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OPTION REPORTS

EXTRADITION OF CRIMINALS

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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.

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

Constitutional rules governing international judicial cooperation regulate the extradition of criminals to other countries. Some constitutions restrict extradition to foreign nationals, while others restrict extradition to certain types of crimes. We describe below the range of constitutional provisions regarding extradition of criminals.

2. DATA SOURCE(S)

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, 36% of constitutions in the sample contain provisions regarding the extradition of criminals. Table 1 shows the breakdown of the constitutional provisions.

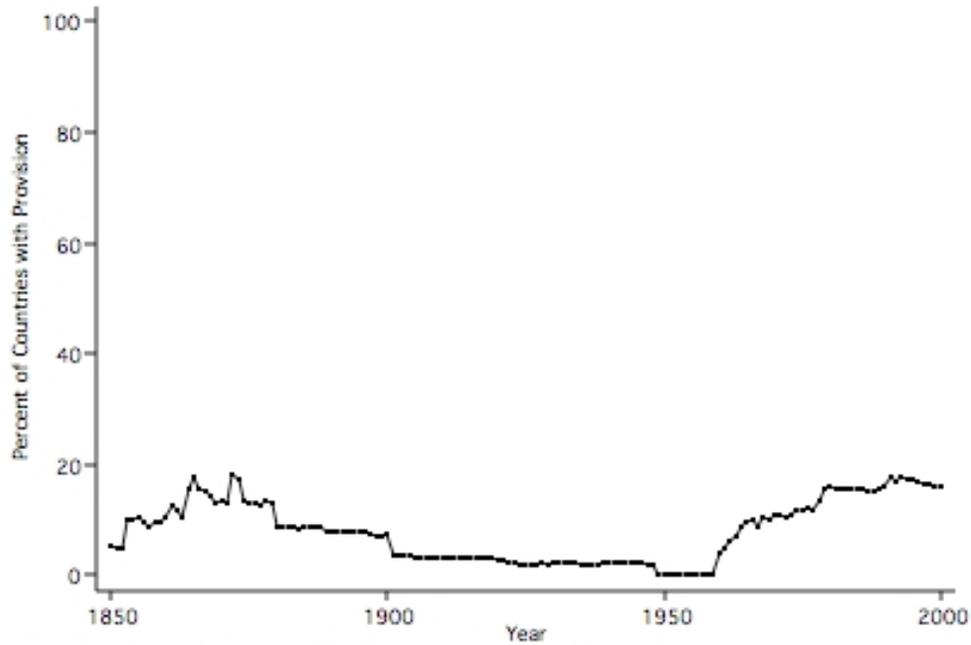
Table 1. Distribution of Provisions Regarding Extradition of Criminals (N=569)

Provision	Number of Cases	Percent of Cases
Always Allowed	55	9.67
Always Prohibited	3	0.53
Prohibited for Citizens	57	10.02
Prohibited for Political Refugees	44	7.73
Prohibited for Both Citizens and Political Refugees	32	5.62
Left to Non-Constitutional Law	14	2.46

As Figure 1 suggests, constitutional provisions allowing for the extradition of criminals became common in the second half of the 19th century and again in the second half of the 20th century. In 2000, 16 % of constitutions in force provided for the extradition of criminals. Figure 2 shows regional variation among these constitutions. The figure indicates

that the extradition of criminals is characteristic to only Oceania, Latin America, Sub-Saharan Africa, and Western Europe.

Figure 1. Percent of Constitutions That Always Allow for the Extradition of Criminals by Year (N=569)



Data from the Comparative Constitutions Project - www.comparativeconstitutionsproject.org

Figure 2. Percent of Constitutions That Always Allow for the Extradition of Criminals in 2000 by Region (N=181)

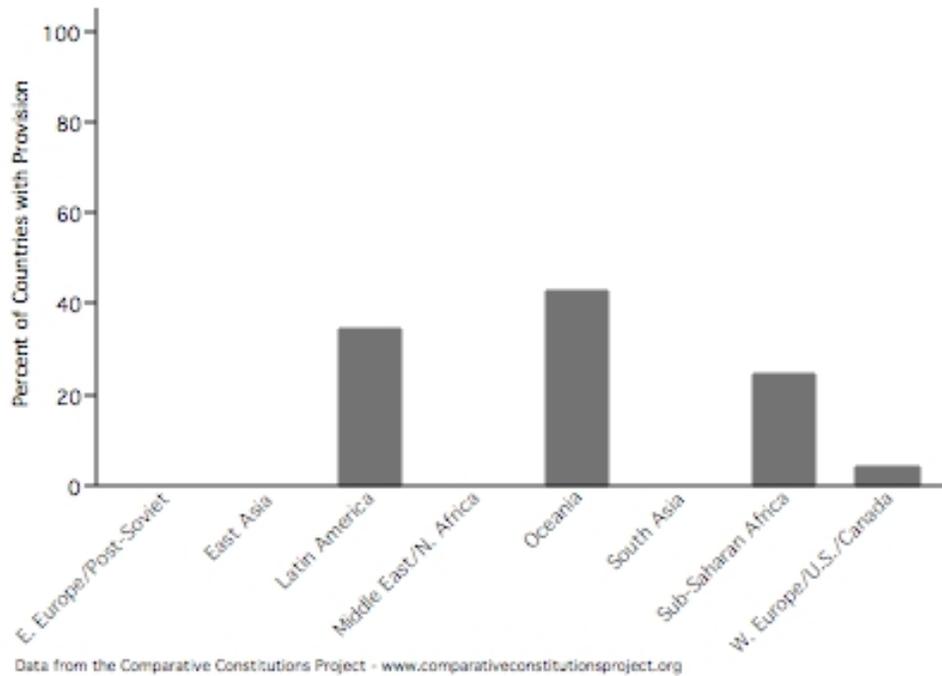
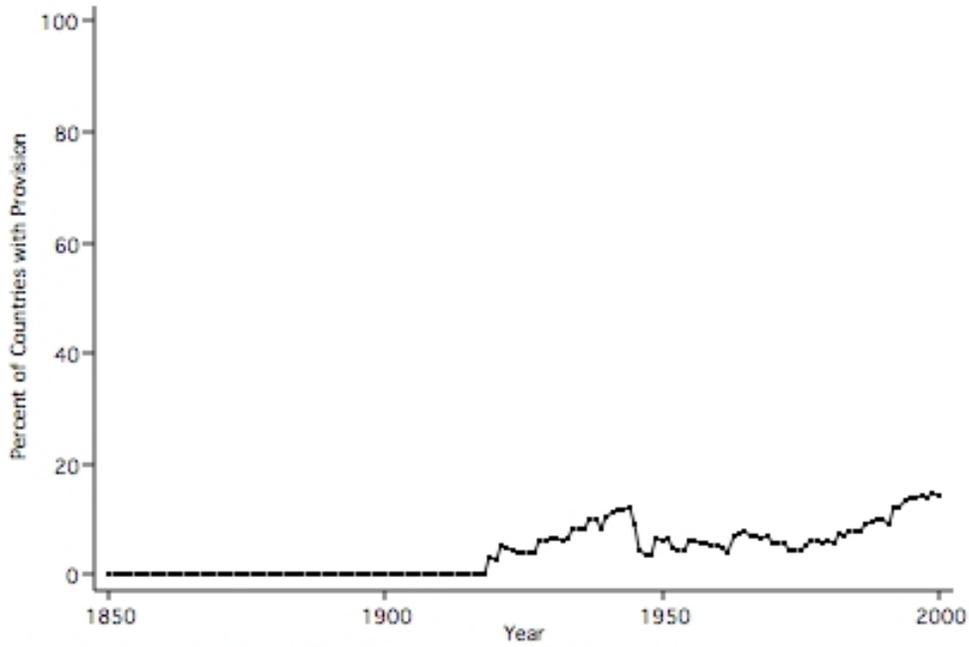


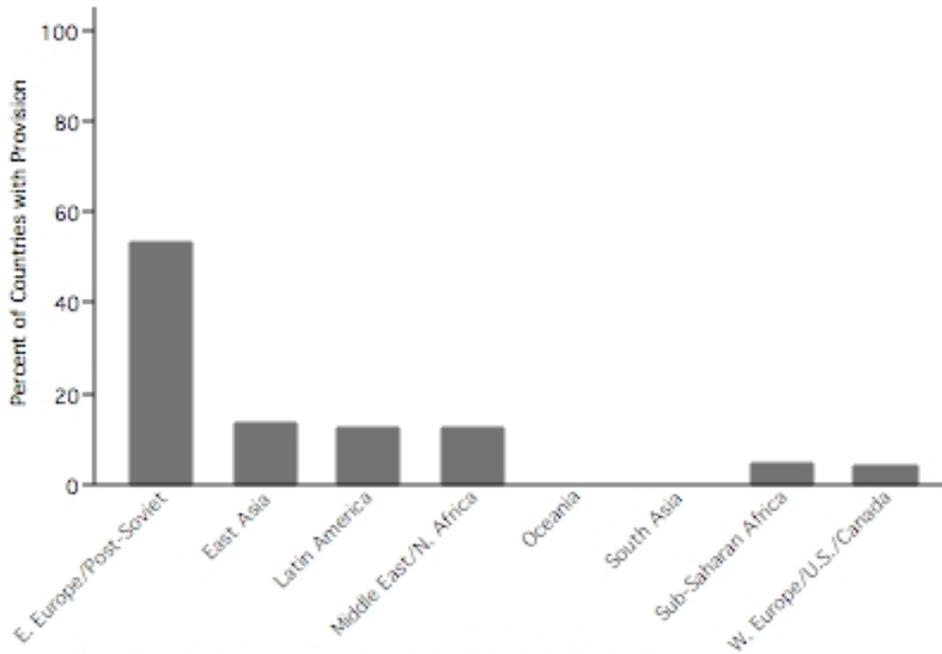
Figure 3 demonstrates the incorporation of provisions expressly prohibiting the extradition of citizens (or nationals or subjects) over time. As Figure 3 suggests, this is a 20th century phenomenon. In 2000, 14 % of constitutions in force prohibited the extradition of citizens. Figure 4 shows regional variation among these constitutions. The figure indicates that the provision prohibiting the extradition of citizens is most common in Eastern Europe, East Asia, and Latin America, and absent in Oceania and South Asia.

Figure 3. Percent of Constitutions That Prohibit the Extradition of Citizens by Year (N=569)



Data from the Comparative Constitutions Project - www.comparativeconstitutionsproject.org

Figure 4. Percent of Constitutions That Prohibit the Extradition of Citizens in 2000 by Region (N=181)



Data from the Comparative Constitutions Project - www.comparativeconstitutionsproject.org

Figure 5 shows the incorporation of provisions expressly prohibiting the extradition of political refugees (or those guilty of political offenses) over time. Such provisions became more popular in the second half of the 20th century. In 2000, almost 8 % of constitutions in force prohibited the extradition of political refugees. Figure 6 shows regional variation among these constitutions. The figure indicates that the provision prohibiting the extradition of political refugees is primarily found in the Middle East, but also found in Latin America, Sub-Saharan Africa and Eastern Europe.

Figure 5. Percent of Constitutions That Prohibit the Extradition of Political Refugees by Year (N=569)

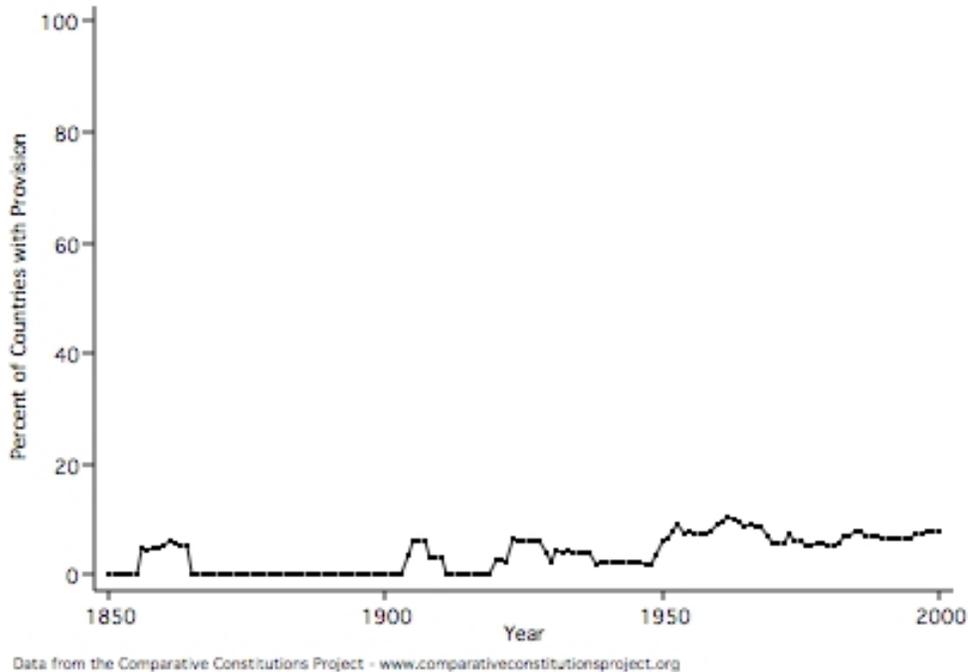


Figure 6. Percent of Constitutions That Prohibit the Extradition of Political Refugees in 2000 by Region (N=181)

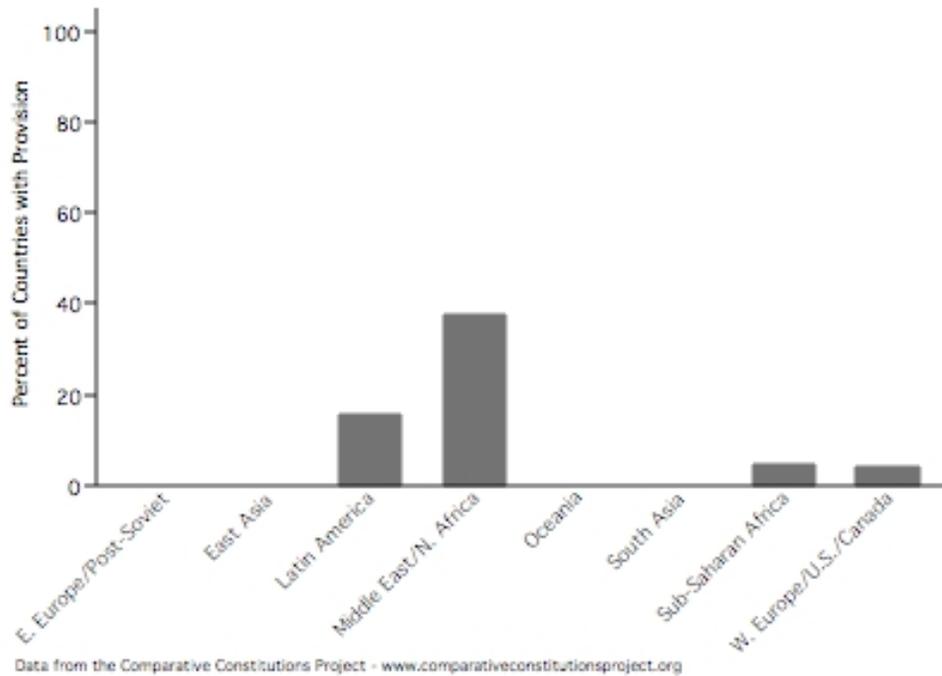


Figure 7 shows the incorporation of provisions expressly prohibiting the extradition of both citizens and political refugees over time. These joint prohibitions are relatively rare but have remained relatively constant in the 20th century. In 2000, 8 % of constitutions in force prohibited the extradition of citizens and political refugees. Figure 8 shows regional variation among these constitutions. The figure indicates that the provision prohibiting the extradition of citizens and political refugees is most common in the Middle East, Eastern Europe, and Western Europe, and absent in East Asia, South Asia, and Oceania.

Figure 7. Percent of Constitutions That Prohibit the Extradition of Citizens and of Political Refugees by Year (N=569)

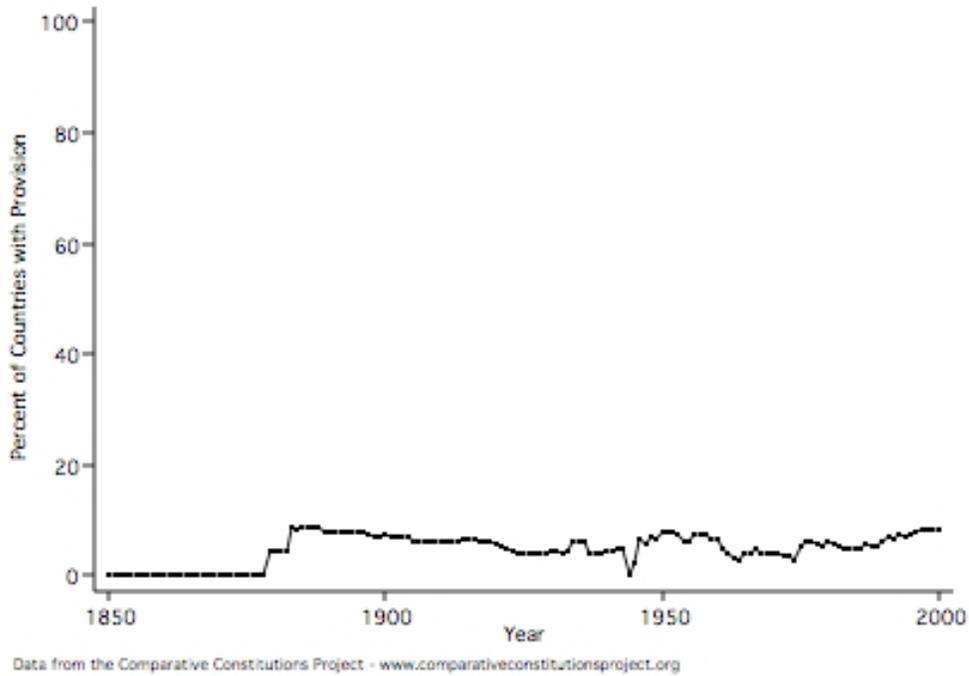
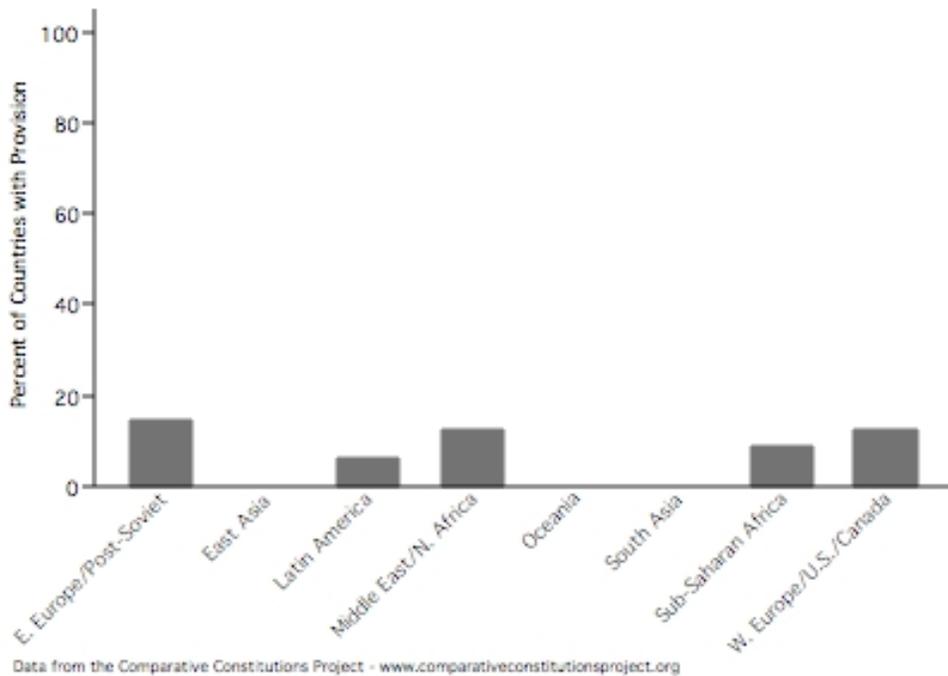


Figure 8. Percent of Constitutions That Prohibit the Extradition of Citizens and of Political Refugees in 2000 by Region (N=181)



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.)

The set of sample provisions is divided into sections on:

1. Extradition is Always Allowed
2. Extradition is Always Prohibited
3. Extradition of Citizens/Nationals/Subjects is Specifically Prohibited
4. Extradition of Political Refugees is Prohibited
5. Extradition of Both Citizens/Nationals/Subjects and Political Refugees is Prohibited
6. Extradition Permitted According to International Agreements, Law, or Principle of Reciprocity
7. Extradition Left Explicitly to Non-Constitutional Law

5.1. Extradition is Always Allowed

Every person shall be entitled to his personal liberty and no person shall be deprived of his personal liberty except in the following cases and in accordance with procedure permitted by law—

...

(f) for the purpose of preventing the unlawful entry of that person into Ghana, or of effecting the expulsion, extradition or other lawful removal of that person from Ghana or for the purpose of restricting that person while he is being lawfully conveyed through Ghana in the course of his extradition or removal from one country to another;

- *Ghana 1996, Article 14.1.c*

5.2. Extradition is Always Prohibited

There shall be no deprivation or restriction of the liberty of a person by imprisonment, arrest, extradition or otherwise.

- *Israel 1992, Section 5*

5.3. Extradition of Citizens/Nationals/Subjects is Specifically Prohibited

No citizen of the Republic of Afghanistan shall be extradited to a foreign state.

- *Afghanistan 1987, Article 35*

No federal citizen may be extradited to a foreign country for prosecution or punishment.

- *Austria 1934, Article 20*

Cambodian citizens cannot be deprived of their nationality, sent into exile, or extradited to any foreign countries. Cambodian citizens living abroad are supported by the state.

- *Cambodia 1989, Article 42*

In no case may the extradition of an Ecuadoran be granted. Their judgment is subject to the laws of Ecuador.

- *Ecuador 1998, Article 25*

No German may be extradited to a foreign country. By law a departing (*abweichende*) regulation for extraditions to a member state of the European Union or to an International Court of Justice may be made as long as the fundamental principles of a law-governed State are maintained.

- *German Federal Republic 2002, Article 16.2*

The extradition of Venezuelans is prohibited.

- *Venezuela 1999, Article 69*

The extradition of nationals is not permitted.

- *Yugoslavia 1931, Article 20*

5.4. Extradition of Political Refugees is Prohibited

The extradition of political refugees is prohibited.

- *Bahrain 2002, Article 21*

The State will not authorize the extradition of persons guilty of political crimes nor will it attempt to obtain extradition of Cubans guilty of such crimes who take refuge in foreign territory.

- *Cuba 1962, Article 31*

1. Extradition shall only take place based on a court decision.
2. Extradition on political grounds is prohibited.

3. Extradition in respect of offences punishable, under the law of the requesting State, by death penalty or life imprisonment or whenever there are grounds to assume that the person to be extradited may be subjected to torture and inhuman, degrading and cruel treatment, shall not be permitted.

4. An East Timorese national shall not be expelled or expatriated from the national territory.

- *East Timor 2002, Article 35.2.3*

The extradition of political refugees is prohibited.

- *Egypt 1980, Article 53*

The right of asylum is accorded to political refugees, provided they conform to the laws of the country. Extradition in political matters is not admissible.

- *Haiti 1983, Article 47*

Honduras recognizes the right of asylum in the form and conditions established by law.

When asylum is revoked or denied in accordance with the law, in no case shall the persecuted or the asylee be expelled to the territory of the State that may claim him.

The State shall not authorize the extradition of persons accused of committing political crimes or related common offenses.

- *Honduras 1991, Article 101*

Art. 10. The Italian juridical order conforms to the generally recognized norms of international law.

The legal status of foreigners is regulated by law in conformity with international provisions and treaties.

The foreigner who is denied in his own country the real exercise of the democratic liberties guaranteed by the Italian Constitution has the right of asylum in the territory of the Republic, in accordance with the conditions established by law.

The extradition of a foreigner for political offences is not admissible.

Art. 26. Extradition of a citizen can be consented to only in cases expressly provided for in international conventions.

In no case may it be permitted for political offences.

- *Italy 2003, Articles 10; 26*

(i) Political refugees shall not be extradited on account of their political beliefs or for their defence of liberty.

(ii) Extradition of ordinary criminals shall be regulated by international agreements and law.

- *Jordan 1984, Article 21*

No treaty shall be authorized for the extradition of political offenders or of delinquents of the common order who have been slaves in the country where the offense was committed; nor shall any agreement or treaty be entered into which restricts or modifies the guarantees and rights established in this Constitution for man and citizen.

- *Mexico 2003, Article 15*

In Nicaragua there is no extradition for political crimes or common crimes committed in conjunction with them, according to Nicaraguan qualification. Extradition for common crimes is regulated by law and international treaties.

Nicaraguans shall not be objects of extradition from the national territory.

- *Nicaragua 2005, Article 43*

Extradition may be approved only by the Executive Branch after prior opinion of the Supreme Court, in accordance with the law and treaties and on the basis of reciprocity. Extradition is not to be approved if it is determined that it is sought for the purpose of persecuting or punishing a person for reasons of religion, nationality, opinion, or race. Excluded from extradition are those persecuted for political crimes or for activities connected with them. Neither genocide nor assassination of a public official nor terrorism are considered as such.

- *Peru 2005, Article 37*

Extradition will only be granted in compliance with a treaty or the law in keeping with the principle of reciprocity. Excluded from extradition are political crimes, acts of terrorism not being considered as such.

- *Spain 1992, Article 13.3*

Extradition of persons who are refugees because of their political principles or of their activities in the pursuit of freedom is forbidden.

- *Syria 1964, Article 15*

The extradition of political refugees is forbidden.

- *Yemen 1970, Article 31*

5.5. Extradition of Both Citizens/Nationals/Subjects and Political Refugees is Prohibited

1. The extradition or expulsion of Angolan citizens from the nations territory shall not be permitted.
2. The extradition of foreign citizens for political motives or for charges punishable by the death penalty under the laws of the applicant county shall not be permitted.

3. In accordance with the law, Angolan courts shall know the charges made against citizens whose extradition is not permitted under the foregoing clauses of the present Article.

- *Angola 1992, Article 27*

Extradition of a foreign subject shall not be granted for political crimes or crimes of opinion, or of a Brazilian in any case.

- *Brazil 1946, Article 141.33*

(1) No Cape Verdian citizen may be extradited or expelled from the country.

(2) No foreigner may be extradited for political or religious reasons or for opinions.

(3) Extradition shall not be permitted to countries in which the particular crime carries the death penalty or a life sentence or where the accused would be subject to torture or inhuman, degrading or cruel treatment.

(4) Expulsion of foreigners, permanent residents, or those who have requested asylum may only take place following a judicial decision.

(5) Extradition may be granted only when expressly provided by law or international convention

- *Cape Verde 1992, Article 35*

Extradition may be requested, granted or offered in accordance with public international treaties and, in their absence, with the law.

The extradition of Colombians by birth will also be granted for crimes committed abroad which are considered as such by the Colombian penal legislation, as regulated by law.

Extradition will not be granted for political crimes.

Extradition will not be granted for acts committed prior to the promulgation of the present provision.

- *Colombia 2005, Article 35*

1. Extradition shall only take place based on a court decision.

2. Extradition on political grounds is prohibited.

3. Extradition in respect of offences punishable, under the law of the requesting State, by death penalty or life imprisonment or whenever there are grounds to assume that the person to be extradited may be subjected to torture and inhuman, degrading and cruel treatment, shall not be permitted.

4. An East Timorese national shall not be expelled or expatriated from the national territory.

- *East Timor 2002, Article 35*

1. Extradition may take place only pursuant to a court decision.

2. Extradition for political reasons shall not be authorised.

3. Extradition shall not be permitted for crimes which are punishable by

death or by perpetual imprisonment under the law of the requesting State, or when there are grounds to believe that the extradited person may be subjected to torture or inhumane, degrading or cruel treatment.

4. No Mozambican citizen may be expelled or extradited from the national territory.

- *Mozambique 2004, Article 67*

In Nicaragua there is no extradition for political crimes or common crimes committed in conjunction with them, according to Nicaraguan qualification. Extradition for common crimes is regulated by law and international treaties.

Nicaraguans shall not be objects of extradition from the national territory.

- *Nicaragua 2000, Article 43*

The State may not obligate itself by any international treaty of extradition to surrender its own nationals.

Neither shall it concede the extradition of foreigners who are prosecuted for political offenses.

- *Panama 1946, Article 23*

1. The extradition of a Polish citizen is forbidden.

2. The extradition of a person suspected of the commission of a crime for political reasons but without the use of force is forbidden.

3. The courts adjudicate on the admissibility of extradition.

- *Poland 1997, Article 55*

1. Portuguese citizens cannot be extradited from the national territory.

2. The expulsion of persons who have entered, or are permanently resident in, the national territory, who have obtained a residence permit, or who have lodged an application for asylum that has not been refused, shall be determined by a judicial authority assuring an expedited form of decision.

3. The extradition of Portuguese citizens shall only be permitted where reciprocal arrangements have been established by international treaty, in cases of terrorism and organized international crime, and provided that the legal order of the requesting State ensures guarantees of a just and equitable process.

4. Extradition shall be admissible in respect to offenses which may be sanctioned, under the law of the requesting State, by a punishment or a safeguarding measure consisting in a deprivation or restriction of liberty of a permanent nature or of indefinite duration, provided that the requesting State is a party to an international convention by which Portugal is bound and offers guarantees that such punishment or safeguarding measure shall not be imposed or enforced.

5. The provisions of the previous paragraphs (*números anteriores*) do not

prejudice the application of norms of penal judicial cooperation established within the scope of the European Union.

6. Extradition is not admissible, nor the delivery based on any title, for political motives or crimes that correspond, according to the right of the petitioning state, to a penalty of death or [any other] one that results in an irreversible injury of the physical integrity.

7. Extradition can be determined by a judicial authority only.

8. The right of asylum is guaranteed to aliens and stateless persons who are persecuted, or under a serious threat of persecution, in consequence of their activities on behalf of democracy, social or national liberation, peace between peoples or liberty or rights of human persons.

9. The law defines the status of political refugees.

- *Portugal 2004, Article 33*

Art. 61.1. A citizen of the Russian Federation cannot be deported from Russia or extradited to another state.

2. The Russian Federation guarantees its citizens protection and patronage beyond its boundaries.

Art. 63. 1. The Russian Federation grants political asylum to foreign citizens and stateless citizens in conformity with the commonly recognized norms of international law.

2. In the Russian Federation it is not allowed to extradite persons persecuted for their political views or any actions (or inaction), which are not recognized as criminal by the law of the Russian Federation, to other states. The extradition of persons charged with crimes and also the hand-over of convicts for serving time in other countries shall be affected on the basis of the federal law or international treaty of the Russian Federation.

- *Russia 1993, Articles 61; 63*

The extradition of citizens and of political refugees shall be prohibited.

- *United Arab Emirates 1996 and 1971, Article 38*

5.6. Extradition is According to International Agreements, Law, or Principle of Reciprocity

Extradition may be permitted only when it is expressly provided in international agreements, to which the Republic of Albania is a party, and only by judicial decision.

- *Albania 1998, Article 39.2*

No one may be extradited except on the basis and application of an extradition law.

- *Algeria 2002, Article 68*

The right of asylum is recognized in the conditions defined by the law. Extradition is authorized only within the limits specified by law. No Burundian may be extradited abroad except if he is prosecuted by an international criminal jurisdiction for a crime of genocide, a war crime or other crimes against humanity.

- *Burundi 2004, Article 50*

Extradition of a citizen can be consented to only in cases expressly provided for in international conventions.

In no case may it be permitted for political offences.

- *Italy/Sardinia 2003, Article 26*

Every Liberian Citizen shall have the right to leave and to enter Liberia at any time. Liberian citizens and non-Liberian residents may be extradited to foreign country for prosecution of a criminal offense in accordance with the provisions of an extradition treaty or other reciprocal international agreements in force. Non-Liberian residents may be expelled from the Republic of Liberia for cause.

- *Liberia 1986, Article 13.b*

The extradition of Portuguese citizens shall only be permitted where reciprocal arrangements have been established by international treaty, in cases of terrorism and organized international crime, and provided that the legal order of the requesting State ensures guarantees of a just and equitable process.

- *Portugal 2004, Article 33.3*

1. The Russian Federation grants political asylum to foreign citizens and stateless citizens in conformity with the commonly recognized norms of international law.
2. In the Russian Federation it is not allowed to extradite persons persecuted for their political views or any actions (or inaction), which are not recognized as criminal by the law of the Russian Federation, to other states. The extradition of persons charged with crimes and also the hand-over of convicts for serving time in other countries shall be affected on the basis of the federal law or international treaty of the Russian Federation.

- *Russia 1993, Article 63*

The right to asylum is recognized under conditions defined by the law. The extradition of foreigners shall be authorized only so far as it is consistent with the law or international conventions to which Rwanda is a party.

However, no Rwandan may be extradited.

- *Rwanda 2003, Article 25*

Extradition will only be granted in compliance with a treaty or the law in keeping with the principle of reciprocity. Excluded from extradition are political crimes, acts of terrorism not being considered as such.

- *Spain 1992, Article 13.3*

5.7. Extradition is Left Explicitly to Non-Constitutional Law

The Federal State shall have powers of legislation and execution in respect to the following matters:

...

c. Regulation and supervision of entrance into and departure from federal territory; immigration and emigration; passports, deportation, removal, expulsion, and extradition from or through the federal territory.

- *Austria 1929, Article 10.1.c*

Without prejudice to the other related provisions of this Constitution, the law sets the rules regarding:

...

- amnesty and extradition;

- *Democratic Republic of Congo 2003, Article 118*

The law shall determine the rules regarding the extradition of foreigners; extradition can only be effected on the basis of a treaty and in the manner determined by law.

- *Surinam 1992, Article 3.7*

6. APPENDIX

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

[EXCRIM]-Does the constitution provide for the extradition of suspected or convicted criminals to other countries?

1. Always allowed
2. Always prohibited
3. Prohibited for nationals/citizens/subjects only
4. Prohibited for political refugees/those guilty of political offenses only
5. Prohibited for both nationals/citizens/subjects and political refugees/those guilty of political offenses
90. left explicitly to non-constitutional law
96. other, please specify in the comments section
97. Unable to Determine
98. Not specified

Instructions: If extradition is explicitly prohibited only for aliens, please code OTHER. If extradition is permitted for common crimes (with no references to citizens/political refugees) 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.