

CONSTITUTIONMAKING.ORG

OPTION REPORTS

LANGUAGE RIGHTS IN THE CRIMINAL PROCESS

August 6, 2008

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.

Note that the dates provided herein for constitutional texts reflect either the year of initial promulgation *or* of a subsequent amendment, depending on the version used for analysis. For example, Brazil 2005 refers to the Brazilian Constitution of 1988, as amended through 2005.

1. INTRODUCTION

The right to a trial in a language the accused can understand, or to an interpreter to assist with court proceedings, is considered by many to be a component of the right to a fair trial. We describe below the range of constitutional provisions for the right to interpreter.

2. DATA SOURCE

The analysis reported below is based on data the Comparative Constitutions Project (please see the appendix for more information on this resource). As of this writing, the project sample includes 550 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

Overall, 21% of constitutions in the sample have provided for the right to a trial in a language the accused understand or to an interpreter. As Figure 1 suggests, incorporation of this legal principle in constitutional texts has increased after World War II. In 2000, over 35% of constitutions in force incorporated this right. As Figure 2 suggests, provisions regarding this legal principle are most common in Oceania, Latin America, and Eastern Europe, and absent in the Middle East.

Figure 1. Percent of Constitutions That Provide for the Right to Trial in a Language the Accused Understands or to an Interpreter by Year (N=550)

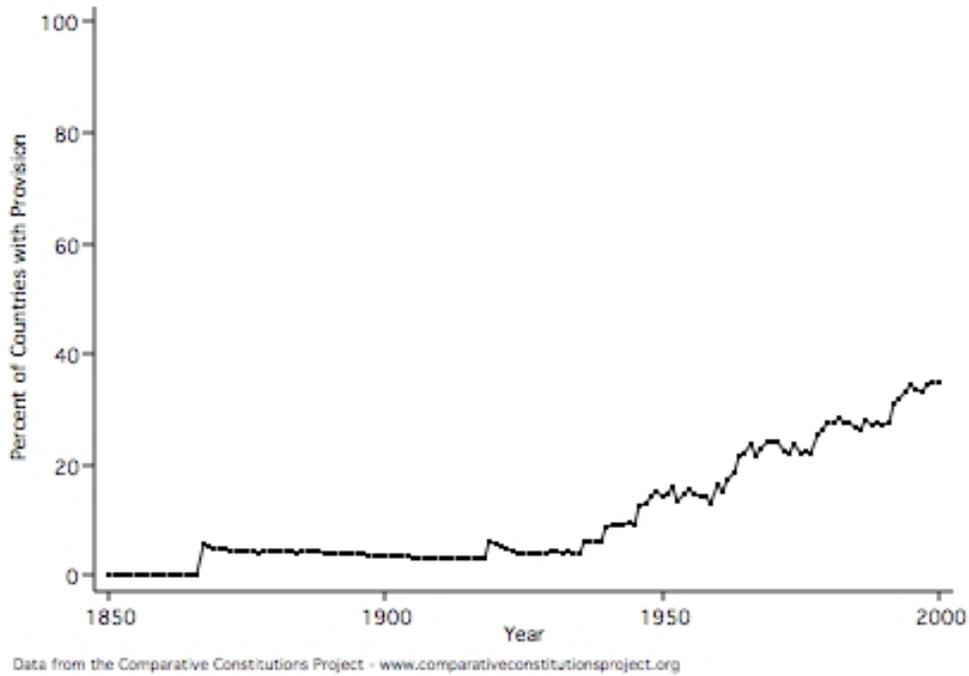
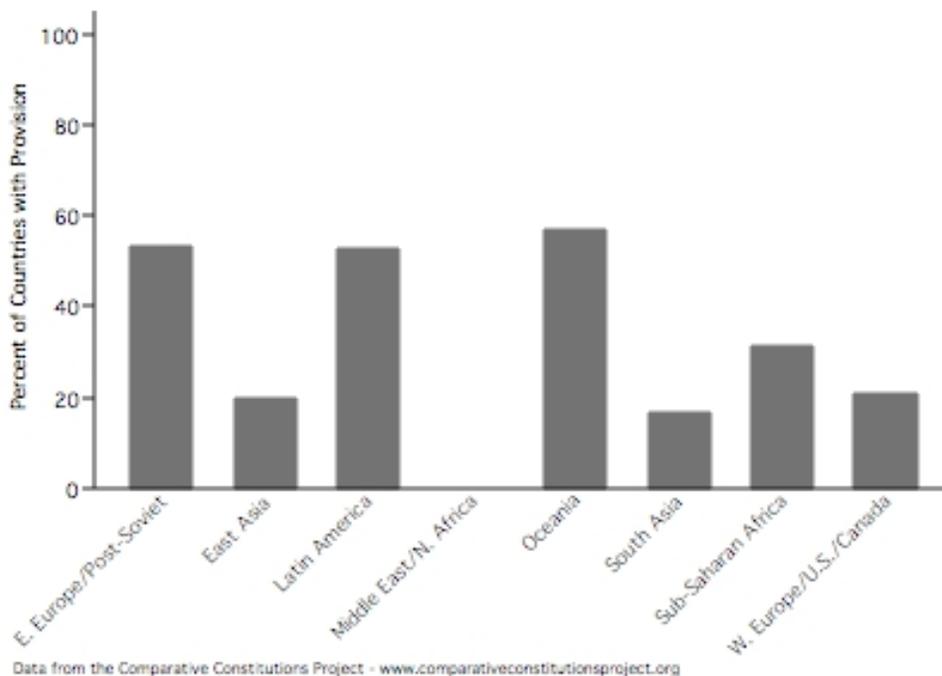


Figure 2. Percent of Constitutions That Provide for the Right to Trial in a Language the Accused Understands or to an Interpreter in 2000 by Region (N=191)



4. NOTES ON ATYPICAL CASES

None.

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.)

If parties involved in a case do not know the language in which the trial is conducted, they have the right to understand the material and documents related to the case through an interpreter and the right to speak in their mother language in the court.

- *Afghanistan 2004, Article 135*

Gratuity, publicity, swiftness and probity are essential conditions for administering justice. The Judicial Power is responsible for providing free legal defense to indigents, as well as translation services when their mother tongue is not Castellán.

- *Bolivia 2002, Article 116.10*

Courts of the State of Cambodia shall ensure that citizens who are ethnic minorities have the right to use their own language and writings in court proceedings.

- *Cambodia 1989, Article 84*

Citizens of all nationalities have the right to use the spoken and written languages of their own nationalities in court proceedings. The people's courts and people's procuratorates should provide translation for any party to the court proceedings who is not familiar with the spoken or written languages in common use in the locality.

In an area where people of a minority nationality live in a compact community or where a number of nationalities live together, hearings should be conducted in the language or languages in common use in the locality; indictments, judgments, notices and other documents should be written, according to actual needs, in the language or languages in common use in the locality.

- *China 2004, Article 134*

(6) Every person charged with an offence, every party to civil proceedings and every witness in criminal or civil proceedings has the right to give evidence and to be questioned in a language that he or she understands.

(7) Every person charged with an offence and every party to civil proceedings has the right to follow the proceedings in a language that he or she understands.

(8) To give effect to the rights referred to in subsections (6) and (7), the court or tribunal concerned must, when the interests of justice so require, provide, without cost to the person concerned, the services of an interpreter or of a person competent in sign language.

- *Fiji 1998, Article 29.6; 29.7; 29.8*

It shall be the duty of a court to ascertain the truth in every case provided that every person who is charged with a criminal offence—

...

(f) shall be permitted to have without payment the assistance of an interpreter if he cannot understand the language used at the trial of the charge, and, except with his consent, the trial shall not take place in his absence unless he so conducts himself as to render the continuance of the proceedings in his presence impracticable and the court has ordered him to be removed and the trial to proceed in his absence or he fails without reasonable excuse (the proof whereof shall lie on him) to attend court.

- *Guyana 1995, Article 144.2.f*

In the criminal process, the law ensures that persons charged with a criminal offence have the right to be notified promptly and confidentially of the nature and cause of the charges made against them; they shall be given adequate time and conditions to prepare their defense; they have the right to examine, or to have examined, the witnesses testifying against them in court and to obtain the attendance and examination of witnesses on their behalf under the same conditions as witnesses against them, and to obtain all other evidence on their behalf; they shall be assisted by an interpreter if they cannot understand or speak the language used during the trial.

- *Italy 2003, Article 111*

Every person who is charged with a criminal offence—

...

(f) shall be permitted to have without payment the assistance of an interpreter if he cannot understand the language used at the trial of the charge,

- *Kenya 1997, Article 77.2.f*

This Constitution recognizes and guarantees the right of indigenous peoples and communities to self-determination and, as a result, their autonomy to:

...

VIII. Accede fully to the jurisdiction of the State. In order to guarantee this right in all trials and proceedings in which they take part, individually or collectively, [the State] shall take into consideration their customs and cultural traditions while respecting the principles of this Constitution. Indigenous people have at all times the right to be assisted by translators and public defenders who are knowledgeable of their language and culture. The constitutions and laws of the federative entities will determine the characteristics of self-determination and autonomy that best represent the circumstances and aspirations of the indigenous people in each entity as well as the norms for recognition of the indigenous communities as units of public interest.

- *Mexico 2003, Article 2.a.8*

Judicial proceedings are conducted in the language of the union republic or autonomous republic, of the autonomous province, the autonomous area, or in the language of the majority of the population of the given locality. The right fully to familiarize oneself with the materials of the case, participation in court proceedings through an interpreter, and the right to address the court in one's native language are ensured to persons who take part in a case and do not master the language in which the proceedings are conducted.

- *Russia 1977, Article 159*

Every accused person has a right to a fair trial, which includes the right—

...

(k) to be tried in a language that the accused person understands or, if that is not practicable, to have the proceedings interpreted in that language;

- *South Africa 2003, Article 35.3.k*

Any person has the right to be heard in any type [*clase*] of procedure, with the due guarantees and within the time reasonably determined

legally, by a competent, independent and impartial tribunal previously established. [The person] who cannot speak Castillian or cannot communicate in a verbal manner, has the right to an interpreter.

- *Venezuela 1999, Article 49.3*

6. APPENDIX

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

[TRILANG] – Does the constitution specify the trial has to be in a language the accused understands or the right to an interpreter if the accused cannot understand the language?

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

Instructions: If the text specifies that an arrested must be informed in a language he understands of the reasons for his arrest, please code OTHER.

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.