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OPTION REPORTS

RIGHT TO A SPEEDY 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 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 speedy trial is designed to ensure that defendants are not subjected to unreasonably lengthy incarceration prior to a trial. Violation of this principle may be cause for dismissal of a criminal case. We describe below the range of constitutional provisions for the right to a speedy 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

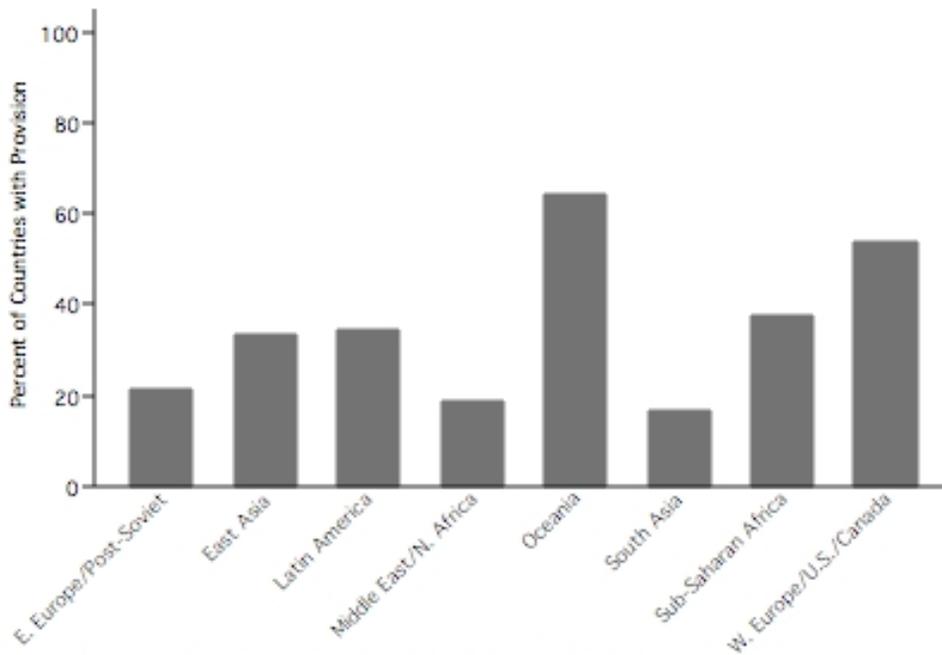
Overall, 19.6% of constitutions in the sample have provided for the right to a speedy trial. As Figure 1 suggests, incorporation of this legal principle in constitutional texts has increased in the second half of the 20th century. In 2000, over 35% of constitutions in force incorporated the right to a speedy trial. As Figure 2 suggests, provisions regarding this legal principle are most common in Oceania, Western Europe, and Sub-Saharan Africa, and least common in the Middle East, South Asia, and Eastern Europe.

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



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

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



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

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. Speedy Trial
2. Trial Within Reasonable Time
3. Trial Without Undue Delays
4. Other Provisions

5.1. Speedy Trial

Every person accused of a criminal offence shall have the right to a speedy and public trial by an independent and impartial court or tribunal established by law.

- *Bangladesh 2004, Article 35.3*

Every defendant shall be presumed innocent until found guilty, and judgment must be given in the shortest period of time compatible with guarantees of defense.

- *Cape Verde 1992, Article 33.1*

In procedural law, the greatest speed in handling cases shall be paramount. Except for the cases otherwise provided by law, the administration of justice is gratuitous when rendered by judges, and remunerated when special masters intervene.

- *Ecuador 1946, Article 121*

In all criminal prosecution the accused, duly submitting to the court, shall have the right to speedy trial and to be confronted with the witnesses against him, to have compulsory process, in accordance with the law, for obtaining witnesses in his favour at the expense of the Government and to have the assistance of Counsel for his defence who, if the accused is

unable to obtain the same by his own funds, shall be assigned and provided to the accused by the court.

- *Ethiopia 1955, Article 52*

The right to a fair, speedy, and open trial shall be guaranteed.

- *Iraq 2004, Article 15.f*

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

- *Japan 1946, Article 37*

All citizens shall have the right to a speedy trial. The accused shall have the right to a public trial without delay in the absence of justifiable reasons to the contrary.

- *Republic of Korea 1987, Article 27.3*

Every person arrested or detained shall be formally charged and presented before a court of competent jurisdiction within forty-eight hours. Should the court determine the existence of a prima facie case against the accused, it shall issue a formal writ of arrest setting out the charge or charges and shall provide for a speedy trial. There shall be no preventive detention.

- *Liberia 1986, Article 21.f*

Litigation is a protected right and is guaranteed to all people. The Law prescribes the procedures and conditions necessary to exercise this right. The State as far as possible will guarantee approximation of judicial bodies to litigants and speedy settlement of cases.

- *Oman 1996, Article 25*

In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the

absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable.

- *Philippines 1986, Article 3.14.2*

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*

5.2. Trial Within Reasonable Time

All persons have the right to have their case heard by a competent judge within a reasonable time.

- *Democratic Republic of Congo 2005, Article 19*

(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.

...

(8) Any court or other authority prescribed by law for the determination of the existence or extent of any civil right or obligation shall be established by law and shall be independent and impartial; and where proceedings for such a determination are instituted by any person before such a court or other authority, the case shall be given a fair hearing within a reasonable time.

- *Dominica 1984, Article 8.1; 8.8*

If any person arrested or detained as mentioned subsection (3)(b) of this section is not tried within a reasonable time, then, without prejudice to any further proceedings that may be brought against him, he shall be released either unconditionally or upon reasonable conditions, including in particular such conditions as are reasonably necessary to ensure that he appears at a later date for trial or for proceedings preliminary to trial.

- *Fiji 1990, Article 6.5*

(1) Any court or other adjudicating authority established by law for the determination of any criminal trial or matter, or for the determination of the existence or extent of any civil right or obligation, shall be independent and impartial; and

(a) if any person is charged with a criminal offence, then, unless the charge is withdrawn; or

(b) where proceedings are commenced for the determination or the existence of any civil right or obligation, the case shall be afforded a fair hearing within a reasonable time.

- *Gambia 1996, Article 24.1*

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*

The parties to all trials may speak in their own defense in the presence of the other parties, under conditions of parity, before an independent and impartial court. The law ensures a reasonable duration.

- *Italy 2003, Article 111*

(a) 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.

(b) A trial referred to in Sub-Article (a) hereof shall take place within a reasonable time, failing which the accused shall be released.

- *Namibia 1998, Article 12.1.1-b*

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*

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

- *Sierra Leone 2002, Article 23.1*

Every accused person shall have the right to a fair trial, which shall include the right

(a) to a public trial before an ordinary court of law within a reasonable time after having been charged;

- *South Africa 1993, Article 25.3.a*

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*

5.3. Trial Without Undue Delays

Every person has the right, on equal terms, and in all legal or administrative processes to:

...

d) Be tried without any undue delays in the process;

- *Bolivia 2002, Article 16.3.d*

Any accused has the right, under equal conditions, to the following minimal guarantees:

...

2. To be tried without delay by a competent court established by law. There is no alternative venue. No one may be removed from appearing before one's judge having jurisdiction nor made to appear before a special court;

- *Nicaragua 2005, Article 34.2*

Likewise, all have the right to the ordinary judge predetermined by law, to defense and assistance of an attorney, to be informed of the accusation made against them, to a public trial without delays and with all the guarantees, to utilize the means of proof pertinent to their defense, to refrain from self-incrimination, to refrain from pleading guilty and to the presumption of innocence.

- *Spain 1992, Article 24.2*

5.4. Other Provisions

The State shall guarantee the accessibility of the judicature organs to litigants, and the rapidity of statuting [*sic*] on cases.

- *Egypt 1980, Article 68*

Any individual suspected of having committed a criminal offense and held in detention shall either be released or shall be brought before a judge within the shortest possible period of time. The judge is required to grant the detained individual a hearing and shall immediately prepare a written ruling with a justification for either releasing the detainee or having the individual placed under arrest.

- *Hungary 2003, Article 55.2*

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. The courts' services shall be gratuitous and all judicial costs are, therefore, prohibited.

- *Mexico 2003, Article 17*

6. APPENDIX

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

[SPEEDTRI] – Does the constitution provide the right to a speedy trial?

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

Instructions: If the text specifies that trials must take place within "reasonable time", please code yes.

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.