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OPTION REPORTS

HUMAN RIGHTS 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 Human Rights 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)

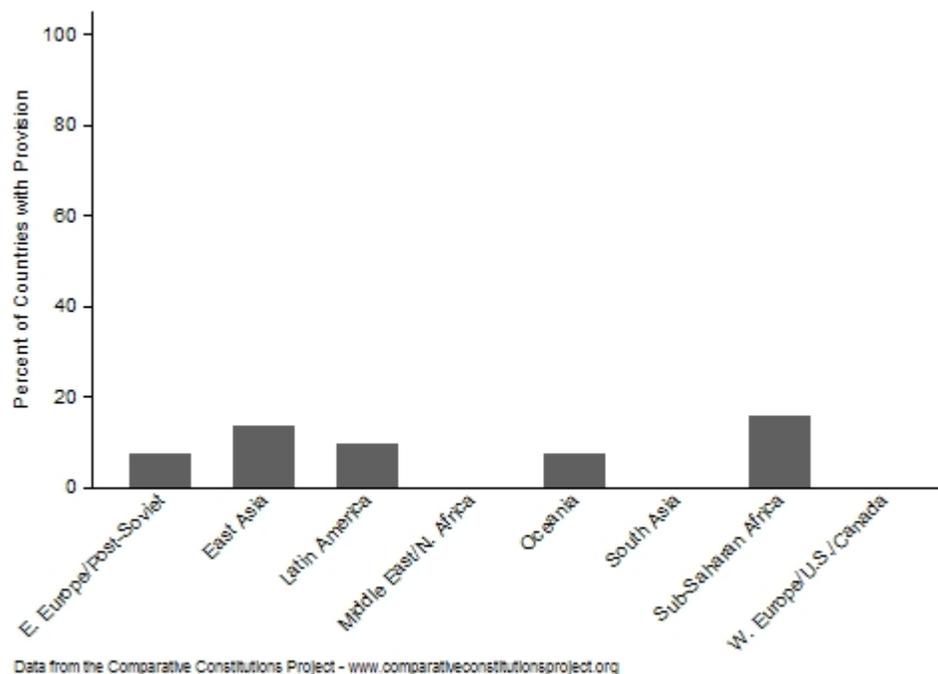
The analysis reported below is based on data the Comparative Constitutions Project (please see the appendix to view the survey question text). As of this writing, the project's sample includes 580 of the roughly 800 constitutions put in force since 1789, including more than 90% of constitutions written since World War II.

3. CLASSIFICATION AND HISTORICAL TRENDS

Constitutional provisions establishing Human Rights Commissions are a relatively recent, yet still infrequent, phenomenon. Only 25 of the 580 constitutional texts reviewed provide for such oversight bodies. Almost 70% of provisions date from 1995 or later. No such provision appears in the data prior to 1985. Five cases received a coding of "other."

While illustrating the relative scarcity of human rights commissions worldwide, Figure 1 also reveals a slight regional trend. Approximately 20% of constitutions in Sub-Saharan Africa provide for a commission while some regions, such as Western Europe, lack them entirely.

Figure 1. Percent of Constitutions with a Human Rights Commission in 2000 by Region (N=182)



Generally speaking, as Table 1 below shows, legislatures are the dominant actor in the selection of commission members. In some cases (see Mexico 2003 and Guatemala 1985 below), this power is relatively unconstrained with no “veto gates.” In other cases, the executive has a more pronounced role. Regardless, in only a single case (see Sudan 2005 below) does an executive have the unfettered ability to select commission members. A further four cases, however, require the executive to seek the advice of non-legislative actors such as councils of state, ombudsmen, or prime ministers. Two cases explicitly require legislative approval of executive appointments while Thailand 1997 and South Africa 2003 provide for executive appointment on either the advice or recommendation of at least one legislative chamber. Four constitutions leave the issue of selection to future legislatures by delegating the power to craft selection provisions to ordinary law. Finally, seven constitutions are silent on the issue of selection to and membership of human rights commissions.

Table 1. Membership Selection Procedures

Selection Process	Number	Percentage
Legislature	10	40%
Non-legislative, other	4	16%
Left to law	4	16%
Not specified	7	28%

As with the selection of members, broad patterns exist concerning the allocation of power to human rights commissions. By definition, all human rights commission provisions express a duty to either promote or protect rights. In addition, twelve constitutions endow the commission with investigative powers. A further eight texts either allow or require the drafting and submitting of reports to the government or other state bodies concerning the status of human rights in the country. Seven texts explicitly stipulate an educational and/or research purpose to the commission's activities. More infrequent provisions grant human rights commissions the power to visit prisons, monitor treaty compliance and in one case, to confer prosecutorial immunity on cooperative witnesses in the course of investigating human rights abuses. Three texts, Bosnia-Herzegovina 1995, Nicaragua 1987 and Togo 2002, fail to specify the powers of the human rights commission while four more, Ethiopia 1994, Iraq 2005, Sudan 2005 and Zambia 1991, leave the enumeration of powers to ordinary law.

Table 2. Powers Granted to Human Rights Commissions

Power	Number	Percentage
Investigation	11	44%
Reporting	8	32%
Education/Research	6	24%
Left to law (exclusively)	4	16%
Not specified	3	12%

4. NOTES ON ATYPICAL CASES

In the CCP data, commissions are defined as those bodies that have as their main duty the promotion and/or protection of rights. The absence of such specificity is sufficient to code a text as either not having a commission or as "other," depending on the context. Bodies that have such duties secondarily were coded "other" with comment.

Some constitutions such as Niger's of 1996 and 1999, call for the formation of a commission should the need arise. These were coded as "other," with elaborating comments.

References to a Plenipotentiary for Human Rights (as in Russia 2001) were also coded "other" with comment.

A passing reference to a human rights agency, in the absence of additional information, was coded as "no" but with a comment (see Haiti 1987 below)

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. Enumeration of Human Rights Commissions
2. Selection of Members of Human Rights Commissions
3. Powers of Human Rights Commissions

5.1. The enumeration of Human Rights Commissions

The State, for the purpose of monitoring the observation of human rights, to promote their advancement and protection, shall establish the Independent Human Rights Commission.

- *Afghanistan 2004, Article 58*

Awaiting the establishment of the Permanent Electoral Council provided for in this Constitution, the National Council of Government shall set up a Provisional Electoral Council of nine (9) members, charged with drawing up and enforcing the Electoral Law to govern the next elections, who shall be designated as follows:...

5) One for agencies defending human rights, who may not be a candidate in the elections;

- *Haiti 1987, Article 289.5*

The Supreme Commission for Human Rights and the Supreme Independent Commission for Elections and the Integrity Agency are considered independent associations subject to the supervision of the Council of Representatives. Their work is regulated by law.

- *Iraq 2005, Article 100*

A National Commission shall supervise the promotion and the effectivity of the above declared rights and liberties, if necessary, in accordance with the international agreements to which Niger is a signatory.

A law shall determine the organization and the functioning of this Commission.

- *Niger 1999, Article 33*

The Office of the Defender of the People is charged with the promotion, defense and oversight of the rights and guarantees established in this

Constitution and the international treaties concerning human rights, as well as the legitimate, collective and pervasive [*difusos*] interests of the citizens.

- *Venezuela 1999, Article 280*

5.2. Selection of Members of Human Rights Commissions

The structure, and functions of this Commission shall be regulated by law.

- *Afghanistan 2004, Article 58.4*

The Institutions supporting democracy are chaired by the representatives of the "Force Vives" Component (*La Composante "Forces Vives"*), in accordance with the relevant provisions of the Global and Inclusive Agreement.

The other Components and Entities from the Inter-Congolese Dialogue shall belong to their respective boards.

- *Democratic Republic of the Congo 2003, Article 157*

The members of the Human Rights Commission referred to in paragraphs (3)(b) and (c) are appointed by the President on the advice of the Prime Minister, following consultation by the Prime Minister with the Leader of the Opposition and the sector standing committee of the House of Representatives responsible for matters concerning human rights.

- *Fiji 1998, Article 42.4*

The Congress of the Republic will appoint a Commission of Human Rights made up of a deputy for each political party represented in the corresponding period...

- *Guatemala 1993, Article 273*

The Human Rights Commission shall consist of-...

(c) such persons as shall be nominated from time to time in that behalf by those organizations that are considered in the absolute discretion of both the Law Commissioner and the Ombudsman to be reputable organizations representative of Malawian Society and that are wholly or largely concerned with the promotion of the rights and freedoms guaranteed by this Constitution.

(2) The Law Commissioner and the Ombudsman shall jointly refer the name of persons nominated under paragraph (c) of subsection (1) to the President who shall formally appoint such persons as members of the Human Rights Commission.

- *Malawi 1999, Article 131*

...The National Commission of Human Rights shall have a Consultative Council composed of ten members, who shall be elected by the vote of two-thirds of the present members of the Chamber of the Senators...

- *Mexico 2003, Article 102.B*

The President of the Republic shall, after consultation within the Presidency, establish a Human Rights Commission consisting of fifteen independent, competent non-partisan and impartial members. Their appointment shall be representative.

- *Sudan 2005, Article 142.1*

The National Human Rights Commission consists of a President and ten other members appointed, by the King with the advice of the Senate, from persons having recognized knowledge and experience in the protection of rights and liberties of the people, having regard also to the participation of representatives from private organizations in the field of human rights.

The President of the Senate shall countersign the Royal Command appointing the President and members of the National Human Rights Commission.

The qualifications, prohibitions, selection, election, removal and determination of the remuneration of members of the National Human Rights Commission shall be as provided by law.

The term of office of members of the National Human Rights Commission is six years as from the date of their appointment by the King and they shall hold office for only one term.

- *Thailand 1997, Section 199*

The Commission shall be composed of a Chairperson and not less than three other persons appointed by the President with the approval of Parliament.

- *Uganda 1995, Article 51.2*

5.3. Powers of Human Rights Commissions

The Commission for Human Rights of the Azerbaijan Republic...can file an inquiry with the Constitutional Court of the Azerbaijan Republic regarding normative acts of legislative and executive organs, municipalities and court acts violating human rights and freedoms.

- *Azerbaijan 2002, Article 130.VII*

The House of People’s Representatives “shall establish a Human Rights Commission and determine by law its powers and functions.”

- *Ethiopia 1994, Article 55.14*

The Commission on Human Rights shall have the following powers and functions.

- (1) Investigate, on its own or on complaint by any party, all forms of human rights violations involving civil and political rights;...
- (3) Provide appropriate legal measures for the protection of human rights of all persons within the Philippines, as well as Filipinos residing abroad, and provide for preventive measures and legal aid services to the underprivileged whose human rights have been violated or need protection;
- (4) Exercise visitatorial powers over jails, prisons, or detention facilities;
- (5) Establish a continuing program of research, education, and information to enhance respect for the primacy of human rights;
- (6) Recommend to the Congress effective measures to promote human rights and to provide for compensation to victims of violations of human rights, or their families;
- (7) Monitor the Philippine Government's compliance with international treaty obligations on human rights;
- (8) Grant immunity from prosecution to any person whose testimony or whose possession of documents or other evidence is necessary or convenient to determine the truth in any investigation conducted by it or under its authority...

- *Philippines 1986, Article 13 Section 18*

The South African Human Rights Commission] must-

- (a) promote respect for human rights and a culture of human rights;
 - (b) promote the protection, development and attainment of human rights;
- and
- (c) monitor and assess the observance of human rights in the Republic.

- *South Africa 2003, Article 184.1*

The law shall specify the functions, powers, procedures, terms and conditions of service of the Commission.

- *Sudan 2005, Article 142.2*

The National Human Rights Commission has the power and duties to examine and report commission or omission of acts which violate human rights, to recommend National Assembly and Council of Ministers policies and recommendations to promote protection of human rights.

- *Thailand 1997, Article 200*

6. APPENDIX

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

[HR] Does the constitution contain provisions for a human rights commission?

1. Yes
2. No
96. other, please specify in the comments section
97. Unable to Determine

[HRSEL] What are the details of the process for selection of members of the Human Rights Commission?

1. [open-ended response]

[HRPOW] What powers are reserved for the Human Rights 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.