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OPTION REPORTS

OMBUDSMAN

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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 ombudsmen, independent state officials tasked with protecting citizens' interests and investigating complaints of improper government activity. It details the prevalence of such institutions across texts, selection processes, term length, qualifications, and de jure powers.

2. DATA SOURCE(S)

The analysis reported below is based on data the Comparative Constitutions Project (please see the appendix to view the question text). As of this writing, the project's sample includes 584 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 an Ombudsman are a relatively recent phenomenon. Only 77 of the 584 constitutional texts reviewed (13%) provide for this oversight body. Figure 1 illustrates both the historical scarcity of this provision and the time trend in the last half of the 20th century that saw the proportion of texts with an ombudsman more than double.

Figure 1. Percent of Constitutions with an Ombudsman by Year (N=584)

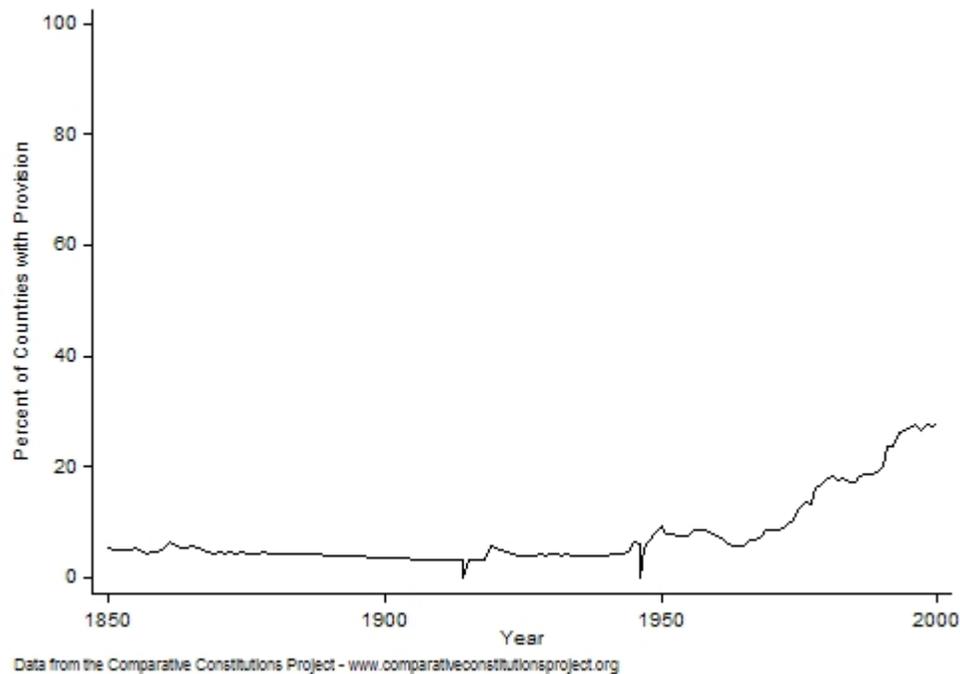
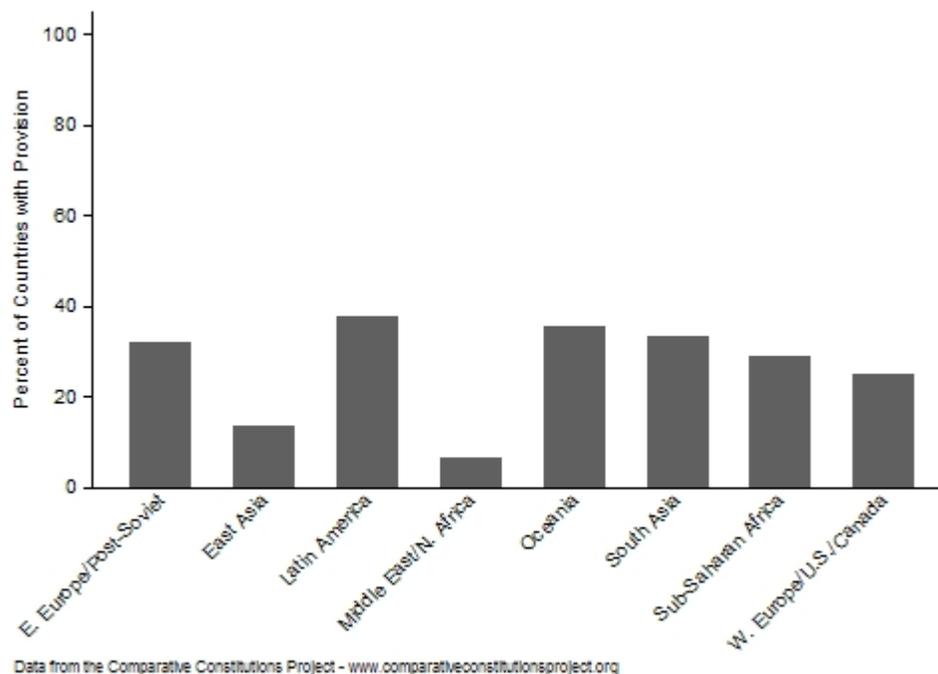


Figure 2 shows the regional distribution of ombudsmen in 2000. In no region do more than 40% of constitutions provide for an ombudsman. The East Asia and Middle East/North Africa regions are notable outliers with less than 10% of texts mandating an ombudsman.

Figure 2. Percent of Constitutions with an Ombudsman in 2000 by Region (N=181)



In a majority of cases, selection of the ombudsman is made by a single institutional actor. Table 1 below provides a summary of the most common selection procedures. Exclusive selection by either a head of state or the first chamber of the legislature accounts for approximately 50% of all cases. Five cases make no provision for selection of the ombudsman at all.

Table 1. Ombudsman Selection Procedures (N=77)

Nominating (N)/Approving (A) Body	Number	Percentage
Head of state only	16	21%
First chamber only	22	29%
Second chamber only	2	2%
Both chambers together	4	5%
Government only	1	1%
Judiciary only	1	1%
Head of state and First Chamber	6	8%
Left to law	5	6%
Not specified	5	6%

Half of the constitutions reviewed do not specify the tenure of office. The distribution of the remainder ranges from Ecuador (1983), which has a one year term, to Panama (2004) with a ten year term for the ombudsman. The modal tenure among fourteen cases is five years. Two-thirds of texts which provide for an ombudsman are silent on the

issue of term limits. Only twelve impose a limit, while eight establish no term limits. Four constitutions leave the issue to ordinary law.

The most common power of an ombudsman is investigative (42 of 77 texts) followed by the hearing and registering of citizen complaints (27 texts). Twelve constitutions empower the ombudsman to bring either criminal or civil suits. Fifteen delegate the delineation of ombudsman powers to future legislatures by leaving the matter to ordinary law. Provisions in twenty eight texts were beyond the scope of the survey question and so were coded other. As multiple responses to this question are permitted, the categories are not exclusive – forty three constitutions specified multiple powers.

4. NOTES ON ATYPICAL CASES

A formal institution to accept and respond to citizen petitions and complaints is deemed sufficient to consider a body an ombudsman. Another element of the decision on whether a particular body qualified as an ombudsman is whether it is empowered to investigate constitutional or legal violations by the state. Vietnam 1960 contained provisions for both citizen complaints and investigation but since a formal body was not established, so was coded as not having an ombudsman.

The Office of the Ombudsman in Iraq's 2004 constitution was housed within the National Commission of Human Rights. The bodies are considered distinct and so the ombudsman was coded in the affirmative despite the fact that organizationally it was part of a human rights commission.

An ombudsman was created by statute in New Zealand in 1975. The wording of this act was changed via constitutional amendment in 1986. This is judged sufficient to deem the ombudsman entrenched and hence constitutionalized.

5. SAMPLE CONSTITUTIONAL PROVISIONS

The set of sample provisions is divided into sections on:

1. Ombudsman
2. Appointment of Ombudsman
3. Term Length and Qualifications of Ombudsman
4. Powers and Duties of Ombudsman

5.1. Ombudsman

The Judicial Proctorate shall be an independent public body the purpose of which shall be to defend the rights, freedoms and guarantees of citizens ensuring by informal means the justice and legality of the public administration.

- *Angola 1992, Article 142.1*

The Defender of the People is an independent body created within the ambit of the National Congress which shall operate with full functional autonomy without taking orders from any authority. Its mission is the defense and protection of human rights and other rights, guarantees and interests protected by this Constitution and by the law, against deeds, acts and missions of the Administration and the review of the exercise of public administration functions.

- *Argentina 1994, Article 86*

A permanent National Council for Peaceful Mediation (*le Conseil National de la Médiation Pacifique*) is established under the direction of an independent personality, the Mediator of the Republic (*le Médiateur de la République*). The National Council for Mediation has the principal mission to improve the relations between citizens, in view of protecting and promoting the rights of citizens...

- *Central African Republic 2004, Article 104*

An organ of mediation denominated the Mediator of the Republic is instituted. The Mediator of the Republic is an independent administrative authority invested with a mission of public service.

- *Cote D'Ivoire 2000, Article 115*

The office of Ombudsman must investigate action, being action that relates to a matter of administration, taken either before or after the commencement of this Constitution by a department or by a prescribed authority and in respect of which a complaint has been made.

- *Fiji 1998, Article 158*

There shall be an Ombudsman for Guyana.

- *Guyana 1995, Article 122*

An office known as the OFFICE OF CITIZEN PROTECTION is established to protect all individuals against any form of abuse by the Government.

- *Haiti 1987, Article 207*

The Chamber shall choose a committee to consider and investigate all petitions submitted by an individual or a group of citizens. The committee shall inquire into every complaint and shall inform the petitioner accordingly.

- *Syria 1950, Article 68*

Citizens of the Democratic Republic of Vietnam have the right to complain of and denounce to any organ of State any servant of the State for transgression of law. These complaints and denunciations must be investigated and dealt with rapidly. People suffering loss owing to infringement by servants of the State of their rights as citizens are entitled to compensation.

- *Democratic Republic of Vietnam 1960, Article 29*

5.2. Appointment of Ombudsman

The Ombudsman is appointed by the National Assembly with a majority of three-quarters (3/4) of its members. His appointment is subject to the approval by the Senate with a majority of two-thirds (2/3) of its members.

- *Burundi 2004, Article 239*

An organic law determines the organization, composition and functioning of the National Council for Mediation.

- *Central African Republic 2004, Article 105*

The Ombudsman will be part of the Public Ministry and will exercise his/her functions under the supreme direction of the General Prosecutor of the Nation. He/She will be elected for a term of four (4) years on a proposal drawn up by the President of the Republic.

- *Colombia 2005, Article 281*

The Tribunal of Constitutional Guarantees is established, with jurisdiction throughout the Republic and its seat in Quito. It comprises the following members:

1. Three members elected by the National House of Representatives;
2. The Chief Justice of the Supreme Court;
3. The Attorney General;
4. The President of the Supreme Electoral Tribunal;
5. One representative of the President of the Republic;
6. A representative of the workers;
7. A representative of the chambers of production; and

8. Two representatives of the citizenry, elected by their electoral colleges—one by the mayors of the cantons and the other by the prefects of the provinces.

The members indicated in 5, 6, 7 and 8 above must be Ecuadoran by birth, be in full enjoyment of their citizenship rights, and be at least twenty-five years of age. All of these and the ones indicated in 1 above are appointed for a term of one year and may be reelected. The others are ex officio members of the Tribunal. The Tribunal shall elect from among its members a president and a vice president for a term of one year.

- *Ecuador 1983, Article 140*

Ombudsman is appointed by the Constitutional Offices Commission following consultation by it with the Prime Minister.

- *Fiji 1998, Article 163.1*

There shall be an Ombudsman who shall be appointed by the President, acting in consultation with the Council of State, and with the approval of Parliament.

- *Ghana 1979, Article 100*

The Ombudsman shall be appointed by the Governor-General acting on the recommendation of the Prime Minister after consultation with the Leader of the Opposition.

- *Guyana 1966, Article 52.2*

The office is directed by a citizen bearing the title of PROTECTOR OF CITIZENS. He is chosen by consensus of the President of the Republic, the President of the Senate and the President of the House of Deputies. His term is seven (7) years and may not be renewed.

- *Haiti 1987, Article 207-1*

The Parliamentary Ombudsmen for Civil Rights and for the Rights of National and Ethnic Minorities shall be elected by a majority of two-thirds of the votes of the Members of Parliament, based on the recommendation made by the President of the Republic. The Parliament may also elect special Ombudsmen for the protection of individual constitutional rights.

- *Hungary 2003, Article 32/B.4*

Nominations for appointment to the office of Ombudsman shall be received from the public by way of a public advertisement placed by the Clerk to the National Assembly and the successful candidate shall be

appointed by the Public Appointments Committee in accordance with the requirements of this section.

- *Malawi 1999, Article 122.1*

(2) The members of the Commission shall be appointed by the Head of State, acting with, and in accordance with, the advice of an Ombudsman Appointments Committee consisting of—

- (a) the Prime Minister, who shall be Chairman; and
- (b) the Chief Justice; and
- (c) the Leader of the Opposition; and
- (d) the Chairman of the appropriate Permanent Parliamentary Committee, or, if the Chairman is not a member of the Parliament who is recognized by the Parliament as being generally committed to support the Government in the Parliament, the Deputy Chairman of that Committee; and
- (e) the Chairman of the Public Services Commission.

- *Papua New Guinea 2006, Article 217.2*

There shall be an Ombudsman who shall be appointed by the President from candidates proposed by the Constitutional Appointments Authority.

- *Seychelles 1996, Article 143.1*

The Ombudsman shall be appointed by the Governor General, acting in accordance with the advice of a committee consisting of the Speaker, the Chairman of the Public Service Commission and the Chairman of the Judicial and Legal Service Commission.

- *Solomon Islands 2001, Article 96.2*

The Public Defender of Rights shall be elected by the National Council of the Slovak Republic from among candidates proposed by at least 15 Members of Parliament for a term of five years.

- *Slovakia 2004, Article 151a.2*

An organic law shall regulate the institution of the Defender of the People as the High Commissioner of the General Cortes, appointed by them for the protection of the rights for which purpose he may supervise the activity of the administration, informing the General Cortes of it.

- *Spain 1992, Article 54*

There shall be established an independent body, to be known as the Public Grievances Chamber. Its chairperson and members shall be nominated by the President of the Republic from among persons of competence and integrity and approved by the National Assembly. The

Chamber shall be responsible to the President of the Republic and the National Assembly.

- *Sudan 2005, Article 143.1*

The Ombudsmen shall not be more than three in number who shall be appointed by the King with the advice of the Senate, from the persons recognized and respected by the public, with knowledge and experience in the administration of the state affairs, enterprises or activities of common interest of the public and with recognized integrity.

- *Thailand 1997, Article 196*

5.3. Term Length and Qualifications of Ombudsman

The Parliament appoints for a term of four years a Parliamentary Ombudsman and two Deputy Ombudsmen, who shall have outstanding knowledge of law. The provisions on the Ombudsman apply, in so far as appropriate, to the Deputy Ombudsmen.

- *Finland 1999, Section 38*

An Ombudsman or deputy Ombudsman may only be removed from office by the President for inability to discharge the functions of his or her office (whether arising from infirmity of mind or body or from any other cause) or for misconduct, and shall not be removed unless the National Assembly has appointed a tribunal to investigate the case and his or her removal has been approved by resolution of the National Assembly supported by the votes of not less than two-thirds of all the Members of the National Assembly. The Ombudsman or a deputy Ombudsman shall have the right to be heard and to be legally represented before the tribunal.

- *Gambia 1996, Article 164.6*

Matters relating to the establishment and competences of the "Ombudsman", which operates as an independent authority, shall be specified by law.

- *Greece 2002, Article 103.9*

...The Public Attorney is elected for a term of eight years, with the right to one reelection...

- *Macedonia 1998, Article 77*

The Chief Commissioner shall not be less than 50 years of age and the Commissioners shall not be less than 40 years of age at the time of appointment, but no person above the age of 70 years shall be appointed as Chief Commissioner or Commissioner of the Commission.

- *Nigeria 1989, Schedule 3.N.33*

The Public Protector is appointed for a non-renewable period of seven years.

- *South Africa 2003, Article 183*

5.4. Powers and Duties of Ombudsman

Public organs and officials are obligated to present to the People's Advocate all documents and information requested by him.

- *Albania 1998, Article 63.4*

On application by the *Volksanwaltschaft*, the Constitutional Court decides on the illegality of decrees [issued] by the administrative agency.

- *Austria 2004, Article 148e*

The National Council for Mediation has extended powers for receiving the complaints of citizens and proposing reforms, with the view of establishing an effective mechanism for the prevention, management and resolution of conflicts of all kinds, in particular of major political, economic, social and military conflicts involving the Administration and the administered, for the guarantee of grassroots democracy and the access of the feeble to the law.

- *Central African Republic 2004, Article 104*

The Ombudsman is an independent organ in charge to examine and seek to settle citizens' complaints against public bodies, certify the conformity of the acts with the law, prevent and initiate the whole process to remedy injustices.

- *East Timor 2002, Article 27.1*

The Parliamentary Ombudsman for Civil Rights is responsible for investigating or initiating the investigation of cases involving the infringement of constitutional rights which come to his attention and initiating general or specific measures for their remedy.

- *Hungary 2003, Article 32/B.1*

The Public Attorney protects the constitutional and legal rights of citizens when violated by bodies of state administration and by other bodies and organisations with public mandates...

- *Macedonia 1998, Article 77*

The Ombudsman shall investigate the cases submitted to him. He shall not have power to make decisions about the cases, but shall submit

recommendations to the appropriate offices to correct or prevent illegalities or injustices.

If the investigations of the Ombudsman lead to the conclusion that the Public Administration has committed serious mistakes, irregularities or violations, he shall inform the Assembly of the Republic, the Attorney General of the Republic and the central or local authority, with recommendations for pertinent measures.

- *Mozambique 2004, Article 259*

...(c) the duty to investigate complaints concerning the overutilization of living natural resources, the irrational exploitation of non-renewable resources, the degradation and destruction of ecosystems and failure to protect the beauty and character of Namibia;

(d) the duty to investigate complaints concerning practices and actions by persons, enterprises and other private institutions where such complaints allege that violations of fundamental rights and freedoms under this Constitution have taken place;...

- *Namibia 1998, Article 91*

(1) In the discharge of his functions under this Constitution, a Commissioner shall have the power to compel the attendance of any person so required to give evidence, supply information or produce documents.

(2) Any person who fails to comply with such order of the Commission shall be guilty of contempt and triable in a court of law for that offence in addition to any other offence provided in any Act of the National Assembly.

- *Nigeria 1989, Schedule 3.N.35*

The Public Protector has the additional powers and functions prescribed by national legislation.

- *South Africa 2003, Article 182.2*

The Riksdag elects one or more Parliamentary Ombudsmen to supervise the application of laws and other statutes in the public service, under terms of reference drawn up by the Riksdag. An Ombudsman may institute criminal and disciplinary proceedings in the cases indicated in these terms of reference.

- *Sweden 2003, Chapter 12 - Article 6*

In the case where the Ombudsman is of the opinion that the provisions of law, rules, regulations or any act of any person under Section 197(1) begs a question of the constitutionality, the Ombudsman shall submit the case

and the opinion to the Constitutional Court or Administrative Court for decision in accordance with the rules procedure of the Constitutional Court or the law on the procedure of the Administrative Court, as the case may be.

- *Thailand 1997, Section 198*

6. APPENDIX

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

Does the constitution provide for an ombudsman?

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

Who nominates the Ombudsman?

1. Head of State (use this choice for single executive systems)
2. Head of Government
3. the Government/Cabinet
4. First (or only) Chamber of the Legislature
5. Second (or only) Chamber of the Legislature
6. Both Chambers of the Legislature are required
7. Judicial Council
8. Judiciary (other than the judicial council)
90. left explicitly to non constitutional law
96. other, please specify in the comments section
97. Unable to Determine
98. Not Specified

Instructions: If both chambers must act, then please select 'Both Chambers of the Legislature are required' If either chamber can act, then please select both the 'First Chamber of the Legislature' and the 'Second Chamber of the Legislature.'

Who approves the nomination of the Ombudsman?

1. Head of State (use this choice for single executive systems)
2. Head of Government
3. the Government/Cabinet
4. First (or only) Chamber of the Legislature
5. Second (or only) Chamber of the Legislature
6. Both Chambers of the Legislature are required
7. Judicial Council
8. Judiciary (other than the judicial council)
90. left explicitly to non constitutional law
96. other, please specify in the comments section

97. Unable to Determine

98. Not Specified

Instructions: If both chambers must act, then please select 'Both Chambers of the Legislature are required' If either chamber can act, then please select both the 'First Chamber of the Legislature' and the 'Second Chamber of the Legislature'.

What is the length of term of the ombudsman?

1. [open-ended response]

Instructions: Please answer 0 if the term length is not specified, and answer 100 if there is no term length or the term length is the life of the office holder.

What restrictions are in place regarding the number of terms the ombudsman may serve?

1. Only one term permitted, total

2. Only two terms permitted, total

3. No successive terms permitted, but multiple non successive terms permitted

4. Only two successive terms permitted, but multiple non successive terms permitted

5. No term limits

90. left explicitly to non constitutional law

96. other, please specify in the comments section

97. Unable to Determine

98. Not Specified

Instructions: For this question, no limit means the constitution specifies there is no limit on the number of terms and not specified means the constitution does not specify whether or not there is a limit.

What are the ombudsman's powers and duties?

1. bring a criminal suit

2. bring a civil suit

3. hear and register citizen complaints

4. hold hearings

5. investigate

6. initiate the review of a law's constitutionality

90. left explicitly to non constitutional law

96. other, please specify in the comments section

97. Unable to Determine

98. Not Specified

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.