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OPTION REPORTS

PUBLIC REGISTRY OF DETAINEES

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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

A small number of constitutions (around 1%) require that the names of those arrested or detained be entered into a registry. This facilitates transparency and accountability of the criminal justice system.

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

None.

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. Public Registers of Arrested/Detained
2. Wardens Must Enter Names of Arrested in a Registry
3. Names of Detained are Published During State of Emergency

5.1. Public Registers of Arrested/Detained

In all cases, the authorities and their agents shall make a record of the arrest, which shall be signed by the person arrested, who shall be informed, by the authority who ordered it, of the reason for it and the place to which he is going to be taken, all of these details being entered on the record.

...

Registers of arrested persons and prisoners are public.

- *Cuba 1940, Article 26*

5.2. Wardens Must Enter Names of Arrested in a Registry

Wardens of prisons shall not admit anyone as detained, arrested, or imprisoned without entering in his register a copy of the respective warrant. They can, nevertheless, retain within the prison limits those who have been arrested, for the purpose of bringing them before the competent judge within twenty-four hours.

- *Bolivia 2002, Article 11*

Those in charge of prisons may not receive anyone who has been arrested or detained, being tried or in prison without documenting in a public register the order emanating from a legally authorized official;

- *Chile 2001, Article 19.7*

Any person detained has the right to communicate immediately with his relatives, [an] attorney or person of his trust, and they, in turn, have the right to be informed of the place where the person is detained, to be notified immediately of the reasons of the detention and to place a written record in the file about the physical and psychological state of the detained person, be it by themselves or with the help of specialists. The competent authority will keep a public register of every detention made, which will comprise the identity of the person detained, place, time, conditions and functionaries who performed it.

- *Venezuela 1999, Article 44.2*

5.3. Names of Detained are Published During State of Emergency

Wardens of prisons shall not admit anyone as detained, arrested, or imprisoned without entering in his register a copy of the respective warrant. They can, nevertheless, retain within the prison limits those who have been arrested, for the purpose of bringing them before the competent judge within twenty-four hours.

- *Bolivia 2002, Article 11*

No one may be arrested or detained, subjected to preventive arrest or prison except in his home or in public places established with this objective.

Those in charge of prisons may not receive anyone who has been arrested or detained, being tried or in prison without documenting in a public register the order emanating from a legally authorized official;

- *Chile 2001, Article 19.7.d*

No Keeper or Gaoler can receive or detain any person, but by virtue of the Warrants, Orders of Arrest, or Sentences, enumerated in the tenth Article, and except they shall have been transcribed upon his register.

- *France 1791, Article 3.5.14*

The competent authority will keep a public register of every detention made, which will comprise the identity of the person detained, place, time, conditions and functionaries who performed it.

- *Venezuela 1999, Article 44*

6. APPENDIX

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

[PRISONRG] – Does the constitution require that the name of those imprisoned be entered in a public registry?

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

Instructions: Any mention of a register of prisoners should be coded YES; if the register is not explicitly public, please code YES and make comment. If the requirement only exists during states of emergency, 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.