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## OPTION REPORTS

### RIGHT TO A FAIR TRIAL

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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](http://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 fair trial is an essential guarantee for the rule of law. It is explicitly proclaimed in Article 10 of the Universal Declaration of Human Rights, as well as in many constitutions throughout the world. We describe below the range of constitutional provisions for the right to a fair trial.

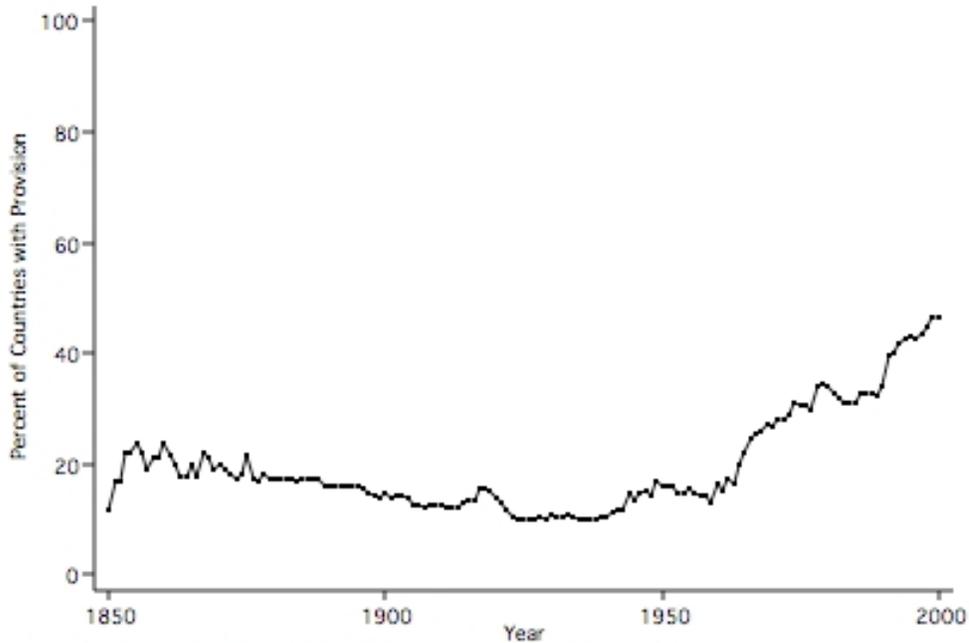
## **2. DATA SOURCE**

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**

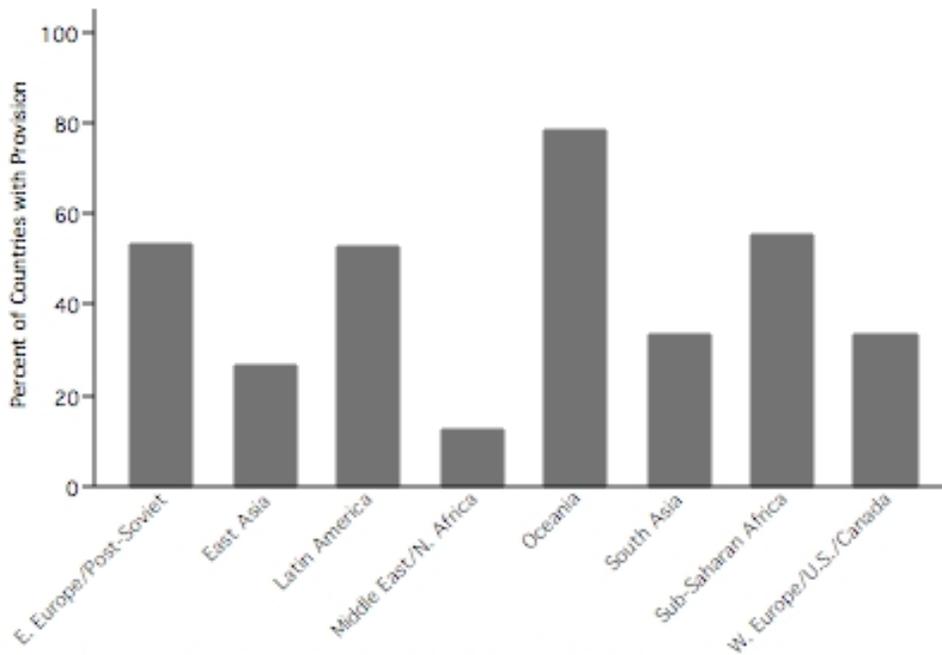
Overall, 25% of constitutions in the sample have provided for the right to a fair trial. As Figure 1 suggests, incorporation of this legal principle in constitutional texts has increased in the second half of the 20<sup>th</sup> century. In 2000, over 45% of constitutions incorporated the right to a fair trial. Figure 2 shows the regional variation among constitutions in 2000. As Figure 2 suggests, provisions regarding this legal principle are most common in Oceania, Sub-Saharan Africa, and Eastern Europe and least common in the Middle East and East Asia.

**Figure 1. Percent of Constitutions That Provide for the Right to a Fair Trial by Year (N=550)**



Data from the Comparative Constitutions Project - [www.comparativeconstitutionsproject.org](http://www.comparativeconstitutionsproject.org)

**Figure 2. Percent of Constitutions That Provide for the Right to a Fair Trial in 2000 by Region (N=191)**



Data from the Comparative Constitutions Project - [www.comparativeconstitutionsproject.org](http://www.comparativeconstitutionsproject.org)

#### 4. NOTES ON ATYPICAL CASES

A number of constitutional texts provide for the right to defense, prohibit acts of bias and discrimination in the administration of justice, or specify that all participants in court proceedings have equal rights. We have coded such cases as “other” in this data (see Appendix).

#### 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. Fair Trial
2. Fair Hearing
3. Impartial Justice/Impartial Tribunal

##### 5.1. Fair Trial

Judges decide the cases in an unbiased, fair way, following the legal equality of the sides, on the basis of facts and in accordance with the law.

- *Azerbaijan 2002, Article 127.2*

Enumeration of Rights. All persons within the territory of Bosnia and Herzegovina shall enjoy the human rights and fundamental freedoms referred to in paragraph 2 above; these include:

...

e. The right to a fair hearing in civil and criminal matters, and other rights relating to criminal proceedings.

- *Bosnia-Herzegovina 1995. Article 2.3.e*

Everyone has the right to have his case heard fairly, within a reasonable time and by the competent judge. Everyone has the right to defend himself or to be defended by someone chosen by him. No one may be removed against his will from the judge assigned to him by law. A national law shall set the conditions of indigence and the type of penalty which justifies legal assistance.

- *Democratic Republic of Congo 1964, Article 21*

Every person charged with an offense shall be entitled to a fair, speedy and public hearing by a court of law; provided, however, that such a court may exclude the press and the public from all or any part of the trial for reasons of morals or national security, as may be necessary in a just and democratic society.

- *Eritrea 1997, Article 17.6*

Every person charged with an offence has the right to a fair trial before a court of law.

- *Fiji 1998, Article 29.1*

The law is administered by means of a fair trial governed by the law.

- *Italy 2003, Article 111*

Every person shall be entitled to a fair trial by a competent court or judicial authority.

- *Nepal 2006, Article 24.9*

Every person accused of a crime shall be presumed innocent until his or her guilt has been legally and conclusively established in accordance with the law in a public and fair hearing in which all the necessary guarantees for defense have been accorded.

Nobody may be denied the right to appear before a judge which the law assigns.

- *Rwanda 2003, Article 19*

Art. 34. Everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum.

Art. 35.3. Every accused person has a right to a fair trial, which includes the right—

- (a) to be informed of the charge with sufficient detail to answer it;
- (b) to have adequate time and facilities to prepare a defence;
- (c) to a public trial before an ordinary court;
- (d) to have their trial begin and conclude without unreasonable delay;
- (e) to be present when being tried;
- (f) to choose, and be represented by, a legal practitioner, and to be informed of this right promptly;

- (g) to have a legal practitioner assigned to the accused person by the state and at state expense, if substantial injustice would otherwise result, and to be informed of this right promptly;
  - (h) to be presumed innocent, to remain silent, and not to testify during the proceedings;
  - (i) to adduce and challenge evidence;
  - (j) not to be compelled to give self-incriminating evidence;
  - (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;
  - (l) not to be convicted for an act or omission that was not an offence under either national or international law at the time it was committed or omitted;
  - (m) not to be tried for an offence in respect of an act or omission for which that person has previously been either acquitted or convicted;
  - (n) to the benefit of the least severe of the prescribed punishments if the prescribed punishment for the offence has been changed between the time that the offence was committed and the time of sentencing; and
  - (o) of appeal to, or review by, a higher court.
- *South Africa 2003, Article 34; 35.3*

In a criminal case, an alleged offender or an accused has the right to a speedy, continuous and fair inquiry or trial.

- *Thailand 1997, Article 241*

Everyone has the right of litigation either as plaintiff or defendant and the right to a fair trial before the courts through lawful means and procedures.

No court can refuse to hear a case within its jurisdiction.

- *Turkey 2002, Article 36*

## 5.2. Fair Hearing

If any person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established or recognized by law.

- *Botswana 2002, Article 10.1*

Every person is entitled, in judicial or administrative proceedings, to a fair hearing of his cause and to a judgement within a reasonable period of time.

- *Burundi 2004, Article 38*

Affirm our attachment to the fundamental freedoms enshrined in the Universal Declaration of Human Rights, the Charter of United Nations and The African Charter on Human and Peoples' Rights, and all duly ratified international conventions relating thereto, in particular, to the following principles:

...

— the law shall ensure the right of every person to a fair hearing before the courts;

- *Cameroon 1996, Preamble*

If any person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law.

- *Dominica 1984, Article 8.1*

Every citizen shall enjoy the following rights and freedoms:

...

j. The right to a fair hearing before the courts;

- *Equatorial Guinea 1995, Article 13.j*

A person charged with a criminal offence shall be given a fair hearing within a reasonable time by a court.

- *Ghana 1996, Article 19.1*

If a person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law.

- *Kenya 1997, Article 77.1*

If any person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law.

- *Malawi 1964, Article 18.1*

In the determination of their civil rights and obligations or any criminal charges against them, all persons shall be entitled to a fair and public hearing by an independent, impartial and competent Court or Tribunal established by law: provided that such Court or Tribunal may exclude the press and/or the public from all or any part of the trial for reasons of morals, the public order or national security, as is necessary in a democratic society.

- *Namibia 1998, Article 12.1.a*

All have the right to have a decision in cause, which affects them, to be determined in a fair trial within a reasonable time.

- *Portugal 2004, Article 20.4*

All parties shall be entitled to a fair trial and to the resolution of their cases within a reasonable time.

- *Romania 2003, Article 21.3*

If any person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be given a fair hearing within a reasonable time by an independent and impartial court established by law.

- *Fiji 1990, Article 11.1*

In the determination of civil rights and obligations or any criminal charge a person shall be given a fair and speedy public hearing within a reasonable time by an independent and impartial court or adjudicating authority established by law.

- *Swaziland 2005. Article 21.10*

### **5.3. Impartial Justice/Impartial Tribunal**

All the Burkinabians and every person living in Burkina Faso benefit from equal protection of the law. All have the right to have their case heard by an independent and impartial jurisdiction.

- *Burkina Faso 1997, Article 4*

In the Republic of Hungary everyone is equal before the law and has the right to have the accusations brought against him, as well as his rights and duties in legal proceedings, judged in a just, public trial by an independent and impartial court established by law.

- *Hungary 2003, Article 57.1*

In all criminal cases the accused shall enjoy the right to a speedy and public trial by an impartial tribunal.

- *Japan 1946, Article 37*

No person shall be held to answer for a capital or infamous crime, except in cases of impeachment, cases arising in the army or navy, and petty offences, unless upon presentment by a grand jury; and every person criminally charged shall have a right to be seasonably furnished with a copy of the charge, to be confronted with the witness against him, to have compulsory process for obtaining witnesses in his favor; and to have a speedy, public, and impartial trial by a jury of the vicinity. He shall not be compelled to furnish or give evidence against himself; and no person shall for the same offence, be twice put in jeopardy of life or limb.

- *Liberia 1955, Article 1.7*

Every person has the right to have quick, complete and impartial justice by courts, which shall be open for the administration of justice at such times and under such conditions as established by law.

- *Mexico 2003, Article 17*

In all civil and criminal proceedings, every person shall be entitled to a fair and public hearing by a competent, independent and impartial court of law as shall be regulated by law.

- *Sudan 2005, Article 34.3*

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":

[FAIRTRI] – Does the constitution provide the right to a fair trial?

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

Instructions: A fair trial includes such formulations as “honest trial” or a right to “impartial justice.” If the constitution mentions only specific aspects of a fair trial, such as the right to mount a defense or right to trial by a competent court, please code “other” and make a comment.

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](http://www.comparativeconstitutionsproject.org).