

## **IMPRISONED AT HOME: WOMEN UNDER HOUSE ARREST IN LATIN AMERICA**

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**July 2020**

The COVID-19 pandemic represents a serious threat to the life, health, and economies of communities throughout the world. However, some groups such as health care personnel, frontline and informal workers, people in situations of homelessness, and those in contexts of confinement are at a higher risk of facing potentially fatal health problems. The COVID-19 pandemic has forced governments, members of civil society, and international organizations to pay attention to a pre-existing situation that has been aggravated in the current circumstances: the humanitarian and health crisis inside Latin America's detention centers and prisons.<sup>1</sup> The health risks related to the pandemic in contexts of confinement have prompted initiatives and calls by governments and international agencies to adopt alternative measures to incarceration, and the use of one such measure, house arrest, has increased.<sup>2</sup>

Although house arrest is less restrictive than incarceration, it constitutes a form of deprivation of liberty and is one of the most onerous alternatives for those to whom it is applied. Generally speaking, house arrest tends to be combined with other coercive monitoring measures that, when taken together, pose challenges for those detained, as well as for others in their household. In addition, its use can be counterproductive if the conditions are so strict that they prevent working or fulfilling family responsibilities. Furthermore, the absence of studies, official data, or standards regulating the implementation of house arrest in Latin American countries limits the design and implementation of effective public policies for people under house arrest and their communities. This report reviews the international and regional framework on alternatives to incarceration with a special focus on women,<sup>3</sup> compares regulatory frameworks in some of the region's countries, and explores the challenges for implementing house arrest. Finally, it proposes the use of other alternative measures and presents public policy recommendations for the use of house arrest.



## Introduction

Beginning in early 2020, the world's population has experienced, to varying degrees, forms of home confinement aimed at preventing the spread of COVID-19. Even for privileged people who live comfortably in their homes, these prolonged stays have impacted their emotional well-being, health, relationships, and in some cases, their income. Although there is a big difference between deprivation of liberty and temporary confinement for health reasons, the pandemic context enables us to be more sensitive to the difficulties that confinement entails, particularly for people in low-income situations. This document shows that while house arrest is a less restrictive option than the deprivation of liberty in prison, this measure nonetheless poses difficulties that are often hidden from view.

Over the last two decades, the prison population in the Americas has grown by 40.8%, and that of women deprived of liberty rose even further, by 57.1%—even though the overall population only rose by 19.1%.<sup>4</sup> The key factors fueling this rapid growth include the implementation of repressive drug policies, as well as the criminalization of behavior related to sexuality and reproduction.<sup>5</sup> In addition, in Latin American countries a high proportion of the female prison population is being held in pretrial detention.<sup>6</sup> The rise in women's incarceration reflects their specific vulnerability to poverty, discrimination, and gender-based violence. The incarceration of women has disproportionately negative consequences for them and for their communities, and it increases the number of children and adolescents who have incarcerated adult caregivers in their lives.<sup>7</sup>

Given this situation, international bodies and civil society organizations have advocated

for expanding the use of non-custodial measures that address the specific needs of women caught up in the criminal justice system, especially for minor, non-violent drug offenses.<sup>8</sup> Alternatives to incarceration are less costly than putting people behind bars, not just in economic terms but also with regard to social and community-related effects.<sup>9</sup> In addition, non-custodial measures can help address women's specific needs, facilitating their reintegration process and reducing recidivism rates.<sup>10</sup>

This report is the result of a collaborative effort by the Working Group on Women, Drug Policy, and Incarceration in Latin America and the Caribbean, along with other partner organizations.<sup>11</sup> Despite the lack of official statistical data in some countries of the region, the report gathers information from Argentina, Brazil, Colombia, the Dominican Republic, Ecuador, Mexico, and Peru. The testimony of women deprived of liberty in their homes complements the analysis of the main challenges for house arrest to serve as an effective alternative to incarceration. The document includes a review of the international and regional framework on alternatives to incarceration with a special focus on women, a comparison of the regulatory frameworks in select countries of the region, challenges for the implementation of house arrest, and public policy recommendations to ensure that people subjected to this measure may fully exercise their dignity and have their rights protected.

## Alternatives to Incarceration: Overall Framework

International instruments and standards provide guidance for applying non-custodial measures to people in contact with the law at any stage in the process: The phase prior to trial, during trial, and in the sentencing and

*“Amid lockdown, with a pandemic that is attacking all sectors, the state’s neglect of women under house arrest has been exposed. In the social movement I belong to, we are accompanying more than 100 women. Their testimony about day-to-day life is very harsh.*

*Pamela was pregnant, she had an electronic ankle bracelet and every time she asked for permission to leave her home, it took so long to get a response that she ended up missing her doctor’s appointments. When the time came for delivery, while experiencing contractions, fear, and anxiety, she prepared the baby’s things and called the electronic monitoring service to tell them she was going to the hospital. They responded that she had to have court authorization. She had to request written permission to go give birth!*

*The subjugation, discipline, and methods used by prison services to numb people travel beyond the prison walls and take root in this new context of confinement in one’s own home. Every time we have contact with these women, a common theme emerges: there are times when they must choose whether to stay at home or return to a cellblock, and the reality they’re experiencing leads them to think about this. That is unacceptable, but I understand them because of my own experience upon regaining freedom and not being able to provide my son with food. At some point I thought, ‘If I’m in prison and I make a bit of a fuss, they give me meat, at least it’s something, or a diaper, but on the outside, what do I do?’”*

Testimony of Nora Laura, Argentina

post-sentencing phase. The United Nations Standard Minimum Rules for Non-custodial Measures (**the Tokyo Rules**) propose a series of guidelines for reducing the use of prison.<sup>12</sup> Specifically, Rule 6 insists on the use of pretrial detention as a last resort, although it does not provide examples of applicable alternatives for people who are awaiting trial or sentencing.

In addition, the **Handbook of basic principles and promising practices on Alternatives to Imprisonment** published by the United Nations Office on Drugs and Crime (UNODC) stresses the need to adopt alternative measures to the deprivation of liberty, as they are more effective and economical, ensure the protection of rights, reduce recidivism rates, and foster better community reentry than incarceration does.<sup>13</sup>

Similarly, the **Principles and Best Practices on the Protection of Persons Deprived**

**of Liberty in the Americas** set forth by the Inter-American Commission on Human Rights of the Organization of American States (IACHR/OAS) urge states to incorporate into law alternatives to deprivation of liberty, taking into account international human rights standards and active participation by the family and community.<sup>14</sup>

## **Non-custodial Measures for Women**

Taking a gender perspective into account, the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (**the Bangkok Rules**) complement the Tokyo Rules and the United Nations Standard Minimum Rules for the Treatment of Prisoners (**the Nelson Mandela Rules**).<sup>15</sup> It is important to note that while numerous documents produced by the United Nations and other international organizations refer

**Tokyo Rule 8.2 includes alternative measures to incarceration such as:**

- Verbal sanctions, such as admonition, reprimand, and warning;
- Conditional discharge;
- Status penalties;
- Economic sanctions and monetary penalties, such as fines and day-fines;
- Confiscation or an expropriation order;
- Restitution to the victim or a compensation order;
- Suspended or deferred sentence;
- Probation and judicial supervision;
- A community service order;
- Referral to an attendance center;
- House arrest;
- Any other mode of non-institutional treatment; or
- Some combination of the measures listed above.

to people deprived of liberty as “delinquents” or “criminals,” this language is demeaning; people in contact with the law should not be stigmatized for a specific incident in their lives. Terms such as “people in contact with the legal system,” “people charged with or accused of committing an offense,” “people deprived of liberty,” and “people subjected to an alternative to incarceration,” among others, are appropriate insofar as they put the emphasis on state action and not on the people themselves.

The Bangkok Rules urge states to use alternatives to the deprivation of liberty, taking into account women’s specific characteristics and situations, mitigating circumstances (such as the lack of a prior criminal record or prosecution for minor, non-violent offenses), histories of victimization in many cases, and their responsibilities in caring for others.<sup>16</sup> Likewise, the rules stress the importance of alternative measures

being combined with interventions aimed at resolving the most common problems that lead women to come into contact with the criminal justice system, such as poverty, dependence on psychoactive substances and their criminalization, as well as the existence of intimate partner relationships marked by gender violence.

The Commission on Narcotic Drugs’ **Resolution on Mainstreaming a Gender Perspective in Drug-related Policies and Programs** urges states to take into account women’s specific needs and circumstances in the use of alternatives to incarceration to improve public health and safety for individuals, families, and societies.<sup>17</sup> In addition, the OAS has recommended implementing different models for restricting rights that do not entail the deprivation of liberty for minor drug offenses. These alternatives include house arrest, decriminalization or depenalization, referral

to social services outside the judicial system, third-party custody and supervision, and halfway houses.<sup>18</sup>

The call to apply alternative measures has special relevance when drug-related offenses are involved, since they constitute the main grounds for women's incarceration in Latin America.<sup>19</sup> In countries such as Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Ecuador, Panama, Paraguay, Peru, and Venezuela, the most common offenses for women are drug-related, and a higher percentage of women are incarcerated for drug offenses as compared to men in prison.<sup>20</sup> In the case of pretrial detention for drug-related offenses, the disparities are even greater, since women accused of such offenses are more likely to be put in pretrial detention than men. For example, in Peru (2016), Argentina (2017), and Uruguay (2018), the percentage of women held in pretrial detention for drug-related offenses (54.5%, 51.7%, and 23.0%, respectively) is three times greater than that of their male counterparts (19.3%, 18.2%, and 7.4%), and in Colombia (2019), the percentage of women in this situation (44.6%) is more than double that of men (20.3%).<sup>21</sup>

Furthermore, deprivation of liberty has a negative impact for around 2 million children and adolescents whose mothers and fathers are incarcerated in Latin America.<sup>22</sup> These children are exposed to multiple forms of violence and the psychological effects of separation and discrimination, and they face situations of social exclusion and vulnerability. Nearly half a million of them have parents who are incarcerated for non-violent, minor drug offenses, which underscores the need to consider alternatives to incarceration.<sup>23</sup>

## House Arrest

Alternatives to incarceration include house arrest for people who are in pretrial detention or who have been sentenced. Although house arrest is a less intrusive measure than incarceration, it is one of the most punitive alternatives for the person involved and constitutes another form of deprivation of liberty. Moreover, people in contact with the law often change their residence, and some of them are in situations of homelessness or in overcrowded conditions, rendering house arrest nearly impossible for them.

*"If house arrest were imposed for the full 24 hours of the day, it would place an intolerable burden on the offender's many housemates. It would also mean that an offender's home would become his prison, except that, unlike prison, he would be responsible for meeting his own basic needs. Various means of electronic monitoring (...) could further increase the oppressiveness of house arrest."*

UNODC, Handbook of basic principles and promising practices on Alternatives to Imprisonment<sup>24</sup>

A judge determines whether house arrest will take place in the person's home or in someone else's residence, and with or without electronic or personal monitoring. House arrest can be particularly harsh in the absence of the judicial dispositions, administrative mechanisms, and social programs needed to make it a true alternative to incarceration aimed more at reintegration than coercion. For example, a judge can limit the number of hours of house arrest to ensure that the person can hold a paid job during the day, while remaining confined to his or her home at night.<sup>25</sup> Likewise, this measure should not become an extension of deprivation of liberty for the people living

with the person who has been sentenced or is being held in pretrial detention, nor should it increase the risk of exposure to violence or abuse, whether with regards to the person accused or sentenced, or those who share their home.

The conditions of house arrest must respect women's rights and those of their family members, and must not hamper their ability to generate income and/or fulfill their family responsibilities. For example, women must have guaranteed access to shelter, food, and medication, as well as to community support organizations, while under house arrest.<sup>26</sup>

## House Arrest in Latin America and the Caribbean

The terminology on house arrest in Latin America and the Caribbean may vary, but the most common terms are “house arrest” and “home detention.” In the case of Colombia, “home detention” and “home incarceration” are used. Table 1 (pages 7 to 9) summarizes some legislative regulations, showing the criteria currently used for granting this measure. It is worth clarifying that the table is illustrative and not exhaustive, as it only includes the regulations pertaining to the specific procedural stages mentioned and from select countries.

In the region's countries, house arrest is conceived of as an alternative to incarceration before sentencing (as an alternative to pretrial detention) and, in some cases, after sentencing. As the table indicates, house arrest has been used in the majority of these countries as an alternative to pretrial detention, particularly for pregnant women or women with dependent children.

Despite the benefit of house arrest for mothers and pregnant women, it is important to note that women should not be considered solely on the basis of their reproductive function, reinforcing the stereotype of women as mothers and caretakers.<sup>27</sup> In this sense, children are portrayed as appendices of their mothers, and no other provision is made for their care beyond ensuring that their main caretaker is in custody inside the home. On occasion, house arrest is a temporary measure since many pregnant women are granted this benefit for a few months to recover from giving birth, and afterward they return to detention, sometimes with their child.

*“This measure [house arrest] is drastic, because it's true that I'm not incarcerated in a prison but in my house instead. I can't take my children to school, or pick them up, or take them to the doctor, or anything. I have to wait for people to come get me and when they do they're dressed like military officials, which embarrasses me because everyone sees the situation I'm in, and there is a lot of stigma. In addition, I can't go very far because the shackle [electronic monitoring] that I have is expensive, it goes off and starts making noise, and alerts the company when I have gone beyond the meters it was programmed for.”*

Testimony of Martina, Dominican Republic

In addition, the use of house arrest can be counterproductive if the conditions are so strict that women cannot work or fulfill their responsibilities in providing care. Yet despite the conceptual limits of this legal approach, the recognition that women and men with children in their care should not be deprived of liberty is a step forward that must be

**Table 1: Legislative Regulations on House Arrest**

Country	Procedural stage	Law	People who benefit
<b>Argentina</b>	Execution of a sentence involving deprivation of liberty	Law on the Execution of Custodial Sentences ( <i>Ley de Ejecución de la Pena Privativa de la Libertad</i> ). <sup>28</sup>	<ul style="list-style-type: none"> <li>• Those who are sick.</li> <li>• With an illness in a terminal phase.</li> <li>• With a disability.</li> <li>• Over 70 years old.</li> <li>• Pregnant women.</li> <li>• Mothers in charge of caring for a child under 5 years of age or a person with a disability.</li> </ul>
	Pre-sentencing	National Criminal Procedural Code ( <i>Código Procesal Penal de la Nación</i> ). <sup>29</sup>	<ul style="list-style-type: none"> <li>• Envisaged as a coercive measure to ensure procedural aims.<sup>30</sup></li> </ul>
<b>Brazil</b>	Pre-sentencing	Code of Criminal Procedure ( <i>Código de Processo Penal</i> ). <sup>31</sup>	<ul style="list-style-type: none"> <li>• Those over 80 years old.</li> <li>• Extremely weak due to a serious illness.</li> <li>• Essential for the special care of a person under 6 years of age or with a disability.</li> <li>• Pregnant women.</li> <li>• Women with children up to 12 years old.</li> <li>• Men, if they are the only ones responsible for caring for a child up to 12 years old.</li> <li>• In the case of pregnant women or those responsible for children or for persons with disabilities, house arrest applies if: a) the offense was committed without violence or serious threat; and b) the offense was not committed against her dependents.</li> </ul>
	Execution of a sentence involving deprivation of liberty	Penal Execution Law ( <i>Lei de Execução Penal</i> ). <sup>32</sup>	<ul style="list-style-type: none"> <li>• Those over 70 years old.</li> <li>• Affected by a serious illness.</li> <li>• With a child who is a minor or who has a physical or mental disability.</li> <li>• Pregnant women.</li> </ul>

Country	Procedural stage	Law	People who benefit
Colombia	Pre-sentencing	Criminal Procedure ( <i>Código de Procedimiento Penal</i> ). <sup>33</sup>	<p>Requirements for obtaining the substitution of pretrial detention with home detention:</p> <ul style="list-style-type: none"> <li>• That this not affect the workings of the process or put victims at risk.</li> <li>• Those over 65 years old.</li> <li>• When the person charged or accused is due to give birth in 2 months or less and during the 6 months following delivery.</li> <li>• Those in a grave state due to illness.</li> <li>• When the person charged or accused is a female head of household with a child who is a minor or who has a permanent disability. In her absence, the father who fulfills those duties will have the same benefit.</li> </ul>
	Pre-sentencing and in the sentencing phase	Penal Code ( <i>Código Penal</i> ). <sup>34</sup>	<p>Requirements for granting home incarceration as an alternative penalty:</p> <ul style="list-style-type: none"> <li>• That the prison term be for 8 years or less.</li> <li>• That the case not involve any of the offenses included in the 2nd clause of Article 68A of Law 599 of 2000.</li> <li>• That family and social ties may be demonstrated.</li> <li>• That compliance with the following obligations be ensured, through bonds: <ul style="list-style-type: none"> <li>o No changing residence without prior authorization.</li> <li>o Providing reparations for the harm caused by the offense.</li> <li>o Appearing before the judicial authority that monitors compliance with the sentence.</li> <li>o Allowing the public servants charged with overseeing compliance with the detention to enter the residence.</li> </ul> </li> </ul>



Country	Procedural stage	Law	People who benefit
<b>Dominican Republic</b>	Pre-sentencing and execution of a sentence involving deprivation of liberty	Criminal Procedural Code ( <i>Código Procesal Penal</i> ). <sup>35</sup>	<ul style="list-style-type: none"> <li>• Those over 70 years old.</li> <li>• Suffer from a terminal illness or a state of dementia that set in after the infraction was committed.</li> <li>• Pregnant or nursing women.</li> <li>• Have drug or alcohol addiction.</li> </ul>
<b>Ecuador</b>	Pre-sentencing	Comprehensive Organic Criminal Code ( <i>Código Orgánico Integral Penal</i> ). <sup>36</sup>	<ul style="list-style-type: none"> <li>• Those over 65 years old.</li> <li>• With a serious or incurable illness.</li> <li>• Suffering a grave permanent physical disability that significantly affects their ability to move around.</li> <li>• Pregnant women.</li> </ul>
<b>Mexico</b>	Pre-sentencing	National Code of Criminal Procedures ( <i>Código Nacional de Procedimientos Penales</i> ). <sup>37</sup>	<ul style="list-style-type: none"> <li>• Those over 70 years old.</li> <li>• Affected by a serious or terminal illness.</li> <li>• Pregnant women.</li> <li>• Women who are nursing.</li> </ul>
<b>Peru</b>	Pre-sentencing	Criminal Procedural Code ( <i>Código Procesal Penal</i> ). <sup>38</sup>	<ul style="list-style-type: none"> <li>• Those over 65 years old.</li> <li>• With a serious or incurable illness.</li> <li>• Suffering a grave permanent physical disability that significantly affects their ability to move around.</li> <li>• Pregnant women.</li> </ul>

acknowledged and promoted—as long as the best interest of the child is contemplated—taking into account the severe impact that an adult’s incarceration has for his/her dependents in the majority of cases.

House arrest can be combined with other measures, such as electronic monitoring, which heightens the severity of custodial measures in the home. Electronic monitoring can entail additional costs for those who are granted this measure, disproportionately affecting those in situations of poverty who end up being criminalized. Furthermore, the visibility of the electronic bracelet can

bring with it stigma and discrimination that increase people’s difficulty obtaining work or even taking their children to school.<sup>39</sup> Finally, the monitoring measures, in conjunction with house arrest, also affect others in the household, translating state control into a “home prison.”

## Implementation of House Arrest

Various obstacles hinder the effective implementation of house arrest, which can lead to legislative measures existing solely on paper and to favoring the use of incarceration. Generally speaking, the laws on house arrest

do not clarify how it should be carried out, which can cause problems when the time comes for implementation.<sup>40</sup> These obstacles can be divided into three groups: structural, institutional, and gender-related.

The first structural obstacle is the judicial branch's resistance to granting house arrest. Both judicial officials and public opinion often perceive alternatives to incarceration as promoting "impunity." In addition to this resistance—which cannot be generalized—the tendency of prosecutors to request automatic pretrial detention is also a problem.

The laws in some countries prohibit the application of house arrest or other alternative measures for certain kinds of offenses, such as drug-related ones. In **Peru**, drug offenses are the most frequent among women deprived of liberty (54.0%) and are the second most frequent among men (18.8%).<sup>41</sup> However, the offenses classified as "aggravated forms of illicit drug trafficking" and the "sale and cultivation of poppy and marijuana and its compulsory planting" do not qualify for prison benefits, which means house arrest cannot be applied in those cases.<sup>42</sup> In general in **Colombia**, drug

### Case Study: Brazil

One of the most emblematic reforms involving the release of incarcerated women was the presentation of collective habeas corpus 143.641 before Brazil's Federal Supreme Court—the first collective habeas corpus accepted in the history of the Brazilian judicial system. In February 2018, by a majority vote, the Supreme Court ordered the substitution of pretrial detention with house arrest for women deprived of liberty who are pregnant, who have given birth recently, or who are the mothers of young children or children with disabilities in their custody, regardless of the offense committed.<sup>43</sup>

Based on the Supreme Court decision, the National Congress passed Law 13.769 in December 2018, which included Article 318-A in the Brazilian Code of Criminal Procedure. However, Article 318-A imposes two conditions for substituting pretrial detention with house arrest, that the offense 1) had not been committed with violence or serious threat to the person and 2) had not been committed against their child or dependent. The law went beyond the Supreme Court decision and established similar conditions for convicted women serving a custodial sentence who are in the same situations. Thus, the law was innovative both in terms of criminal procedure and penal execution, paying greater attention to pregnant women and women with children who are subject to the penitentiary system.

Some estimates indicate that the reform could have benefited about 15,000 women.<sup>44</sup> For a country like Brazil that has some 42,355 women deprived of liberty—which represents the fourth-highest women's incarceration rate in the world—this is a significant number.<sup>45</sup> However, reports from 2019 indicate that just 3,388 women benefited from the Supreme Court ruling, while 5,012 women were still awaiting a decision on their pretrial detention.<sup>46</sup> Generally speaking, federal and state judges have poorly implemented the Supreme Court's order, and incarcerated women's lack of access to legal aid has been an obstacle to them fully benefiting from this decision.<sup>47</sup>

For more information, see the *Instituto Pro Bono* report, in [Spanish](#) and in [Portuguese](#).

offenses are excluded from the application of alternatives to incarceration. However, house arrest for offenses related to growing illicit plants and trafficking small quantities can be ordered once a person has served half their sentence.<sup>48</sup> Data from Colombia from 2020 shows that there are 32,547 people in pretrial house arrest, of whom 5,810 (17.9%) are women. Within this group, 2,453 women are accused of offenses related to the drug trade.<sup>49</sup>

Another structural barrier is that house arrest is granted without regulating how beneficiaries can leave home to go to work, deal with bureaucratic requirements, go to the doctor, or care for dependents—for example, by taking their children to school, to the doctor, or to recreational spaces, or caring for the health of older adults or adults with disabilities. This underscores the need to ensure conditions that enable compliance with an alternative measure. As the UNODC handbook mentioned previously indicates:

*“To avoid excesses, the court can restrict the hours of house arrest. This could, for example, allow an offender to remain gainfully employed during the day but leave him confined to his house at night. With a supply of good information, the court should be able to distinguish between cases where house arrest may be imposed without too severe a disruption to the lives of other inhabitants of the same house. It can also tailor enforcement measures accordingly.”<sup>50</sup>*

One institutional obstacle is the limited capacity for monitoring alternative sanctions on the part of the proper authorities from the public prosecutor’s office or others in the judicial branch. In the case of electronic monitoring, those responsible may be connected to a private company. These authorities often do not have enough

*“During my first months of house arrest, I thought I was still in prison because I couldn’t go out, or move. I didn’t have any support. I felt very alone and cried a lot. When I was released, I didn’t have anything: I didn’t have a bank account, I didn’t have savings, and I had sold my house to pay my lawyers and all my case expenses. So I had to go live with my brother. The process for requesting permission from INPEC [National Penitentiary and Prison Institute / Instituto Nacional Penitenciario y Carcelario] to be able to leave the house is very absurd and bureaucratic. For example, to go to the doctor, they asked for a certificate of the appointment beforehand, which is absurd because they give you a certificate after you’ve gone, not before. The truth is that, during that period, I didn’t go see a doctor.*

*Prison is very hard, but you leave and it’s even harder. At least in prison I had my own space, my family took me food, and I could move around inside. When you leave prison, you don’t have moral, financial, or psychological support. Looking for work is impossible for those of us under house arrest. Some women do things at home, like handicrafts, but only if they have the money to do so. In my case, I didn’t have money to buy the materials.”*

Testimony of Martha Franco, *Mujeres Libres*, Colombia

economic, administrative, or human resources to implement alternatives to incarceration. For example, according to the information obtained on **Ecuador**, officials justify the failure to use house arrest by arguing that the National Police do not have enough staff to constantly monitor compliance and that some

people have failed to comply. As noted, if uniformed officers carry out the monitoring, the beneficiary and his/her family may be exposed to discrimination and stigma within their communities.

These structural and institutional factors overlap with mindsets regarding “traditional gender roles” that influence judicial decisions. For example, the stereotypes of the “good mother” versus the “bad mother” give rise to the notion that a woman accused of an offense or one who uses drugs cannot care for her children or that she represents a risk to them, and such ideas are used as the basis for not granting alternative measures. The following extract from a Brazilian sentencing decision illustrates how attitudes about maternity can hinder the application of house arrest:

*“In addition, she stated that she goes out on weekends, drinks alcohol, and uses cocaine, so she is able to leave her children in someone else’s care to engage in such activities. Clearly, she is not at all capable of being responsible for a four-year-old child and a one-year-old who, if left in the care of a cocaine user involved in dangerous crimes related to drug trafficking, will be at grave risk. Regarding the harmful effects of separating a mother and child, it is important to note that the evidence is much worse for a child who has contact with a cocaine user that is involved in drug trafficking.”<sup>51</sup>*

This situation is exacerbated in the case of foreign-born women who cannot show that they have a permanent address, which is a

### Case Study: Argentina

In the majority of cases in Argentina, house arrest is monitored via electronic devices or with a monitoring system overseen by the judicial or executive branch authorities of a given province. In the federal system and in the province of Buenos Aires, the executive branch oversees this. Trends in recent years show an increase in the implementation of house arrest with electronic monitoring. According to 2019 data from the national Justice Ministry’s Program of Assistance for Persons under Electronic Surveillance (*Programa de Asistencia de Personas Bajo Vigilancia Electrónica*), 345 women were in the Federal Penitentiary System, representing 43.0% of the people granted electronic monitoring measures, and the majority of these women were deprived of liberty for having violated the Narcotics Law (*Ley de Estupefacientes*). This program prioritized women with children up to 10 years of age or with disabilities, people with disabilities or illnesses, people age 70 and older, and LGBTI+ people. In some cases, when judges allow it, people with ankle bracelets are permitted to leave the home, for example, to take children to school or get an education. This program also provides psychosocial support and social integration projects to ensure women’s empowerment, the strengthening of their autonomy, and their access to work and health care.

The program’s results include a 16.0% reduction in recidivism rates (compared with 40.0% on average in federal prisons), lower costs for the state, fewer escape attempts, reductions in prison overcrowding, as well as more effective social and community integration.<sup>52</sup> This program shows the benefits of house arrest as long as it is regulated in such a way that people can keep carrying out some of their everyday tasks and get comprehensive support for social reintegration.

requirement for house arrest. Also, gender discrimination can be compounded by economic discrimination. Judges may argue that a precarious financial situation could hurt the child, which means that only women who are economically better off would be in a position to request house arrest. If house arrest is combined with electronic monitoring and the beneficiary must cover the cost of renting the bracelet, economic discrimination is compounded even further. In addition, conditioning factors such as access to electricity and a telephone signal or Internet connection for location monitoring can negatively affect people who come from more marginalized areas. Yet another factor that can lead to the measure being rejected is if the residence proposed for house arrest is located in an area that is deemed dangerous or in a poor neighborhood.

*“The most difficult thing for me was living with my mother, I constantly felt guilty for being a burden to her. I felt like I was 7 years old again and had to ask permission for everything, and I felt guilty about everything. It was hard to tell my children [a four-year-old and a one-and-a-half-year-old] what to do because I was the one who was imprisoned at home. At first I was very depressed. My sister took my children to school, as I was ashamed to do it myself. I could have asked for permission from the court to do it, but I didn’t have the strength. I was even ashamed to eat because my Mom had to pay for everything. After a few months, I felt better, and I started helping my Mom with sewing jobs.”*

Testimony of Marina, Argentina

In short, legislative, judicial, and administrative barriers intersect with mindsets and gender stereotypes which, on the one hand, seem to “benefit” women and lead to these measures being granted to them more frequently while, on the other hand, pigeonhole them in the role of caregiving mothers. This occurs to the detriment of other social markers of exclusion—like nationality—and often to the detriment of these same women’s rights.

## Conclusions

House arrest is a form of deprivation of liberty, and as such, it constitutes an alternative to incarceration that is onerous for the person to whom it is applied. In contrast to the penitentiary system, which regulates life in prison and recognizes the rights of people deprived of liberty—at least in theory, since it is not so common in practice—house arrest does not tend to take into account any right such as access to education, work, health, or food. Therefore, some women under house arrest say it is worse than being in prison.

Complying with house arrest and achieving its objective of serving as a less onerous reentry measure than incarceration can be difficult. In fact, the measure can even be counterproductive, if its compliance is not accompanied by the conditions that guarantee the person’s rights. According to the Bangkok Rules, the aim must be to improve the living situation of women and their families and to resolve the underlying problems that led them to come into contact with the criminal justice system.

House arrest is often combined with other coercive measures such as electronic monitoring, face-to-face or telephone supervision by the institutions in charge of monitoring compliance with the measure,

or having to appear before the responsible authority periodically. The implications of this include economic discrimination due to the expenses that people must bear—obligations that are incompatible with the activities and responsibilities involved in sustaining one’s livelihood—and the stigma that using the electronic monitoring device and/or getting visits from uniformed law enforcement officers can entail in their communities.

Legislative approaches to house arrest are mainly applied to pregnant women, those who are nursing, or those who have children in their care, and meet specific conditions—primarily involving an age limit or some kind of disability. This last point is problematic because it excludes women who do not fit that bill. It can be discriminatory toward men with children or other dependents; it reproduces the notion of women as caretakers; and it does not necessarily ensure that her well-being or that of her children will be taken into account. Likewise, judicial officials may reproduce discriminatory gender mindsets based on beliefs related to the notion of the “good mother.” Similarly, women in situations of economic vulnerability are not seen as being suited to house arrest because they would put their children “at risk.” In addition, some women face discrimination due to their sexual preference, gender identity, or their drug use, among other factors.

**Finally, the use of house arrest must be evaluated in the broader context of the variety of alternatives available.** These include efforts to reform laws to reduce the number of people currently in prison and shorten sentences, as well as to limit the use of incarceration as a punishment. Judicial authorities have a range of alternatives to incarceration that they can utilize, depending on their country’s laws. For people who come into contact with the criminal justice system

due to underlying factors related to poverty and who are in situations of vulnerability or drug dependence, alternatives include reporting to authorities, being placed in educational or job-training programs, evidence-based drug treatment programs, mental health services, services for homeless people, and community support. Ideally, people should be referred to these services before being processed by the criminal justice system to avoid the stigma and discrimination associated with a conviction. In other cases, community services can provide an alternative form of reparation that benefits both the community and the individual involved.

## Recommendations

This report is based on two premises. Generally speaking, house arrest can be a less punitive measure than incarceration, particularly amid humanitarian and health emergencies such as those linked to the COVID-19 pandemic. Dramatically reducing the prison population is critical, given the major risks posed to the health, well-being, and lives of people behind bars, and this involves increasing the number of people under house arrest.

However, house arrest must be recognized as a harsh alternative to incarceration and, therefore, in general, it should be granted taking into consideration the woman’s circumstances. House arrest should not simply replace one form of incarceration for another; a better approach is a less interventionist measure that takes into account a woman’s individual situation. To the extent possible, the alternatives mentioned previously that empower people to avoid recidivism should be chosen instead of house arrest or, at the very least, be combined with house arrest.

**Recommendations to states to ensure the effective implementation of house arrest include:**

- Guarantee that the conditions imposed by house arrest respect the rights of women in contact with the law (access to education, work, and health) and those of their family and that they do not hamper their ability to generate income or to fulfill their family responsibilities and/or responsibilities for the care of other dependents.
- Ensure that women under house arrest have access to decent housing, food, and medication and that they are linked up with community organizations capable of supporting them, taking into account women's needs and particularities.
- Guarantee access to house arrest for foreign-born women who do not have a residence in the country in which they have come into contact with the law, through social services that provide access to housing and work while they comply with the restrictions on their liberty.
- Implement community-led support programs to help people in situations of vulnerability to obtain employment, housing, access to health, and education, with special attention to those getting out of prison.
- Prioritize ensuring that the health, food, and educational needs of the children and adolescents living with women subject to house arrest are met.
- Establish security controls to ensure that women are not subjected to violence or abuse by their partners or family members while at home and that they are not in a high-risk family environment.
- Ensure that the procedure for requesting and receiving special permissions is expeditious and efficient.
- Establish mechanisms within the criminal justice system to compile and analyze statistical data on the implementation of house arrest, as well as other accompanying measures, with the aim of developing and implementing evidence-based policies. The data should be disaggregated by gender, according to the type of offense committed and the profile of people who belong to high-risk groups, including but not limited to Afro-descendant persons, indigenous people, foreign nationals, LGBTI+ people, older adults, and people with disabilities and/or mental health concerns or drug dependence.
- Implement additional non-custodial measures when a person under house arrest fails to comply with the conditions imposed; return to prison should not be the immediate response.
- Respect that pretrial detention should be the exception. Both incarceration and house arrest must be used in moderation, taking into account the limits established by the Inter-American Commission on Human Rights (IACHR).
- Expand the grounds for applying house arrest since, in general, this measure is currently granted to special groups and mainly to pregnant women, those who nurse, and those with young children.
- Ensure that people charged with or convicted of minor, non-violent drug offenses are not excluded, *de jure* or *de facto*, from qualifying for house arrest.

- Avoid discrimination and stereotypes around “traditional gender roles”—or economic status, sexual preference, and drug use, among others—in judicial decisions to grant alternatives to incarceration.
- Ensure that other measures accompanying house arrest—electronic monitoring or phone calls—do not involve purchase or rental costs for the person who is charged with an offense or sentenced. The lack of economic resources should not be an obstacle to granting the measure; instead, state support should be provided in proportion to the person’s economic possibilities.

## Key resources

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## Acknowledgments

The authors would like to acknowledge the work of our collaborators: Victoria Darraidou (*Centro de Estudios Legales y Sociales*, Argentina), Surrailly Fernandes Youssef (*Instituto Pro Bono*, Brazil), Macarena Fernández Hofmann (*Centro de Estudios Legales y Sociales*, Argentina), Rebecca Groterhorst (*Instituto Pro Bono*, Brazil), María Cristina Meneses (Ecuador), Luciana Pol (*Centro de Estudios Legales y Sociales*, Argentina), Kenya Romero (Dominican Republic), María Santos (*Procuraduría Nacional Penitenciaria*, Argentina) and Coletta Youngers (WOLA).

The authors also want to thank Nora Laura Calandra, Adrià Cots Fernández, Luis Felipe Cruz Olivera, Indiana Guerenó, Juan Hernández, and Isabel Pereira Aldana for their valuable comments and contributions.

Hilary Burke translated the report from the original Spanish, and WOLA Senior Fellow Coletta Youngers edited the English version.

## Endnotes

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