private property rights of those already on the land (for example Law 22, Art. 3 for Emberá), but specifications vary. In Ngöbe-Buglé, local governments can sell or lease communal property provided they give the community the option to purchase (Law 10). In Emberá-Wouna'an, the sale or lease of communal lands is prohibited (Law 22, Art. 2).[3] Indigenous territories cannot veto national development in their territory (Jordan-Ramos 2010), including concessions to third party developers for natural resource extraction. However, since 1998 national laws have put in place a system for profit sharing (Wickstrom 2003: 46; *Ley General del Ambiente*, General Environmental Law 41 of 1998). Indigenous territories play also a role in ensuring the incorporation of traditional medicine and education practices in their territory. The *comarcas* score 2 on institutional depth and 2 on policy scope.

The government recognized two smaller *comarcas*, Madugandí in 1996 (Law 24) and Wargandí in 2000, which currently have municipal status, though with a special statute. Municipal government is protected from arbitrary central government interference (C 1972, Art. 232), and since 1973 (Law 106) *distritos* are in charge of local economic development (Luna 2009: 12). Gradually, *distritos* have taken on a greater role in public works and licensing, though their role is less pronounced in conventional municipal matters such as education, policing, internal institutional set-up, or the justice system, which remain controlled by the central government (Quintero 2004). Law 37 in 2009 decentralizes competences in culture and tourism, education,

[3] The legal protections for indigenous control—own institutional set up and indigenous land rights in particular—are contested. In 2010, Decree 537 unilaterally changed the Ngöbe-Buglé charter and named a central government appointee as Cacique General against the choice of the *congreso general*. Major conflict in 2011 over central government authority to grant exploitation rights of the world's fifth largest copper mine—in Ngöbe-Buglé—exposes the fragility of the constitutional guarantees of sovereignty.

transportation, social services, and local economic development to *distritos* (Luna 2009: 22). Consistent with the status of *distritos*, Wargandí and Madugandí score 1 on policy scope until 2008, and 2 from 2009.

The status of dozens of small indigenous communities not within the confines of the comarcas has been in flux. While Law 72 in 2008 appeared to lay a framework allowing for these communities to petition for protection and legal status, enabling legislation was not passed until 2010 (Decreto 223). Indigenous communities also protested Article 17 of the enabling legislation, which, in effect, traded legal protection for allowing a hydroelectric project on indigenous land, opposed by indigenous communities (Bivin Ford 2015). While dozens of communities have initiated the process, few had received status as of 2018: Caña Blanca and Puerto Lana in 2012, Arimae in 2015, Piriati in 2014, and Ipeti in 2015—these last two as a result of a case brought against the Panamanian government in the Inter-American Commission on Human Rights by indigenous leaders alleging that excluding native land rights from areas under national environmental protection broke international law. Most indigenous communities outside comarcas overlap in territory with national preserves. In 2019 a resolution was passed that paves the way for removal of this legal barrier (Resolution DM-0612-2019).

Law 72 creates a mechanism for communal ownership of the land title for indigenous communities, not the creation of autonomous governments. Yet as many of these localities were already using traditional systems of self government without institutionalization, these laws add a layer of protection of physical land as well as traditional indigenous rights. Formally, these legal changes do not confer the same self and shared rule autonomy granted to the five comarcas and so they do not reach the threshold of intermediate government, despite the somewhat fuzzy status of their institutions[4].

Fiscal autonomy

Provinces and *comarcas* have no fiscal autonomy. Taxation is firmly controlled by the center (Luna 2009; IADB 2003: 4). Provinces collect some revenue, but they do not have control over the base or rate of taxes (Quintero 2004: 16). The 1998 rules for profit sharing over natural resources in indigenous *comarcas* grant them increased revenue, but no autonomy.

Borrowing autonomy

While municipal governments have limited borrowing autonomy (with a golden rule provision and prior central approval), provincial governments are prohibited from borrowing (Valpoort 2007). *Comarcas* do not borrow.[α]

[4] These communities also have very small populations, often a few hundred people, and are smaller than corregimentos (townships).

Representation

Provincial governors are appointed by the national executive and can be removed at will (C 1972, Art. 249; C 1983, Art. 249). Since 1972 provinces have a *consejo provincial*, composed of municipal representatives (local mayors) plus other members that the national legislator chooses to include (Art. 205). Since 1983 councils can elect their own president as well as a *junta* (Board of Directors) from their members (C 1983 Art. 251). From 1972, provinces score 1 on assembly, and from 1983, they also score 1 on executive to reflect the co-existence of an autonomous and centrally appointed executive.

All the *comarcas* have dual executives with a centrally appointed governor as well as a *cacique general* chosen by the *congreso*. Each comarcal *carta orgánica* lays out selection procedures for the *congreso*, which usually follow custom. The overall structure varies by *comarca*. Each provincial *comarca* has an indirectly elected assembly. In Kuna Yala, for example, each locality has an *onmaked nega* (local council) made up of all adult males and elders elected by consensus (Martínez Mauri 2009: 5). These smaller congresses elect the *congreso general kuna*, which meets every six months. In Emberá-Wouna'an, the two regions (Sambú and Cémaco) have regional *congresos* that constitute the *congreso general*, which meets every one or two years. In Madugandí and Wargandí, local *congresos* elect the *cacique*, but there is also a *representante de corregimento*, the local counterpart of the centrally appointed governor.

Shared rule

Law making

Provinces and *comarcas* have no shared rule in law making. The national parliament has never had a chamber based on equal territorial representation. Since 1983, a provincial council (through its president) may propose legislation to the parliament (C 1983, Art. 159b). The right of initiative concerns only ordinary law, i.e. it does not include the constitution or state organization. Presidents of the provincial council present the bill in the chamber, but cannot vote. This provides some very weak channel for influence on law making.[β]

Executive control

Provinces have no executive control. Since 1983 the presidents of the provincial councils have a seat in the *Consejo General de Estado*, which is chaired by the president (C 1983, Art. 196). Provincial representatives constitute a minority in the council, which also includes the vice-president, ministers of state, the directors of autonomous and semi autonomous entities, the chief commander of the National Guard, the comptroller-general, the national attorney general, the solicitor general, and the president of the parliament. Moreover, provincial Presidents do not have the right to put matters on the agenda, but can only assist in advising the president or the

parliament “on matters submitted to it by the President or the President of the Legislative Assembly” (C 1983, Art. 197).

The *comarca* statutory laws prescribe consultation (and sometimes consent) on development and land use,[5] but until 2000, there was no routinized channel. Since 2000, the *consejo nacional de desarrollo indígena* convenes regularly. The *consejo* is composed of indigenous and central representatives, including indigenous groups outside the recognized *comarcas*, and can make binding decisions about the implementation of public services impacting indigenous communities (Executive Decree 1, Art. 3). Comarcas score 0 through 1999, and 2 from 2000-2002 on bilateral executive control.

In 2003 legislation creating several new local units (Ley 18) also discretely eliminated the articles of General Environmental Law 41 that protected the right to indigenous consultation in the comarcas (Arts 5, 63, 96, 98, and 101; see Herrera 2012: 48). This erosion of indigenous land rights in comarcas spurred conflict in the intervening years. The degradation of required consultation in 2003 represents a significant loss in autonomy, reflected in a score of 1 for 2003-2018.

Fiscal control

Provinces and *comarcas* have no fiscal control.

Borrowing control

Provinces and *comarcas* have no borrowing control.

Constitutional reform

Provinces play no role in constitutional reform. The *carta orgánica* of the communities requires approval of both the national executive and comarcal authorities (Jordan-Ramos 2010; Wickstrom 2003), which means that *comarcas* can veto. For example, the *carta organica* for the Ngöbe-Buglé *comarca* reads that “the present Charter may be amended by agreement between the [national] executive and the General Congress [of the Ngobe-Bugle comarca]” (1999, Art. 282).

[5] For example see Article 19 of Law 22 of 1983, which created the *comarca* of Emberá-Wouna’an and requires consent of the *caciques* prior to natural resource extraction.

Self-rule in Panama

		Institutional depth	Policy scope	Fiscal autonomy	Borrowing autonomy	Representation		Self-rule
						Assembly	Executive	
Provincias	1950–1971	1	0	0	0	0	0	**1**
	1972–1982	1	0	0	0	1	0	**2**
	1983–2018	2	1	0	0	1	1	**5**
Kuna Yala	1950–2018	2	2	0	0	1	1	**6**
Emberá -Wouna'an	1983–2018	2	2	0	0	1	1	**6**
Ngöbe-Buglé	1997–2018	2	2	0	0	1	1	**6**
Madugandí	1996–2008	2	1	0	0	2	1	**6**
	2009–2018	2	2	0	0	2	1	**7**
Wargandí	2000–2008	2	1	0	0	2	1	**6**
	2009–2018	2	2	0	0	2	1	**7**

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Shared rule in Panama

		Law making						Executive control		Fiscal control		Borrowing control		Constitutional reform		Shared rule
		L1	L2	L3	L4	L5	L6	M	B	M	B	M	B	M	B	
Provincias	1950–2018	0	0	0	0	0	0	0	0	0	0	0	0	0	0	**0**
Kuna Yala	1950–1999	0	0	0	0	0	0	0	0	0	0	0	0	0	4	**4**
	2000–2002	0	0	0	0	0	0	0	2	0	0	0	0	0	4	**6**
	2003–2018	0	0	0	0	0	0	0	1	0	0	0	0	0	4	**5**
Emberá-	1983–1999	0	0	0	0	0	0	0	0	0	0	0	0	0	4	**4**
Wouna'an	2000–2002	0	0	0	0	0	0	0	2	0	0	0	0	0	4	**6**
	2003–2018	0	0	0	0	0	0	0	1	0	0	0	0	0	4	**5**
Ngobe-	1997–1999	0	0	0	0	0	0	0	0	0	0	0	0	0	4	**4**
Buglé	2000–2002	0	0	0	0	0	0	0	2	0	0	0	0	0	4	**6**
	2003–2018	0	0	0	0	0	0	0	1	0	0	0	0	0	4	**5**
Madugandí	1996–1999	0	0	0	0	0	0	0	0	0	0	0	0	0	4	**4**
	2000–2002	0	0	0	0	0	0	0	2	0	0	0	0	0	4	**6**
	2003–2018	0	0	0	0	0	0	0	1	0	0	0	0	0	4	**5**
Wargandí	2000–2002	0	0	0	0	0	0	0	2	0	0	0	0	0	4	**6**
	2003–2018	0	0	0	0	0	0	0	1	0	0	0	0	0	4	**5**

National legislature has: L1=regional representation; L2=regional government representation; L3=majority regional representation; L4=extensive authority; L5=bilateral regional consultation; L6=veto for individual region. Total for shared rule is either multilateral (M) or bilateral (B).

@Version, Nov 2020 – author: S. Chapman-Osterkatz