

**Incarceration and Enfranchisement:  
International Practices, Impact and Recommendations for Reform**

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## Introduction

Ex-prisoner Joe Loya describes his reintegration into democratic society in the following way:

A few weeks ago I received voter-registration material in the mail. There it was, clearly marked, my disqualification. "You must NOT be in prison or on parole for the conviction of a felony."

I felt obligated to press further, to fight for the privilege. I telephoned the registrar and explained that I'm on "supervisory release," not parole. Could I vote?

She had to check. On hold, I thought about the almost 3 million felons like me who have served our sentences but still can't vote. Some of us are permanently barred. She came back on line.

"Nope, you still can't vote."

I came out of prison wanting to think and act 100 percent different than when I went in. I supposed that the opposite of the virulently anti-social criminal is an optimistic civic-minded citizen.<sup>1</sup>

Joe's experience is not unique to the United States. Dozens of other nations place either temporary or permanent voting restrictions on individuals who have been or are currently incarcerated, causing distressing numbers of individuals to be excluded from the civil process.

This paper addresses the issues surrounding the enfranchisement (or disenfranchisement) of the penal and ex-penal population worldwide. It begins by addressing the historical and theoretical basis for the exclusion of prisoners and ex-prisoners from the vote. Legal exclusions in most countries consider removal from the civil process as an additional punishment for those who have broken the law. This project then explores various international and peace agreements that govern the voting rights of prisoners and ex-prisoners. As we will see, these agreements are often at odds with country-specific laws. Nations that include or exclude prisoners and ex-prisoners are then categorized and ranked on a four-point scale according to level of inclusion in the political process. From these classifications, several country-based case studies are presented

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<sup>1</sup> <http://www.pacificnews.org/jinn/stories/4.21/981023-prison-vote.html>; Accessed 6/3/03.

and analyzed with more depth to provide a cultural and political sense of the practices and impacts in specific countries. Finally, recommendations on reform and informational products are offered as a way to tie together multiple forms of international practice on prisoner's rights.

### **Theories of Incarceration-Related Disenfranchisement**

The interconnection of citizenship, enfranchisement and democracy produces a valuable starting point for the discussion of prison disenfranchisement and country-specific practices. As will become clearer in subsequent sections, most international agreements on the rights of suffrage hold that universal and equal suffrage is a key component of a democratic society. True to this ethos, Robert Dahl argues in his groundbreaking study of democratization, *Polyarchy*, that the necessary component of a democracy is a “continuing responsiveness of the government to the preferences of its citizens, considered political equals.”<sup>2</sup> Dahl further notes that a major component of a “perfect democratic process” is that citizens have an opportunity to participate in the governance of their country and that this participation is equal. On “effective participation,” Dahl writes:

Throughout the process of making binding decisions, citizens ought to have an adequate opportunity, and an equal opportunity, for expressing their preferences as to the final outcome. They must have an adequate and equal opportunities for placing questions on the agenda and for expressing reasons for endorsing one outcome rather than another.<sup>3</sup>

On “voting equality,” Dahl writes,

At the decisive stage of collective decisions, each citizen must be ensured an equal opportunity to express a choice that will be counted as equal in weight to the choice expressed by any other citizen. In determining outcomes at the decisive stage, these choices, and only these choices, must be taken into account.<sup>4</sup>

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<sup>2</sup> Dahl, Robert. 1971. *Polyarchy: Participation and Opposition*. New Haven: Yale University Press, 1.

<sup>3</sup> Dahl, Robert A. 1989. *Democracy and its Critics*. New Haven: Yale University Press, 109.

<sup>4</sup> Ibid.

The promotion of democracy through universal voting rights and the punishment of those who violate the social order meet at theories of incarceration. Many sociologists argue that incarceration is used primarily to protect the interests of the dominant class. Sociologists Jacobs and Helms write that, “It seems plausible that an expanded racial or economic underclass with little to lose could destabilize the social order that benefits the affluent so much.”<sup>5</sup> These scholars argue that prisons function within the criminal justice system as a means to control elements of these communities to maintain a stable system of order. Those individuals who are viewed as a danger to themselves or others are removed from society altogether.

The primary argument for those who favor the extension of voting rights to prisoners is that prison serves as a dislocating element of punishment, where criminals are physically relocated to another place, not a mechanism to permanently disenfranchise individuals. Prisons are built to rehabilitate citizens, and removal of civil rights during or after prison terms does not further that goal.<sup>6</sup> Opponents argue that the removal of civil rights (in various forms) is central to the punishment of serious criminals who have broken the “social contract” of understood norms (see below for more on this).<sup>7</sup> Those who violate these established community practices forfeit their rights to engage in the democratic polity.

The disqualification of prison inmates from voting stems from a belief that citizens must comply with written laws. Those who break this contract are considered unworthy of participation in modern civil society and are therefore excluded from the democratic process.

Planinc notes that both those who believe in an implied social contract and those who argue for a

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<sup>5</sup> Jacobs, David and Ronald E. Helms. 1996. “Towards a Political Model of Incarceration: A Time Series Examination of Multiple Explanations for Prison Admission Rates.” *American Journal of Sociology* (102): 323-357.

<sup>6</sup> See Mauer, Mark and Meda Chesney-Lind (editors). 2002. *Invisible Punishment: The Collateral Consequences of Mass Imprisonment*. New York: New Press.

<sup>7</sup> See Dodge, Calvert R. 1979. *A World Without Prisons : Alternatives to Incarceration Throughout the World*. Lexington, MA: Lexington Books.

utilitarian approach to society (the greatest good for the greatest number), “no matter how they understand the proper boundaries of democratic citizenship, ... all conclude that criminals fall outside them. Their unanimous agreement directly answers the question of democratic voting rights: only citizens have the right to vote, and it would not be reasonable to consider criminals as citizens.”<sup>8</sup>

Specifically, social contract theorist Thomas Hobbes argues that if a criminal is a murderer, “he has renounced Reason, the common Rule and Measure God hath given to Mankind.”<sup>9</sup> Contract theorist Jean Jacques Rousseau argues that criminals are not to remain free citizens and that:

every offender who attacks the social right becomes through his crimes a rebel and traitor to his homeland; he ceases to be one of its members by violating its laws, and he even wages war against it.... The proceedings and judgment are the proofs and declaration that his has broken the social treaty, and consequently is not longer a member of the state.<sup>10</sup>

Although utilitarian John Stuart Mill strenuously argues for universal electoral suffrage, in the case of criminals, “it might be expedient that in the case of crimes evincing a high degree of insensitivity to social obligation, the deprivation of this and other civic rights should form part of the sentence.”<sup>11</sup> This idea seems to translate into the countries that partially exclude prisoners from voting (in certain circumstances) reported in Table 2 below.

Cesare Beccaria, who wrote one of the first books to influence the modern understanding of crime according to Planinc, argues that the punishment of criminals involves their civil death and therefore a loss of citizenship and voting rights, especially if the crime results in disgrace or

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<sup>8</sup> Planinc, Zdravko. 1987. “Should Imprisoned Criminals Have a Constitutional Right to Vote?” *Canadian Journal of Law and Society* (2): 153-64.

<sup>9</sup> Hobbes, Thomas. 1979. *Leviathan*. Edited by C.B. Mcpherson. New York: Penguin Press.

<sup>10</sup> Rousseau, Jean Jacques. 1978. *On the Social Contract*. Translated by R.D. and J.R. Masters. New York: St. Martin’s Press, 65. See also Planinc 1987.

<sup>11</sup> Mill, John Stuart. 1977. “Thoughts on Parliamentary Reform.” In *The Collected Work of J.S. Mill*. Toronto: University of Toronto Press. See also Planinc 1987.

a “breach of honor.”<sup>12</sup> In the United States, the debate about the disenfranchisement of prisoners and ex-prisoners centered on a similar discussion of what the Alabama Supreme Court dubbed the “purity of the ballot box.”<sup>13</sup> Although state laws rarely made morality a criterion for voting qualification, nevertheless it was argued that voters should be “moral persons.”<sup>14</sup>

Overall, very little is written about the theory, practice or rights of voting by prisoners or ex-prisoners. Damaska notes that there is scant policy behind attaching additional punishments to a criminal conviction.<sup>15</sup> Most works relating to voting rights begin on more abstract terms, delving into the history of the extension and exclusion of voting rights. Many current electoral laws governing who may be permitted to vote were codified from citizenship requirements in early history. Laws disenfranchising current (and often former) prisoners are a residual punishment from medieval times when citizens who broke the social contract by engaging in a civil wrong suffered a “civil death.”<sup>16</sup> In the Roman Republic, those that were in the lower class, such as slaves, freedmen or those who lacked the legal criteria for privilege, were exempt from citizenship.<sup>17</sup> In practice, many current laws excluding prisoners from voting are based on laws in the United States. In the American case, Lowenstein writes that:

The American colonies inherited property qualifications for voting that had been established in England at least as early as the fifteenth century. In addition, British law excluded women, Catholics, Jews, aliens, and servants from the franchise. However, because of cheap land and lax administration, suffrage was far more widespread in practice in the colonies during the eighteenth century than in England.<sup>18</sup>

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<sup>12</sup> Beccaria, Cesare. 1963. *On Crimes and Punishments*. Translated by Henry Paolucci. Indianapolis: Bobbs-Merrill. See also Planinc 1987, 161.

<sup>13</sup> Keyssar, Alexander. 2000. *The Right to Vote: A Contested History of Democracy in the United States*. New York: Basic Books, 163.

<sup>14</sup> Ibid.

<sup>15</sup> Damaska, Mirjan. 1972. “Adverse Legal Consequences of Conviction and Their Removal: A Comparative Study.” *The Journal of Criminal Law, Criminology and Police Science* (59) No.3.

<sup>16</sup> Keyssar 2000.

<sup>17</sup> Garnsey, Peter. 1968. “Legal Privilege in the Roman Empire.” *Past and Present* (41): 3-24.

<sup>18</sup> Lowenstein, Daniel Hays. 1995. *Election Law: Cases and Materials*. Durham: Carolina Academic Press, 22-23.

The property requirement as a minimum threshold for voting rights also created an age restriction in practice, as most young, white males did not have sufficient property to meet the requirement until middle age. Ultimately, registration was not left to the federal government but to the states, and certain states had less stringent requirements.

After the Civil War, efforts to enfranchise former slaves in the United States were met with fierce resistance from southern politicians and the public. The promise and potential of the Fifteenth Amendment, which gave Congress the power to regulate who could be considered a “citizen” of the United States, gave way to the establishment of such practices as secret ballots, poll taxes, literacy tests and the white primary. The adoption of the Nineteenth Amendment, which extended suffrage to women, took more than three-quarters of a century more to establish.<sup>19</sup> The Civil Rights Act of 1964 and the Voting Rights Act of 1965 began the process of reforming the vote to provide more inclusion in the democratic process.

Citizenship expunging laws passed in the United States in 1865 deemed deserters from the military or naval services are “to have voluntarily relinquished and forfeited their rights of citizenship, as well as their right to become citizens; and such deserters shall be forever incapable of holding any office of trust or profit under the United States or of exercising any rights of citizens thereof.”<sup>20</sup> The law was amended in 1912 to allow the president to mitigate or remit the sentence. Desertion from active duty in the Armed Forces was considered second only to treason as a violation of patriotic order.

Laws specific to the disenfranchisement of prisoners began in the late 18<sup>th</sup> century. Eleven states disenfranchised those convicted of infamous crimes (and occasionally specific crimes like perjury, bribery or election betting) between 1776 and 1821. These bans were

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<sup>19</sup> Ibid, 28.

<sup>20</sup> Gathings, James A. 1949. “Loss of Citizenship and Civil Rights for Conviction of Crime.” *American Political Science Review* (43): 1228-1234.



implicitly permanent, except in New York where those pardoned for their crimes could vote again.<sup>21</sup> Kessar argues:

The right to vote also was withheld from another group of men who violated prevailing social norms, those who had committed crimes, particularly felonies or so called infamous crimes. Disenfranchisement for such crimes had a long history in England, European, and even Roman law, and was hardly surprising that the principle of attaching civil disabilities to the commission of a crime appeared in American law as well.<sup>22</sup>

Laws in the southern United States that specifically excluded those convicted and sent to prison from the right to vote possibly originated in the 1800s out of racism against former slaves.<sup>23</sup> Combined with lynching and execution of blacks in the south, incarceration was a means of exacting social control over former slaves. Massey and Myers note that corporal punishment declined in favor of incarceration for southern blacks from 1882 to 1935, and these “deprivations of liberty” became the preferred mode of social control.<sup>24</sup> Massey and Myers further note, “After Emancipation, however, the proportion of blacks sentenced to prison greatly exceeded the proportion of whites in virtually every southern state.”<sup>25</sup> These sentences were usually served not in reformatories or prisons but in labor camps, which contracted with businesses to lease the labor of the inmates.

The disposition of laws excluding prisoners from voting grew out of the exclusion of those individuals thought to be “immoral” or threatening to the democratic order of society. The manner in which these rights are restored subsequent to release is rarely discussed, but in most cases, democratic citizenship is restored after an individual has been in the rehabilitative care of the government. The following section outlines several international agreements that attempt to clarify the scope of the political rights and duties of democratic citizens worldwide.

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<sup>21</sup> Keyssar 2000.

<sup>22</sup> Ibid, 62-3.

<sup>23</sup> Drinan, Robert. “Let Prisoners Keep the Right to Vote.” *Boston Globe*, 14 July 2000.

<sup>24</sup> Massey, James L. and Martha A. Myers. 1989. “Patterns of Repressive Social Control in Post-Reconstruction Georgia, 1882-1935.” *Social Forces* (68): 458-488.

<sup>25</sup> Ibid, 459.

## International and Peace Agreements

Several international agreements govern the disposition of political rights worldwide, and most argue that the right to participate in the democratic electoral process is unassailable. These documents, however, do not normally deal specifically with the issue of prisoner or ex-prisoners voting rights, rather these documents deal with more general civil and political voting rights. As will be seen in the subsequent sections, these international protocol documents are generally congruent with several regional initiatives establishing electoral standards but are often at odds with country-specific laws and practices.

In outlining principles of representation and equality, the *Universal Declaration of Human Rights* (1948), Article 2 states:

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Article 21 of the Declaration picks up this theme and outlines the right to popular sovereignty, which states:

- (1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
- (2) Everyone has the right of equal access to public service in his country.
- (3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.<sup>26</sup>

In this document, which has served as the basis for the extension of human rights since its inception, universal and equal suffrage are key components of democratic representation.

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<sup>26</sup> *Universal Declaration of Human Rights*. Adopted and proclaimed by General Assembly resolution 217 A (III) of 10 December 1948. See <http://www.un.org/Overview/rights.html>.

Several additional international documents govern international or regional human, social, civil and political rights.<sup>27</sup> The *African [Banjul] Charter on Human and Peoples' Rights* (1981) addresses the issue of universal suffrage in Article 13 which states:

1. Every citizen shall have the right to participate freely in the government of his country, either directly or through freely chosen representatives in accordance with the provisions of the law.
2. Every citizen shall have the right of equal access to the public service of his country.
3. Every individual shall have the right of access to public property and services in strict equality of all persons before the law.<sup>28</sup>

The *Document of the Copenhagen Meeting of the Conference on the Human Dimension of the Commission on Security and Cooperation in Europe (CSCE)* (1990) also contains several provisions for equal access to the ballot, among them:

To ensure that the will of the people serves as the basis of the authority of government, the participating States will

(7.1) - hold free elections at reasonable intervals, as established by law;

(7.2) - permit all seats in at least one chamber of the national legislature to be freely contested in a popular vote;

(7.3) - guarantee universal and equal suffrage to adult citizens;

(7.4) - ensure that votes are cast by secret ballot or by equivalent free voting procedure, and that they are counted and reported honestly with the official results made public;

(7.5) - respect the right of citizens to seek political or public office, individually or as representatives of political parties or organizations, without discrimination.<sup>29</sup>

These emerged from a post-World War II philosophy that securing national sovereignty and establishing working democracies went hand in hand.

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<sup>27</sup> For the sake of brevity, only a few representative documents are listed here for illustrate purposes. Some of those agreements included here and several more, as they pertain to enfranchisement, are listed at: [http://www.vybory.com/uk/legis/6internat/Intern\\_std\\_elect.html](http://www.vybory.com/uk/legis/6internat/Intern_std_elect.html).

<sup>28</sup> *African [Banjul] Charter on Human and Peoples' Rights*, adopted June 27, 1981. See <http://www1.umn.edu/humanrts/instreet/z1afchar.htm>.

<sup>29</sup> *Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE*, June 5-July 29, 1990. See <http://www.osce.org/docs/english/1990-1999/hd/cope90e.htm>.

As is clear from the statutes in the documents reported here, there are no explicit laws that govern the rights of prisoners or ex-prisoners to vote. The *Geneva Convention Relative to the Treatment of Prisoners of War* (1950) contains several rights of prisoners to send and receive mail but no expressed provision on voting rights in their home countries.<sup>30</sup> The *American Convention on Human Rights* (1978) does, however, contain a provision that allows for member states to restrict access to voting participation based upon several factors. While principles of universal and equal suffrage are emphasized in Article 23, Section 3 states, “The law may regulate the exercise of the rights and opportunities referred to in the preceding paragraph only on the basis of age, nationality, residence, language, education, civil and mental capacity, or sentencing by a competent court in criminal proceedings.”<sup>31</sup> The last phrase in the section opens the door to the exclusion of individuals who have been sentenced but does not specify whether individuals can vote while in detention, in prison or subsequent to release from prison.

### **Description of International Practices**

The international agreements in the preceding sections outline general political and civil rights for individuals, but as noted, these documents rarely deal specifically with the practice or performance of election systems with regard to voting by prisoners or ex-prisoners. These documents lean heavily on the principle of universal suffrage, yet a key component to this ideal is the effective practice of allowing those eligible to vote to retain access to the polls even under temporarily dislocating circumstances. This section describes several regional initiatives for establishing electoral standards and compares them to the principles espoused in several

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<sup>30</sup> *Geneva Convention Relative to the Treatment of Prisoners of War*, entered into force October 15, 1950. See <http://www.yale.edu/lawweb/avalon/lawofwar/geneva03.htm>.

<sup>31</sup> *American Convention on Human Rights*, O.A.S.Treaty Series No. 36, 1144 U.N.T.S. 123 entered into force July 18, 1978. See <http://www1.umn.edu/humanrts/oasinstr/zoas3con.htm>.

international agreements. This section also documents several of the challenges of registering prisoners and extending the right to vote to incarcerated individuals. The gap between the promise of “best practices” and actual performance during election events frames the issues surrounding prison disenfranchisement and serves as a springboard for recommendations in subsequent sections.

In some cases, provisions in these documents establishing electoral standards are made to allow for the exclusion of those serving a prison sentence (or other criteria). For instance, Article 8, Section 1.6 of The Association of Central and Eastern European Election Officials’ draft “Convention on Election Standards, Electoral Rights, and Freedoms” states:

1.6. The right to elect and be elected shall not be enjoyable by persons who have not attained to the age established by the constitution and/or laws. The electoral rights and freedoms, including the right to elect and/or be elected, may be restricted by law for persons pronounced by a court to be incapable and persons serving a criminal sentence which has come into legal force.<sup>32</sup>

The “Convention on Election Standards, Electoral Rights, and Freedoms” ensures that individuals with other disabilities are offered special protection of their right to vote, noting that nations should allow for “voting outside a polling station, postal voting, voting on the basis of an absentee certificate, early voting, voting on the basis of a power of attorney or other forms of voting which assure maximum convenience to voters.”<sup>33</sup> These provisions also cover individuals like those serving in the military, in the police force, home-bound or hospital-bound by sickness or fear and those with other disabilities.

Other initiatives expressly outline rules governing the practice of extending the right to vote to prisoners. The following rules from the OSCE outline questions related to the

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<sup>32</sup> Association of Central and Eastern European Election Officials, draft “Convention Election Standards, Electoral Rights, and Freedoms.” See: [http://www.cikrf.ru/conference/conference\\_en\\_konv.htm](http://www.cikrf.ru/conference/conference_en_konv.htm)

<sup>33</sup> Ibid.

recommended procedures for administering ballots to those individuals who are confined or otherwise absent from their home district on election day:

### ***Voting in Military Barracks, Prisons and Hospitals***

In such cases where voting is permitted in military barracks, prisons and hospitals:

- Will sufficient campaign material be provided to soldiers, prisoners, and hospital patients in order for them to make an informed choice on election day
- Are special voter registration arrangements provided
- How are double registration and multiple voting prevented
- Will there be adequate practical arrangements provided in these voting sites or will these segments of the electorate vote with the general public
- Will there be adequate provisions for these voters to vote by secret ballot and free from intimidation<sup>34</sup>

The OSCE guidelines serve to extend the principles of universal suffrage to all voters, regardless of particular hardships.

Even though several nations do allow prisoners to vote by law, practical issues of registration are often problematic and obscure these rights. *The Southern African Development Community, Parliamentary Forum*, “Norms and Standards for Elections in the SADC Region” offers recommendations on the registration of voters for elections:

#### **Problem**

Registration of voters in SADC countries is a once off thing, done when elections are eminent. Experience shows that this practice leaves out a substantial proportion of eligible voters. A properly compiled register of voters provides a sound basis for the organization of free and fair elections. The compilation of a satisfactory voters’ register is a biggest test of the impartiality and technical competence of the Electoral Commission.

#### **Recommendations**

Registration of voters should therefore be a continuous exercise and not just wait for an election.<sup>35</sup>

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<sup>34</sup> See [http://www.osce.org/odihr/documents/guidelines/election\\_handbook/eh\\_book.htm](http://www.osce.org/odihr/documents/guidelines/election_handbook/eh_book.htm), accessed 6/5/03.

The recommendation of a continuous registration of voters presents problems for those individuals who are incarcerated and therefore unable to obtain registration. Legal actions have been undertaken to reconcile the principle with the practice of registration. For instance, in South Africa where prisoner voting is legal, the Constitutional Court (the high court) clarified the law as it related to registration of voters in prison.<sup>36</sup> South African election procedures allowed for three specific weekends in which one could register to vote, and individuals in prison on those dates could not register to vote. In 1999, the Court held that the Electoral Commission effectively barred prisoners from voting by not offering a viable solution to the registration problem, and the Court required that additional provisions be made to enable prisoners detained on registration or election days to vote.

Registration of prisoners can be problematic given the potential geographical quandary of where to physically register prisoners (either in their home district before incarceration or at the location of the prison). Some countries send special registration teams to prisons to sign up prisoners who are eligible for voting. For instance, the Lesotho Elections Commissioner, Mafole Sematlane, announced in 2001 that teams of registrars would be sent to prisons in Lesotho on specific days to register the inmates.<sup>37</sup> However, prisoners are often overlooked, or no mechanism is utilized to register them to vote. In Lithuania, prisoners who are registered vote by mail via prison post offices, but as the OSCE Office for Democratic Institutions and Human Rights (ODIHR) observed during the Parliamentary Elections of 1996:

A team of observers visited the Pravieniskiu prison and witnessed voting. Despite the fact that the number of prisoners is approximately 1,800, only sixty had applied to vote. Most of the voter

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<sup>35</sup> The *Southern African Development Community, Parliamentary Forum*, “Norms and Standards for Elections in the SADC Region.” Adopted by the SADC Parliamentary Forum Plenary Assembly on the 25<sup>th</sup> March 2001, Windhoek, Namibia. See: [http://www.sadcpf.org/documents/sadcpf\\_electionnormsstandards.pdf](http://www.sadcpf.org/documents/sadcpf_electionnormsstandards.pdf)

<sup>36</sup> See [http://www.deneysreitz.co.za/dr\\_publications\\_main/pdf\\_files/5044%20Constitutional%20Update%208%20.pdf](http://www.deneysreitz.co.za/dr_publications_main/pdf_files/5044%20Constitutional%20Update%208%20.pdf), accessed 6/6/03.

<sup>37</sup> Mopheme. “Voter Registration Starts, Prisoners Forgotten?” *Africa News*. 15 August 2001.

certificates were sent to the prisoners' home addresses. Without this certificate, it is uncertain to what extent the prisoners were given sufficient information about the possibility to apply for a vote on the basis of their passports. As for the remaining 1,200-1,300 prisoners without passports, the ODHIR is not convinced that they had been properly informed about their possibilities to be identified through regular prison register.<sup>38</sup>

The OSCE, ODHIR Election Observation report from Macedonia in the September 2002

elections addresses this problem:

The law provides that military personnel on duty, prisoners and internally displaced persons (IDPs) cast ballots at their current location one day in advance of regular voting. However, it does not specify whether these categories of citizens voting outside their place of permanent residence should receive a ballot corresponding to the district where they are from, or the district in which they are temporarily located. The SEC decided to provide these voters ballots from their place of origin.<sup>39</sup>

In addition to special advanced registration, many countries hold voting early (from one month to one day in advance) of the regularly scheduled national election day for those with special needs, including police officers and those in hospitals. The OSCE representatives instituted this Special Needs Program where "OSCE teams will be working in every municipality to help people who, for very specific reasons, will not be able to go to a polling station on the day of the general election, 17 November, to cast their vote."<sup>40</sup> The Program ran for two weeks, up until two days until the officially scheduled election day. These procedures are explored with more depth in the Case Studies section below. A similar process takes place in Australia, where those in prison are permitted to vote early by mail.

A standard and important principle of free and fair elections, especially in newly emerging democracies, is the secrecy of one's vote. The legitimacy of an election can be compromised if coercion is used as a means to alter the outcome of a democratic election. For instance, the Inter-Parliamentary Union "Declaration on Criteria for Free and Fair Elections"

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<sup>38</sup> See [http://www.osce.org/odhr/documents/reports/election\\_reports/lt/lith1-3.pdf](http://www.osce.org/odhr/documents/reports/election_reports/lt/lith1-3.pdf), accessed 6/6/03.

<sup>39</sup> See <http://www.europarl.eu.int/meetdocs/delegations/seed/20030115/15.pdf>, Accessed 6/20/03.

<sup>40</sup> See [http://www.osce.org/news/generate.pf.php3?news\\_id=2107](http://www.osce.org/news/generate.pf.php3?news_id=2107), accessed 6/5/03.



states in Article 2, Section 7 that, “The right to vote in secret is absolute and shall not be restricted in any manner whatsoever.”<sup>41</sup> Furthermore, the OSCE (OHDIR) “International Standards and Commitment on the Right of Democratic Elections: A Practical Guide to Democratic Elections Best Practice” argues that in mobile voting (the procedure necessary for prison voting), provisions have to be made to prevent voting fraud and specifically regarding the secrecy of a voter’s ballot:

Under no circumstances, except for counting of ballots after close of the polling, should a polling station committee member or other person be allowed to see a voter’s marked ballot. Obviously, this prohibition does not apply to a person legally authorized to assist a blind voter or a voter requiring assistance due to physical infirmity. However, it is acceptable for a member of a polling station committee to handle or control the voter’s marked ballot before it is placed in the ballot box.

The principle of secrecy of the vote requires that election regulations underlie that secret voting is not only a right on the part of the voter, but an absolute obligation. Election officials have an obligation to provide adequate facilities to ensure that voters have the space and time necessary to cast their vote in secret.<sup>42</sup>

There are often several problems in practice with the secrecy of an individual’s ballot during the administration of the ballot or during the transmission of the ballot to the tabulation place. For example, OHDIR/OSCE observed in the Republic of Montenegro Municipal Elections in 2002:

The large majority of observers characterized the voting (86%) and counting (81%) as "good" or "excellent." A small number of irregularities were noted, in particular with the secrecy of the vote (6%), stamping of ballots in advance (4%), and identification (1%) and ink (1%) checks. Serious violations such as voters failing to sign the voter register led to the cancellation of voting in at least one polling station. Procedures for mobile voting and voting in prisons did not always

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<sup>41</sup> Inter-Parliamentary Union, “Declaration on Criteria for Free and Fair Elections,” Unanimously adopted by the Inter-Parliamentary Council at its 154th session (Paris, 26 March 1994). See: <http://www.ipu.org/cnl-e/154-free.htm>.

<sup>42</sup> OSCE (OHDIR) “International Standards and Commitment on the Right of Democratic Elections: A Practical Guide to Democratic Elections Best Practice,” Article IV, H “Balloting,” Section 1, Warsaw, 20 November 2002. See: [http://www.osce.org/odihr/documents/elections/intstand\\_draft.pdf](http://www.osce.org/odihr/documents/elections/intstand_draft.pdf).

provide for sufficient secrecy of the ballot, in particular when the number of voters was small. No significant problems were observed concerning the vote count.<sup>43</sup>

Similarly, in the Ukraine, where prisoners are allowed by law to vote, the administration of the ballot is often problematic. For example, in an OSCE report from OHDIR, the voting procedures for secrecy may have been violated. The report concludes:

Voting in "special polling stations" located in hospitals and prisons is of concern. In constituency 28, ballot papers were not folded after voting and a prison guard inspected marked ballots before they were deposited in the ballot box. In constituency 169, turnout at a prison approached 100% with 99.7% of votes cast for FUU. Observers in Crimea reported that military conscripts voted with their officers in close proximity.<sup>44</sup>

Equally damaging to the democratic process are the politically coercive uses of stripping detainees or prisoners of their political and civil rights, such as using temporary detainment as a means to exclude individuals from voting. To address this problem, *The Southern African Development Community, Parliamentary Forum*, "Norms and Standards for Elections in the SADC Region" offers recommendations on election guidelines to prevent circumstances involving violence or coercion from denying election access:

**Problem**

There are numerous cases in our countries whereby eligible voters have been unable or prevented from exercising their right to vote through violence, lack of information on location of polling station, intimidation and misinformation.

Furthermore, there are situations whereby the secrecy of the ballot has been severely compromised by making voters queue behind their party candidates, village headmen and threats based on the ability of competing candidates/parties to use modern communication equipment to tell which way a voter has voted.

**Recommendations**

(ii) Any measures such as political violence, kidnapping, murder, threat and sanctions such as denial of development opportunities in opposition controlled areas that prevent eligible

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<sup>43</sup> See [http://www.osce.org/odihr/documents/reports/election\\_reports/ya/ya\\_mont\\_may2002\\_eps.php3](http://www.osce.org/odihr/documents/reports/election_reports/ya/ya_mont_may2002_eps.php3), accessed 6/5/03.

<sup>44</sup> See [http://www.osce.org/odihr/documents/reports/election\\_reports/ua/ua\\_pe\\_march2002\\_epr.php3](http://www.osce.org/odihr/documents/reports/election_reports/ua/ua_pe_march2002_epr.php3), Accessed 6/6/03. This process, however, can also run smoothly. See "Report of Observations: Election of the President of the Russian Federation," 16 June 1996, International Foundation for Election Systems.

individuals to register to vote and to vote in secrecy should be perpetually outlawed by SADC member states.<sup>45</sup>

For example, on the semi-autonomous island of Zanzibar between November of 1997 and May of 1998, 18 citizens were arrested and permanently detained, four of whom were members of parliament. Since 1995, there have been numerous cases of short-term arrest of members of the opposition party, and those detained by government authorities are not allowed to vote in elections.<sup>46</sup> The temporary or short-term detention of individuals, such as in Zanzibar or elsewhere, who have been targeted as key electoral opposition groups or important voting publics, undermines the principles of universal suffrage and access to the ballot. This problem is also occurring in Kosovo, where ethnic Albanians are being jailed for political reasons, and the effect is to dilute the voting power of ethnic Albanians.<sup>47</sup>

The necessity of non-political legal adjudication in cases of extending voting rights to the incarcerated is of similar importance. Judges in most countries possess the authority to remove prisoners or ex-prisoners from the voting roles depending on the specifics of the law and the severity of the crime.<sup>48</sup> Laws pertaining to the establishment or execution of voting rights must be applied fairly and impartially, especially to prisoners who are most susceptible to the brunt force of an overly politicized judiciary.

The examples in this section address the gaps between agreed upon electoral standards and country-specific incidents that deviate from established recommendations. While the frequency of these deviations cannot be known, these findings frame potential problems and

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<sup>45</sup> The *Southern African Development Community, Parliamentary Forum*, "Norms and Standards for Elections in the SADC Region." Adopted by the SADC Parliamentary Forum Plenary Assembly on the 25<sup>th</sup> March 2001, Windhoek, Namibia. See: [http://www.sadcpf.org/documents/sadcpf\\_electionnormsstandards.pdf](http://www.sadcpf.org/documents/sadcpf_electionnormsstandards.pdf).

<sup>46</sup> <http://web.amnesty.org/web/www.nsf/0/9bf6fa1a5f6dd4ae8025690a004abcd0?OpenDocument>, accessed 6/6/03.

<sup>47</sup> <http://www.crisisweb.org/projects/showreport.cfm?reportid=10>, Accessed 6/20/03. See also <http://heiwww.unige.ch/humanrts/ins/macedo95.pdf>, Accessed 6/20/03.

<sup>48</sup> Demleiter, Nora V. 2000. "Continuing Payment on One's Debt to Society: The German Model of Felon Disenfranchisement as an Alternative." 84 *Minnesota Law Review* 753.

underscore the need for formal guidelines and more attention in practice. The following section details a global classification scheme based upon the restrictiveness of country-specific laws, which further explicates potential gaps between international agreements, regional initiatives on electoral standards and laws in several countries.

### **Classification of Nations and Incarceration Enfranchisement**

Different nations have different electoral regulations governing the ability of prisoners and ex-prisoners to vote, often regardless of international human rights agreements or regional electoral practice agreements like the documents described in the previous sections. For purposes of analysis, these nations have been divided into four manageable categories: nations that allow prisoners to vote with no restrictions, nations that allow prisoners to vote with some restrictions, nations that do not allow prisoners to vote and nations that do not allow prisoners to vote and ban voting for a period of time past the incarceration release date. Not all nations could be classified because of ambiguous or missing references to prisoner and ex-prisoner voting. Therefore the classification tables below list those countries that had specific written practices governing such voting in their constitutions or electoral laws. These categories are arranged from least restrictive to most restrictive in terms of the voting rights extended to prisoners and ex-prisoners.<sup>49</sup>

As will become clearer in the following section, documenting the official voting rights of prisoners and ex-prisoners is difficult because many constitutions and electoral laws are not explicit about the rights of these individuals. Either the constitution or electoral law indicates that “all citizens” of a country can vote and leaves the rest unspecified, or if a country makes

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<sup>49</sup> Countries were classified if a specific document confirmed or denied the rights of prisoners to vote, including the constitution, electoral law, court cases, activist organization sites or media reports that could be located.

special provisions for special voting needs, such as those in “special” institutions, military bases or policy facilities, prison facilities are absent from the list. Vagaries such as these are not included in the categorization in this section unless supporting documentation, such as an international observer report, court case or journalistic account, could supplement the findings. Nations that could fit into two categories (for instance Chile, which not only restricts prisoners voting based upon type of crime, but also bans ex-prisoner voting for a time after incarceration) were coded in the more restrictive category. Nations not listed in the below tables are those whose laws make no mention of prisoner or ex-prisoner voting rights or where the laws contain ambiguous descriptions of these rights.

Table 1 below reports the countries that allow prisoners to vote in elections. The countries on this list encompass a wide range of regions, cultures and histories. Although one may expect more westernized countries to provide the ballot to prisoners, no clear pattern emerges in the list of countries granting prisoners the right to vote, although several “western” states do grant voting rights such as France, Ireland and Canada. Scandinavian countries, like the Norway, Finland and Sweden, which tend to be more socially democratic, also allow prisoners the right to vote as do several recently democratizing countries in Central and Eastern Europe, like Croatia, Slovenia, Kosovo, Serbia, Albania and the Czech Republic. Despite the legality of prison voting in several of these countries, the process is not always perfect. Several problems present with voting in general emerge, such as registration issues and ballot secrecy, and some of these concerns are outlined in the “Descriptions of International Practices” section above.

**Table 1**  
**Nations that Allow Prisoners to Vote**

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Bosnia	Norway
Croatia	Ukraine
Canada	Montenegro
Iran	Pakistan
Albania	Peru
Czech Republic	Poland
Denmark	Sweden
France	South Africa
Iceland	Slovenia
Ireland	Switzerland
Israel	Puerto Rico
Finland	Bangladesh
Greece	Kenya
Latvia	Macedonia
Lithuania	Serbia

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NOTE: Countries classified if supporting documentation could be found in constitutions, electoral laws or other corroborating documents. Nations included here expressly document the rights of prisoners to vote (either in election qualifications or in procedures for special voting needs).

Certain countries have taken a middle ground approach to extending voting rights to prisoners. Table 2 lists the countries that allow prisoners to vote (or not to vote) and the specific circumstances that govern when prisoners are eligible to vote. In general, regardless of country, the more serious the crime involved, the less eligible to vote prisoners become. For instance, in China prisoners on death row and in Lesotho prisoners on death row or serving a life sentence cannot vote. Individuals convicted of crimes considered to be particularly egregious, such as treason or electoral fraud in Germany, those involved in “ideological or anarchistic” activities in Turkey, or those convicted of any felony in Kosovo, are banned from voting as well. In Slovakia and Australia, certain prisoners are allowed to vote in particular elections. In Australia, individuals serving less than five years in prison can vote in federal elections, and in Slovakia prisoners can vote only in federal elections but not local elections. This practice generally follows the form described in the “Theory of Disenfranchisement” section above, where individuals considered to have most egregiously broken the implied or explicit social contract by

violating the norms of the community are limited in the rights they can practice while incarcerated.

**Table 2**  
**Nations that Allow Prisoners to Vote (Under Specific Circumstances)**

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Australia (twelve months or less can vote; five years and under can vote in federal elections)
Austria (length of sentence)
Belize (no voting for sentences over 1 year)
Benin (sentences of 3 months or more cannot vote)
China (no voting on death row)
Germany (convicted of treason, electoral fraud, espionage or membership in illegal organization are banned)
Greece (certain felonies)
Kosovo (convicted felons cannot vote)
Italy (certain felons cannot vote)
Jamaica (sentences over 6 months cannot vote)
Japan (certain offenses banned)
Laos (certain offenses banned)
Lesotho (those serving life sentence or on death row are banned)
Macedonia (those prohibited from “practicing their profession” cannot vote)
Mali (sentences over 1 month cannot vote)
Malta (sentences over 1 month cannot vote)
Netherlands (sentences of 1 year or more are banned)
Papua New Guinea (sentences of 9 months or more are banned)
Slovakia (only in presidential elections)
Spain (certain offenses)
Trinidad & Tobago (sentences of more than 1 year are banned)
Turkey (more than one year cannot vote; offenses such as “involvement in ideological or anarchistic activities.”)
Zimbabwe (only those serving a sentence less than six months can vote)

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NOTE: Countries classified if supporting documentation could be found in constitutions, electoral laws or other corroborating documents. Those specific offenses which are detailed in election laws or constitutions are included here, but those which are vague are left as such.

Table 3 lists nations that ban prisoners from voting while serving time in prison. Although no crystal clear pattern emerges, the countries that ban prisoners and ex-prisoners from voting seem to be concentrated in Africa and Latin America. The historical legacy of state-dominated hegemony, the colonial legacy in Africa and the political and social history of strong (and often oppressive) dictatorships in Latin America may contribute significantly to the practice of banning prison voting today and the state power that results from this exercise of this

authority. It seems that few traditionally western countries are included on this list, although the United Kingdom is a prominent member of this category.

**Table 3**  
**Nations that Do Not Allow Prisoners to Vote**

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Azerbaijan	Kazakhstan
Angola	Kyrgyzstan
Belarus	Lithuania
Botswana	Uruguay
Bulgaria	Malaysia
Comoros	Moldova
Equatorial Guinea	Mongolia
Estonia	Mozambique
Egypt	Palestinian Territories
Georgia	Panama
Guatemala	Poland
Haiti	Russia (those awaiting trial can vote)
Honduras	Venezuela
Hungary	Argentina
Luxembourg	Bahamas
Nigeria	Barbados
Romania	Brazil
Senegal	India
Sierra Leone	Cape Verde
Vietnam	Cyprus
Uganda	Equator
United Kingdom (detainees can vote)	Latvia
Madagascar	Micronesia
Portugal	Samon
Sao Tome	St. Lucia
St. Vincent	Peru
Kenya	

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NOTE: Countries classified if supporting documentation could be found in constitutions, electoral laws or other corroborating documents.

The countries with the most restrictive practices are catalogued in Table 4 where prisoners are not eligible to vote while incarcerated and for a period of time after their term is complete. The countries from Table 3 and Table 4 can be compiled together as countries who do not allow prisoners to vote. The United States has the most restrictive practices of this group of countries; some U.S. states permanently ban ex-felons from voting. Nations like Cameroon and Chile ban voting for a ten-year span subsequent to release. Not many countries reach this level



of voting restrictions—only eight could be located, but this reflects specific legal and civil society components from each country’s particular history.

**Table 4**  
**Nations that Do Not Allow Prisoners to Vote and Restrict Voting after Prison Term is Complete**

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Armenia  
Cameroon (ten years)  
Chile (ten years)  
Belgium (those imprisoned for 5 years or more are permanently disenfranchised)  
Finland (seven years)  
New Zealand (seven years)  
Philippines (five years)  
United States (varies by state – see Case Studies below)

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NOTE: Countries classified if supporting documentation could be found in constitutions, electoral laws or other corroborating documents.

Table 5 shows the prison populations in countries that completely restrict voting rights for prisoners and countries that ban ex-prisoners from voting after their term of incarceration is complete. As is clear from the country totals, the vast majority of disenfranchisement occurs in the United States and the Russian Federation where a substantial number of individuals are incarcerated. India and Brazil are the next closest countries in terms of total prison population (at 281,320 and 240,107 respectively) but these are dwarfed by the inmate total in the United States and the Russian Federation.

Almost four and a half million people in the 54 countries on this list do not possess the right to vote as a result of incarceration. Countries that have larger prison populations also seem to be the most restrictive in terms of prisoner access to voting, but there is no proof of causation. It should also be noted that more individuals may be disenfranchised as a result of general oversight during the administration of the election than from technical exclusions (such as those present in the laws of the countries on the list). The impact on civil society, however, is much more difficult to measure. Whether or not these individuals, if released from prison, would positively contribute to the civil society of their countries is unknown.

**Table 5**  
**Prison Population and Disenfranchisement**

<b>Country</b>	<b>Number in Prison</b>
Angola	49,750
Argentina	38,604
Armenia	4,343
Azerbaijan	17,795
Belarus	55,156
Belgium	8,764
Botswana	6,102
Bahamas	1,280
Barbados	850
Brazil	240,107
Bulgaria	9,283
Cameroon	20,000
Cape Verde	775
Comoros	200
Chile	33,098
Cyprus	369
Equatorial Guinea	--
Equator	7,716
Estonia	4,460
Egypt	80,000
Finland	3,617
Georgia	7,688
Guatemala	8,460
Haiti	4,152
Honduras	11,502
Hungary	17,890
India	281,320
Kazakhstan	84,000
Kyrgyzstan	19,500
Latvia	8,437
Lithuania	11,345
Luxembourg	357
Malaysia	28,804
Micronesia	39
Moldova	10,903
Mongolia	7,256
Mozambique	8,812
New Zealand	5,881
Nigeria	39,368
Palestinian Territories	--
Panama	10,423
Poland	80,467
Romania	48,053
Russia	905,000
Samoa	176
Senegal	5,360
Sierra Leone	--
St. Lucia	243
Venezuela	15,107
Uganda	21,900
United States	2,019,234 <sup>50</sup>
United Kingdom	72,890
Uruguay	5,629
<b>Total</b>	<b>4,322,465</b>

<sup>50</sup> The U.S. figure includes both jail and prison inmates. Almost all of jail inmates are eligible to vote. The actual US prison population is 1,440,655 as of 2002.

NOTE: Data taken from [http://www.kcl.ac.uk/depsta/rel/icps/worldbrief/world\\_brief.html](http://www.kcl.ac.uk/depsta/rel/icps/worldbrief/world_brief.html), accessed 6/6/03. The data for Equatorial Guinea, Palestinian Territories and Sierra Leone was not available. The data in this table represent only those who are currently incarcerated; more ex-prisoners in these countries may not be able to vote depending on the country-specific laws.

Blais, et.al. note that “stronger” democracies are slightly less likely to disenfranchise prison inmates, but “even among ‘strong’ democracies, about one-third disenfranchise all prison inmates, one-third disenfranchise some and another third grant all of them the right to vote.”<sup>51</sup> Although their study does not explore the issue of prison voting with the same depth as this paper, the conclusions regarding a discernable pattern of countries and prison voting exclusions similar. There appears to be no strong pattern by geography, age, “strength” of democracy or size, which are typical classificatory categories for comparative politics. Instead, the patterns seem to be more country-specific and subtle. Indigenous country history, size of penal population and the public politicization of crime may have significant effects where traditional predictive categories fail. The case studies in the following section will help illuminate these possible causal factors.

## **Case Studies**

This section describes the laws and practices of prison and ex-prisoner voting in several countries. As has been made clear, each nation treats the issue of voting rights for prisoners and ex-prisoners differently, largely as a result of particular historical, social or colonial legacies. These case studies touch on procedures, practices, empirical documentation and impacts in several of the countries listed above. Viewing these countries independent of the larger

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<sup>51</sup> Blais, Andre, Louis Massicotte and Antoine Yoahinaka. 1999. “Deciding Who Has the Right to Vote: A Comparative Analysis of Election Laws.” Paper Prepared for Delivery at the Annual Meeting of the American Political Science Association, Atlanta.

considerations will illuminate the specific practices and impacts of laws governing prisoner and ex-prisoner voting.

*United States.* The number of prisoners and ex-prisoners unable to vote in the United States continues to grow rapidly each year as more individuals are incarcerated and those formerly incarcerated are released from prison. The Washington Post of October 1, 2002 notes, “The prison-building boom of the late 1980s and early 1990s, which was fueled by an increase in the number and severity of anti-drug laws, caused the nation's prison population to soar to a current total of more than 2 million.”<sup>52</sup> The United States retains the second largest rate of incarceration per 100,000 (at 600, Russia is the first at 690) (see Table 5 for a larger comparative analysis). The next closest nation is Belarus at 505. What impact does this have on the electoral system? Forty-eight states and the District restrict inmates from voting while serving time, and at least 32 states bar ex-inmates from voting, either permanently or for several years after their release from prison. Specifically:

Nearly 4 million people, 1 of 50 adults in the country, are denied the right to vote. Of those, 1.4 million are black men who represent 13 percent of the nation's black male population.<sup>53</sup>

Table 6 shows the voting-age population in the United States (in total and by state) along with the number of individuals in prison, on probation and on parole and the total number of individuals in each state who are not eligible to vote based upon particular voting laws in each state. The resulting percentage of individuals disenfranchised varies greatly by state, usually hovering at about 1% to 2 % of the total voting age population, with a national average of 1.2 % (or more than two and a half million people). The problem of prison and ex-prisoner

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<sup>52</sup> “Conference Focuses On Inmate Rights; Many Ex-Prisoners Unable to Vote.” The Washington Post. 1 October 2002.

<sup>53</sup> Ibid.

disenfranchisement is particularly acute among the population of black males in the United States. Fourteen percent of black men in 1997 were barred permanently from voting based upon specific exclusionary laws in several states.<sup>54</sup> Thirteen states permanently barred voting, which amounts to approximately 510,000 individuals, and more than 950,000 individuals are ineligible to vote because they are currently serving time in prison, on probation or on parole.<sup>55</sup> State specific laws also change the picture: “In Alabama and Florida, nearly 1 in every 3 black men is permanently disenfranchised, and in Iowa, Mississippi, New Mexico, Virginia, Washington and Wyoming, the ratio is about 1 in 4.”<sup>56</sup>

**Table 6**  
**United States Voting Age Populations (by state) and Ineligible Felons 2002**

<u>State</u>	<u>Voting Age Population</u>	<u>Prisoners</u>	<u>Probation<sup>57</sup></u>	<u>Parole</u>	<u>Total Ineligible Felon</u>	<u>Percent Disenfranchised</u>
<i>Total US</i>	215,139,087	1,245,486	2,239,872	2,673,154	2,673,154	1.2%
Alabama	3,401,343	26,741	40,617	5,663	52,713	1.5%
Alaska	439,406	4,546	4,855	522	7,496	1.7%
Arizona	3,960,779	27,710	63,082	3,536	62,787	1.6%
Arkansas	2,031,931	12,159	26,558	10,301	35,739	1.8%
California	25,884,058	159,444			159,444	0.6%
Colorado	3,384,689	17,448			17,448	0.5%
Connecticut	2,537,660	19,196			19,196	0.8%
Delaware	608,981	7,006	19,995	503	17,534	2.9%
DC	459,692	2,750			2,750	.6%
Florida	12,803,101	72,406	294,626	5,891	225,610	1.8%
Georgia	6,357,341	45,937	358,030	20,809	245,761	3.9%
Hawaii	920,403	5,454			5,454	0.6%
Idaho	986,379	6,006			6,006	0.6%
Illinois	9,331,680	44,348			44,348	0.5%
Indiana	4,578,954	20,966			20,966	0.5%
Iowa	2,223,615	7,962	20,797	3,076	21,437	1.0%
Kansas	2,015,152	8,577			8,577	0.4%
Kentucky	3,144,882	15,424	21,993	6,406	32,827	1.0%
Louisiana	3,301,034	35,710			35,710	1.1%

<sup>54</sup> “Felony Disenfranchisement Removes 1.4 Million Black Men from the Voting Rolls.” *The Journal of Blacks in Higher Education* (22): 61-62.

<sup>55</sup> Butterfield, Fox. “Many Black Men Barred from Voting.” *The New York Times*. 30 January 1997.

<sup>56</sup> Lewin, Tamar. “Crime Costs Many Black Men the Vote, Study Says.” *The New York Times*. 23 October 1998.

<sup>57</sup> The probation figures generally include both misdemeanors and felonies, but only the felonies result in disenfranchisement.

Maine	996,315					
Maryland	4,011,170	23,752	80,708	13,415	77,521	1.9%
Massachusetts	4,904,469	10,602			10,602	0.2%
Michigan	7,438,229	48,849			48,849	0.7%
Minnesota	3,745,050	6,606	113,613	3,156	66,569	1.8%
Mississippi	2,127,746	21,460	15,435	1,788	30,966	1.5%
Missouri	4,261,089	28,757	55,767	12,864	69,505	1.6%
Montana	687,113	3,328			3,328	0.5%
Nebraska	1,277,399	3,937	20,847	530	14,891	1.2%
Nevada	1,614,120	10,201	10,454	4,519	19,947	1.2%
New Hampshire	959,733	2,392			2,393	0.2%
New Jersey	6,432,667	28,142	132,846	11,931	106,496	1.7%
New Mexico	1,340,667	5,668	10,335	1,742	12,578	0.9%
New York	14,469,368	67,534		56,719	124,253	0.9%
North Carolina	6,300,761	31,979	110,676	2,954	90,271	1.4%
North Dakota	477,782	1,004			1,004	0.2%
Ohio	8,530,637	45,281			45,281	0.5%
Oklahoma	2,611,041	22,780	30,269	3,406	41,321	1.6%
Oregon	2,656,262	11,455			11,455	0.4%
Pennsylvania	9,367,419	38,062			38,062	0.4%
Rhode Island	799,379	3,241	24,759	375	15,996	2.0%
South Carolina	3,131,422	22,576	42,408	4,100	47,880	1.5%
South Dakota	565,327	2,812		1,532	4,344	0.8%
Tennessee	4,415,247	23,671	41,089	8,074	52,290	1.2%
Texas	15,703,926	162,070	443,684	107,688	491,600	3.1%
Utah	1,586,775	5,343			5,343	0.3%
Vermont	476,162					
Virginia	5,534,825	31,603	37,882	4,873	55,417	1.0%
Washington	4,536,596	15,159	159,119	155	94,874	2.1%
West Virginia	1,410,555	4,215		939	5,154	0.4%
Wisconsin	4,076,763	21,533	54,951	9,681	58,690	1.4%
Wyoming	371,023	1,684	4,477	557	4,480	1.2%

NOTE: Data compiled by the author from [http://elections.gmu.edu/VAP\\_VEP.htm](http://elections.gmu.edu/VAP_VEP.htm) Those on probation and parole listed here are not necessarily ineligible to vote in these states. The data are offered here as a reference point. Changing laws in various states will alter these numbers.

The United States is only one of a handful of countries that not only restricts prisoners from voting but also often permanently bars the right to vote in several states.<sup>58</sup> Table 7 below shows the states that have such laws (as well as those that allow prisoners to vote). The crimes that lead to the exclusion of voting vary widely by state. In some states “major” crimes included vagrancy, breaking a water pipe, participating in common-law marriage and stealing edible

<sup>58</sup> “Disenfranchised for Life.” The Economist. 24 October 1998.

meat.<sup>59</sup> Historical variations in state politics and culture contribute to present day voting standards.

**Table 7**

<b>States that Permanently Ban Voting to Ex-Felons</b>	<b>States that Allow Prison Inmates to Vote</b>	<b>States that Ban Voting only in Prison (not after)</b>
Alabama	Maine	Washington, DC
Arizona	Vermont	Hawaii
Delaware		Idaho
Florida		Illinois
Iowa		Indiana
Kentucky		Kansas
Maryland		Louisiana
Mississippi		Massachusetts
Nevada		New Hampshire
New Mexico		North Dakota
Tennessee		Ohio
Virginia		Oregon
Wyoming		Pennsylvania
		South Dakota
		Utah

NOTE: Data compiled from <http://www.usdoj.gov/crt/restorevote/restorevote.htm>, accessed 7/7/03. The states in the first column ban felons from voting in most circumstances, however certain state laws allow for voting to be reinstated after a period of time. The remaining states not listed here ban voting while in prison and for a time after release.

The civil rights movement of the 1960s and 1970s sought to relax the disenfranchisement of prisoners and ex-prisoners, and a string of court cases in the early 1970s sought to declare such exclusions unconstitutional. The Supreme Court ruled in 1972 that such exclusions were not unconstitutional and that states could decide whom to exclude from the voting rolls.<sup>60</sup> Recently, certain states are also pushing for more stringent voting restrictions, mirroring the civil punishment trend described above. For instance, in Massachusetts in 2001, a ballot initiative passed to deny the right to vote to prisoners, who had previously been able to vote both in state

<sup>59</sup> Keyssar 2000.

<sup>60</sup> Ibid.

and federal elections.<sup>61</sup> Other states, however, are seeking to expand voting rights for ex-felons. A bill proposed in the Florida State Legislature in 1999 would allow ex-felons to vote one year after the termination of their prison sentence.<sup>62</sup>

**Kosovo.** As noted in the preceding section, the municipal elections of 2000 allowed for special electoral assistance to “special needs voters,” including members of the military and police force not in their home district on election day, those who were hospitalized on election day, hospital staff who were working on election day, those homebound by disability or fear, individuals with mental impairments housed in medical institutions and those incarcerated in prison.<sup>63</sup> Only prisoners who had not been convicted of a felony, had registered to vote during the “Civil Registration Period” and could produce the requisite documentation or were incarcerated on or before April 19, 2000 (the beginning of the Civil Registration Period) and remained in detention during the full registration period ending July 19, 2000 were permitted to vote.

**Table 8**  
**Targeted Prison Population in 2000 Kosovo Elections**

<b>Prison Location</b>	<b>Estimated Detainees</b>
Prizren	95
Mitrovica	67
Pristina	57
Bondsteel	62
Gnjilane	38
Peja	38
Lipjan	5
Istok-Dubrava	12
<b>Total</b>	<b>374</b>

NOTE: Source *Implementation Plan for Registration and Voting for Individuals with Special Needs*, Joint Registration Task Force, United Nations Mission in Kosovo, 10 August 2000.

<sup>61</sup> “House Approved Expansion of Prisoner Voting Ban.” The Associated Press State & Local Wire. 18 July 2001.

<sup>62</sup> Knowlton, Brian. “Some States Seek to Give the Vote Back to Felons.” International Herald Tribune. 23 February 1999.

<sup>63</sup> Two documents outlined the plan and procedures for those requiring special assistance for voting. These were: *Implementation Plan for Registration and Voting for Individuals with Special Needs*, Joint Registration Task Force, United Nations Mission in Kosovo, 10 August 2000; and *Procedures for Special Needs Registration and Voting in Kosovo*, Organization for Security and Cooperation in Europe.



Any of the eight prisons listed in Table 8 that allowed their inmates to participate in the program were sent an “Information Package” detailing the necessary requirements for prisoners to be allowed to vote. Figures 1 and 2 below illustrate prisoners taking part in the Special Needs Program days before Kosovo’s National Municipal Election of 2002.<sup>64</sup> A Special Needs Team consisting of an international supervisor, a polling station worker, a translator and a driver was dispatched for one day of voting at each prison that allowed its inmates to vote during the week of the scheduled election.

**Figure 1**



**Figure 2**



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<sup>64</sup> Pictures are available at: <http://www.osce.org/photos/>.

Once the team arrived, prison inmates had to produce an acceptable identity document to verify their identification. The eligible inmates then had to fill out a registration form (with assistance if necessary) and were given ballots and “Absentee Conditional” envelopes in which to place their ballots when complete. Prisoners who had valid registration identification skipped the registration step and were immediately given a ballot. To ensure secrecy, prison guards were not allowed to accompany the inmates behind the voting screen. The ballots were then placed by a Team member into a portable ballot box and returned to the election headquarters.

*Macedonia.* Several post-communist states in Central and Eastern Europe, where twenty-two of the twenty-seven post-communist states are new sovereign entities, have begun a process of “semi-democratization,” which often includes free, equal and competitive elections.<sup>65</sup> Although this transition from state-dominated hegemony to a democratic system of government is slow, the liberalization of voting rights is a critical element in the democratization process. The data in Table 1 as well as the previous case study in Kosovo support this claim and reveal that several liberalizing countries in this democratizing region allow prisoners to vote. One such country is Macedonia, which allowed prisoners to vote in its September 2002 parliamentary elections.<sup>66</sup>

The procedure is similar to prison voting in Kosovo, but unlike Kosovo, all prisoners in Macedonia can vote rather than just those not convicted of felonies. The Macedonian Election law states that voters who on Election Day are serving a prison term of any length or are in custody awaiting trial are eligible to vote in the penitentiary institutions where they are currently housed. This voting will take place in the week before the official Election Day. On August 23,

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<sup>65</sup> Parrott, Bruce. 1997. “Perspectives on Postcommunist Democratization.” In *Democratization and Authoritarianism in Postcommunist Societies: The Consolidation of Democracy in East-Central Europe*, edited by Dawisha, Karen and Bruce Parrott. Cambridge: Cambridge University Press.

<sup>66</sup> Republic of Macedonia State Election Commission Electoral Board Procedural Manual. September 2002 for the elections to the Parliament of Macedonia.

2002, the Election Code was amended to address several specific registration and voting problems as they related to prisoners:

3. The Municipal Election Commissions that need to conduct the voting of the persons referred to in Article 86 paragraphs 1 and 2 and Article 126 paragraph 1 of this Law, shall get specially packed election material, as follows: ballots for each voter, separated from the ballots in the polling station where the voter is registered in the Voters' List according to the place of residence, special forms for minutes – prescribed on Forms number 16, 17 and 18 and a special excerpt of the Voters' List for those persons, which represents an excerpt of the Voters' List where the person has been registered according to the place of residence and an envelope for delivery to the Regional Election Commissions.”

In item 4 after the words “personal ID card” a comma is inserted, the word “or” is deleted, while after the word “passport” the full stop is deleted and the following words are added: “or a confirmation for the internally displaced persons”.

These changes seem to require registration prior to incarceration because ballots from the location of the prisoner's residence are to be brought to the prison. In addition, it is interesting that the requirements for identification for voting are expanded to include several additional forms of identification (such as passport or a “confirmation for the internally displaced persons”) which might be easier to access for those individuals confined to prison wanting to vote.

*Germany.* In marked contrast to the practices of many other western countries, Germany requires all inmates to be registered to vote while in prison.<sup>67</sup> This stands in contrast with the previous case studies: the United States, where prisoners are heavily disenfranchised, and Kosovo and Macedonia, where special election laws had to be crafted to extend voting rights to the incarcerated. This is not to say that voting rights cannot be removed in Germany. In fact, judges have the power and authority to expunge voting rights from citizens convicted of certain crimes (listed above in Table 2). Demleinter notes that: “deprivation of voting rights is limited to serious, legislatively enumerated offenses, must be assessed directly by the sentencing judge

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<sup>67</sup> Demleinter 1972.

at the time of sentencing, and can be imposed only for a limited and relatively short period of time.”<sup>68</sup>

*Sweden.* As noted in relation to Table 1 above, most Scandinavian countries traditionally allow for universal suffrage, and therefore most extend voting rights to incarcerated publics and do not ban voting subsequent to release. The prospect of prison voting can challenge even the most prepared election administrators, but the Swedes have devised a solid plan for administering the ballot to those who need extra assistance.

There are two ways in which Sweden administers the ballot to those in prison: through a special polling place and through proxy voting in the mail. For setting up a special polling place, Chapter 12, Section 1 of the Swedish Elections Act states, “The Central Election Authority may decide that special voting shall be arranged at hospitals, housing for the aged, prisons, or similar care establishments or institutions.” Section 5 notes that this voting may be arranged “from and including the seventh day before the election day and up to and including the election day.” This arrangement is similar to the arrangements made for prison voting in Kosovo and Macedonia where local election administrators can set up special early voting places in prisons.

The second way in which Sweden administers the vote to prison inmates is via proxy mail voting. Chapter 14, Section 2 notes:

Voters who are ill, disabled or old and subsequently cannot come in person to vote at their polling station or at any other voting place may submit their ballot papers by proxy.

That stated in the first paragraph also applies to a voter who:

1. is an inmate of a remand centre, or
2. is an inmate of a penal institution and for reasons of security cannot vote in the same voting place as other inmates at the institution.

In this case, a proxy must be an individual with close ties to the voter, including a spouse, cohabitant, sibling, primary caregiver, father, mother, sibling or grandchild. The voter’s ballot is then

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<sup>68</sup> Ibid, 755-756.

transferred to the post office or to the voter's ordinary polling station on election day. This arrangement covers prisoners in a general way as well as those deemed a security risk.

### **A Growing Reform Movement**

Despite resistance in several countries, the last few years have witnessed a surge of movements internationally to allow prisoners at various stages of incarceration to legally vote in elections. The sheer volume of inmates excluded from the political process, as noted above in Table 5, and the exponentially growing population of prisons internationally has spurred activists in varying degrees to strive for the inclusion of prisoners in the democratic process. The burgeoning reform movement links together several disparate groups internationally, including social reformers, legal scholars, religious groups and even political parties. One legal activist summarizes the reasoning behind the movement:

Did you want the disaffected 18-year-old in your street, now serving a six-month sentence for criminal damage, to lose the right to vote in the present general election (the first one he or she can vote in), so that he or she feels even more alienated and disengaged from society on being released from custody? Wouldn't it be better if politicians canvassed such young people while in custody, to encourage them to feel that they have a stake in society and invite them to think about the political process itself?<sup>69</sup>

In particular, these efforts are driven by reform-minded prisoners in several localities. Inmates at the Saughton Jail, in Edinburgh, Scotland, are initiating a legal battle to have their right to vote reinstated at the local level.<sup>70</sup> A non-profit group in Virginia, called the Virginia Organizing Project, is seeking support from the Governor of Virginia to urge him to use his power to provide clemency to all ex-felons who have been released from prison so that they may regain voting eligibility. The Virginia Crime Commission is also recommending that the

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<sup>69</sup> <http://www.guardian.co.uk/comment/story/0,3604,489068,00.html>; Daniel Machover, 11 May 2001. Accessed 6/3/03.

<sup>70</sup> "Prisoners Want the Right to Vote for Their MSP." The Daily Mail (London). 19 May 2003.

General Assembly approve a constitutional amendment that reinstates voting rights for ex-felons convicted of non-violent crimes.<sup>71</sup>

Several countries over the last few years have also dealt with new legal challenges to bans on prisoners voting. As recently as 2002, the Supreme Court in Canada overturned an Alberta law which banned federal inmates who were serving more than two years in prison from voting during their term in prison.<sup>72</sup> The Court argued that individuals in prison were “morally worthy” to vote in federal elections, tacitly reversing the Alabama Supreme Court’s assertion in the late nineteenth century that prisons were not “morally worthy” to vote. Chief Justice McLachlin reasoned, “The idea that certain classes of people are not morally fit or morally worthy to vote and to participate in the law-making process is ancient and obsolete.”<sup>73</sup> Since Canada incarcerates relatively few inmates, and prisoners will likely be required to vote in their home districts rather than the prison they are incarcerated in, the overall impact would be slight on the electoral environment, but the symbolic value to the movement is high. South Africa’s high court in 1999 ruled in a similar way the same year but this ruling was effectively overturned by legislation.

These potential changes are also present in legislative decision making. The Labor Party (ALP) in Australia is considering a policy which would strike sections of the Electoral Code that prohibit inmates serving more than 12 months from voting in federal elections.<sup>74</sup> The City of Takahama, Aichi Prefecture, in Japan has also lifted the ban on prisoners voting in hopes of increasing the number of voters going to the polls.<sup>75</sup> Legislation drafted by Representative John

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<sup>71</sup> Bergman, Justin. “Group Urges Governor to Restore Prisoners’ Rights.” Associated Press State & Local Wire. 16 July 2002.

<sup>72</sup> Pederson, Rick. “Alberta Ban on Inmate Voting Unlikely to Stand.” The Edmonton Journal. 1 November 2002.

<sup>73</sup> Friscolanti, Michael. “Convicts ‘Morally’ fit to Vote: Supreme Court Ruling: 5-4 Decision Extends Franchise to Prisoners Inside Federal Institutions.” The National Post. 31 October 2002.

<sup>74</sup> Pollard, Krystina. “NSW: Killers Would get Right to Vote Under Labor.” AAP Newsfeed. 11 March 2003.

<sup>75</sup> “Takahama Gives Voting Right to Youths, Foreigners, Prisoners.” Japan Economic Newswire. 23 June 2002.

Conyers, Jr. (D-MI) (along with Martin Frost (D-TX)) introduced in the U.S. House of Representatives in late 2002 (H.R. 259) sought to allow all former felons the right to vote in United States elections.<sup>76</sup> At the state level, legislatures in both Wyoming and Virginia have passed legislation to allow ex-prisoners to petition for the reinstatement of voting rights.<sup>77</sup>

### **Recommendations for Developmental Action**

Based upon the often disconnected juxtaposition of international agreements and practices in countries, this section offers several recommendations that may assist in the standardization of best practices in regards to prisoner and ex-prisoner voting. These recommendations are not meant to take a position on whether or not an individual country's practices are legitimate; they only offer a way to standardize and clarify international practices. The clarity of procedures provide a more transparent and fair process, as well as more firmly connecting the views of the legislators to the implementation of the laws.

One way in which international assistance might be provided is in the clarification of who can vote under a prison voting or non-voting rule. The gray areas of the legal voting status of prisoners or detainees are problematic and can easily result in unintentional loss of civil rights. For example, the Election Law in Bulgaria simply states that an individual serving a term of imprisonment is ineligible to vote:

**Chapter 1, Article 2**

2. The right to vote have all Bulgarian citizens over 18 years of age with the exception of those placed under judicial disability and those who are serving a term of imprisonment.

Sierra Leone has a similar wording to the election law in their country:

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<sup>76</sup> "Conference Focuses On Inmate Rights; Many Ex-Prisoners Unable to Vote." The Washington Post. 1 October 2002.

<sup>77</sup> See <http://www.stateaction.org/cpa/publications/policynews/03-03.htm>, accessed 7/7/03.

## **Part II, Registration of Voters by Ward**

7. No person shall be registered as an elector, or having been registered as such, shall be entitled to vote at any election if he is –
  - a. a non-citizen
  - b. a lunatic within the meaning of any law in force in Sierra Leone,
  - c. disqualified from being registered as an elector or voting in any law in force in Sierra Leone, relating to offenses connected with elections; or
  - d. serving a term of imprisonment.

It is not entirely clear what “serving a term of imprisonment” means here. It may or may not include those awaiting trial, those awaiting sentencing, those temporarily in jail or those under house arrest. In contrast, Chile makes the provisions governing prisoner and ex-prisoner voting clear:

### **Article 39**

Even though they have all the qualifications for registration indicated in Article 37 and 38, persons may not be registered whose right of suffrage has been cancelled for any of the following reasons:

1. Prohibition by reason of insanity
2. On trial for a felony or for a crime legally characterized as terrorist conduct
3. Having been sanctioned by the Constitutional Court under the provisions of Article 8 of the Constitution on a sentence passed during the past ten years counting from the date of the registration. Persons included in one of the categories above may be registered once the cause of the impediment has been removed.

Neither can persons be registered whose right of suffrage has been cancelled for any of the following reasons even though they have all the qualifications for registration indicated in Articles 37 and 38.

1. Those condemned for felonies
2. Those condemned for a crime legally characterized as terrorist conduct
3. Those who have lost their Chilean nationality in conformity with those Nos. 3, 4 or 5 of Article 11 of the Constitution.

Those condemned for felonies may only register after rehabilitation by the Senate.

The Chilean law specifies which crimes make individuals ineligible to vote, identifies the disposition of voting for criminals on trial, and makes explicit when voting rights may be restored. This type of clarity in the law is important for the protection of democratic rights.



Clarity in terms of election registration is also needed to ensure that those eligible to vote are allowed to do so without complication. As was made clear in the “International Practices” section above, complications due to the timing of voter registration can unnecessarily exclude otherwise eligible individuals from voting. Being eligible to vote and being allowed to vote are two very different items here. If citizens are only allowed to register on specific days, some provision should be made to allow those with special circumstances, such as those serving in the military or police service or those confined to hospitals, to register to vote. Clearly identifying when and where prisoners are allowed to register to vote is an important part of the citizen education process for election administrators. This information should be made available to the prison population via prison posting or an official letter from the supervisor of elections in the appropriate area.

Overall, the most urgently needed activity in terms of clarifying voting rights for prisoners is additional and frequent international election observation of prison voting in several countries. This observation serves a dual process. First, additional prison voting observation would potentially limit the number of gross infractions of prisoners’ rights as outlined in the “International Practices” section, such as access to the ballot, the secrecy of one’s ballot and lack of coercion in the voting process. Lack of knowledge or potential dismissal of the laws governing prison voting would be minimized with the presence of international observers. Second, because little is known about the internal process of prison voting in most countries that allow the practice, additional election observations will provide the international community a better understanding of the practice of election administration inside the prison walls in order to offer more concrete recommendations for improving the procedures.

## **Conclusion**

The broad purpose of this project is to highlight the importance of prisoner and ex-prisoner voting to election administration worldwide. This paper has identified several important considerations and has framed the multiple and overlapping issues that complicate the issue of voting by prisoners and ex-prisoners. The hope is that the empirical findings and analysis from this project will be used to clarify the practice of prisoner and ex-prisoner voting throughout the world. Further research is needed to explore the intimate connections between judicial sentencing laws, prison administrators, the demographics of the prison and ex-prisoner population and election laws to understand the full impacts and ramifications of incarceration and enfranchisement. This project is a first step in understanding these interwoven and often complicated relationships.

A democracy is necessarily constructed of those who are given voice in the political process. Each country listed and analyzed in this study has a specific reason for disenfranchising prisoners or ex-prisoners, seeking a balance between the public order for the protection of society and the extension of democratic voting rights to individual citizens. The tenor and tilt of this balance can be questioned for the same reason that the balance exists in the first place: democracies allow the public will to be translated (although not perfectly) into policy action.

However, when the expressed rights of citizens, even those incarcerated or formerly incarcerated, are dampened in a haze of procedural fumbles or administrative shortcomings, the very life of democracy is threatened. Voting in prisons is highly susceptible to this type of democratic disconnect between the promise of rights granted to citizens and the practice of extending these rights. This gap must be closed and full citizenship rights extended to those who to whom the rights are granted.

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