Democracy Behind Bars: Guatemalan Prisons
By Mackenzie Roche

As the world tries its best to survive the COVID-19 pandemic, high-risk communities are at the forefront of discussion. While many communities most at-risk, such as the elderly, are met with sympathy and concern, one certain at-risk group of people is dismissed because of their social status: prisoners. Although they live in communal spaces that are often crowded, and lack access to personal protective gear, which is necessary to avoid spreading the virus, carceral-centered societies have little concern for the health of prisoners specifically. During the pandemic, instead of caring about the personal health of the prisoners, many governments have treated prisons as a threat to general public health. This apathy and depersonalization extends almost every issue incarcerated people face, and the easiest place to determine where democracy begins to crumble is to consider how a government treats its most vulnerable populations. This evidence of a devolving representative government is seen notably in Guatemala. The prison system in Guatemala is a hindrance to the country’s democracy, which can be addressed through prison complex reforms, judicial reforms, and social reforms.

In order to fully address the state of Guatemala’s prisons, it is important to first look at what fuels public support for prisons. Guatemala has one of the highest rates of violence and crime in Central America. Although crime statistics are trending slightly downward, Guatemala still documented 3,578 homicides in 2019. The United States government reported that “Guatemala’s alarmingly high murder rate appears driven by narco-trafficking activity, gang-related violence, a heavily armed population, and a police/judicial system unable to hold criminals accountable.” While this seems to explain Guatemala’s high crime rates, it ignores the history of the United States’ involvement in the Guatemalan Civil War. The effects of this 36-year long conflict are still felt throughout the Central American nation; the length of violence has had a long-lasting destabilizing influence on the nation which contributed to the current crime rates, and human rights abuses have gone unpunished. Marginalized communities are especially at risk of an increase in crime. Indigenous communities still face some of the worst violence. Guatemala is also extremely dangerous for women, with Deutsche Welle reporting that “there have been 161 femicides and more than 20,000 complaints of violence against women, including almost 3,000 rapes” in May 2021 alone. Along with civilian crime, Guatemala has consistently struggled with issues of corruption, which is rarely punished. Crime itself has far-reaching impacts on democracy with prisons seen as a solution, one that rarely fully works. Guatemalan prisons are overcrowded, despite the fact that most murders remain unsolved, and law enforcement rarely prosecutes sexual and domestic violence. Violence continues to plague Guatemala, and instead of offering some relief, prisons simply continue to perpetuate it.

As of February 2021, the prison population of Guatemala was 25,298, amounting to about 139 inmates per 100,000 citizens. While on a global scale this is not particularly disproportionate, it is a strain on the country’s infrastructure. As of October of 2019, the official capacity for the 21 prisons in Guatemala is
approximately 6,800 inmates, which means the prison system is currently 372% over capacity, an exponential jump from 140% capacity in 2018. This overcrowding threatens the personal safety of incarcerated people. As of 2016, an inmate was twelve times more likely to die in prison than a resident of the nation’s capital, Guatemala City. Part of this can be attributed to a self-governing approach which has spread in the understaffed and under-resourced prisons. Often, gangs will take over prisons and act as the de facto authority, illegally controlling access to visitations and legal counsel. Not only do these gangs inflict violence, many prison guards are easily bought off and corrupted and also will enact violence on prisoners.

Healthcare is also a major problem. Prison Insider finds that while “each prison has an infirmary,” “some are administered by a qualified medical person, and others by an inmate with medical experience. In the prisons most affected by overpopulation, inmates occupy the spaces designated for patients” (Guatemala Profile). This has only been exacerbated by the COVID-19 pandemic. Pitts and Inkpen found that “within its [Guatemala’s] 21 prisons with roughly 15 outpatient physicians serving just over 26,000 persons in custody.”14 Fifteen physicians cannot reasonably be expected to manage public health for 26,000 inmates normally, much less in a pandemic. COVID-19 threatened not only prisoners’ physical health, but also their mental and emotional health. In order to limit spreading between incarcerated and non-incarcerated populations, “on March 15, only 2 days after Guatemala confirmed its first positive case, the President suspended all family face-to-face visits with prisoners ... A day later, all visits from court authorities to prison were also suspended.”5 Lack of access to court authorities is especially concerning for the 12,496 incarcerated people who have yet to see trial and be judged, which makes up 49.6% of the incarcerated population.6

All of these issues are compounded for women within the prison system. Making up 9.6% of the prison population, there are only two facilities for only women and 13 mixed population prisons. In one prison, 82 women have to share only one toilet. Women face invasive and often abusive body searches, and the conditions these women live under are also perpetuated to their young children. Prison Insider reports that “children can stay with their mother until age four. In July 2016, 86 children (43 girls and 43 boys) were residing in Guatemalan prisons” and there are no budgeted funds to care for or feed these children.7 For minors in prison because of their own doings, they are deprived of education and spend “an average of 23 hours a day locked in their cells.”8 At every turn, the quality of life for incarcerated people is disregarded and thrown to the wayside and the threat of violence is pervasive. The Guatemalan justice system does not serve victims, as many assailants never face charges, and it does not rehabilitate those who are incarcerated; it simply serves to perpetuate cycles of violence. These cycles include tangible acts of violence as well as systemic violence that erodes Guatemalan democracy.

One of the clearest infringements to democracy that imprisoned people face is disenfranchisement while incarcerated. Brandon Rottinghaus summarizes possible arguments for the disenfranchisement of voters, stating how “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” but often those deemed to be immoral were poor or members of lower social classes.9 Rottinghaus further explains that “prisons are built to rehabilitate citizens, and removal of civil rights during or after prison terms does not further that goal.”10 The isolation and disenfranchisement inmates face means they have no say in how they are treated or represented in government. When a group is unable to democratically participate, the conditions they live under rarely improve within the confines of a system. Prisoners have to rely on advocates on the outside to be heard in the voting booth, which is hardly a proper democracy. Disen-
franchisement of prisons also typically pretends that the prison system is fully removed and separate from civil society, which notably in Guatemala is not the case. Research by Anthony Fontes and Kevin O'Neill found that there is distinct codependency between prisoners and non-prisoners. They concluded that “these interdependencies come into stark relief with a focus on the labour that female visitors provide for incarcerated men... but also an overcrowded and underfunded prison system.” Female visitors often are smugglers for contraband into the prison, as they bring in items such as cell phones or drugs and rely on these illicit commodities to survive financially. Outside of this source of income, female visitors are instrumental in propping up the failing prison system by providing care and support for incarcerated people and supplementing the lackluster prison healthcare system. The children who live in prisons rely on church groups and local non-government organizations, primarily run by women, for basic necessities such as food and clothes. Not only is life inside and outside of prison inextricably linked, life outside the prison walls economically relies on the prison system falling into disrepair. There is no access for vocalizing reform from inside the prison, and the prison has no external incentive to reform or improve the conditions of incarcerated people. Almost half of the incarcerated people also have not been convicted of a crime; they simply lost their right to vote while possibly being innocent. The combination of bleak conditions, societal entanglement, and disenfranchisement create the society of Guatemala which is tied to crumbling democratic ideals.

While there are few domestic incentives to reform the prison system, international pressure has incited some government action. Guatemala has adopted the Optional Protocol to the Convention Against Torture and created a domestic task force called the National Office for the Prevention of Torture (OPCAT) to specifically address gang-related torture and violence seen in prisons. Although it has been in place for over a decade, the adoption of the mechanism was superficial, and there have been few substantive changes in line with the United Nations (UN) protocols regulating OPCAT. At the start of 2020, Guatemala announced the New Prison Management Model (NMGP), an initiative intending to curb prison overpopulation. This new reform “includes the construction of a maximum security prison, the creation of ‘rehabilitation farms’ and the implementation of the electronic shackle in order to reduce overcrowding.” Rather than addressing systemic problems at hand, this plan aims to expand the prison system, playing catch up with overpopulation rather than addressing the causes of the exponential growth.

The electronic shackle, also known as ankle monitors, seems like a step in the right direction, but many prison advocates in the United States see electronic shackles as just expanding the prison system to the home. Due to its relative newness, it is hard to make any claim about the success of the NMGP legislation, but there are other solutions Guatemala could look towards. These solutions fall into three main categories: reforms to the prison complex itself and its infrastructure, reforms to the judicial system, and social reforms to address crime and violence at its root.

Looking at possible reforms to the prison complex and infrastructure, it is important to not give too much power to the carceral state. The top priority should be the safety and genuine rehabilitation of incarcerated people. Two main prongs of reforms are addressing corruption within prison officials, specifically prison guards and prison finance reform. Guatemalan prisons are run by two parallel organizations: the General Direction of the Penitentiary System (DGSP) and the Civil National Police (PNC). This dual structure is a direct result of overcrowding as the PNC primarily runs police stations that hold inmates. International organizations have monitored Guatemala, and in its 2016 report, “the Inter-American Commission on Human Rights (IACHR) pointed out that State officials are responsible for the acts of corruption.
and violence. For example, some of them accept bribes from the inmates who want to bring in weapons and drugs.\textsuperscript{13} Guatemala has attempted to cut down on this corruption by branding it as extortion by prisoners for illicit goods. While this provides a systemic answer and a way to make public progress, it does not address the fact that prison guards are underpaid and stretched thin. In one correctional facility, the ratio of prisoners to guards at any time is 61 to 1 if no prisoners have to leave the facility for appointments or court.\textsuperscript{14} Guards need further training and more coworkers in order to maintain the safety of themselves and the incarcerated populations. There also needs to be more female guards for women-only prisons, as sexual assault and harassment are commonly perpetrated by male guards against female inmates. It is vital that the danger of the job is recognized by the central authorities, and that the guards receive adequate pay so they do not turn to bribes from prisoners.

This increased pay should be a part of the financial reforms of Guatemalan prisons. With the recent election of President Alejandro Giammattei, a former director of the prison system, there has been a recent push to increase prison funding. While the increased funds could be helpful, they have been historically severely misallocated or not used at all. The UN Commission for Human Rights found that the authorities of the penitentiary system did not execute the budget allocation of 300,700,000 Quetzals that in 2013 as well as 2014, specifically for construction, equipment, & application of detention centers, in both years the execution of this proposition was 0%.\textsuperscript{15} Not only should funding be increased, but an audit system also needs to be put in place to ensure proper use of these funds. As the infrastructure of the prison complex gets addressed, the failures of the judicial system still need to be reformed.

The judicial system is still marked by the impunity granted to human rights violators during the Guatemalan Civil War, but there is a mounting positive trajectory towards a better system. Wendy Johara Maldonado Urbina calls this positive momentum the Justice Spring of Guatemala, which started “in 2009, a phase was initiated which marked a before and after in the history of the judicial system in Guatemala. The appointment of the judges of the Supreme Court of Justice who served for a five-year term from 2009 to 2014 was fundamental for this change.”\textsuperscript{16} This movement towards a truly impartial justice system was assisted by the International Commission against Impunity in Guatemala (CICIG), a partnership between the United Nations and Guatemala which has been instrumental in addressing corruption in the nation. While impartiality and reducing impunity are important for addressing violence, the judicial system’s capacity to take cases to trial needs to be expanded to reduce the percent of pre-trial detainees. Around 50% of prisoners are only in prison because they are awaiting their trial date. Speeding up the process will not only reduce overcrowding but will also assist in avoiding unnecessary disenfranchisement. Judicial expansion includes hiring more public defenders, prosecutors, and judges as the Washington Office on Latin America found that the Public Prosecutor’s Office only had "offices in 20 percent of the country’s municipalities and the ratio of prosecutors to citizens is low. On average, there were 6 judges for every 100,000 people in the country, well below the national global average of 17. The ratio of public defenders was equally low."\textsuperscript{17} The judicial system is overloaded, which leaves citizens without proper access to sufficient representation.

Another way to address the large pre-trial population is to implement bail alternatives. Bail systems disproportionally keep poor people incarcerated and criminalize poverty, a systemic failure rarely a personal failure. Cash bail is a common practice in many judicial systems but it has increasingly been criticized. Guatemala’s suggested use of electronic shackles could be used as a bail alternative but this still invalidates the presumption of innocence all pre-trial citizens are guaranteed and is rather expensive for the state.
As some states in the United States start to address the harms of cash bail, there have been tangible examples and results that can be pointed to. Muhammad Sadar addresses the shortcomings of these experiments and suggests that they could go “one step further by releasing misdemeanor defendants on personal recognizance... The efforts of community bail funds across America have shown that a vast majority of defendants will return to court if adequately notified, exemplifying that pretrial restrictions are unnecessary punitive measures.” Not only would this reduce overcrowding, it would also free up the funds it requires to house the pre-trial detainees, allowing for a better allocation of the prison budget. Moves to eliminate or reduce cash bail would also lighten the load on prison guards, a necessary change as mentioned in the previous paragraph.

Prison reform and judicial reform are solutions that address the consequences but not the central problem at hand: what puts people in prison. Addressing the root of crime will give the community the necessary support so they no longer have to rely on illegitimate means of survival. Much of the crime committed in Guatemala is tied to gangs and drug trafficking, a necessary source of income for many impoverished citizens. While there are a myriad of suggestions on how to address this, a key one is economic development. Reducing unemployment is one way to give citizens legitimate options and contributes to economic development. Expanding infrastructure and living situations all promote shifts to the formal sector, and these projects also create government-funded jobs within the communities that need them the most. Expanding women's rights and family programs also reduce crime. When women are allowed to plan their family, it is easier to make sure each child has proper resources and support. Children mimic what they see, so if family programs are expanded within at-risk communities, children can get raised in environments sheltered from violence and hopefully start to end the cycle.

Prisoners are one of the least sympathized-with populations in a country. Many see them as undisputedly guilty and a danger to society, their time in prison often marking a person’s life for good. This specific population should not be ignored for the indifference they elicit, but instead should be seen as the canary in the coal mine of a failing democracy. Indifference leads to cut corners and poor treatment, and the clearest way to see how a government feels about its citizens is to see how it treats those with few advocates. As democracy crumbles inside prison walls, it loses stability on the outside, and that should never be a point of indifference.

References


5. Ibid.


9. Rottinghaus, Brandon. “Incarceration and Enfranchisement:
14. Ibid.

The Aqueduct of Segovia is one of the most recognized and best-preserved Roman aqueducts. It stretches nearly half a mile and still carries water to this day.
Photo by Brooke Chow, Second-Year Public Policy and Business Major and Minor in Philosophy, Politics, and Economics
(Above) This was taken during my Denali expedition in 2017 by my father, when we have successfully climbed the highest peak of the U.S and North America. 
Photo by Dmitry Tertychnyy, Fourth-Year Economics and Mathematics Double Major and Minor in Geography

(Right) Photo by Isabelle Kaufman, Fourth-Year History Major and Spanish Minor