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OPTION REPORTS

COUNTER CORRUPTION COMMISSION

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The following report is one of a series produced by the Constitutional Design Group, a group of scholars dedicated to distributing data and analysis useful to those engaged in constitutional design. The primary intent of the reports is to provide current and historical information about design options in written constitutions as well as representative and illustrative text for important constitutional provisions. Most of the information in these reports comes from data from the Comparative Constitutions Project (CCP), a project sponsored by the National Science Foundation. Interested readers are encouraged to visit constitutionmaking.org for further resources for scholars and practitioners of constitutional design.

1. INTRODUCTION

This report examines the constitutional provision of counter-corruption commissions. It details the prevalence of such commissions across texts, the selection processes employed to staff them, and finally, the de jure powers granted to these regulatory commissions.

2. DATA SOURCE(S)

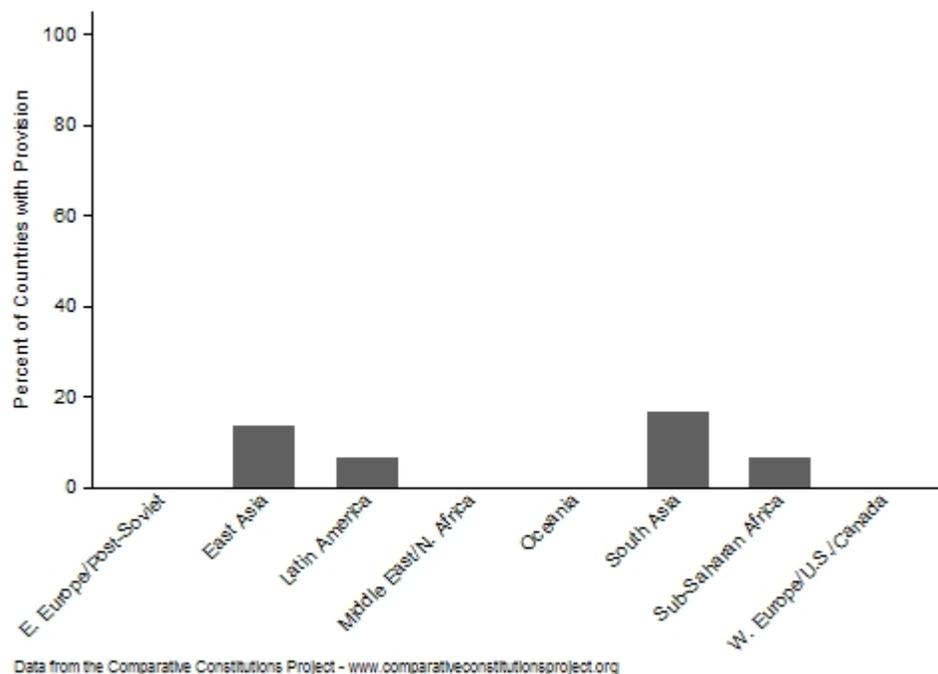
The analysis reported below is based on data the Comparative Constitutions Project (please see the appendix to view the survey question text). As of this writing, the project's sample includes 579 of the roughly 800 constitutions put in force since 1789, including more than 90% of constitutions written since World War II.

3. CLASSIFICATION AND HISTORICAL TRENDS

Constitutional provisions establishing counter-corruption commissions are exceedingly rare. Just 15 of the 578 constitutions, representing 13 countries, reviewed for this report include formal provisions for a counter-corruption commission. Thus, 96% of the constitutions in this report do not contain such a commission. The constitutionalization of counter-corruption commissions is a recent phenomenon with approximately 50% of commissions established just in the last two decades.

While illustrating the relative scarcity of counter-corruption commissions worldwide, Figure 1 nevertheless reveals a slight regional trend. Though by no means prevalent in any region, commissions are beginning to emerge in Asia and Sub-Saharan Africa while none have appeared in any post-Soviet state.

Figure 1. Percent of Constitutions with a Counter-Corruption Commission in 2000 by Region (N=182)



The executive typically plays a role in the selection of members of the commission. Nine of the fifteen selection procedures reviewed provide a formal role for the executive. Six cases require the executive to act on either the advice or recommendation of legislatures or service commissions such as judicial or constitutional councils. Two of these six constitutions are Nepalese. The 2007 text, however, shifts the power to appoint commissioner from the king to the prime minister.

The executive is the sole actor in three constitutions (Nigeria 1989, Seychelles 1982 and Zimbabwe 2005). The Republic of Vietnam constitution of 1967 provides for one-third of the members to be chosen by the executive, another third by the legislature, and the final third by the Supreme Court. Finally, four constitutions do not specify a selection procedure and two leave the procedure to ordinary law.

By definition, all bodies coded as counter-corruption commissions have as their primary function the elimination or control of governmental corruption. As the section, "Notes on Atypical Cases," below makes clear, however, there need not be explicit "anti-corruption" language in the text for a body to constitute a such a commission.

Constitutional language with regard to the powers of counter-corruption commissions is fairly general. Mandates to monitor behavior or assets of public officials are common and nine bodies have investigative power.

4. NOTES ON ATYPICAL CASES

Self-described Anti- or Counter-Corruption Commissions are taken at face value, even if no details are given or the reference is made in passing (see Zambia 1996 below). Bodies with counter-corruption as their primary duty regardless of their title are coded as counter-corruption commissions (see, for example, Seychelles' Integrity Commission below). Positive codings, however, do not require explicit reference to the term corruption. For instance, counter-corruption powers are inferred in the functions given to bodies charged solely with monitoring compliance of public officials with constitutionally mandated asset disclosure. This inference is also extended to bodies such as Nigeria's Code of Conduct Bureau that are tasked with monitoring the behavior of public officials.

A number of constitutions establish bodies, one of whose functions is counter-corruption but as this is not the sole or primary task of the body, the cases are coded "other" with comment (see the Republic of Vietnam 1967 below). This includes instances in which counter-corruption powers are housed in the office of an ombudsman such as Rwanda 2003.

Haiti 1983 is unique in providing specific anti-corruption language but without establishing an official entity to enforce the provisions. It is coded "other" with comment (see Sample Provisions below).

Offices whose primary responsibility is the audit or monitoring of public finances are not considered anti-corruption and are coded "no".

5. SAMPLE CONSTITUTIONAL PROVISIONS

(Note: dates provided reflect the version of the constitution used to obtain sample provisions, and represent either initial year of promulgation or year through which subsequent amendments are included.)

The set of sample provisions is divided into sections on:

1. Counter-Corruption Commissions
2. Selection of Members of Counter-Corruption Commissions
3. Powers of Counter-Corruption Commissions

5.1. Counter Corruption Commissions

Property of President, vice president, ministers, members of Supreme Court and the attorney general before and after their term of office would be registered by an organ to be set by law.

- *Afghanistan 2004, Article 154*

There shall be an anticorruption commission, headed by a chairperson and comprising two members, which shall be an independent authority and shall take all necessary steps to prevent and combat corruption in the Kingdom and shall exercise such powers and functions as may be prescribed by law made by Parliament.

- *Bhutan 2005, Article 26.1*

The Commission of Civic Control of Corruption is a juridical person of public law, with its seat in Quito, with economic, political and administrative autonomy and independence.

- *Ecuador 1998, Article 220*

There shall be a commission to be called the Commission for the Investigation of Abuse of Authority of Nepal consisting of a Chief Commissioner and a number of other Commissioners as may be required.

- *Nepal 2007, Article 119.1*

There shall be an Integrity Commission (in this section and in section 139 referred to as "the Commission") for Trinidad and Tobago consisting of such number of members, qualified and appointed in such manner and holding office upon such tenure as may be prescribed.

- *Trinidad and Tobago 2006, Article 138.1*

A person holding or acting in any post, office of appointment—...the Anti-Corruption Commission...shall not be qualified for election as a member of the National Assembly.

- *Zambia 1996, Article 65.7*

5.2. Selection of Members of Counter Corruption Commissions

The Chairperson and members of the Commission shall be appointed by the Druk Gyalpo from a list of names recommended jointly by the prime minister, the Chief Justice of Bhutan, the Speaker, the Chairperson of the National Council and the Leader of the Opposition Party.

- *Bhutan 2005, Article 26.2*

The law shall determine its integration, administration and functions, the institutions of civil society that will designate [its members,] and the duration of the tenure of its members who are outside of the Supreme Court.

- *Ecuador 1998, Article 220*

The Prime Minister shall, on the recommendation of the Constitutional Council, appoint the Chief Commissioner and other Commissioners.

- *Nepal 2007, Article 119.2*

All Chairmen and members of the bodies so established shall be appointed by the President.

- *Nigeria 1989, Article 152*

The Inspectorate includes from nine to eighteen Inspectors, one-third designated by the National Assembly, one-third by the President, and one-third by the Supreme Court.

- *Republic of Vietnam 1967, Article 90.1*

The Commission shall consist of an Investigator-General, who shall be appointed by the President in consultation with the Judicial Service Commission and shall be the chairman, and three Commissioners who shall be appointed by the President.

- *Zambia 1990, Article 118.1*

There shall be an Anti-Corruption Commission consisting of at least four and not more than nine members appointed by the President.

Persons appointed to the Anti-Corruption Commission shall be persons of integrity chosen for their knowledge of and experience in administration or the prosecution or investigation of crime or for their general suitability for appointment, and—

- (a) at least one shall be entitled to practise as a legal practitioner; and
- (b) at least one shall be entitled to practise as an auditor or public accountant in Zimbabwe; and
- (c) at least one shall have had not less than ten years' experience in the investigation of crime.

- *Zimbabwe 2000, Article 108A*

5.3. Powers of Counter Corruption Commissions

Civil servants who have information about an infraction against the Public Treasury by their subordinates must inform the competent authority within the shortest period of time or risk being deemed receivers of stolen goods and prosecuted as such.

- *Haiti 1983, Article 167*

Unlawfully increased assets will be proven by any means, notably by presumption of the marked disproportion between the official's resources

acquired since he took office and the total amount of the salary or wages his position entitled him to receive. To ascertain the amount of this increase, the actual capital of the official, plus his wife's and his under-age children's, shall be considered as a lump sum.

The officials named by the law are required to declare the state of their finances to the Records Office of the Civil Court within sixty (60) days after they take office. The competent Commissioner of the Government can take any measure he deems necessary to verify the accuracy of the declaration.

The law sanctions infractions against the Public Treasury and unlawfully increased assets.

- *Haiti 1983, Article 168*

[The Code of Conduct] Bureau shall have power-

- (a) to receive declarations by public officers made under paragraph 12 of Part I of the Fifth Schedule to this Constitution;
- (b) to examine the declarations in accordance with the requirements of the Code of Conduct or any law;
- (c) to retain custody of such declarations and make them available for inspection by any citizen of Nigeria on such terms and conditions as may be prescribed' by law;
- (d) to ensure compliance and where appropriate enforce the provisions of the Code of Conduct or any law relating thereto;
- (e) to receive complaints about breach or non-compliance with the provisions of the Code of Conduct or any law in relation thereto, investigate the complaint and, where appropriate, refer such matters to the Code of Conduct Tribunal; and
- (f) to appoint, promote, dismiss and exercise disciplinary control over the staff of the Code of Conduct Bureau in accordance with the provisions of an Act of the National Assembly enacted in that behalf;

- *Nigeria 1989, Schedule 3 Part I.A*

The responsibilities of the Ombudsman Office shall include preventing and fighting against injustice, corruption and other related offenses.

- *Rwanda 2003, Article 182*

An Act may make provision with respect to the powers and immunities of the Integrity Commission and its members, the discharge of its functions and its procedure, *and may*, in particular, make provision

- (a) requiring the President, Ministers, members of the Central Executive Committee of the Seychelles People's Progressive Front, members of the Assembly, the Chairman of the Assembly and persons holding office in

the service of Seychelles, to file statements at prescribed times, of their assets and liabilities and those of an prescribed member of their family; (b) empowering the Commission to enquire into any such statement so filed, and in particular to require and obtain evidence in support of any such statement ; and

(c) requiring the Commission to report any unusual increase in the assets of any such person, or any prescribed member of his family, to the President or, in the case of any such increase in the assets of the President, or any prescribed member of his family to the Central Executive Committee of the Seychelles People's Progressive Front.

- *Seychelles 1982, Article 88*

The National Counter Corruption Commission shall have the power to inquire into facts, summarize the case and prepare opinions to be submitted before the Supreme Court's Criminal Division for persons holding political positions.

- *Thailand 1997, Article 301*

The functions of the Inspectorate of Government shall be prescribed by Parliament and shall include the following—(b) to eliminate and foster the elimination of corruption, abuse of authority and of public office;

- *Uganda 1995, Article 225.1.b*

The Inspectorate is empowered to: (1) Inspect, control and investigate personnel of all public and private agencies directly or indirectly engage in corruption, speculation, influence-peddling or acts harmful to the national interest; (2) Inspect accounts of public agencies and public corporations; (3) Audit the property of personnel of public agencies including the President, Vice-President, Prime Minister, National Assembly members, and the President of the Supreme Court.

- *Republic of Vietnam 1967, Article 88*

6. APPENDIX

(Note: dates provided reflect the version of the constitution used to obtain sample provisions, and represent either initial year of promulgation or year through which subsequent amendments are included.)

This report is based on the following question(s) from the Comparative Constitution Project's "survey instrument":

[CC] Does the constitution contain provisions for a counter corruption commission?

1. Yes

- 2. No
- 90. other, please specify in the comments section
- 97. Unable to Determine

[CCSEL] What are the details of the process for selection of members of the Counter Corruption Commission?

- 1. [open-ended response]

[CCPOW] What powers are reserved for the Counter Corruption Commission?

- 1. [open-ended response]

For additional documentation on the Comparative Constitutions Project, (including the full codebook, the sample, the sources of constitutional texts and translation issues related to those texts, coding procedures, publicly available data, etc.) please visit the project website at www.comparativeconstitutionsproject.org.