



UNODC

United Nations Office on Drugs and Crime

ALTERNATIVES TO CONVICTION OR PUNISHMENT AVAILABLE FOR PEOPLE WHO USE DRUGS AND WITH DRUG USE DISORDERS IN CONTACT WITH THE CRIMINAL JUSTICE SYSTEM

**Draft summary report on available measures
based on an analysis of Note Verbale responses
by UN Member States to UNODC**

Report produced in collaboration with the African Union



3 GOOD HEALTH
AND WELL-BEING



16 PEACE, JUSTICE
AND STRONG
INSTITUTIONS



This report has not been formally edited.

Acknowledgements

The United Nations Office on Drugs and Crime (UNODC) would like to acknowledge and thank the following Member States, organizations and individuals for their contribution to this paper:

A total of 77 Member States who have contributed to the Note Verbale inputs on treatment and care as an alternative to conviction or punishment for people with drug use disorders in contact with the criminal justice system (in alphabetical order):

Albania, Algeria, Andorra, Armenia, Argentina, Australia, Austria, Belarus, Belgium, Benin, Bhutan, Bolivia, Brazil, Brunei, Bulgaria, Cabo Verde, Canada, Chine, Colombia, Croatia, Cyprus, Czechia, Democratic Republic of the Congo, Denmark, Ecuador, Egypt, El Salvador, Eritrea, Eswatini, Finland, Gambia, Germany, Greece, Guatemala, Hungary, Iraq, Israel, Italy, Japan, Kazakhstan, Latvia, Lebanon, Liberia, Luxembourg, Madagascar, Mauritius, Mexico, Morocco, Myanmar, Netherlands, New Zealand, Nicaragua, Niger, Nigeria, Pakistan, Palestine, Panama, Philippines Poland, Portugal, Qatar, Romania, Russian Federation, Saud Arabia, Senegal, Sierra Leone, Singapore, Spain, Sudan, Sweden, Tanzania, Togo, Turkey, Turkmenistan, United Kingdom (UK), United States of America (USA), Venezuela, Zambia and Zimbabwe.

Ms. Nicola Singleton, as expert consultant to UNODC, made an invaluable contribution to the drafting of this draft summary report.

Dr. Abel Basutu, Senior Drug Control Officer, the African Union Commission coordinated the collection of African Union Member State responses jointly with UNODC.

Ms. Anja Busse, UNODC, coordinated this collaborative effort jointly with many other international partners under the supervision of Ms. Giovanna Campello. UNODC staff, in particular the following, made a significant contribution to the development of the paper: Ms. Jee Aei (Jamie) Lee, Mr. Sven Pfeiffer and Ms. Sanita Suhartono. The following staff, consultants and interns from UNODC Prevention, Treatment and Rehabilitation Section (PTRS) made additional important contributions in the process of developing this paper (in alphabetical order): Mr. Jan-Christopher Gumm, Dr. Wataru Kashino, Ms. Christina Gamboa Riano and Dr. Elizabeth Saenz.

Table of contents

Acknowledgements.....	2
1 Introduction.....	7
2 Data sources	12
2.1 Information requested and overview of responses received	12
2.2 Challenges and limitations of the data	13
3 Extent of provision of different types of alternatives to conviction or punishment.....	16
3.1 Pre-arrest alternatives.....	18
3.1.1 Diversion into treatment/rehabilitation or education programmes	19
3.1.2 Administrative offence/alternative sanctions	23
3.1.3 Exempting people in treatment from prosecution for drug use offences.....	24
3.1.4 Refraining from prosecution	24
3.2 Pre-trial alternatives	25
3.2.1 Conditional dismissal/suspension of the prosecution	26
3.2.2 Caution with referral/conditional caution	28
3.2.3 Conditional bail	28
3.2.4 Restorative justice/community resolution processes	30
3.3 Trial/sentencing alternatives	30
3.3.1 Conditional deferral of sentencing	31
3.3.2 Conditional suspension of sentence execution	33
3.3.3 Probation / judicial supervision	36
3.3.4 Special courts	38
3.3.5 Alternative sanctions and punishments	40

3.4	Post-sentencing alternatives.....	43
4	Mechanisms to support the implementation of alternatives to conviction or punishment	46
4.1	Establishing the legal framework for alternatives to conviction or punishment	46
4.1.1	Legislative instruments	46
4.1.2	Criteria for the provision of alternatives.....	46
4.2	Efforts to increase the availability and use of alternative measures	48
4.2.1	Improving knowledge and attitudes towards alternatives to conviction or punishment 49	
4.2.2	Supporting and disseminating good practice	50
4.2.3	Improving inter-departmental collaboration, particularly between health sectors and the criminal justice system	52
4.2.4	The importance of monitoring and evaluation.....	53
4.2.5	Screening and assessment processes and monitoring of compliance/progress	55
4.2.6	Ensuring adequate provision of appropriate educational or treatment and rehabilitation programmes	56
5	A discussion of key principles for the provision of alternatives to conviction or punishment for people with drug use disorders in contact with the criminal justice system in the context of the NV responses.....	58
5.1	Application of key principles.....	58
6	Conclusions.....	63

List of abbreviations

AdSS	Brunei: Administrative Supervision Scheme
AOAR	Czechia: appropriate obligations and appropriate restrictions
AoDT	New Zealand: Alcohol and Other Drug Treatment
AU	African Union
CAHOOTS	USA: Crisis Assistance Helping Out On The Streets
CAO RF	Russian Federation: Code of Administrative Offences of the Russian Federation
CCAD	Cabo Verde: Commission for the Coordination of Alcohol and other Drugs
CCPCJ	Commission on Crime Prevention and Criminal Justice
CDT	Lebanon: Drug Addiction Dissuasion Commissions
CND	Commission on Narcotic Drugs
COIP	Ecuador: Código Orgánico Integral Penal
CIT	USA: Crisis Intervention Teams
CJS	Criminal Justice System
CRP	Conference Room Paper
DCA	Gambia: Drug Control Act
DEC	Zambia: Drug Enforcement Commission
DIICOT	Romania: Directorate for the Investigation of Organized Crime and Terrorism Offences
DLEU	Cyprus: Drug Law Enforcement Unit
DRR	UK: Drug Rehabilitation Requirement
DTC	Drug Treatment Court
DTCFP	Canada: Drug Treatment Funding Programme
DUD	Drug Use Disorder
EAP	Cabo Verde: out-patient Psychosocial Support Space
ECOWAS	Economic Community of West African States
EDSO	Singapore: Enhanced Drug Supervision Order
EMS	Emergency Medical Service
FDCTA	Egypt: Fund for Drug Control and Treatment of Addiction
GIT	Luxembourg: Groupe Interministeriel Toxicomanies
MOH	Ministry of Health
MOJ	Ministry of Justice
NDLEA	National Drug Law Enforcement Agency
NGO	Non-Governmental Organization

NECD	Zambia: National Education Campaign Division
NSP	Needle Syringe Programme
NV	Note Verbale
PJTD	Panama: Programma Judicial de Tratamiento de Drogas
PPO	Egypt: Public Prosecutor's Office
PTACC	USA: Police, Treatment, and Community Collaborative
PTRS	Prevention, Treatment and Rehabilitation Section
QCT	Czechia: Quasi-compulsory Treatment
SAMBA	Turkey: Standardised implementation manual for tobacco, alcohol & drug intervention programme
SAMHSA	USA: Substance Abuse and Mental Health Services Administration
SDG	Sustainable Development Goals
SIAD	Spain: Asociación Servicio Interdisciplinar de Atención a las Drogodependencias
SMG	Austria: Suchtmittelgesetz
SUD	Substance use disorders
SVG	Netherlands: Special branch of the probation service, the Addiction Probation Service
TTC	Argentina: Project for the Implementation of Drug Treatment Courts
ULD	Cabo Verde: Residential Drug Free Unit
UEPE	Italy: Uffici di Esecuzione Penale Esterna – Parole Offices
UMK	Turkey: Anti-Drug Board
UMTK	Turkey: Anti-Drug Technical Board
UMYK	Turkey: Higher Anti-Drug Board
UN	United Nations
UNGASS	United Nations General Assembly Special Session
UNODC	United Nations Office on Drugs and Crime
WHO	World Health Organization

1 Introduction

Substance/Drug Use Disorders (S/DUDs) are multifactorial and biopsychosocial health disorders, associated with additional health problems, socio-economic inequalities, violence, criminal behaviour and social exclusion. In addition to the public health and developmental dimension of S/DUDs, people with S/DUDs are often in contact with the criminal justice system. Strengthening prevention and treatment of S/DUDs in line with the *International Standards on Drug Use Prevention*¹ and the *International Standards for the Treatment of Drug Use Disorders*² is an essential demand reduction strategy that can contribute to both improved public health and security and is a cornerstone of the 2016 United Nations General Assembly Special Session on the World Drug Problem (UNGASS) Outcome Document and has been specifically set as Target 3.5 of Goal 3, under the 2030 Agenda for Sustainable Development Goals (SDGs). People affected by S/DUDs often have other somatic and associated mental health conditions, and this comorbidity has been increasingly recognised³. There is growing recognition of the importance of health and justice collaboration to provide effective services to people with drug use disorders in contact with the criminal justice system as an alternative to conviction or punishment in appropriate cases of a minor nature⁴.

The International Drug Control Conventions⁵ state that “Parties shall take all practical measures for the prevention of abuse of drugs and for the early identification, treatment, education, after-care, rehabilitation and social reintegration of the persons involved”, and that such measures can be implemented as alternatives to conviction or punishment in cases of possession, purchase or cultivation of controlled drugs for personal use and other cases of a minor nature. The International Covenant for Civil and Political Rights provide that “no one shall be subjected to arbitrary arrest or detention”, and that “it shall not be the general rule that persons awaiting trial shall be detained in custody”.⁶ The United Nations Standard Minimum Rules for Non-Custodial Measures (the Tokyo Rules)⁷ specify that Member States should develop non-custodial measures within their legal systems, thus reducing the use of imprisonment, and to rationalize criminal justice policies, taking into account the observance of human rights, the requirements of social justice and the rehabilitation needs of offenders. The United Nations Rules for the Treatment of Women Prisoners and Non-custodial

¹ UNODC/WHO (2018). *International Standards on Drug Use Prevention*. Available at: <https://www.unodc.org/unodc/en/prevention/prevention-standards.html>

² UNODC/WHO (2020). *International Standards for the Treatment of Drug Use Disorders*. Available at: https://www.unodc.org/documents/drug-prevention-and-treatment/UNODC-WHO_International_Standards_Treatment_Drug_Use_Disorders_April_2020.pdf

³ E/CN.7/2022/CRP.12 UNODC (2022). *Comorbidities in Drug Use Disorders. No Wrong Door*. Available at: https://www.unodc.org/documents/drug-prevention-and-treatment/UNODC_Comorbidities_in_drug_use_disorders.pdf

⁴ UNODC/WHO (2019). *Treatment and care for people with drug use disorders in contact with the criminal justice system: Alternatives to conviction or punishment*. Available at: https://www.unodc.org/documents/drug-prevention-and-treatment/UNODC_WHO_Alternatives.pdf

⁵ The International Drug Control Conventions. Single Convention on Narcotic Drugs of 1961 as amended by the 1972 Protocol Convention on Psychotropic Substances of 1971 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 with final acts and resolutions. Available at: https://www.unodc.org/documents/commissions/CND/Int_Drug_Control_Conventions/Ebook/The_International_Drug_Control_Conventions_E.pdf

⁶ General Assembly resolution 2200A (XXI), *International Covenant on Civil and Political Rights*. Available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>

⁷ General Assembly resolution 45/110, annex: *United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules)*. Available at: https://www.unodc.org/documents/commissions/CCPCJ/Crime_Resolutions/1990-1999/1990/General_Assembly/A-RES-45-110.pdf

Measures for Women Offenders (the Bangkok Rules) highlight the need to develop gender-responsive measures and consider the special situation of women in contact with criminal justice system.

The UNGASS 2016 Outcome Document⁸ “Our joint commitment to effectively addressing and countering the world drug problem”, encourages “voluntary participation of individuals with drug use disorders in treatment programmes, with informed consent” and “the development, adoption and implementation . . . of alternative . . . measures with regard to conviction or punishment in cases of an appropriate nature, . . . taking into account, as appropriate, relevant United Nations standards and rules, such as the United Nations Standard Minimum Rules for Non-custodial Measures (Tokyo Rules)”.

UNODC, jointly with the World Health Organization (WHO), has launched an initiative on *Treatment and Care for People with Drug Use Disorders in Contact with the Criminal Justice System: Alternatives to Conviction or Punishment*. This initiative responds especially to Commission on Narcotic Drugs resolution 58/5 “Supporting the collaboration of public health and justice authorities in pursuing alternative measures to conviction or punishment for appropriate drug related offences of a minor nature”, and seeks to support Member States in their efforts to explore and implement strategies and options to divert people with drug use disorders who are in contact with the criminal justice system to the health care system, in appropriate cases, in line with the International Drug Control Conventions⁹ and the relevant United Nations standards and norms in crime prevention and criminal justice, most notably the United Nations Standard Minimum Rules (the Tokyo Rules) and the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules).

As part of this initiative, UNODC and WHO launched a publication entitled *Treatment and Care for People with Drug Use Disorders in Contact with the Criminal Justice System: Alternatives to Conviction or Punishment* in 2019.¹⁰ This technical tool provides guidance on principles and options to divert people with drug use disorders in contact with the criminal justice system to health services and apply alternatives to conviction or punishment committed by people who use drugs and with drug use disorders in contact with the criminal justice system, in line with the International Drug control Conventions and other relevant international rules and norms.

⁸ UNODC (2016): Outcome Document of the 2016 United Nations General Assembly Special Session on the World Drug Problem. Available at: <https://www.unodc.org/documents/postungass2016/outcome/V1603301-E.pdf>

⁹ The International drug control conventions are the 1961 Single Convention on Narcotic Drugs as amended by its 1972 Protocol (1961 Convention); the 1971 Convention on Psychotropic Substances (1971 Convention); and the 1988 United Nations Convention Against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988 Convention). Available at: https://www.unodc.org/documents/commissions/CND/Int_Drug_Control_Conventions/Ebook/The_International_Drug_Control_Conventions_E.pdf

¹⁰ UNODC/WHO (2019). *Treatment and care for people with drug use disorders in contact with the criminal justice system: Alternatives to conviction or punishment*. Available at: https://www.unodc.org/documents/drug-prevention-and-treatment/UNODC_WHO_Alternatives.pdf

ADMINISTRATIVE RESPONSE	CRIMINAL JUSTICE RESPONSE		
Pre-arrest Police	Pretrial Police, prosecutor, defence, examining magistrate	Trial/sentencing Judge, probation officers	Post-sentencing Prison director, parole board, minister of justice
Administrative response with information/ referral to treatment	Caution with a diversion to education/treatment	Postponement of the sentence, with a treatment element	Early release/ parole/pardon, with a treatment element
	Conditional dismissal/ Conditional suspension of the prosecution	Deferring the execution of the sentence, with a treatment element	
	Conditional bail (alternative to pretrial detention)	Probation/judicial supervision	
		Special courts/dockets (e.g., the drug treatment court)	

Table 1: Key intervention points and types and of diversion programmes.

Source: Treatment and Care of People with Drug use Disorders in Contact with the Criminal Justice System – Alternatives to Conviction or Punishment (UNODC/WHO, 2019)

In May 2016, the United Nations Office on Drugs and Crime (UNODC) reached out to United Nations (UN) Member States to obtain information on national responses with regard to justice and health collaboration on alternative measures to conviction or punishment for appropriate drug-related offences of a minor nature through Note Verbale (NV) CU_2016/121/DO/JS. In December 2020, the Commission of the African Union, together with UNODC reached out especially to African Union Member States to identify existing practises on alternatives to conviction or punishment through Note Verbale DSA/DR/577.20. Lastly, in February 2021, UNODC invited UN Member States to provide information on existing tools on the collaboration of justice and health authorities with regard to alternatives measures to conviction or punishment for appropriate drug-related offences of a minor nature and the roles of different professional groups at each stage of the criminal justice continuum, from pre-arrest to post-sentencing stage, through Note Verbale CU 2021/51/DO/DHB.

This draft summary of Note Verbale (NV) responses was prepared by the UNODC following the Commission on Narcotic Drugs (CND) resolution 58/5 “Supporting the collaboration of public health and justice authorities in pursuing alternatives measures to conviction or punishment for appropriate drug related offences of a minor nature.”¹¹ UNODC was invited, in consultation with UN Member States and, as appropriate, other relevant international and regional organization to “provide guidelines or tools on the collaboration of justice and health authorities on alternative measures to conviction or punishment for appropriate drug-related offences of a minor nature.” In 2017, the Economic and Social Council encouraged UN Member States through ECOSOC resolution 2017/1912, in implementing holistic and comprehensive crime prevention and criminal justice policies, to

¹¹ CND resolution 58/5 (2015): Supporting the collaboration of public health and justice authorities in pursuing alternative measures to conviction or punishment for appropriate drug-related offences of a minor nature. Available at: https://www.unodc.org/documents/commissions/CND/CND_Sessions/CND_58/2015_Resolutions/Resolution_58_5.pdf

¹² Economic and Social Council Resolution 2017/19 (2017): Promoting and encouraging the implementation of alternatives to imprisonment as part of comprehensive crime prevention and criminal justice policies. Available at: <https://undocs.org/E/RES/2017/19>

promote, as appropriate, alternatives to imprisonment, from the pretrial stage to the post-sentencing stage, taking into account the background, gender, age and other specific circumstances of offenders, including their vulnerability, and the objective of their rehabilitation and reintegration into society.

All above activities and their mandates are underpinned and guided by the normative commitments made by Member States through the United Nations legal instruments, including the Universal Declaration of Human Rights, Article 5 on “[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”¹³ and Article 9 of the International Covenant on Civil and Political Rights (ICCPR)¹⁴, which provide general legal obligations on the procedural due process guarantees and on the treatment of offenders. The commitments enshrined in the international legal framework are further elaborated by the relevant United Nations standards and norms in crime prevention and criminal justice, including the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)¹⁵, the United Nations Standard Minimum Rules for Non-Custodial Measures (the Tokyo Rules)¹⁶ that elaborates on the types and implementation of non-custodial alternatives, and the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules)¹⁷ based on the principle of non-discrimination on non-custodial measures for women offenders. Moreover, the United Nations General Assembly Special Session (UNGASS) 2016 Outcome Document¹⁸ encouraged Member States on the development, adoption, and implementation, with due regard for national, constitutional, legal and administrative systems, of alternative or additional measures with regard to conviction or punishment in cases of an appropriate nature, in accordance with the three international drug control conventions and taking into account, as appropriate.

This draft summary of Note Verbale (NV) responses provides information received from Member States through the responses to the above listed Notes Verbales. The inclusion of examples in this report does not reflect an endorsement by UNODC. The aim of this draft summary paper is to map out the existing situation with regard to treatment of drug use disorders provided as an alternative to conviction or punishment in UN Member States. This draft summary report is based exclusively on a summary of Member States responses and the information provided has not been triangulated with other data sources. The utmost effort was made to summarize the responses received from Member States in a meaningful way. The categorisation by stage of the criminal justice system in which a certain alternative is being implemented, follows mostly the indication given by the Member State itself. The

¹³ General Assembly resolution 217 A (1948): Universal Declaration of Human Rights. Available at: <https://www.un.org/en/about-us/universal-declaration-of-human-rights>

¹⁴ General Assembly resolution 2200A (XXI), International Covenant on Civil and Political Rights. Available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>

¹⁵ General Assembly resolution 70/175, annex (2015): United Nations Standard Minimum Rules for the Treatment of Prisoners. Available at: https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-ebook.pdf

¹⁶ General Assembly resolution 45/110, annex (1990): United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules). Available at: https://www.unodc.org/documents/commissions/CCPCJ/Crime_Resolutions/1990-1999/1990/General_Assembly/A-RES-45-110.pdf

¹⁷ General Assembly resolution 65/229, annex (2010): United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules). Available at: https://www.unodc.org/documents/justice-and-prison-reform/Bangkok_Rules_ENG_22032015.pdf

¹⁸ UNODC (2016): Outcome Document of the 2016 United Nations General Assembly Special Session on the World Drug Problem. Available at: <https://www.unodc.org/documents/postungass2016/outcome/V1603301-E.pdf>

summary has focused on alternatives available to adults in contact with the criminal justice system for drug use, drug use disorders and minor drug-related offences.

This document has not been formally edited. The terminology used in this draft summary report is not fully coherent as examples reported often follow the language used by Member States in their respective Note Verbale responses. All boundaries, names and designations used in maps that have been included in the draft summary report do not imply official endorsement or acceptance by the United Nations.

2 Data sources

2.1 Information requested and overview of responses received

The information reported in this paper was obtained from the following UNODC NV requests:

1. CU/2016/121/DO/JS, sent on 11 May 2016, inviting governments to provide information on:
 - national experience and applied models relating to alternative measures to conviction or punishment for drug-related offences, in particular through evidence-based drug-dependence treatment and medical care;
 - supporting legislation or information about other measures on diversion of persons with drug use disorders from criminal proceedings or on alternatives to imprisonment, which can be implemented in pre-trial, sentencing or post-sentencing stages (see General Assembly resolution 45/110, annex, the “Tokyo Rules”);
 - mechanisms for interaction and coordination, including joint- or inter-ministerial entities, which bring together health and justice sectors for the implementation of practical measures on treatment and care as alternatives to conviction or punishment.
2. DSA/DR/577.20, sent on 24 December 2020, (jointly with the African Union Secretariat) incorporating the topics from the previous NV into a questionnaire on legislations and applied models relating to alternative measures to conviction or punishment for drug-related offences in Member States of the African Union.
3. CU/2021/51/DO/DHB, sent on 16 February 2021, requesting information on alternative measures to conviction or punishment for people with mental health disorders, including drug use disorders, in contact with the criminal justice system and referral to relevant services and the roles of different professional groups at each stage of the criminal justice continuum: (1) Measures at pre-arrest stage (e.g., deflection, administrative sanctions) (2) Measures at pretrial stage (e.g., caution, conditional bail, conditional dismissal with referral to education or treatment) (3) Measures at trial/sentencing stage (e.g., postponement of sentence, deferring the execution of the sentence, diversion through specialized courts, probation/judicial supervision) (4) Measures at post-sentencing stage (e.g., early release, parole, pardon with an element of treatment); and

In total, 77 countries provided one or more responses to the above information requests, spanning all five regions and 16 sub-regions as shown in Figure 1. Of these, 73 provided some information relating to specific provision for adults with drug use disorders within their criminal justice system.

The vast majority of these reported that they had some sort of legal provision for alternatives to conviction or punishment that might apply to this group of offenders. However, there was some variation by region, with the lowest proportion of countries reporting these in Africa (71% of 21 responding countries) and Asia (86% of 15 responding countries), while all those countries in Oceania and the Americas who responded indicated there were some such measures available. However, some of these differences may relate to the wording and format of the information request they received. For example, the questionnaire sent by the UNODC and the AU Secretariat to AU countries in 2020¹⁹ began with a question about ‘*National experience and applied models relating to alternative measures to conviction or punishment for drug-related offences*’ whereas the 2021 NV²⁰ sent to all UN Member States asked for ‘*relevant information about existing national level mechanisms for alternative measures to conviction or punishment for people with mental health disorders, including drug use disorders, in contact with the criminal justice system*’. The latter wording, being broader, might have led to countries describing legal provisions for individuals with mental disorders more generally, rather

¹⁹ Note Verbale DSA/DR/577.20

²⁰ Note Verbale CU/2021/51/DO/DHB

than those actually applied to offenders with drug use disorders, as well as including provision for offences other than drug offences.

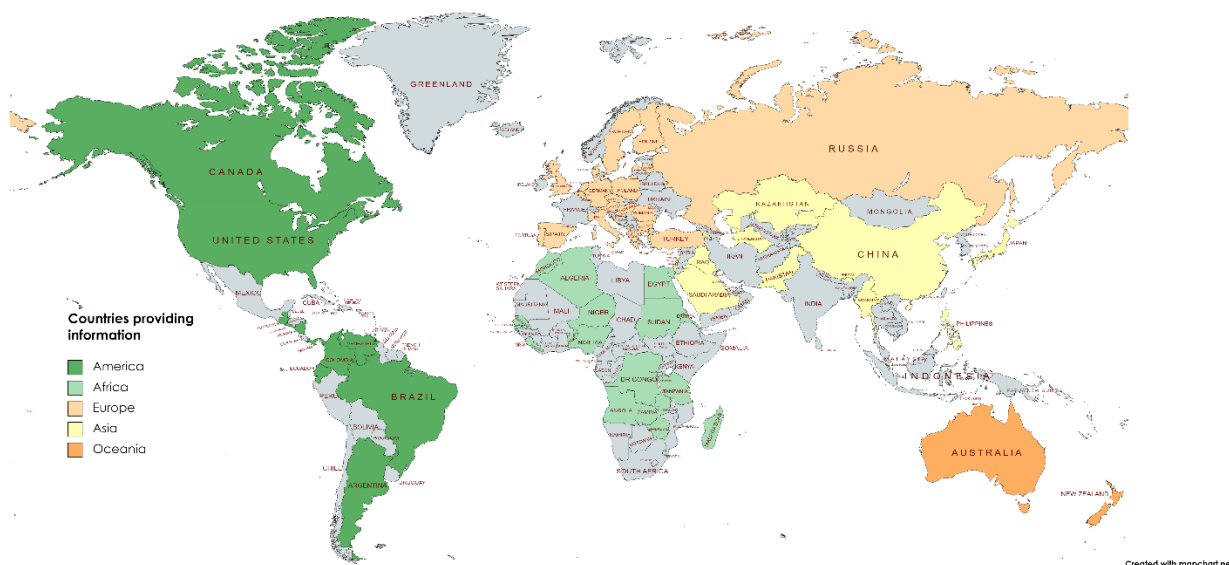


Figure 1: Countries who responded to the NVs with some information about their provision of alternatives to conviction or punishment (including those who said there were none).

Disclaimer: The boundaries, names and designations used in maps that have been included in the draft summary report do not imply official endorsement or acceptance by the United Nations.

2.2 Challenges and limitations of the data

The three Note Verbale requests generated a wealth of information on the availability of alternatives to conviction and punishment across the globe. However, when considering this information, there are some limitations to the data that must be borne in mind.

Firstly, a lack of response to the NV requests cannot be assumed to indicate that no alternatives are available in that country, and there may be other approaches to providing alternatives to conviction or punishment that are not included in this report. Similarly, many countries only responded to one of the NV requests and the three requests asked for a range of different types of information and countries differed in their interpretation of the requests and the focus of their responses. For example, some countries detailed all alternatives that are available within their system and might be applicable to people charged with drug offences as well as for other offences. Other countries focused on new alternatives that had recently been developed or those that were specific to people with drug problems in contact with the criminal justice system. So, this report should be viewed as providing an illustration of the range of approaches being adopted.

It should also be noted that the alternatives available in a country will inevitably vary because of differences in legal systems, the extent and nature of drug problems, and the national social and economic context. Therefore, they do not always fit neatly into a particular classification system and there can be a blurring or crossover between approaches available at different stages of the criminal justice continuum. For example, in a number of countries, conditional suspension of proceedings may be available both pre-trial and also within the trial process, but in some cases, it may only have been reported at one stage. In this report, where countries reported the alternatives available at specific stages of the criminal justice process, their own classification has been used in most cases.

Finally, the information included in the report is based entirely on the information in the responses to the NVs. Since the first NV was circulated in 2016, for some countries the information reported may be out of date. For example, some countries reported that new legislation was going through parliament and others that task forces or committees established to consider how to extend the use of alternatives to conviction or punishment for people who use drugs, and these may have led to changes not reflected here.

Furthermore, it needs to be noted that as part of this NV analysis, it was not possible to verify the non-custodial or voluntary nature of the described alternative, nor the quality of the intervention provided as an alternative by the reporting Member States.

In some cases the information in the responses suggested that individuals with drug use disorder were being compulsorily detained in treatment, rather than treatment being voluntary as called for in the UNGASS 2016 Outcome Document²¹, in the International Standards for the Treatment of Drug Use Disorders²² or in line with the principles developed by UNODC and WHO in its 2019 publication “Treatment of drug use disorders for people in contact with the criminal justice system – Alternatives to conviction or punishment”, stating that “a diversion to treatment should be made with the informed consent of the offender”. It is important to note that measures involving institutional treatment or care cannot be considered as appropriate non-custodial measures in line with the Tokyo Rules.

This paper includes information on the provision of treatment or other alternatives instead of conviction or punishment for adults with drug use disorders in contact with the criminal justice system, although many of those responding also provided some information about programmes specifically for children in conflict with the law. Treatment of drug use disorders and associated mental health disorders in prison settings, which was the subject of a separate NV request is also not considered, as a separate paper covering this topic has already been published by UNODC as a Conference Room Paper at the 65th session of the Commission for Narcotic Drugs.²³

The wording used in the original NV response has been kept to some extent in this summary document, in order to avoid misinterpretation of what has been shared by countries. As a result, the language in this document is not fully coherent nor always in line with UNODC technical documents. NV responses were requested in English, which might have led to additional translation challenges for some NV responses as well.

Although not specifically requested in the NVs, there has been very limited information on the gender dimension obtained from the NVs, but the UNODC World Drug Report reveals that, while overall the number of women in prison is lower than men, a higher proportion of women than men are in prison for drug related offences. There was even less information on ethnic disparities in the use of alternatives and culturally appropriate provision (again this was not specifically requested). This is an area that would benefit from greater attention and action going forward.

Despite the issues highlighted, if read with these limitations in mind, this report can provide a picture of the wide range of possible alternatives to conviction or punishment that may be considered and

²¹ UNODC (2016): Outcome Document of the 2016 United Nations General Assembly Special Session on the World Drug Problem. Available at: <https://www.unodc.org/documents/postungass2016/outcome/V1603301-E.pdf>

²² UNODC (2020): International Standards for the Treatment of Drug Use Disorders, Available at: https://www.unodc.org/documents/drug-prevention-and-treatment/UNODC_WHO_International_Standards_Treatment_Drug_Use_Disorders_April_2020.pdf

²³ E/CN.7/2022/CRP.9 UNODC (2022): Treatment of Drug Use Disorders and Associated Mental Health Disorders in Prison Settings and Forensic Hospitals. Available at: https://www.unodc.org/documents/drug-prevention-and-treatment/UNODC_TX_in_Prisons_March22.pdf

highlight some issues to consider for those seeking to institute or improve the provision of such alternatives in their country. It aims to provide policymakers and justice, health and other practitioners with examples of how different countries and jurisdictions have addressed the provision of alternatives to conviction or punishment for people who use drugs and with drug use disorders, who are in contact with the criminal justice system.

3 Extent of provision of different types of alternatives to conviction or punishment

Many people in contact with the criminal justice system have drug use disorders. These people may be arrested for minor drug offences, such as use or possession for personal use or for other offences committed to obtain drugs, such as theft or burglary. Providing them with appropriate and evidence-based treatment services has been shown to be effective in reducing both drug use and recidivism. On the other hand, some people arrested for minor drug offences may not have a drug use disorder and, while drug use disorder treatment services may not be appropriate, criminal penalties, particularly incarceration, may be very harmful and alternative punishments much more effective also for them. Figure 2 provides an estimate of people in contact with the criminal justice system for drug possession for personal use.

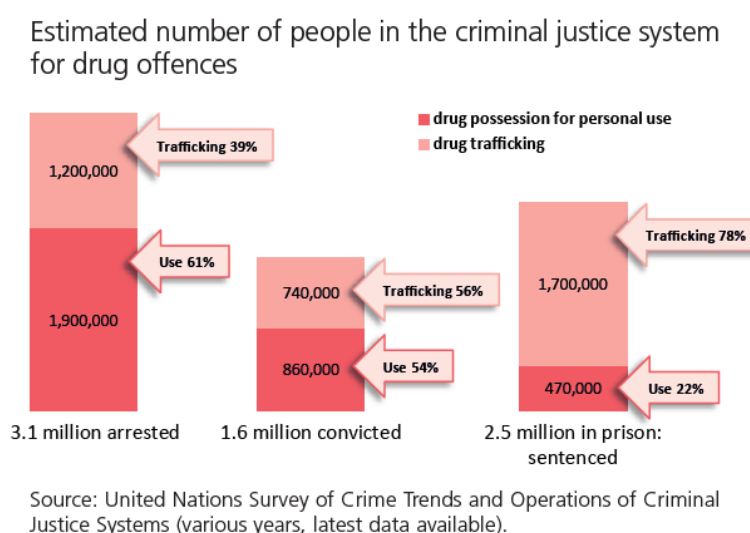


Figure 2: Estimated number of people in the criminal justice system for drug offences

The number and types of alternatives to conviction or punishment available need to be determined in such a way that consistent and individualized sentencing remains possible. Non-custodial alternative measures may be considered at all stages of the criminal justice continuum, including pre-arrest and pre-trial diversion as well as diversion at the trial/sentencing stage and at the post-trial stage.

The UNODC-WHO handbook *“Treatment of drug use disorders for people with drug use disorders in contact with the criminal justice system: Alternatives to conviction or punishment”*²⁴ focused specifically on persons with drug use disorders in contact with the criminal justice system who might benefit from and be eligible for a diversion from the criminal justice system to drug use disorder treatment services.

The NVs, the summary of responses of which are presented here, also in some cases emphasised alternatives to conviction or punishment that involved treatment for drug disorders but also asked more generally about alternative measures at different stages of the criminal justice system from pre-

²⁴ UNODC-WHO (2019): Treatment of Drug Use Disorders for People with Drug Use Disorders in Contact with the Criminal Justice System: Alternatives to Conviction or Punishment. Available at: https://www.unodc.org/documents/drug-prevention-and-treatment/UNODC_WHO_Alternatives.pdf

arrest to post-sentencing. As a result, many of the examples given involve the provision of drug disorder treatment instead of conviction or punishment, or in some cases alongside alternative sanctions (but as an alternative to incarceration. However, this paper also includes reported alternatives options for minor drug offences when treatment is not appropriate.

The UNODC-WHO handbook on alternatives to conviction or punishment²⁵ also highlighted the importance of providing a wide range of such alternative measures, at all stages of the criminal justice continuum from pre-arrest to post-sentencing. Information was presented along the four broad stages of the criminal justice process, i.e. pre-arrest; pre-trial; trial/sentencing; and post-sentencing. These same broad stages are used also in the 2021 NV requests²⁶ and in this paper, although it should be noted that the amount of information provided on the nature of alternatives and how they operate was varied and there may be some blurring and overlap between the stages.

Overall, out of the 73 countries who provided information on the topic, 65 countries provided information suggesting that at least one type of alternative to conviction or punishment was available for some drug-related offences committed by adults. Over half of these described alternatives at more than one stage on the criminal justice continuum, with nine countries providing information on alternatives at all four of the stages mentioned above (Australia, Belgium, Germany, Greece, Israel, Latvia, Luxembourg, New Zealand, USA). Alternatives applied at the trial/sentencing stage were most commonly mentioned (51 countries) followed by those used at the pre-trial stage (37 countries). Pre-arrest and post-sentencing options were less common, being mentioned by 24 countries in each case.

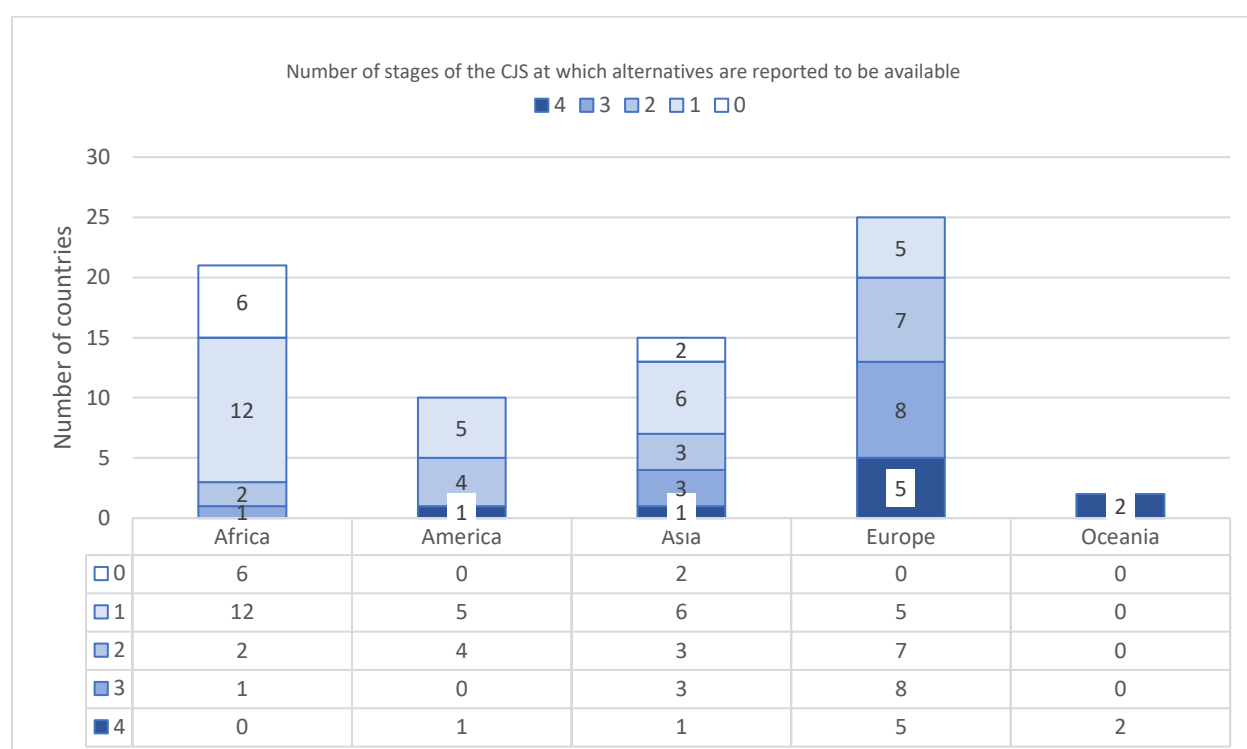


Figure 3: The number of countries in each region that reported having alternatives to conviction or punishment available at different numbers of stages in the criminal justice system (CJS)

²⁵ UNODC-WHO (2019): Treatment of Drug Use Disorders for People with Drug Use Disorders in Contact with the Criminal Justice System: Alternatives to Conviction or Punishment. Available at: https://www.unodc.org/documents/drug-prevention-and-treatment/UNODC_WHO_Alternatives.pdf

²⁶ Note Verbale CU 2021/51/DO/DHB

Figure 3 illustrates the variation by region in the spread of availability of alternatives across the different stages of the criminal justice continuum. Both countries in Oceania who provided information (Australia and New Zealand) described having alternatives to conviction or punishment available at all four stages of their criminal justice system, while in Europe over half of the countries reported alternatives at 3 or 4 stages. In the Americas all but one of the countries mentioned alternatives at 1 or 2 stages, with the other country having alternatives across all 4 stages. In Asia, just under half of responding countries reported alternatives at two or more stages. The countries in the African region who provided information, as would be expected since they had the highest proportion reporting no alternatives, were also least likely to report having alternatives available at more than one stage of the criminal justice continuum.

The types of alternatives to conviction or punishment that are appropriate and practicable in each country will depend on the national legal system and context, as well as the drug use disorder treatment and other services available. The following sections describe the types of alternatives reported at the different stages of the criminal justice continuum by the countries responding to the NVs. These are not an exhaustive list of potential alternatives to conviction or punishment nor necessarily all of the options that are available in the reporting countries. However, they provide an indication of the most commonly used alternatives and the range of options that countries seeking to establish or extend such provision might consider using.

3.1 Pre-arrest alternatives

Pre-arrest alternatives to conviction or punishment involve diversion from the criminal justice system entirely. For people committing minor drug-related offences, this may involve diversion to health services for drug use problems instead of prosecution and/or the imposition of an administrative sanction or issuing of a warning.

In response to the NVs, 24 countries reported some form of pre-arrest alternative to conviction or punishment. Six of these were from the African region, one from the Americas, seven from Asia, eight from Europe and two from Oceania. Four broad types of pre-arrest alternatives were reported:

- Diversion to drug use disorder treatment/rehabilitation or education programmes, as appropriate, with or without any other administrative penalties (20 countries);
- Alternative penalties, generally administrative in nature, e.g., fines, warnings, temporary suspension of driving licence, community service, often administered and supervised by bodies outside of the criminal justice system (7 countries);
- People who were already engaged in a drug use disorder treatment and rehabilitation programme being exempt for prosecution for minor drug offences, e.g., drug use or possession (5 countries);
- Refraining from prosecution where there is no public interest/benefit to be gained by doing so (3 countries).

Some countries described more than one type of alternative being available at the pre-arrest stage, which sometimes may be used alongside each other for the same individual. The numbers reporting each of these different types by region are shown in Figure 4.

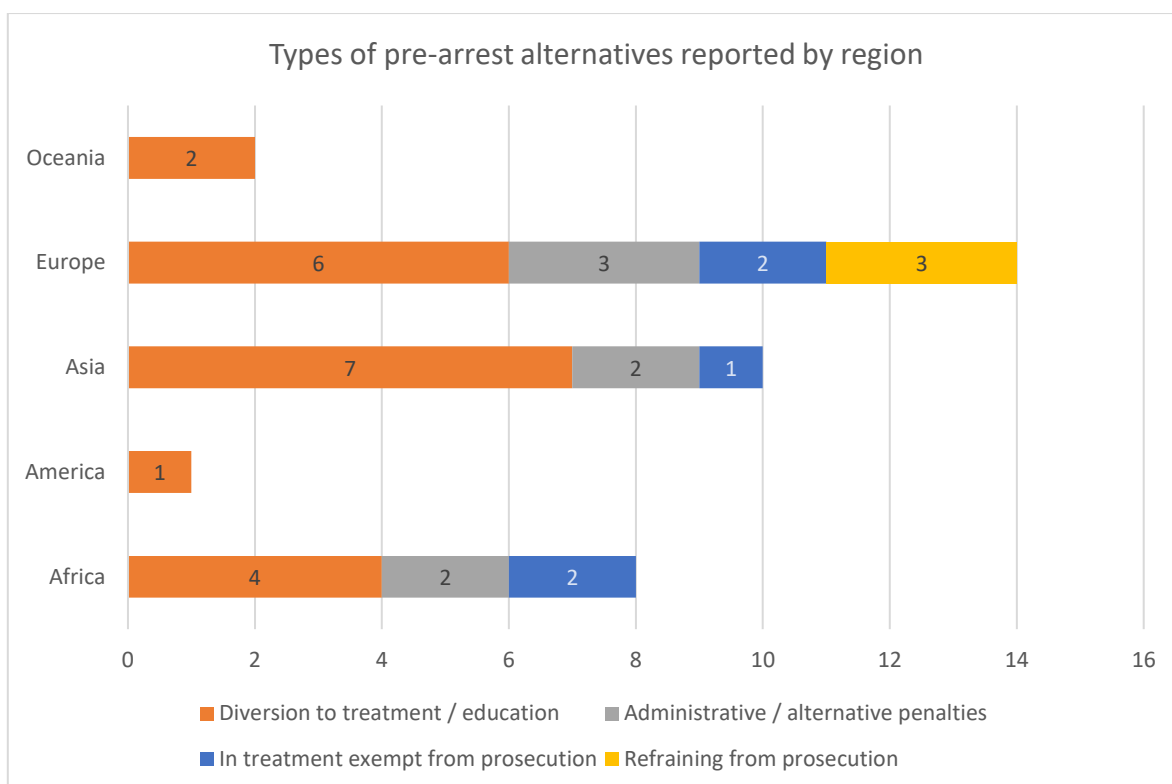


Figure 4: The number of countries in each region that reported having alternatives to conviction or punishment available at pre-arrest stage

3.1.1 *Diversion into treatment/rehabilitation or education programmes*

The most common type of pre-arrest alternative was diversion to drug use disorder treatment and rehabilitation or education programmes instead of taking forward a criminal prosecution. This type of approach was reported by 20 countries, representing all five regions. The types of individuals and offences who could benefit from these provisions varied between countries, as did the extent to which they are used. It needs to be noted that the voluntary or non-custodial nature of mentioned rehabilitation or education programmes could not be confirmed in all cases and is not always a given in the examples reported by Member States.

Australia provided information on their long running Illicit Drug Diversion Initiative, which provides a national framework for police level diversion schemes tailored to the needs and context of each state, with every state and territory having at least one. Each state and territory have implemented at least one police-based diversion programme targeted at the use or possession of cannabis and cannabis implements. The majority also have another programme designed to respond to the use of other illicit drugs, and a small number include the illicit use of prescription drugs. Although practical details may vary, the programmes share some common features. For example: all operate state or territory-wide and rely on the police as the referral source; all focus on individuals detected in possession of minor amounts of drugs and/or drug implements, rather than those charged with non-drug offences even where this is associated with their drug use; all involve an educational component, while most, in particular those targeted at illicit drugs other than cannabis, also include assessment and, if appropriate, require attendance for drug use disorder treatment provided by accredited treatment agencies. Evaluation of these schemes has been generally positive - most participants did not reoffend in the 12 to 18 months following their diversion and those who did, only reoffended once. There were, however, differences between programmes in recidivism rates, which appeared to be related to programme structure and offender characteristics, particularly prior offending records, but nevertheless the proportionate decrease in reoffending after diversion was relatively consistent across all jurisdictions.

The **United States of America** provided another example in which the federal government provides support for State programmes that are tailored to their local context. They reported that there are approximately 850 programmes in the United States that enable police, paramedics, crisis intervention teams, peer recovery coaches, or other first responders to keep at-risk individuals out of the criminal justice system by linking them with treatment for substance use disorder, mental health services, and other support services instead of arrest. In some cases, this deflection or diversion also applies to encounters with people who are not facing arrest but based on their substance use or mental health issues would benefit from a “warm handoff” connection to treatment, housing, and support services in lieu of taking no action. In the United States, these approaches are grouped into five broad Pathways to Deflection and Pre-Arrest Diversion, all of which occur at the pre-arrest stage and are as follows:

- Self-Referral: An individual voluntarily initiates contact with a first responder (a law enforcement, fire services, or Emergency Medical Services (EMS) professional) for a treatment referral (without fear of arrest) and receives a warm handoff to treatment.
- Active Outreach: A law enforcement officer or other first responder identifies or seeks out individuals in need of SUD treatment; a warm handoff is made to a treatment provider, who engages them in treatment.
- Naloxone Plus: A law enforcement officer or other first responder engages an individual in treatment as part of an overdose response.
- Officer Prevention Referral: A law enforcement officer or other first responder initiates treatment engagement, but no criminal charges are filed.
- Officer Intervention Referral: A law enforcement officer or other first responder initiates treatment engagement; charges are filed and held in abeyance, or a citation is issued.

Another type of alternative, also reported by the United States of America, focused on the pre-arrest stage is the Crisis Intervention Teams (CIT) International model. This model creates connections between law enforcement, mental health providers, hospital emergency services and individuals with mental illness, which may include co-occurring substance use disorders, and their families. Finally, there are also early intervention models that do not include law enforcement. The CAHOOTS (Crisis Assistance Helping Out On The Streets) model is a leading example that was first developed in Eugene, Oregon in 1989. In this model, emergency response calls are triaged to determine when police are absolutely necessary versus when it is more appropriate to send healthcare professionals without police.

Most of the examples of diversion to treatment or education programmes reported in response to the NVs were based on police referrals, wherein individuals charged with minor drug offences of use or possession were referred to health services for assessment and appropriate treatment by the police, rather than proceeding to prosecution. For example, in **Austria**, the police are required to notify the public health authorities whenever they file a complaint under the Narcotic and Psychotropic Substances Act (Suchtmittelgesetz, BGBl. I Nr. 112/1997, SMG). The public health authorities then must arrange a medical examination and assessment of the person concerned carried out by a doctor, specialising in substance misuse. If the person is found to have used drugs, then the individual will be required to receive “health related measures” as appropriate to their needs. This may involve medical monitoring of health status; medical treatment including withdrawal and opioid agonist maintenance treatment; clinical-psychological counselling and support; and/or psychotherapy, as well as psycho-social counselling and support. If a person refuses the examination or to undertake any health-related measures indicated, the public health authorities are encouraged to inform the Public Prosecutors Office. In **Brunei**, first time drug consumption offenders found to have a positive urine result and in possession of drugs for personal use are subjected to the Administrative Supervision Scheme (AdSS). Through AdSS, they will be monitored and guided to prevent reoffending. This is a measure undertaken to divert offenders from the criminal justice system in minor cases. AdSS is only eligible for people using drugs who have no record of previous drug arrest, i.e., first time drug offenders. As

such, the programme serves as a non-custodial measure imposed on the offenders, instead of pursuing formal proceedings for their cases. Under the administrative supervision programme, the first-time drug offenders or the supervisees receive counselling and consultation sessions and are exposed to community works with the general public. The supervisees undergo random urine testing, psychological assessment, support sessions with fellow role models as well as relapse prevention classes. Upon the successful completion of the supervision programme, the participants are given a second chance, while unsuccessful AdSS are channelled to undergo drug treatment and rehabilitation at the Al-Islah Treatment and Rehabilitation Centre.

In **Myanmar**, under the Law Amending Narcotics Drugs and Psychoactive Substances Law (1993), it is stated that police officers must promptly send people suspected of drug use for a check-up and adequate treatment, if necessary, at a Ministry of Health and Sport medical centre or the nearest government approved centre, although it appears this only applies to drug use offences and drug possession will still be prosecuted. **Nigeria** reported that since 2002, the National Drug Law Enforcement Agency (NDLEA), through the issuing of a circular, has stopped charging people who use drugs, instead referring them to the NDLEA counselling centres. The NDLEA has extended the benefit so far to all people arrested in places where drugs are used, as well as those between the ages of 18 – 26 years in possession of less than 50 grams of cannabis and 10 grams of other substances for personal use. In **Zambia**, the law enforcement agencies can apply a range of measures when arresting drug-using individuals for minor offences, such as issuing police bonds, warnings and referral to counselling and rehabilitation service providers, although these are used mainly for children in conflict with the law. The Drug Enforcement Commission (DEC) has a fully-fledged department, the National Education Campaign Division (NECD) that is responsible for providing drug prevention education and counselling as a service provider.

While some countries, such as Australia and the USA, have extensive programmes that have been developed and refined over many years, some countries have established programmes more recently or they are still being piloted. For example, in 2019 the **New Zealand** government amended their Misuse of Drugs Act 1975 to specify that the police, when determining whether a prosecution for personal drug possession and use is required in the public interest, should consider whether a health based, or therapeutic approach is more beneficial. Also in 2019, **Singapore** enhanced their drug rehabilitation regime to distinguish between first-time drug use offenders who did not commit other crimes (“pure abusers”) and those who concurrently committed serious drug offences and/or other criminal offences. “Pure abusers” who admit to their drug use and therefore demonstrate a willingness to deal with the problem, are not charged in court but are channelled directly to the relevant rehabilitation pathway. Those first-time drug use offenders who are assessed as being low risk are placed on an Enhanced Drug Supervision Order (EDSO), a non-custodial supervision order. The EDSO includes casework and counselling components delivered by social workers. A case manager is assigned to each individual, to provide support to them and their family. First-time drug use offenders who are assessed to be of moderate- or high-risk of further misuse, and repeated drug use offenders, go through the rehabilitation regime at the Drug Rehabilitation Centre. This programme includes psychology-based correctional interventions; family interventions; and employability skills training. People who complete these programmes are not given a criminal record.

In other countries, a prosecutor or judge may be involved in the referral decision. For example, in **Luxembourg**, after the disclosure of a drug use offence and a police report has been written, the Prosecutor can offer people arrested for drug use, or in some cases small scale drug dealers who appear to mainly be users, the opportunity to voluntarily undergo a rehabilitation treatment. If the treatment programme is completed, the Prosecutor will not press any charges against the offender. This rehabilitation treatment is offered and supervised by a multidisciplinary department from the Ministry of Health, which determines the modalities of the rehabilitation treatment. The Prosecutor can also offer minor drug law offenders the opportunity to undergo the “CHOICE 18+” programme, developed by the drug rehabilitation service IMPULS. This programme, which consists of 3 individual

sessions and 3 awareness, training and self-reflection modules, is for young cannabis users between the ages of 18 and 21 and, if successfully completed, prosecution will be stopped, and they will avoid a criminal record. In **Israel**, according to the Criminal Procedure (Arrests) Law, in the case of drug use offences, the court should consider alternatives to detention and may decide to send the defendant to a treatment institution as an alternative to detention until the termination of proceedings. A probation officer will provide the court with a risk assessment of the offender and will indicate the probability of the offender's rehabilitation. The probation officer will recommend a treatment programme, within the community or in therapeutic frame, under supervision (can include urine tests etc.). The case of **Togo** illustrates how some countries have to operate with more limited resources. In Togo, Law N°98-008 of 18 March 1998 on drug control, punishes the possession and abuse of illicit drugs, with sanctions ranging from incarceration to fines. However, this law also provides for alternatives in the form of a therapeutic injunction issued by a prosecuting magistrate, who assesses the context and may recommend treatment for people who use drugs instead of incarceration or fines. In fact, for several years now, people who use drugs arrested by law enforcement agencies in Togo are no longer incarcerated. When passing through law enforcement agencies, people with substance use disorders generally benefit from information sessions on their health and the national legislation on drugs. In addition, they are offered other services, including Screening, Brief Intervention and Referral to Treatment (SBIRT), individual counselling, educational chats, guidance, family mediation, motivational sessions, and psychological support is provided for parents. However, it should be noted that this activity is not yet well-structured and formalised and is only available in the capital city of Lomé. Elsewhere, there are insufficient resources for these wider services, although it is hoped the programme may be formalised and extended in the future. Finally, in **Qatar**, Article No. (26) of the Qatari Drug Control Law No. 1 of 1987 provides the option for one of the spouses or any of the relatives of a person suspected of drug abuse to request the Public Prosecution to deposit the spouse or relative who is suspected of drug use or dangerous psychotropic substances in one of the sanatoriums for drug use disorder treatment, without taking action against them.

In some countries, for example **Belgium**, the **Russian Federation** and **Portugal**, diversion programmes are applied in the context of administrative rather than criminal sanctions or provisions. These are discussed in more detail in the next section.

Some of the countries responding to the NVs described the use of legislation for dealing with people who commit offences or are a danger to themselves or others when they are mentally ill to the extent that they are not responsible for their actions as a way of providing treatment alternatives to criminal sanctions. For example, in their response, **Latvia** indicated that, according to their Medical Treatment Law,²⁷ in cases where the result of the use of alcohol, narcotic, psychotropic, toxic substances, a patient performs activities dangerous to the public, systematically commits administrative violations or by his or her actions endangers himself or herself, his or her closest relatives or the public, the compulsory measures of social and psychosocial rehabilitation prescribed by law may be applied. Similarly, in the case of mental disorder, the Criminal Law provides that a person who, during the time of the commission of the offence, was in a state of mental incapacity, that is, due to a mental disorder or mental disability was not able to understand his or her acts or control them, may not be held criminally liable, and in such a case, the court may impose the compulsory measures of a medical nature as laid down in the Criminal Law (sec.13). **China** also reported on the options for dealing with people who are mentally ill, which might include people with drug use disorders. The response from **Eswatini** specified that treatment as an alternative to conviction for people with drug use disorders was only used on limited basis where a person is dependent on drugs to the extent that they cannot appreciate what is right or wrong.

²⁷ See <https://likumi.lv/ta/en/en/id/44108-medical-treatment-law>

3.1.2 *Administrative offence/alternative sanctions*

The application of administrative/alternative sanctions for minor drug-related offences is another form of deflection or diversion from the criminal justice system. In total, seven countries mentioned the possibility, at the pre-arrest stage, of applying these sanctions, sometimes in combination with referrals to treatment or education programmes as mentioned above.

In **Belgium**, a 2006 law states that the police may, under certain conditions, administratively arrest a person who is under the influence of psychotropic substances for up to 6 hours, when the police officers are able to inform them about drug use disorder treatment possibilities and provide them with contact information of treatment centres. Also, in the **Russian Federation** a person consuming a narcotic drug or psychotropic substance without a prescription, or a new potentially dangerous psychoactive substance may be held administratively liable under the Code of Administrative Offences of the Russian Federation (CAO RF). In such cases a judge may, when imposing an administrative penalty for an administrative offence on a person found to be dependent on or a user of these substances, impose an obligation to undergo diagnosis, prevention, treatment for drug use disorder, medical or social rehabilitation.

In Portugal, a separate body outside the criminal justice system has been established administer the pre-arrest diversion provision. In **Portugal**, the police refer minor drug offenders (arrested for use or possession for personal use) to a Dissuasion Commission, composed of three members, one is a legal expert appointed by the Ministry of Justice, and the Minister of Health appoints the other two, who are doctors, psychologists, sociologists, social services workers or others with appropriate professional expertise in the field of drug use disorders. They make a psychological and social evaluation of the offender and then make an appropriate decision according to the profile of the individual. This may include treatment or educational interventions to prevent escalating drug use problems. Failure to comply with treatment leads to a range of administrative sanctions. A wide range of administrative measures are available to motivate people to overcome their drug use. In addition to referral to treatment or education when appropriate, other types of administrative sanctions used include suspension of driving licence; a simple warning; prohibition of carrying out a profession or activity; prohibition from frequenting certain places; a ban on meeting or lodging with certain people; a prohibition on leaving the country with authorisation; a requirement to periodically present themselves at a specified place. Fines may also be used but only for individuals who are not dependent on drugs for the reason that people with drug dependence problems generally have limited resources and imposition of a fine may exacerbate their offending.

Overall, the type of administrative penalty most often mentioned in responses is a fine, often specifically for minor cannabis offences. For example, in **Israel** in 2019 a new policy and law regarding personal use of cannabis (personal consumption - up to 15 grams of cannabis) was introduced, taking a staged approach using administrative punishment and drug use disorder treatment, with incrimination as a last resort. For adults (excluding prisoners and soldiers) with no former convictions in felonies/ drug offences/ driving under the influence of drugs, first and second time offenders are fined (first time - 1,000-shekel, second time – 2,000-shekel) with no criminal record, the third time they receive a conditional dismissal procedure when appropriate, and criminal charges are usually only pressed on the fourth occasion. A staged approach, that may escalate to a criminal penalty for future offences is found in **Latvia**, where under the Law on the Legal Trade of Narcotic and Psychotropic Substances and Medicinal Products, and also Precursors,²⁸ the penalty imposed for the unauthorized purchase or storage of narcotic or psychotropic substances in small amounts or for the unauthorized use of these substances, is a warning or a fine. When such an administrative penalty is

²⁸ See <https://likumi.lv/ta/en/en/id/40283-law-on-the-legal-trade-of-narcotic-and-psychotropic-substances-and-medicinal-products-and-also-precursors> for English translation of the law

imposed, the person is warned in writing that they will be held criminally liable if they commit a similar offence within a year after the imposition of the administrative penalty. Other countries reporting the use of fines include: **Eswatini**, where almost all drug-related arrests relate to cannabis indicated that the majority of drug offenders are dealt with by a fine; and **Turkmenistan**. With respect to other types of administrative sanctions, **Zambia** also mentioned the use of warnings, while one administrative sanction mentioned by **Turkmenistan** was suspension of professional activities.

3.1.3 Exempting people in treatment from prosecution for drug use offences

Five countries reported that people with drug problems voluntarily engaging in treatment programmes may be exempted from prosecution for some drug offences. **Algeria** reported that people who are complying with treatment for drug poisoning or who have undergone detoxification and are under medical supervision may not be proceeded against. Similarly, **Greece** stated that attendance at an approved treatment programme could lead to the suspension of an arrest warrant for offences committed prior to attendance at the programme, while in **Luxembourg** article 23 of the 1973 law²⁹ on medical substances allows that, if before the detection of a drug use offence, the person who uses drugs has started a rehabilitative treatment, no charges will be pressed against them. In **Qatar**, to encourage people with drug use disorder to apply for treatment voluntarily, the text of Article No. (28) of the Qatari Narcotics Law No. (9) of 1987, provides that a criminal case will not be instituted against a person using narcotic substances or dangerous psychotropic substances, who, on his own initiative, is seeking treatment. Similarly, in **Tanzania**, drop-in centres and outreach services that offer pre-treatment services for people who use drugs are legally protected and those carrying drug consuming articles for medical purposes such as needle and syringe programme (NSP) are excused from legal actions.

3.1.4 Refraining from prosecution

These alternatives may be pre-arrest diversion measures if administered by the police, but those involving the prosecutor may be more properly classified as pre-trial alternatives. As stated above, in this paper, we followed mainly the classification chosen by the reporting countries.

Three countries indicated that for minor drug offences, the police or prosecutor may have some discretion over whether any action will be taken. For example, in **Germany**, according to section 31a of the German Narcotic Drugs Act [Betäubungsmittelgesetz] the prosecution of some less serious drug offences may be dispensed with: if the offender's guilt could be regarded as minor; if there is no public interest in a criminal prosecution; and if the drugs involved are destined exclusively for the personal use of the offender. In addition, petty offences may not be prosecuted according to section 153 of the German Code of Criminal Procedure, if the offender's guilt is considered to be of a minor nature and there is no public interest in the prosecution. In **Luxembourg**, although legally speaking the police have no discretion, each offence, once disclosed, must be reported and depending on the case, (e.g., first offence for cannabis use), it may occur that no further action is taken. Once a drug law offence case has been reported to the Public Prosecutor, the latter has some discretion on whether or not to prosecute, making a case-by-case decision. Lastly, in **Latvia**, a person who has voluntarily turned in narcotic, psychotropic, new psychoactive substances or articles containing them, the handling of which is prohibited or restricted, or has voluntarily notified regarding the acquisition, storage, transportation or forwarding thereof shall be released from criminal liability for the acquisition, storage, transportation or forwarding of such substances.

²⁹ See the Luxembourg 1973 law. Available at:
https://www.imolin.org/doc/amlid/Luxembourg_loi_du_19_fevrier_1973_substances_medicamenteuses.pdf

3.2 Pre-trial alternatives

In the pre-trial period, alternatives to conviction or being held in prison awaiting trial may be initiated by the police, prosecutor, examining magistrate or investigating judge. It should be noted that the distinction between pre-arrest and pre-trial alternatives is not always clear in practice and in the responses received from the countries, so some programmes may have been inconsistently allocated in this report. In addition, it is likely that responders will not always have listed all the alternatives available in their country, which may be particularly the case in countries which have a wide range of options at their disposal. It needs to be noted that the voluntary or non-custodial nature of mentioned alternatives could not be confirmed in all cases and is not always a given in the examples reported by Member States. Nevertheless, the examples give an idea of the extent and nature of alternatives that are currently used.

Most alternatives at this stage involve diversion to treatment, often in the form of brief interventions or psychosocial interventions in outpatient settings. Types of alternatives described in the responses to these NVs were:

- Conditional caution;
- Suspension of the prosecution / conditional dismissal;
- Conditional bail;
- Use of restorative justice/community resolution process instead of criminal justice procedures.

In total, 37 countries reported some form of alternative to conviction or punishment at the pre-trial stage, including representatives from all five regions. Countries in Africa reported the least number of examples at this stage, while those in Europe and Oceania reported the most.

Figure 5 shows the number of countries reporting each of the four types of alternatives listed above, by region. Nine countries reported more than one type. By far the most frequently reported type of alternative at the pre-trial stage was a conditional dismissal or suspension of the prosecution, generally conditional on participation in a treatment programme. Granting bail instead of pre-trial incarceration on condition of treatment participation was also mentioned quite often, while the use of a caution alongside referral to treatment, or of an alternative restorative justice/community resolution process were only mentioned by 2 and 3 countries, respectively.

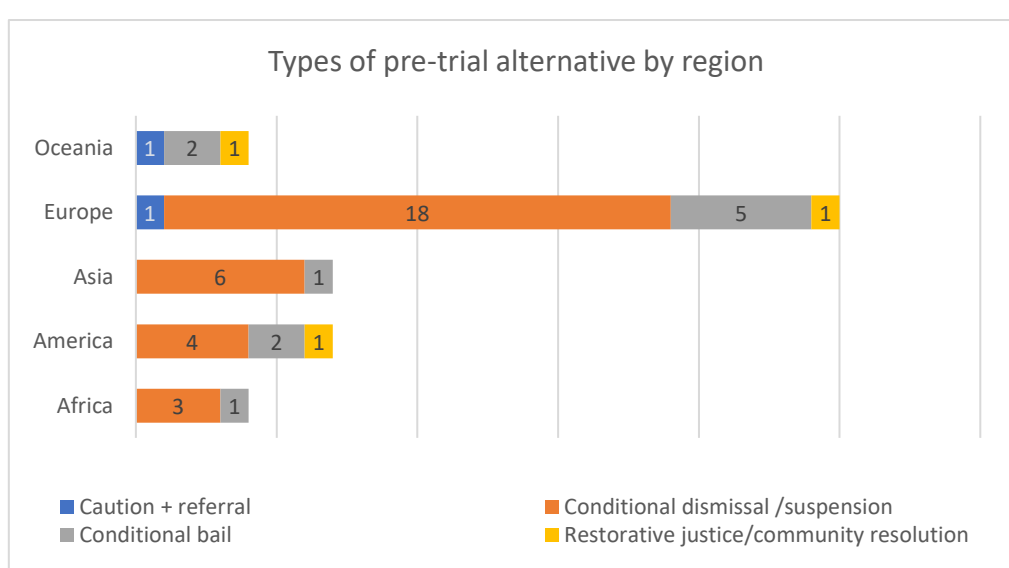


Figure 5: The number of countries in each region that reported having alternatives to conviction or punishment available at pre-trial stage

3.2.1 *Conditional dismissal/suspension of the prosecution*

In total, 31 countries reported that the conditional dismissal/suspension of the prosecution was a possible alternative to conviction or punishment at the pre-trial stage: 18 countries in Europe, six in Asia, four in America and three in Africa. In such cases, people with drug problems facing formal charges or trial may opt for treatment or in some cases other measures, e.g., drug education programmes or community service, instead of prosecution, which if completed successfully may lead to the case against them being dismissed.

These types of alternatives are generally applied for less serious crimes, such as drug use or possession, and depend on the suspect agreeing to attend drug treatment. For example, in **Austria**, in the case of people using drugs being reported for “not too serious violations”, the Public Prosecutor’s Office may opt to apply a provisional deferral of prosecution, setting a probation period accompanied by suitable health-related measures as a condition, which, if completed, leads to the completion of criminal proceedings without a conviction and without any formal sanctioning of the suspect. Similarly, in **Belgium**, a conditional dismissal with a diversion to treatment is one of the alternatives available to the prosecutor and pilot projects specifically target problem drug users who committed drug-related crimes (organised drug-related crime excluded) with the aim of redirecting them to treatment. In Ghent district, the project ‘Proefzorg’ has been in operation since 2005 and has been positively evaluated. It provides a case manager who facilitates referral to appropriate treatment options for persons who committed a crime that can be related to drug use. When the person accepts the treatment offer, the prosecution expires. Similar projects also exist in Liege and other jurisdictions.

Cyprus reported a programme for children and young adults (aged 14 -24 years) arrested for the first time in connection with drug use or possession for personal use who agree to attend and complete a treatment programme in designated treatment centres. The Drug Law Enforcement Unit (DLEU) suggests to the Attorney General that the case be suspended for a period of two years. Upon successful completion of the two years, the DLEU, recommends the suspension of prosecution against the offender and the Attorney General agrees the case is classified as “otherwise disposed of”. Through their referral to a therapeutic programme, young drug users are given the opportunity of an early intervention or a more intensive treatment programme, according to their needs. **Panama** also commenced a pilot project in 2014, the Programa Judicial de Tratamiento de Drogas (PJTD), for first time offenders accused of simple crimes like drug possession. Under PJTD, candidates are assessed for a link between their drug use and offending and if they agree, they will enter an individual treatment programme lasting from one to three years, with monthly monitoring of progress. On successful completion, the criminal case ends with a definitive dismissal. In **Finland**, the potential suspension and dismissal of prosecution for drug use is not limited to first offenders - the Prosecutor General’s guidelines to prosecutors on when to waive charges for drug users who have sought treatment note that breaking a drug use disorder may be difficult and may require several treatment periods differing in content. Accordingly, it is possible to waive charges multiple times for the same individual. Seeking treatment must be demonstrated by written proof indicating having sought treatment at a treatment institution or having booked a place or an appointment there.

Other countries that reported what appears to be a form of pre-trial suspension/dismissal of prosecution for people charged with minor drug offences who attend treatment include **Andorra**, **Greece**, **Luxembourg**, **Niger** (where, in general, a medical certificate of psychiatric and/or psychological follow-up is sufficient to suspend criminal proceedings), **Poland**, **Portugal**, **Romania**, and **Zimbabwe**. In **Israel**, **Morocco** and **Myanmar**, it appears that although there is legal provision for pre-trial suspension/dismissal conditional on treatment attendance, this is not or only rarely implemented due to lack of resources and the necessary organisational infrastructure. In **Hungary**, first time offenders who admit their crime and can prove that they have attended treatment for at least six months may have prosecution waived and a similar provision for a waiver on the basis of voluntary treatment attendance was also reported by **Latvia**. In **Lebanon**, an addiction committee (a multi-

disciplinary body in the Ministry of Justice headed by a judge with representatives from the Ministry of Public Health, Ministry of Interior, Ministry of Social Affairs, and NGOs) refers individuals charged with drug abuse to specialised centres for required tests and the treatment of physical dependence followed by psychosocial interventional treatment. In addition, the person using drugs has a right to be assigned a social assistant from the Ministry of Social Affairs to evaluate their socioeconomic and living situation to identify needs and provide support if necessary. The treatment centres to which the patient is admitted provide regular reports to the committee about the progression of the patient until successfully treated. Based on the committee's reassessment and approval, the patient receives a certificate of successful treatment that he presents to the court so as to be exempted from prosecution. In **Bhutan**, it appears that penalties increase for those who reoffend. People charged with the offence of substance use are required to attend a Treatment Assessment Panel. There is then a graded response including compulsory treatment and rehabilitation for not less than three months in an approved treatment centre if drug dependence is confirmed in the assessment by the Treatment Assessment Panel or one month counselling if he or she does not require treatment or rehabilitation, for a first offence and increasing for subsequent offences. If they complete their treatment, they are exempt from criminal liability for substance abuse and shall not be identified to the public or detained or arrested for this offence. They will also be given equal opportunities for employment and other opportunities for assimilation into the mainstream.

Other countries mention additional obligations or conditions that may be applied alongside a treatment requirement, which may be applicable to people charged with substance-related offending other than drug use or possession. In **Colombia**, the suspension or waiver of prosecution can be applied in the case that the accused or defendant has submitted a reparation plan for the victims and accepts voluntarily to participate in special treatment programmes in order to overcome the problems of dependence on drugs or alcohol. In **Croatia**, in the pre-trial phase, the state attorney may, with the consent of the victim or injured person and of the offender, conditionally postpone or desist from criminal prosecution if the suspect or defendant accepts to fulfil one of the obligations prescribed by law, which may among others also be the obligation to be submitted to treatment for drug abuse if appropriate.³⁰ Supervision of the execution of these obligations is performed by the probation service and on completion of the specific obligation the State Attorney may dismiss a criminal complaint or waive criminal prosecution. **Czechia** similarly reported that the Probation and Mediation Service of the Czech Republic works with both criminal offenders and victims of crime at all stages of criminal proceedings to identify the potential for providing alternatives to conviction or punishment. They also indicated that at the pre-trial stage the prosecutor has a range of alternative options: conditional suspension of the criminal prosecution with a variety of potential conditions applied similar to those in Croatia; suspension of the criminal procedure or discontinuation of the criminal procedure with a requirement for treatment plus, if appropriate, security detention; out-of-court settlement with a treatment requirement, if appropriate. In the **Netherlands**, new clients whose offending is related drug use or drug dependence (about 20% of offenders) are allocated to a special branch of the probation service, the Addiction Probation Service (SVG). The SVG advises the Public Prosecution Service on appropriate options, including for conditional suspension or punishment order, such as a fine, a behavioural condition or community service, which they then may be involved in monitoring. Other countries who reported the availability of conditional suspension/dismissal of prosecution with a variety of applicable conditions included **Germany**, and the **USA**, where a wide variety of pretrial diversion programmes allow justice-involved individuals to avoid a criminal conviction and to have

³⁰ The other possible alternative measures are: performing an action with the purpose of amending or compensating the damage caused by the offence; to pay a certain amount for the benefit of a public institution for humanitarian or charitable purposes or into a fund for the compensation of damage for victims of criminal offences; to fulfil an obligation to provide legal maintenance; to perform community service work; to be submitted to a psycho-social therapy with the objective to eliminate violent behaviour provided that the suspect gives his consent to leave his family for the duration of the therapy.

their cases dismissed in return for performing community service, engaging in treatment, or accessing other support services, e.g., Project Reset, a diversion programme for minor crimes offering participants the opportunity to resolve their cases without ever stepping foot in a courtroom.

In some countries, the prosecution may in certain circumstances be dismissed without the attachment of any conditions. For example, in **Sweden**, the Prosecutor may decide to waive prosecution, which means there will be no prosecution, trial or punishment, but it will still be recorded in the Criminal Records Registry, which could have consequences if the suspect were to commit a new crime. A waiver requires that it must be evident that a crime has been committed (often because of an admission of guilt), that it does not conflict with any private or public interest, if the offence would not result with any other sanction than a fine or the person has recently received a sentence for another offence and the crime in question would not increase that sentence. The sentence for minor drug offences is regularly a fine so they can be subject to a waiver of prosecution in this way. In **Poland**, the prosecutor (and the court) may discontinue proceedings for drug possession offences prior to the issuance of the decision to instigate an investigation or enquiry providing that the quantity of seized illegal substances is small and intended for personal use and the imposition of the penalty would be pointless due to the circumstances of committing the crime and the gravity of social harm. This waiver is not obligatory, and its application is left to the discretion of the court or prosecutor. An unconditional waiver of prosecution is also possible in **Germany**.

3.2.2 Caution with referral/conditional caution

A caution is an alternative to arrest or prosecution. A conditional caution is often used in conjunction with a referral to an education session, assessment and/or a brief intervention or treatment instead of being charged with an offence. Generally, the defendant has to admit the offence and agree to be cautioned. When breaching the conditions of the caution, the defendant may be prosecuted. In response to the NVs, two countries reported use of this type of alternative: **Australia** and the **United Kingdom**.

A conditional caution may often be used in cases of possession of cannabis for personal consumption. For example, in Australia, information from the Australian Crime Commission³¹ shows that, in 2012–13, police diversion for cannabis applied to at least 65% of all illicit drug arrests in South Australia, 40% in the Northern Territory, 21% in the Australian Capital Territory, and 12% in Western Australia.

3.2.3 Conditional bail

The second most common form of pre-trial alternative reported in response to the NVs was conditional bail as an alternative to being remanded in custody after being charged with a crime and while their case is being investigated. There is variety in the forms of conditional bail in the NV responses, ranging from less intensive forms, such as release on recognizance with obligations attached, and more intensive forms, such as long-term residential treatment as a condition of bail. A pretrial supervision agency or probation officers supervise compliance with the conditions as in the cases of **Czechia** and the **Netherlands** described in section 3.1.1 above. If the offender fails to comply with the conditions, they may be sent to jail prior to trial. Successful completion of the conditions may mitigate the sentence if the offender is convicted.

Conditional bail is often used in cases of drug use-related offences. For example, in **Algeria**, at the judicial investigation stage, the investigating judge or juvenile judge may direct people accused of a misdemeanour relating to personal consumption of drugs to undergo detoxification or other

³¹ Australian Crime Commission (2014). Illicit drug data report 2012–13. Canberra: ACC p.230

appropriate treatment remaining under the supervision of the judge for as long the judge deems necessary. Similarly, in **Belgium** the investigation judge can release a suspect on condition of attendance at treatment while he or she is in pretrial detention. In **Luxembourg**, according to the terms of article 24 of the 1973 law, when preliminary charges are brought for personal use of drugs and when it is established that the offender is the subject of medical treatment, at the request of the prosecutor or the accused person, a judicial control or conditional bail can be granted by the investigating courts to a drug offender with the condition to comply with a (rehabilitation) treatment.

In **Australia**, where police diversion is generally used for simple drug possession offences, bail-based programmes involving assessment and treatment conditions are available and are usually applied for offences where criminal behaviour was related to drug use (for example, burglary or public order offence). Similarly, in **Greece**, a person using drugs who has committed offences to facilitate drug use and expresses a desire to undertake an approved treatment programme may be allowed to avoid pre-trial detention on condition of attending the programme or they may receive treatment during pre-trial detention, and this may count towards sentence time. Or attending treatment may be made a condition of bail.

In the **USA**, there are a range of approaches to supervised release/bail. In recognition of the potential difficulty people with drug use disorders may have in affording to post a monetary bail, pretrial supervision includes making release recommendations to judges that are based on other factors such as the risk of failure to appear for court hearings, risk of future criminal activity, and the existence of substance use disorders (SUDs) or mental health disorders that may increase those risks. Under these programmes, the majority of defendants are assessed as low risk, given referrals for services, released without supervision conditions, and followed up with frequent reminders to return to court. Those at high risk are held, assigned a monetary bail, or released with conditions to report to a supervision officer or case manager to address a SUD a mental health disorder, or other identified needs. Some pretrial supervision programmes also incorporate drug treatment courts.

In **New Zealand**, the Bail Support Service is being rolled out nationally, with the aim of improving outcomes for people moving through the criminal justice system. The service utilises Bail Support Officers to support those facing a remand in custody, by helping them address their unmet social needs (such as accommodation, employment, and alcohol and drug needs) in order to create a safe and sustainable bail proposal. The service works both with defendants in the Court, prior to a bail hearing and with those in custody who are awaiting a final determination on bail. Support is also provided to those who are granted bail, to help them remain offence-free and successful on bail.

Other conditions for bail besides drug treatment attendance can be applied. For example, in **Ecuador**, it is constitutionally established that pre-trial detention shall not be the general rule and the judges of criminal guarantees may always order alternative measures. For offences involving small quantities of seized drugs corresponding to defined thresholds the non-application of pre-trial detention with no other precautionary measures will be requested. When slightly over the thresholds but not clearly any commercial intent then alternative or preferential measures to pre-trial detention, such as the prohibition to leave the country, the obligation to appear periodically before the judge hearing the case or before the authority or institution he or she designates, house arrest, and electronic surveillance will generally be applied. The response from **Pakistan** indicated that people arrested for possession of small quantities may be released on bail, but no mention was made of specific conditions.

3.2.4 *Restorative justice/community resolution processes*

Three countries described the use of restorative justice and other community resolution processes as alternatives available at the pre-trial stage. In the **USA**, many programmes utilize restorative justice, a non-adversarial approach to resolve conflict. Restorative justice brings together the offender and those impacted by the crime (e.g., victim, family members, community representatives) for facilitated discussions that seek to repair the harms caused as an alternative or complementary to conventional criminal justice proceedings. Similarly in the **UK**, in England and Wales, community resolution orders can be used for less serious offences. These do not result in a criminal record and where the offender has drug problems, may include a rehabilitative element as well as some sort of reparation element, such as community service. Also in **New Zealand**, following arrest, individuals who meet a defined criterion (low level offences such as shoplifting or driving offences) are provided with an option to go through a restorative community panel process rather than through the courts to deal with the harm caused by their offence. The community panels are called Te Pae Oranga, which means to talk, listen and become well. The panels are made up of three local community leaders (not judges or lawyers), and their role is to decide what should happen as a result of the offence and support the person to develop and complete a plan to address their offending and associated problems. This alternative approach enables a participant to address the reasons for their offending such as by attending rehabilitative programmes. If participants fail to co-operate or complete their plan, they will be referred back to police who may then lay charges and have the matter dealt with by the courts.

3.3 *Trial/sentencing alternatives*

The trial and sentencing stage of the criminal justice process is the stage at which alternatives to conviction or punishment, in particular incarceration, were reported most often in response to the NV requests. In total, 51 of the responding countries reported at least one alternative at this stage; 12 countries in the African region, 8 in the Americas, 7 in Asia, 22 in Europe, and both of the countries in Oceania who sent in information. The vast majority of countries in the American, European and Oceania regions reported at least one alternative available at this stage, but in Asia and Africa, only about half of countries did so. It needs to be noted that the voluntary or non-custodial nature of alternative measures could not be confirmed in all cases and is not necessarily always a given in the examples reported by Member States.

The alternatives reported as being available at this stage described were of five broad types:

- Postponement or deferral of sentencing, with a conditional treatment element;
- Deferring or suspending the execution of the sentence, with a treatment condition;
- Probation/judicial supervision;
- Special courts/dockets (e.g., the drug treatment court);
- Alternative sanctions and punishments.

The most common types of alternative described were the conditional suspension the execution of the sentence (30 countries) and other alternatives measures to imprisonment (29 countries). Conditional deferral of sentencing and probation or judicial supervision were reported in 14 and 17 countries, respectively, while some sort of special courts were reported to be available in 7 countries. Countries often mentioned more than one of these options and some may go hand in hand, for example there is often probation or judicial supervision of conditional suspension of a sentence.

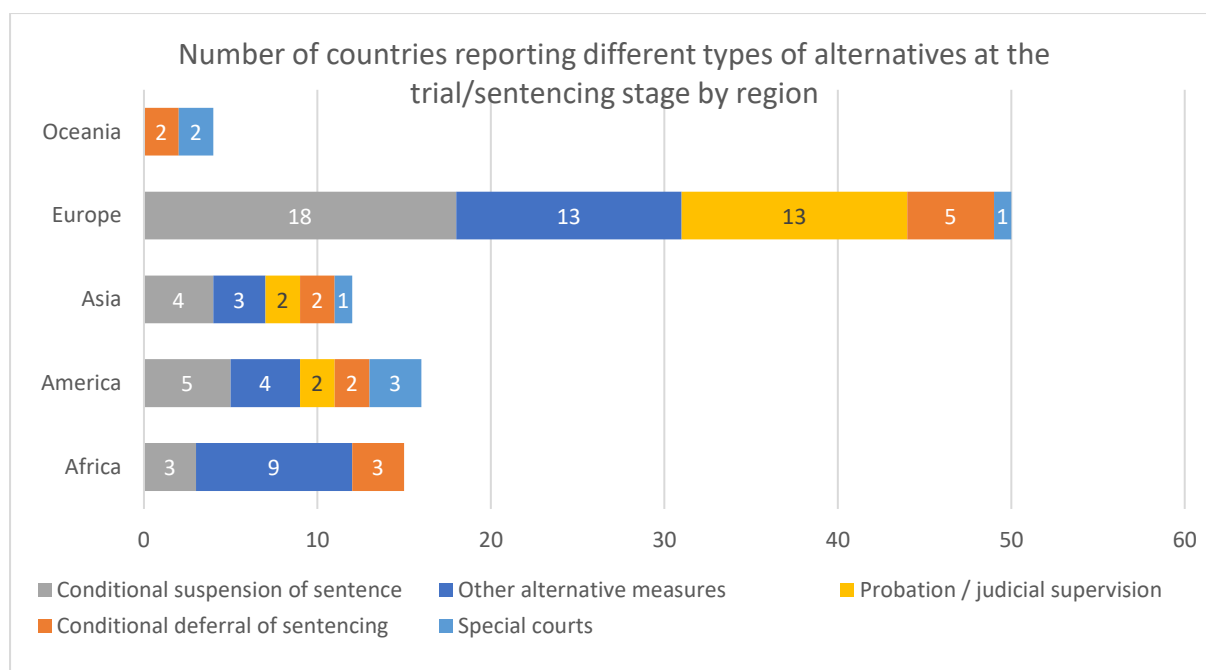


Figure 6: The number of countries in each region that reported having alternatives to conviction or punishment available at trial/sentencing stage

3.3.1 Conditional deferral of sentencing

Conditional deferral of sentencing occurs when the judge or court, having found an individual guilty, delays sentencing on condition that the person undergoes treatment for their drug use disorder under supervision. If treatment is successfully completed, then a more lenient sentence may be given or the sentence may be waived. If the condition is not met, then an appropriate sentence will be determined.

Overall, 14 countries reported that conditional deferral of sentencing was possible for drug-related offences. For example, in **Germany**, at trial the defendant may be given a warning with sentence reserved with a direction to undergo outpatient addiction treatment during a probation period. In **New Zealand**, section 25 of the Sentencing Act 2002 provides judges with the power to adjourn sentencing to determine the most suitable method of dealing with the case and/or to enable the individual to undertake a rehabilitation programme. These provisions may only be available for specific minor offences. For example, in **Tanzania**, where a drug dependent person is found guilty of the specific offences of using a drug (narcotic or psychotropic substance as listed on The Drug Control and Enforcement Act, 2015) or being in a place illegally used for using drugs and possessing of utensils for use without lawful and reasonable excuse, they can be released for undergoing treatment for drug dependence. Such an offender is required to abstain from any of the above offences and within a three-month period furnish the court with a report regarding result of his treatment. If the offender fails to comply with the conditions given upon his release, the court may order the offender to appear before the court for sentencing. The possibility of a conditional suspension of criminal prosecution was also reported by **Nicaragua** based on the criminal procedure code (Law No. 406, article 63). This can be applied only in the case of reckless crimes and less serious crimes, when the accused, without prior conviction by final judgment, manifests compliance with the terms provided by the accusation, before being summoned to trial and having admitted to the veracity of the imputed facts. The Prosecutor may then request the conditional suspension of the criminal prosecution, which consists in the interruption of the process for a period previously established by the judge, which may not be less than three months or more than two years, so that the accused can submit to a personalized test regime. This may consist of carrying out or abstaining from some activities or behaviours, or undergoing any medical or psychological treatment, or determined surveillance, with the purpose of

improving their educational, technical or social condition. The sentencing judge will determine with precision the means of supervision, which will be carried out by the Judge for the Execution of the Sentence and Penitentiary Surveillance.

In several countries, conditional deferral of sentencing appears to be an extension of or supplement to pre-trial conditional suspension of prosecution. For example, **Algeria** reported that, at the trial stage, the judicial authority can compel persons accused of committing a misdemeanour of personal consumption of narcotic drugs or psychotropic substances to undergo treatment by either confirming the investigative judge's order or extending its effects. The judicial authority can also exempt a person from the penalties prescribed for such a misdemeanour in the event that the individual undergoes detoxification treatment by order of the investigating judge either in a specialized institution or externally under medical supervision, and the treating physician periodically informs the judicial authority of the course of treatment and its results. Similarly, in addition to suspension of prosecution at the pre-trial stage, **Latvia** reported that at the trial stage according to the Criminal Law the prosecutor can, with the consent of the person, conditionally release (sec. 58¹) an individual from criminal liability, on condition that they receive medical treatment for alcoholism, narcotic, psychotropic, toxic substance addiction, or other addictions. Also in **Lebanon**, the same process as described at the pre-trial stage can be applied at the trial stage, with the addiction committee able to refer an offender to treatment which, if successfully completed, may exempt them from prosecution. Similarly, in **Poland**, as at pre-trial stage, in the event that a drug-dependent individual or individual using psychoactive substances in a harmful manner has been charged with committing a crime subject to the penalty of deprivation of liberty for a term up to 5 years, enters drug treatment, rehabilitation or participates in a prevention and education programme in a relevant treatment unit or another entity in the health care sector, Article 72 of the 2005 Act on counteracting drug addiction³² provides the prosecutor with an option to suspend the proceedings until the treatment, rehabilitation or participation in the programme is completed. Upon instituting proceedings, the prosecutor, considering the results of drug treatment, rehabilitation or participation in the prevention and education programme, decides whether to continue the proceedings or file the court with the request for the conditional discontinuance thereof. It must be stressed that the provisions of Article 72 are applied in judicial proceedings by the time the court trial is completed.

In **Luxembourg**, Article 26 of the 1973 law provides for the courts to order a conditional postponement of sentencing with the obligation for the drug use offender to comply with a rehabilitation treatment. If the drug use offender complies with this treatment, she or he will be exempted from a prison sentence or a fine. The "CHOICE" and "CHOICE 18+" programmes, described above as a pre-arrest alternative, can also be offered to drug law offenders at this stage of the criminal justice proceedings as an obligation to fulfil either during a period of probation, or during a period of conditional postponement. In addition to having alternatives that may be used at different stages in the criminal justice process, suspended sentences of various types and oversight by probation are also available to the courts. In the abovementioned case, the conditional discontinuance of the proceeding may also be applied towards a perpetrator who faces the penalty of deprivation of liberty for a term up to 5 years. The application of the conditional discontinuance of the proceedings is without prejudice to the perpetrator's criminal record. The suspect has also the right to appeal the decision to continue the proceedings.

Other countries also report overlap or integration of the range of alternatives to conviction or punishment at this stage of the criminal justice process. For example, in their 2016 NV response, **Argentina** reported that for minor drug crimes, such as possession for personal use, either educative or treatment conditions can be combined with a suspension of trial on probation either during the

³² Article 72 of the 2005 Act on Counteracting Drug Addiction. Available at: <https://www.global-regulation.com/translation/poland/2986186/the-act-of-29-july-2005-on-counteracting-drug-addiction.html>

trial or at sentencing as an alternative to imprisonment. The educational security measure makes it possible, for one time only, to substitute this alternative for users who are not physically or psychologically dependent on drugs because they are beginners or experimenters. The measure is on condition of compliance with a specialised programme on responsible behaviour with regard to drug abuse and possession, lasting at least three months. Likewise, the curative security measure involves treatment in appropriate detoxification and rehabilitation establishments for the user who commits one of the above-mentioned offences and who is dependent on narcotic drugs. The judge or court has the power to apply the alternative measure, subject to certain requirements, both during the trial and by suspending the application of the sentence. In the first case, once the result is satisfactory, a definitive acquittal is issued, while in the second case, the offender is exempted from the application of the penalty. In **Belgium**, the NV response indicated that probation may be a sentence in its own right and at the sentencing level, two types of probation can be applied. The sentencing is deferred under individual (probation) conditions or there is no sentence passed, although the facts are considered to be proven. In the second option, the execution of the sentence is suspended as long as the convict complies with his/her conditions, in which case there is a conviction and standard sentence passed but this is suspended as long as the conditions associated with the alternative sentence of probation is applied. At both pre-trial and at trial stages the conditions applied may amongst others be related to drug treatment. Since a large number of homeless, low educated and unemployed people are involved in drug-related crime, the criminal justice system may also broaden their scope and insist on conditions related to work, housing or education (possibly in combination with drug treatment). **Israel** reported that, before sentencing, the court may request a report from Probation Service that will address all aspects of the defendant life. When incarceration is considered, the court is required to consider the report. For drug related offences, the probation officer can recommend an alternative rehabilitative measure. The recommendation will take under consideration the risk assessment and the rehabilitation probability. Penal Law makes it possible for the court to substitute punishment by treatment for people who use drugs, for a period and in accordance with a programme determined by the court. Treatment as such, will be provided under probation order. The court can decide to apply this procedure without conviction and even when the defendant is under violation of conditional sentence, which is due to be operated. The court will order to extend the conditional period, and can do so more than once, when convinced that by doing so, rehabilitation would be obtained, and public security will not be in danger. That would be under probation officer's order.

The response from **Egypt** reported that the General Secretariat of Mental Health developed a new Mental Health Law (Mental Health Act 71 of 2009) based on voluntary treatment. In the case that offenders with drug use disorder refuse treatment, they face all the expected negative consequences. According to article 37 of the Egyptian Criminal Law, a convicted person dependent on drugs may be referred to a specialised facility for treatment rather than imprisonment. This compulsory admission starts from 6 months and doesn't exceed 3 years, during which monitoring, and evaluation of treatment should be performed by a multidisciplinary committee. However, this article is largely unused and it is unclear whether this would be done as a deferral of sentencing or as a suspension of the sentence execution.

3.3.2 Conditional suspension of sentence execution

The most commonly reported alternative to conviction or punishment at the trial/sentencing stage was suspension or deferral of the sentence execution on condition that the individual complies with specified requirements, such as taking part in drug use disorder treatment. The possibility for this type of alternative was reported by 30 countries. Many of the countries who reported conditional deferral of sentencing also reported that conditional suspension of sentence execution was possible. This was the case for **Argentina, Belgium, Germany, Israel, Luxembourg, Nicaragua** and **Poland**. There are similarities between the two options but in the case of conditional suspension of sentence execution,

as well as finding the defendant guilty, the court also specifies a sentence, which is suspended or deferred on condition that the individual complies with the specified conditions. If the offender complies with the specified programme or requirements then the sentence may be reduced or waived altogether, but if they fail to comply or drop out of the programme then the original sentence will usually be applied. These provisions are generally used for offenders convicted of minor offences who are considered of low risk to the public, for example, **Canada** reported that the conditional sentence provisions of their Criminal Code provide sentencing courts with an alternative to incarceration in respect of minor drug offences. To be eligible for a conditional sentence, the offender must not pose a threat to the community, and the offence for which the offender is convicted cannot carry a minimum sentence. The conditional sentence allows custody-bound offenders to serve their prison terms in the community under strict conditions. An offender who breaches any mandatory or optional conditions attached to the sentence order may be required to finish serving the term in a correctional facility.

National laws and policies that focused on treatment and rehabilitation were common in the responses to the NV. For example, in **Greece**, after conviction and sentencing, custodial and financial penalties may be suspended during the period of attendance at the approved treatment programme (as long as the offences were committed prior to attendance). The suspension is conditional on the certification of the Head of the programme and the continuation of attendance. In **Sierra Leone**, possession and use of drugs is an offence liable for imprisonment for a term not less than 5 years. However, in the case of first offenders the court may suspend the whole or part of the penalties imposed on the person, on such terms and conditions as appear to be necessary to ensure that the person does not repeat the offence, if it is in the interests of justice and not contrary to the broader public interest, to make such order. In addition, in cases in which the court considers the offence may have been related to an offender's drug use or drug use disorder they can order the individual to attend for assessment by a treatment assessment panel who may recommend that the individual undergo treatment in an approved centre. The court may then suspend the sentence on condition that the offender attends for treatment as directed under the supervision of the treatment assessment panel for a period of up to two years. If the treatment programme is successfully completed and commits no further offences, then their sentence may be deemed fully served and they will be discharged. If they fail to comply fully with the prescribed treatment, then the suspension of the sentence may be revoked with the time spent in treatment counting as time towards the discharge of the sentence. In **Madagascar**, the law n° 97-039 of November 4, 1997 on the control of narcotics, psychotropic substances and precursor drugs allows, in the case of someone dependent on drugs being convicted for certain drug law offenses, that the court may, in substitution or in addition to the sentence, commit the person dependent on drugs to undergo appropriate treatment or care but if they fail to comply with these measures they will be sentenced to imprisonment or a fine. However, it appears this provision is very rarely used. In **Iraq**, the normal penalty in Article 32 of the national narcotic law for possession or purchase of narcotic drugs or psychoactive substances for personal use is imprisonment from 1 to 3 years. However, under article 39 the court may decide instead to impose an appropriate treatment alternative but if the person refuses the treatment they will be imprisoned as specified in their original sentence. The nature of the treatment programme specified will depend on the extent of their drug use disorder as follows:

- (a) For someone proven to be addicted to a substance, place them in one of the health institutions established for the treatment of addiction until the committee established (within the same law) to review these cases recommends he should be released or otherwise should be held for a further period.
- (b) For those who have misused a substance, require attendance at a psycho-social clinic once or twice a week to address their habitual drug use until the doctor to whom they are assigned raises a report recommending either suspension of treatment or continuation for a further period(s).

- (c) Those released from treatment for drug addiction are then required to attend the psychosocial clinic for some period.

The response from **Myanmar**, indicated that if a person with drug use disorder or mental disorder is assessed as being of unsound mind and incapable of mounting a defence it is possible that they could have their sentence suspended or remitted by the president. However, it was not stated under what circumstances this might apply and on what conditions.

Venezuela reported that they make a distinction between large-scale trafficking or participation in organized crime and trafficking/dealing in small quantities of drugs ('micro-trafficking'), imposing different penalties for each case. There is the possibility of granting to the accused and those convicted of the crime of minor drug trafficking, alternative formulas to the prosecution of the process and to the execution of the sentence.

In general, the conditions that can be applied by courts when suspending sentences may include a range of obligations with or without a requirement to attend a programme to address their drug use or dependence. As well as being used as conditions for suspended sentences these may also often be used by the courts as alternative sentences by themselves. The different types of alternatives mentioned either as conditions or as potential stand-alone measures are discussed in the section "Alternative sanctions and punishments" below (see section 3.3.5). The countries that mentioned applying alternative conditions or measures other than or in addition to drug disorder treatment when granting suspended sentences included **Andorra, Croatia, Czechia, Ecuador, Italy, Netherlands, Portugal, Russian Federation, Spain, Sweden and United Kingdom**.

When a conditional suspended sentence is applied, some level of supervision is required to ensure that the conditions are complied with. In some cases, the providers of the drug disorder treatment report directly to the court as discussed in some of the cases above. However, in many cases the offender is placed on probation and the probation service organises the provision of drug disorder treatment monitors compliance with this and any other conditions. In other countries there may be judges whose role is to oversee the application of penalties. For example, in **Ecuador** the Judge of Penitentiary Guarantees is in charge of monitoring compliance with the conditions. Probation or judicial supervision may also be required for alternative penalties/measures. Countries that reported suspended sentences with probation or judicial supervision include **Albania, Austria, Croatia, Czechia, Italy, Netherlands, Portugal, Russian Federation, Sweden and United Kingdom**.

In a few countries special bodies have been established to oversee the application of alternatives to conviction and punishment. They may be involved in the assessment of the defendant, provide advice on the appropriate drug disorder treatment programme that would be appropriate, and monitor their progress and report this to the court. For example, in **Cyprus** under the Law for the "Treatment of accused or convicted drug users or drug dependent individuals" approved by the House of Representatives in April 2016, a committee is established, consisting of a representative of the Attorney General, a Psychiatrist of the Mental Health Services of Ministry of Health and a health professional with 5 years practice in drug treatment. An accused / convicted individual with a drug use disorder can apply for consideration for a treatment order and the Committee is then responsible for submitting an evaluation of their drug use problem to the Court based on which a decision is to be taken regarding the issue of a decree for referral to treatment. Treatment may last from 3 months to maximum 24 months with reviews every 3 months. People accused / convicted of a felony or drug trafficking are excluded from the legislation. This can be applied at the pre-sentencing stage or post-sentencing stages. At the post-sentencing there can be pardons with an element for drug rehabilitation treatment which are granted to those who are assessed by drug treatment personnel of a Therapeutic Community type treatment program, and they are released with the condition of completing the treatment programme. If they do not fulfil the condition of treatment, they return to prison to serve their suspended sentence.

3.3.3 Probation /judicial supervision

As indicated above, under a probation order the convicted person is placed under the supervision of a probation officer or similar supervision for a specified length of time. This can be required in relation to the supervision of a conditionally deferred or suspended sentence or community sentences, or it can be a separate legal action. The conditions of probation are set by the court or probation commission or other relevant actors according to the needs and situation of the individual offender. While in many countries, probation has a social welfare focus and supporting reintegration, in others it concentrates more on security and ensuring compliance with the conditions stipulated by the court.

Many of the countries responding to the NVs reported here highlighted the importance of their probation service in the provision of alternatives to conviction and imprisonment across the criminal justice continuum and that, as mentioned above they provide advice to the court on the appropriateness of different conditions or penalties for an individual as well as then being involved in identifying appropriate programmes and monitoring progress during the probation period. Some examples from the responses to the NVs that illustrate the different types of organisations and the roles they have at this stage of the criminal justice process are provided in this section.

While the content of the probation requirements is tailored to the individuals these alternatives are often reserved for individuals considered low risk and charged with less severe offences. For example, in **Albania**, the Penal Code has specific provisions for persons considered low risk of further offending based on their age, their health or mental condition, lifestyle and needs, especially those related to family, education or work, the circumstances of the crime, as well as the behaviour after the crime, where the court, when imposing a prison sentence of up to five years, may order the convict to maintain contact with the probation service and be placed in probation, suspending the execution of the sentence, provided that during the probation period he does not commit another criminal offence. There is also provision for the court to impose on a convicted person, who is in a state of chronic addiction to alcohol or narcotics, the obligation to undergo medical treatment for abstinence from the use of alcohol or drugs. The probation service supervises the execution of the court decision and immediately reports to the prosecutor, when the convicted person does not fulfil the obligation.

The **USA** reported how probation is used to address factors such as serious mental illness, SUDs, and trauma that can predispose individuals to criminality. Interestingly, the response suggested that research indicates that low-risk clients do worse under supervision, and, as a result, resources should be focused on high-risk individuals to produce better outcomes.

In **Austria**, the use of suspension of a prison sentence and probation in lieu thereof, is made available in order to enable treatment for those convicted for substance abuse and only applies to convicted individuals who are already habitual users of drugs. It is supposed to be a temporary measure that can be revoked in case of lack of willingness or ability of the convicted for rehabilitation/resocialisation and the successful completion of the probation period does not imply final indulgence of the sentence, the penalty is only deferred for another period of probation and the suspension can be revoked. In **Croatia**, protective supervision is imposed with a suspended / partial suspended sentence, community service and parole, when the court deems that the perpetrator needs the assistance, guidance and supervision of the probation authority in order not to commit criminal offenses in the future and to be more easily involved in society, these may include the special obligation of drug-dependence treatment.

In **Czechia**, while the Probation and Mediation Service are involved in the delivery of alternatives to conviction or punishment at all stages of the criminal justice continuum, the supervision of individuals for whom a sentence of custody has been substituted by supervision makes up a considerable part of this and in their 2016 response they stated that drug-related offences and crime committed under the influence of drugs occur in 58 % of these cases. The court may conditionally suspend the execution of sentence of imprisonment which does not exceed three years or in a case where the offender needs

special care and assistance. In such a case, the court must always prescribe a probation period (of between 1 and 5 years).

In **Italy**, the UEPE (Uffici di Esecuzione Penale Esterna – Parole Offices) plays an important role in the preparatory phase for alternative measures to detention, being involved in providing advice on appropriate provision based on social and family survey findings and the definition of the therapeutic program in collaboration with the relevant entities (Public Services for addictions - Therapeutic Communities). These offices also play a role in the enforcement of the measure itself, for delivery of the actions supporting the concerned person, monitoring of compliance with the provisions and compliance to treatment program. For people who use drugs sentenced to custodial measures, there is provision for the suspension of the enforcement of detention orders and the admission to probation in particular cases. For crimes of a minor nature committed by people with drug use disorder or consumers of drugs or narcotic or psychotropic substances, an alternative sanction of community service in lieu of imprisonment can be applied. A very important role, especially for the outcome of the offender rehabilitation programme, is played by UEPE (Uffici di Esecuzione Penale Esterna – Parole Offices) in the preparatory phase before the access to alternative measures to detention, concerning the prognosis resulting from social and family survey findings and the definition of the therapeutic program in collaboration with the relevant entities (Public Services for addictions - Therapeutic Communities), as well as in the enforcement of the measure itself, for the actions supporting the concerned person, monitoring of compliance with the provisions and compliance to treatment program.

In the **Netherlands**, many minor drug offences are diverted or dealt with before coming to trial but for those cases that are brought to the court, in most cases an advisory report by the Probation Service results in the imposition of a sentence or measure to which supervision and counselling by the Probation Services is attached. In the enforcement stage, mainly persons sentenced to a suspended sentence, community service or conditional hospital order are under the supervision and counselling of the Probation Service.

In **Portugal**, for offences punishable by less than or equal to 5 years, suspension of the execution of a sentence to imprisonment for the same period as the original penalty is possible subject to injunctions and conduct rules. The conviction stands but the imprisonment penalty is subordinated to the treatment and probation regime. Where a person is charged with certain offences and has been determined to suffer from drug use disorder, the suspension may depend on the offender voluntarily agreeing to treatment or placement in an appropriate institution. Treatment may be provided by prison medical services or Ministry of Health. Failure to comply with the treatment or other duties or rules of behaviour will result in the suspension being revoked and the remainder of the sentence will be served in prison. In addition to a requirement for treatment, the suspension may be accompanied by probation. The individual recovery and rehabilitation plan shall be prepared, and its implementation followed by the health services in coordination with the Direction-General for Probation and Prison Services. Also, a range of alternative measures besides treatment are available e.g., community service, home detention.

In the **Russian Federation**, under Article 82.1 of the Criminal Code a person sentenced to deprivation of liberty who has been assessed as dependent on drugs and has committed some specific offences for the first time and who voluntarily wishes to undergo treatment for drug addiction and medical and social rehabilitation, may have the sentence of deprivation of liberty suspended until the completion of the treatment and medical and social rehabilitation, but for no longer than five years. In addition, under article 72.1 of the Criminal Code, if a person assessed as drug dependent is sentenced to an alternative penalty the court may also make this on condition that the convicted person undergo drug use disorder treatment and medical and/or social rehabilitation. In both of these circumstances, the Criminal Enforcement Inspectorate (CEI) takes responsibility for enforcing the court order, placing him/her on the register, monitoring his/her conduct and ensuring that he/she undergoes treatment for drug use disorder, as well as medical and social rehabilitation. After the treatment, the court is

entitled to release the convicted person from serving the punishment or the remainder of the punishment.

In **Sweden**, the drug laws contain four ranges of penalties for drug offences. The range and penalties for minor offences (fine or imprisonment for at most 6 months) is mainly reserved for criminal acts that consist of personal consumption or possession for personal consumption of narcotics. The sentence for these minor offences is usually a fine. In accordance with general Swedish criminal law other sanctions, such as conditional sentences, probation and special care orders, may be applied. Narcotics offences of “normal degree”, the second level (not minor nor gross or exceptionally gross) have generally led to imprisonment (at least 14 days up to maximum of 3 years). However, in certain cases conditional sentences or probation may be applied. Both conditional sentences and probation may be combined with community service and, where the offender suffers from addiction, probation may be combined with measures to prevent substance abuse. Stricter measures make it possible to substitute relatively long prison sentences for probation. One form of condition is “specially planned treatment”, which typically involves time spent in rehabilitation in an institutional setting. Where the treatment condition is decisive in the sentence of probation then the court must indicate the length of prison sentence that it is replacing. In addition, the reply from Sweden indicated that “Compulsory care for abuse” may occur under the Care of Abusers Act (1988:870). A special care order under this act may be used as an alternative to an otherwise applicable penalty.

A Drug Rehabilitation Requirement (DRR), comprising structured treatment and regular drug testing, is available to courts in the **United Kingdom** as an alternative to a custodial sentence. A DRR is one option from of a ‘menu’ of requirements (both rehabilitative and punitive) that can be made as part of a community order or suspended sentence order. To impose the DRR, the court must first be satisfied that the offender is dependent on, or has a propensity to misuse, any controlled drug and as such would benefit from treatment. In addition, the court must be satisfied that the necessary arrangements are or can be made for the treatment and that the offender has expressed a willingness to comply with the requirement. A suitably qualified or experienced individual supervises the treatment, and it is for the court to determine (on advice from treatment providers) whether treatment should be residential or non-residential. Where the requirement lasts for more than 12 months the court must provide for its periodic review by the judiciary at court, and the probation officer provides a written report on the offender’s progress, including the results of drug tests, to the court for the review hearing. The review of a requirement of less than 12 months is at the court’s discretion.

3.3.4 Special courts

Several countries have developed special courts that may be used for people who use drugs or have a drug use disorder in the criminal justice system. These courts can operate at different stages of the criminal justice continuum, and some have been discussed earlier in this report. The most well-known model of special courts are drug courts. These generally have a rehabilitative focus. One model provides post-adjudication/ sentencing programmes, essentially supervising and supporting people to engage with treatment and on successful completion their sentence will be waived or reduced. Others operate before conviction and only if participants fail to complete the programme, do they go for trial. Although quite resource intensive, in contrast to many criminal justice activities, quite a lot of these courts have been evaluated.

Other special court models mentioned in NV responses include community courts, which often take a restorative justice approach in which the offender is required to accept responsibility for their actions and make reparation to the victims or the community for any harm caused, alongside addressing any behaviours, such as substance use, that may be related to their offending. ‘Problem-solving’ court models were also mentioned, and these are often focused on specific types of offending. In some

countries, there are a variety of special court models in use, reflecting the variation in social and cultural contexts and needs in different communities.

There are Drug Treatment Courts (DTCs) in **Canada**, which provide a blend of addiction treatment and judicial supervision premised on the belief that drug dependence is not simply a criminal justice problem but is also a public health and societal concern. Canadian DTC models are, generally, restricted to non-violent accused persons whose criminal activity is driven by a demonstrable addiction to cocaine, opiates or methamphetamine. Applicants are screened out if there are indications of commercial drug trafficking, if they are charged with a violent offence, if they have a significant and/or recent history of violence, if they used a child under 18 in the commission of the offence, or if they are charged with a residential break-and-enter. DTCs promote abstinence but recognize that drug-dependent participants will have relapses along the way as a normal part of the recovery process. Justice Canada delivers the Drug Treatment Court Funding Program (DTCFP) which is designed to support Drug Treatment Court sites as well as build knowledge and awareness among criminal justice, health and social service practitioners and the general public about drug treatment courts. In 2016, there were 10 active DTC sites funded by the programme (Vancouver, Edmonton, Calgary, Regina, Winnipeg, Toronto, Ottawa, Montreal, Kentville - NS, Whitehorse and Yellowknife) with Newfoundland undertaking a feasibility study. A Summative Evaluation of DTC sites funded through the DTCFP between (December 2004 to March 2009) was completed in March 2009 and found strong support for the Drug Treatment Court Funding Program model among criminal justice professionals, addictions specialists, and community or government organizations. The 2015 Drug Treatment Court Funding Program Evaluation confirmed the effectiveness of DTCs in reducing recidivism.

In their response to the 2016 NV, **Argentina** NV indicated that they were seeking to establish a Drug Court. **Belgium** also reported a pilot Drug Treatment Court in Ghent, an approach that is also being tested in other places in the country.

In **Australia**, at the higher end of the court system, there are the intensive pre- and post-sentencing drug court programs. These offer long-term intensive treatment for entrenched offenders whose drug dependence is a key contributor to their offending.

In **Israel**, there is the Community Court project, a partnership between the Ministry of Justice; Courts Administration; Ministry of Social Affairs and Social Services; Israel Police. Around 45% of the cases in the Community Courts deal with drug use. The establishment of the Community Court, was designed to help reduce the phenomenon of recidivism by focusing on rehabilitation processes, relying on welfare and community services. The process operates as a unique procedure, though within the framework of the routine criminal procedure, but also allows the court to supervise a rehabilitation proceeding, which includes tools and solutions that are broader than those offered in the regular procedure. The uniqueness of the program, which relies on the cooperation between the legal and enforcement systems and other systems, enables taking joint responsibility and finding solutions to social, economic and personal problems that lead to crime.

In **New Zealand**, individuals can also be referred to specialist courts that focus on more therapeutic approaches to holding individuals to account. Most notably for individuals with drug dependence they include the Alcohol and Other Drug Treatment (AoDT) court, New Beginnings court and special Circumstances court.

- AODT courts allow eligible participants to be supervised through a judicially monitored treatment programme as an alternative to prison that will help them address their AOD issues and prevent them from committing further crimes.
- The New Beginnings court (Auckland) and the Special Circumstances court (Wellington) attempt to deal with multiple issues of homelessness, mental health and drug dependency by ensuring the necessary social and health supports are provided to address underlying causes of offending.

In late 2020, the Chief District Court Judge announced Te Ao Mārama, reforming the way District Courts operate in New Zealand. Te Ao Mārama means a more enlightened delivery of justice in modern-day Aotearoa New Zealand with a focus on restoration, rehabilitation and welcoming the strength of local iwi and the local community into the court. This will include mainstreaming best practices from the specialist courts.

Drug Treatment Courts have been developed most in the **USA** and there are now over 4,000 drug treatment courts in the United States that serve approximately 150,000 people each year. Drug treatment courts (also known as “treatment courts” or “drug courts”) provide court-supervised treatment for individuals at high risk for failure under regular probation. Studies show treatment courts achieve up to 58% reductions in recidivism among participants. There are also specialised Driving Under the Influence Courts; Juvenile Drug Treatment Courts; Family drug treatment courts; Re-entry drug courts; Tribal healing to wellness courts; Mental health courts; and Veterans Treatment Courts.

Another sort of special court in the United States are Problem Solving Courts, which are similar to drug courts. “Problem Solving Courts” (also known as “Therapeutic Courts”) address the specific needs of special populations, which can include those with SUDs who are low risk. The specific programs often adopt names that minimize stigma, such as the HOPE Court, STAR program, and WIN Court. Other specific types of problem-solving courts include domestic violence courts; re-entry courts; human trafficking courts.

The Red Hook Community Justice Center is a community court in Brooklyn, New York City that was created to address the unique social and judicial needs of its surrounding neighbourhood — the 72nd, 76th, and 78th Police Precincts in New York City. The National Center for State Courts completed an independent evaluation of the Red Hook Community Justice Center in 2013, with support from the National Institute for Justice. The evaluation found that the Justice Centre’s emphasis on alternatives to incarceration, including community restitution projects and social services, helped reduce the use of jail by 35% and has helped reduce recidivism among misdemeanour offenders.

3.3.5 Alternative sanctions and punishments

At the sentencing stage in many countries, as an alternative to imprisonment, in specific circumstances there is the possibility of applying a range of other penalties, such as fines, community service, house arrest, treatment orders, and suspension of various licences. As indicated earlier in section 3.3.2, these are often similar to the requirements that can be associated with suspended sentences (or as conditions associated with alternative measures at the pre-trial stage) and require probation supervision but can also be applied as standalone sentences in their own right. Often a mix of these alternatives is applied, tailored to the circumstances of the individual offender and often include treatment for drug disorders, if appropriate. It should be noted that while seeking treatment may be a condition imposed by the justice system when applying alternatives to incarceration, medical care such as treatment of drug use disorders should always be with informed consent. The extent to which informed consent is obtained in the reported examples could not be assessed. Below are a few examples of the alternatives to imprisonment that can be used as standalone sentences as well as conditions attached to suspended sentences that illustrate the variety of alternative penalties available and how they are used in different countries. However, it should be noted that this is not an exhaustive list.

For example, **Andorra** reported that for misdemeanours, there is a wide range of possible penalties, including community work, suspension of various licences (driving, firearms, fishing, etc), or house arrest. For crimes against public health, which includes drug possession, consumption, cultivation the penalty is generally imprisonment and a fine of varying lengths/amounts depending on the seriousness of the offence. However, when conditional suspension or substitution of the penalties is

granted, the requirements may include completion of medical treatment along with others similar to those mentioned above. There is cooperation between justice department and the Addictive Behaviours Unit (ABU) at the main hospital to provide treatment as a final measure or as a substitute for conviction or punishment either in the investigation of the case or by judicial sentence. The ABU staff assess individuals referred to them and propose an appropriate treatment plan. They report regularly to the justices at intervals depending on the progress of the individual:

- Monthly when there is satisfactory progress
- Every two months if progress is good
- Specific reports before important events
- A final report before medical discharge or completion of the judicial measure.

In **Czechia**, a range of alternatives or appropriate obligations and appropriate restrictions (AOAR) are available. These are measures that can be imposed by the court or (in the preliminary proceedings) by the public prosecutor as a complement of certain general instruments of penal law to contribute to the rehabilitation of the offender, often in combination with the probation supervision. They cannot be imposed separately (as the single measure) but always as a part of certain other provisions (e.g. a conditional sentence, a conditional release etc.) – as one of the conditions that can be imposed in the framework of these arrangements to be fulfilled usually during probation period. In relation to people suffering from mental disorder the following AOAR can typically be used (among those explicitly enumerated by Penal Code): (i) to undergo training to obtain the required qualifications; (II) to undergo appropriate social training and re-education; (III) to undergo treatment of addiction to addictive substances, which does not qualify as quasi-compulsory treatment (QCT); (iv) to undergo appropriate psychological counselling; (v) to refrain from gambling, using slot machines and betting; (vi) to refrain from consuming alcoholic drinks or other addictive substances. Conditions for the imposition of these measures are regulated by the Penal Code no. 40/2009 Coll., as amended. They all can be applied in different stages of criminal proceedings. In addition to an alternative sentence, the offenders are often required to abstain from the consumption of drugs except in accordance with a medical prescription, of alcohol or of any other intoxicating substance. Compliance with this obligation is controlled by probation officers who conduct random testing. Another condition that can be imposed is to undergo treatment for drug dependence.

In **Ecuador**, trafficking is an offence under article 220 of the Código Orgánico Integral Penal (COIP – Penal Code) and the law identifies different levels minimum (subject to 1-3 years imprisonment), medium (3-5 years), high (5-7 years), large scale (10-13 years) (sales to minors increases the max penalty) but the same article expressly states that the possession or possession of narcotic or psychotropic substances for personal use or consumption in the quantities established by the corresponding regulations will not be punishable. According to Article 630 of the COIP, minimum and medium-scale trafficking offences may be subject to conditional suspension of the sentence. For conditional suspension of the sentence to be possible, the sentenced person must meet the conditions set out in Article 631 of the same law:

1. reside at a specific place or address and report any change of address to the competent authority established by the judge.
2. Refrain from frequenting certain places or persons.
3. Not to leave the country without prior authorisation from the judge responsible for prison guarantees.
4. Undergo medical, psychological or other treatment.
5. Having or exercising a job, profession, trade, employment or voluntarily performing community work.
6. Attend an educational or training programme.
7. Make reparation for the damage or pay a certain sum to the victim as full reparation or duly guarantee its payment.

8. Appear periodically before the authority designated by the judge and, where appropriate, prove compliance with the conditions imposed.
9. Not to be a repeat offender.
10. Not to have a new offence under investigation by a prosecutor.

The judge of penitentiary guarantees will be in charge of monitoring compliance with the conditions. If the sentenced person fails to comply with any of the conditions imposed or transgresses the agreed time limit, the judge will immediately order the execution of the custodial sentence (article 632 COIP). Once the sentenced person has complied with the conditions and terms established in the conditional suspension of the sentence, the sentence will be extinguished, following a decision by the judge of penitentiary guarantees (article 633 COIP).

For people with drug problems, drug-related education and treatment programmes may be specified as part of a sentence. In **Spain**, a drug dependence awareness programme, “Cuenta contigo” (Count on you) has been developed. This is a treatment programme for people sentenced to alternative measures for minor drug offences, specifically for people sentenced to community service. This intervention, developed by the General Secretariat of Penitentiary Institutions, aims to reinforce awareness and changes in attitude on the part of people with psychoactive substance use problems who are sentenced to community service. The programme is composed of 21 sessions. The aim is to prevent the person sentenced to this alternative measure from coming back into contact with the penal system and using drugs, thanks to psycho-educational intervention and the pressure exerted by the system itself. In this sense, the operational objectives of the programme are the improvement of social skills and the reduction of positive attitudes towards drug use. The aim of the intervention is to reduce health and public safety risks through personal improvement and social function.

The programme can form part of the rules/conditions applied to a suspended or substituted sentence (substituted by community service). The requirements for these to be applied (art. 80 et seq. Penal Code) are:

1. To have committed a first offence.
2. A custodial sentence of no more than 2 years.
3. Satisfaction of civil liability.

In case the suspended/substituted sentence is imprisonment, one or more rules of conduct of art. 83.6 Penal Code ("participation in training, work (...) and other similar programmes") may also be imposed. Failure to comply with the conditions (i.e. attend the programme) will lead to revocation of the suspension/substitution.

Activities on the topic "Implementation of alternatives to sentencing for drug-related offences through intervention programmes in courts and tribunals" are being successfully implemented by a non-governmental organisation called (Asociación Servicio Interdisciplinar de Atención a las Drogodependencias (SIAD), a non-profit association, founded in 1987, which intervenes in all social fields, mainly in the legal-penitentiary field. The programme consists of multidisciplinary teams that attend to the drug-using population with legal problems, advising users and professionals of the care network on legal issues and judicial operators on issues related to drug addiction.

Other types of alternative punishments mentioned include: in **Croatia** a fine or community service, in **Bulgaria** treatment may be a condition alongside a sentence of probation instead of imprisonment, the **Gambia** reported that the court can recommend treatment as an alternative to incarceration but low availability of SUD treatment limits its use, and also **Qatar** reported that the court may order that a person proven to be dependent on narcotics or dangerous psychotropic substances be sent for treatment instead of imposing a prison sentence, provided that he/she has not been ordered to be admitted to the treatment centre twice, or that at least two years have not passed since his exit from the treatment centre. Coordination is made between the treatment centre and the court to follow up

on those who are admitted to the full treatment and rehabilitation and provide them with subsequent care to integrate them into society and prevent relapse.

3.4 Post-sentencing alternatives

A number of responding countries reported efforts to improve the treatment of people with drug disorders in their prisons. However, as mentioned earlier in this document, measures relating to treatment provided in prison and other custodial settings has been the subject of another paper³³ and therefore are not discussed here. Similarly, some countries reported that convicted individuals with drug disorder may be ordered to undergo treatment in a special medical institution, similar to a prison hospital (although they may provide equivalent care to that in the community). These have also not been included here as they are not clearly an alternative to imprisonment.

This section includes alternative measures to punishment and alternative sanctions to imprisonment at the post-sentencing stage. The post-sentencing alternatives included here are mainly different kinds of early release schemes conditional on, for example, attending treatment for drug use disorders in the community or abstaining from drug use but sometimes with other restrictions, such as house arrest. In a few cases, conditional release schemes within a prison sentence were described and also some provisions incorporating pardons. These provisions are not necessarily specific to people convicted of drug-related offences, for example all prisoners may be considered for release on parole, but they can be tailored to the needs of people with drug problems and may be particularly important for them because of the high risk of drug-related death in this group as well as the high rates of relapse and recidivism.

Overall, about a third of responding countries (23) mentioned some kind of post-sentencing alternative (Figure 7). These came mainly from Europe and also both of the countries from Oceania that responded.

³³ E/CN.7/2022/CRP.12 UNODC (2022). Comorbidities in Drug Use Disorders. No Wrong Door. Available at: https://www.unodc.org/documents/drug-prevention-and-treatment/UNODC_Comorbidities_in_drug_use_disorders.pdf

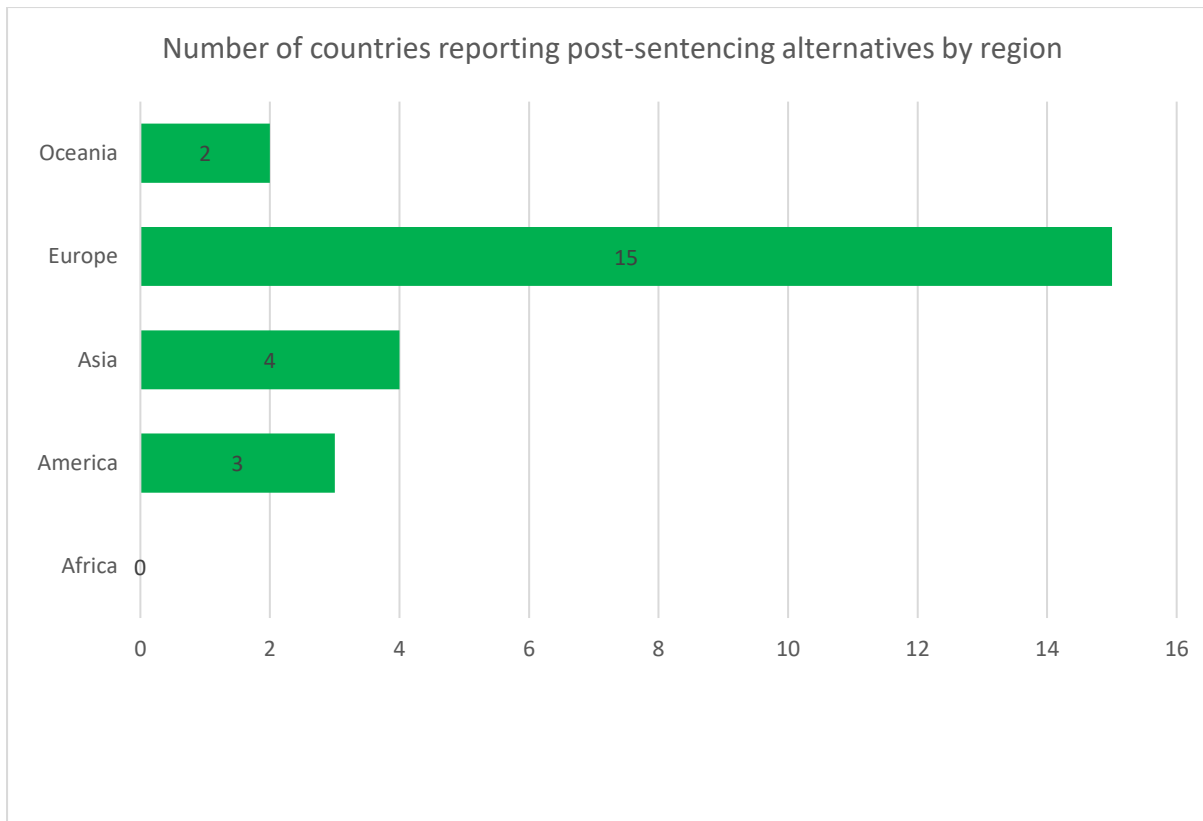


Figure 7: The number of countries in each region that reported having alternatives to conviction or punishment available at post-sentencing stage

The possibility of conditional early release was the most common form of post-sentencing alternative reported, often associated with some sort of drug disorder treatment attendance condition and probation supervision. **Australia** reported that although “custodial diversion” - which occurs as part of a custodial sentence and may include treatment attendance as a condition of parole - is available, alongside many diversion programmes at earlier stages of the criminal justice continuum, it is not widely used but is generally applied to offenders with an established criminal history and long-term drug dependence. The substitution of custody by supervision was also reported as a possibility by **Czechia**, where drug-related offences make up over half of cases where it is used. In **Belgium**, prisoners can be provisionally released (for medical reasons) or conditionally released under supervision. **Denmark** reported that as well as early release under supervision that shortens a prison sentence, temporary release within a prison term (leave or furlough) may be possible with drug-related conditions attached. **Luxembourg** also reported, in addition to conditional early release, the possibility of spells of conditional release to facilitate treatment, describing the possibility of “fractured execution of the prison sentence” allowing an offender who got 1 year or less of imprisonment to execute her or his sentence by segments which last for 1 month or even less, and “day parole” for treatment attendance outside the prison. They also mentioned the use of electronic monitoring to allow people to be released to continue their sentence at home and attend treatment. In the **Russian Federation**, prisoners may be granted parole and release on the grounds of ill-health. Other countries reporting conditional early release schemes include **Colombia, Germany, Greece, Italy, Japan, Latvia, Netherlands, New Zealand, Nicaragua, Philippines**.

In **Croatia**, in addition to the possibility of conditional early release under probation, the option of “work for the common good” was also mentioned. This community service alternative sanction may be used by the court as a replacement for a sentence of imprisonment of up to one year or an imposed

fine. In addition to working for the common good, the court may order protective supervision and / or security measures.

The response from **Cyprus** described a range of different early release arrangements that may apply. One that applies specifically to people with drug use disorders is a pardon with an element for drug rehabilitation treatment. These may be granted to those who are assessed by drug treatment personnel of a Therapeutic Community type treatment program, and people with drug use disorder are released with the condition of completing the treatment programme. If they do not fulfil the condition of treatment, they return to prisons to serve their suspended sentence. Other alternatives that do not apply solely to drug offenders also exist, e.g., the suspension of sentences through pardons, or early releases to community supervision schemes.

Israel reported that conditional release was possible with a treatment condition attached and monthly reporting on progress. During conditional release, the prisoner would be in a rehabilitation program, suitable to his needs addressing drug use, carried out by the Prisoners Rehabilitation Authority (PRA). In addition, they reported the possibility of a pardon being granted although they indicate that, in general, pardon is an exceptional procedure, given rarely. Participation in drug treatment and rehabilitation of the applicant, can be considered in this process alongside with other considerations such as public security, severity of offence, time passed, caused damage etc.

Several countries framed alternative measures in the context of preparation for release and reintegration rather than as alternatives to punishment. In their response, **Spain** described a range of measures that are available to support people in preparation for release and social integration including home stays, day release etc. **Sweden** reported that, in order to reduce risk of re-offending and facilitate reintegration into community, a prisoner may be permitted to stay away from prison as part of pre-release measures, and for someone with drug dependence a stay in appropriate care may be granted. A person conditionally released is placed under supervision. The conditions may include participation in programmes such as relapse prevention, substance use treatment related programmes, psychiatric care or regular drug testing. Electronic monitoring may also be applied. In the **USA**, at federal, state, and local levels, there is a focus on re-entry services and supports for justice-involved individuals with mental and substance use disorders. As a result, these programs and services are expanding. Re-entry is a key issue in the U.S. Department of Health's Substance Abuse and Mental Health Services Administration (SAMHSA) Trauma and Justice Strategic Initiative.

4 Mechanisms to support the implementation of alternatives to conviction or punishment

Implementing alternatives is challenging, but the NV responses also included many examples of ways in which the responding countries were seeking to support and extend their use. Some of these are described in this section.

4.1 Establishing the legal framework for alternatives to conviction or punishment

Each country needs to develop alternatives to conviction or punishment that are appropriate to their own national context and legal system. The NV responses illustrated the variety of ways in which they can be established in law, as well as the diverse interpretations by UN Member States.

4.1.1 *Legislative instruments*

The types of legislative instruments underpinning the use of alternatives to conviction or punishment for people who use drugs/with drug use disorders in contact with the criminal justice system that were mentioned within the NV responses were diverse. They included general laws, such as the Judicial/Criminal/Penal Code, Criminal Procedure Codes and Administrative Laws, and specific laws such as Drug and Mental Health Laws.

In other cases, legislative instruments that establish specific organisations involved in drug law enforcement may also be used to allow for alternatives for people who use drugs and with drug use disorders. Other official documents – including national policies or rules as well as guidance documents - may also be important in guiding the implementation of the legislation permitting the use of alternatives to conviction or punishment, for example policy documents that establish drug use disorders as health disorders that primarily need to be addressed in a health framework.

Some alternative programmes require specific legislative authority, although others can operate under the existing discretion of judges, prosecutors, a law enforcement or other criminal justice system personnel.

The wide variation in different legislative approaches is inevitable and is a reflection of the diversity in approaches to criminal justice generally, as well as the level of development of alternatives for individuals with drug use disorder in contact with the criminal justice system.

4.1.2 *Criteria for the provision of alternatives*

An essential consideration when establishing alternatives to conviction or punishment is defining which offences and/or individuals will qualify for the different alternatives and which professional group is likely to respond.

Often the criteria are extensive and cover a wide range of different aspects. The response from **Panama** to the 2016 NV illustrates this well. They described a pilot project, the Programa Judicial de Tratamiento de Drogas (PJTD) that was established in the province of Coclá in 2014. The entry requirements for a defendant for this programme were as follows:

- Condition of primary delinquency. (Probable sentence of up to three years and absence of convictions).
- Admissibility in terms of the quality of the simple crime (Culpable Injury, Child Abuse, Child Abuse Culpable, Simple Theft, Simple Damage and Simple Possession of Drugs for consumption). Admissibility of the offences.

- Compensation to the victim or to the State translates into a commitment to treatment and rehabilitation.
- Have a drug abuse or dependence disorder.
- Voluntary commitment to accept rehabilitation.

As indicated above, the criteria will vary according to the situation of the country as well as the type of alternatives available. The following provides some examples from the responses received.

The lack of a criminal record or prior offending is quite often mentioned as a requirement, particularly for pre-arrest or pre-trial alternatives. For example, this was mentioned as a requirement for at least one type of alternative in **Brunei, Canada, Cyprus, and Sierra Leone**. This inclusion criteria are likely to receive public and political support but may exclude people with drug use disorder which may make multiple convictions more likely. In some other countries there is a time limit set, for example in **Morocco** the requirement is that they do not have a similar conviction or have received the same alternative provision in the previous 3 years.

Another commonly used criterion is the nature/severity of offending. Some countries in their reports described specific offences as the criterion for inclusion, such as the misdemeanour of personal consumption (e.g., **Algeria**), drug use or possession for personal use (e.g., **Austria, Brunei, Cyprus, El Salvador, Greece, Lebanon, Portugal**). In other cases, the criterion is broader, for example a 'misdemeanour' (e.g., **Bhutan, Andorra**) or minor drug offences (e.g. **Luxembourg, Brazil**). Others used the maximum penalty that offenders may be awarded for the offence (e.g., **Hungary** – offences attracting less than 3 years imprisonment, **Croatia** – offences attracting a prison sentence of less than 1 year). To identify possession for personal consumption as distinct from drug supply/trafficking the quantity of drugs seized is often specified (e.g., **Ecuador, Nigeria, Portugal** – below an average of 10 days consumption. Below that limit (defined by law for each substance) possession or consumption) These amounts need to be specified for different substances and may need revision over time. Other types of alternatives may require evidence of more severe drug use disorder (e.g., **Albania, Armenia, Australia, Bulgaria**).

Another indicator of severity, often used as an exclusion criterion, is whether the offence involves violence, which links to the criterion of public interest in prosecution. For example, in **Canada** whether the offender poses a threat to the community is one of the criteria used to decide eligibility for alternatives to prosecution. Similarly in **Germany** they refer to conditions deemed sufficient to eliminate the public interest in criminal prosecution and if the degree of guilt does not present an obstacle.

The background of the offender is a key aspect to be considered, as stressed by the Tokyo Rules.³⁴ This includes the severity of the person's drug use or drug use disorder, which is important in establishing suitability for alternatives and, in particular, the sort of educational, treatment or rehabilitative programme that will be appropriate for them. Finally, it is important that the individual accepts the alternative voluntarily and will co-operate.

An important issue to note is that if the criteria are too complex it may inhibit the use of the alternatives. Drug use disorder is often a chronic condition that is difficult to overcome, so limiting the alternatives to first time offenders may exclude many people who would benefit from their use. Some of the responses highlighted the need to take this into account. For example, as described earlier, in **Finland**, the potential suspension and dismissal of prosecution for drug use is not limited to first offenders - the Prosecutor General's guidelines to prosecutors on when to waive charges for drug users who have sought treatment note that breaking a drug addiction may be difficult and may require

³⁴ See, e.g., Tokyo Rules 2.3, 3.2 and 13.3.

several treatment periods differing in content. Accordingly, it is possible to waive charges multiple times for the same individual.

In addition to the criteria for provision of alternatives, there are the criteria to be met for any conditions applied as part of the alternative disposal. For example, in the **Philippines**, for exemption from criminal liability for a drug dependent individual who voluntarily submitted him or herself to treatment. This exemption is on condition that they have complied with the rules and regulations of the centre, including the aftercare and follow-up programme for at least 18 months, they have never been charged or convicted of a criminal offence, has no record of escape, and s/he poses no danger by his exemption of liability. These have been described earlier in the sections on types of alternatives available.

4.2 Efforts to increase the availability and use of alternative measures

While most respondents to the NVs had some alternatives to conviction or punishment available several countries indicated that although they had alternatives available these were rarely used even if there was a clear need for such approaches.

For example, the response from **Madagascar** indicated that, although the option of providing treatment as an alternative measure was available, the psychiatric services had not received any referrals. Similarly, in **Egypt**, although the possibility of referral for treatment has been available as an alternative measure for many years, except for one particularly active judge, it is reportedly rarely used. While **Morocco** reported that, although the criminal policy trend in Morocco, whether at the level of legislation or enforcement, encourages leniency towards drug users, the provisions for alternatives contained in the legislative framework are rarely used by magistrates due to the lack of the organizational and institutional structure necessary for implementing this measure. However, about a third of the prison population in the country persons have been imprisoned for crimes related to drug trafficking and consumption and, in 2019. They reported that discussions involving stakeholders have been started with a view to implementing the available alternative measures.

Therefore, as well as highlighting implementation challenges, the responses to the NVs showed there were also strong indications that countries were keen to increase their use, with several mentioning setting up Working Groups etc. For example, in **Egypt**, a National Committee with the membership of the Ministry of Health (MOH), the Fund for Drug Control and Treatment of Addiction (FDCTA), the Ministry of Justice (MOJ) in coordination with Public Prosecutor's Office (PPO) has been set up to address the limited use of treatment alternatives. The committee is currently working on activating the Alternative Measures Act through developing a National Plan and applying it. The proposed plan adopts a national ambition which relies on implementing an initial pilot phase in a number of Egyptian governorates, before it is rolled out to all governorates.

Other examples include **Argentina**, where the Undersecretary for Relations with the Judiciary and Penitentiary Affairs of the Ministry of Justice and Human Rights of the Nation has created, through Disposicion No. 062/2016, a working group to develop a comprehensive approach to the prevention and treatment of drug-related crime issues, with the purpose of elaborating a Project for the Implementation of Drug Treatment Courts (TTC) at the federal level. Also, **Colombia** reported that they are seeking to extend the alternatives available and hence they set up a Technical Support Group that produced a report which contains a catalogue of programs and legal institutions applied by different governments at global level to serve as reference to the Government of Colombia for implementing alternatives to incarceration for drug-related crimes in the different phases of the criminal proceeding.

Even in countries with a long history of providing alternatives to conviction or punishment for people with drug problems in contact with the criminal justice system, the importance of continuing to improve their operation is recognised. For example, in the response to the 2016 NV request, the **UK**

reported that a government initiative is currently underway to provide health and justice pathways across drugs, alcohol and mental health treatment services so that offenders are able to access appropriate health interventions at any point of their journey in the criminal justice system, from police contact through to post release from prison. It is hoped the pathway will provide greater opportunity for offenders, including those with substance misuse issues, to be diverted from charge, court, or custody.

Some countries have undertaken extensive reform of their system to try and improve provision of alternatives. The **Gambia** reported that their Drug Control Act (DCA) 2003 was being completely overhauled in order to bring it in line with international standards of best practice and provide proportionate sentences for all categories; distinguishing sentences for use, dealing and trafficking and making provisions for alternative to incarceration, community services, passing suspended sentences etc. They described how the draft had been reviewed and validated at a workshop sponsored by the UNODC as part of the Economic Community of West African States (ECOWAS) Action Plan support program. National Assembly Members had been engaged and the bill was expected to be presented to Parliament in 2021. The response from **Turkmenistan** described how the country is reforming the national legal framework. This is confirmed by the Resolution of the President “On measures to further improve the legislation of Turkmenistan” dated November 28, 2007, according to which The State Commission for the Improvement of the Legislation of Turkmenistan was formed. Turkmenistan’s foreign policy initiative involves intensifying cooperation and increasing the level of constructive dialogue with foreign partners and international organizations. In this, the issue of the implementation of generally accepted norms of humanitarian law and the recommendations of UN bodies into national legislation is considered important and the Majlis (Parliament) Turkmenistan, when drafting and adopting laws, first of all considers them from the point of view of their compliance with international law in general and international obligations in particular.

Eritrea reported that they had no current alternatives available since drug use in the country has been very low. However, they indicated that discussions are now underway about setting up pilots in the future however, particularly for cannabis users, as there appears to be increasing use among young people in the country.

There are different reasons for the lack of use of alternatives even when they are available. It is important to recognise that establishing alternatives to conviction and punishment is a complex process, sometimes requiring a culture change within the criminal justice system and it can take a considerable period of time. For example, **Myanmar** in their response the 2021 NV request described the law change in 2018, which made alternatives available but also indicated the rules for administering these are still being drafted. In some cases, there is a problem of lack of the relevant infrastructure and resources – there is a need for expertise/institutions for assessment, treatment provision, monitoring and reporting. Another issue is the attitude of the key decisionmakers in the criminal justice system, such as the police, prosecutors, and judges as well as that of the public. Another problem may be that the restrictions within the law on who can be given these alternatives may rule out the people who might benefit from them.

There were a number of examples in the NVs of actions to address these issues, which are discussed below.

4.2.1 Improving knowledge and attitudes towards alternatives to conviction or punishment

A recognised barrier to increased use of alternatives to conviction and punishment is a lack of knowledge of the evidence concerning the value and effectiveness of these measures and negative attitudes towards them among the public and professionals within the criminal justice system. Within the NV responses there were a number of examples of activities that have been undertaken to address these knowledge gaps and improve professional attitudes and buy-in to their use.

Poland described how some amendments to the Act on counteracting drug addiction were made in 2011 aiming to increase the use of alternatives to conviction and punishment that were already available. Firstly, a new Article 70^a imposes an obligation on the prosecutor in the course of preparatory proceedings and the judge in the course of judicial proceedings to collect information on the use of narcotic drugs or psychotropic substances by the suspect. Previously, the prosecutor or the judge was not responsible for collecting such data, which resulted in failure to apply rules regarding educational or therapeutic measures (i.a. Article 72) towards experimenting or dependent users. Other modifications of the rules were also made, which facilitate the process of implementing the treat-rather-than-punish principle concerned Article 72a (suspending proceedings while in treatment) and Article 73a (allowing furloughs in serving the sentence while in treatment). The amendment of the Act was designed to increase the use of the available alternatives and have been successful in doing this.

Brazil reported a range of activities to expand the use of alternatives in their response to the 2016 NV request. They described a project entitled 'Integration of competences in the judicial activities with drug users and dependents' to provide training and capacity building on the topic of alternatives to imprisonment and socio-educational measures to professionals in law, public security, and psychosocial care. They also developed guidelines aimed at expanding use of alternatives to incarceration have been developed in line with the 2016 National Policy on Penal Alternatives: "Postulates, principles and guidelines for the policy of penal alternatives" and the "Manual for the management of penal alternatives. These documents aim to reinforce the principles of dignity and liberty and serve as a guide for the justice system to safeguard the voluntary nature of drug treatment, offering a methodology for referrals that limits compulsory treatment and its negative consequences. They also reported taking action to allow the use of alternatives to incarceration for the crime of drug trafficking through Senate Resolution 5/2012. Finally, they also reported financing Integrated Centres of Penal Alternatives, which are multidisciplinary teams that provide support to the judiciary branch in relation to the application and follow-up of alternatives to incarceration, including those involving drug-related cases.

Similar examples of activities in this area include **Egypt** who also reported that a scientific manual has been drafted and developed for judges and members of the Public Prosecution Office on the application of alternative measures of punishment and legal and practical issues in dealing with drug cases. In addition, interactive workshops were implemented with judges and members of the Public Prosecution Office to build their capacities towards enhancing the role of criminal justice in reducing drug demand in cooperation between (FDCTA) and the human rights sector at the Ministry of Justice and the Public Prosecutor's Office (PPO). In **Canada**, Justice Canada delivers the Drug Treatment Court Funding Program (DTCFP) which is designed to support Drug Treatment Court sites as well as build knowledge and awareness among criminal justice, health and social service practitioners and the general public about drug treatment courts. **Germany** also reported providing training to prosecutors & judges while in **Niger** training sessions have been organised for mental health nurses, psychologists and law enforcement officers in the field of drug abuse management in 2018 and 2019. These trainings were funded by ECOWAS, UNODC, the African Union and the State.

Sudan highlighted the fact that combating drugs is a societal responsibility in the first place, and community participation needs to be fostered through awareness raising through the media, mosques and neighbourhoods, and through the implementation of a peer education program.

4.2.2 Supporting and disseminating good practice

As discussed earlier, treatment as an alternative to conviction or punishment needs to be tailored to national contexts, and in larger countries, also local contexts. Nevertheless, there can be considerable benefits in sharing good practice and experience. Also, while the nature and extent of drug problems may vary within a country, with drug use often concentrated in large urban areas for example, so it

makes sense for some programmes such as drug courts to be sited in these areas, national governments will also wish to ensure equitable access to alternatives nationwide. In the NV responses there were several examples where, in federal states, programmes had been established to support and increase use of alternatives in individual states.

For example, the NV response from the **USA** highlighted the wide range of different alternatives available in many states and a number of networks around different models which may help disseminate good practice. For example, as mentioned earlier the National Association of Drug Court Professionals provides model drug court legislation designed for use within the United States, while more information about establishing drug treatment courts internationally can be found at the web site of the International Association of Drug Treatment Courts. Another example pertains to deflection and pre-arrest diversion. The U.S. Department of Justice has collated and disseminates information on the various approaches that first responders can use to connect individuals to treatment, housing, and other social services. While communities develop deflection or diversion programs tailored to their unique needs and resources that involve hybrid or innovative models, eight U.S. communities have been selected to serve as mentor sites for law enforcement/first responder diversion and referral program mentoring initiatives. In addition, The Police, Treatment, and Community Collaborative (PTACC)³⁵, was formed in the United States as the national voice of the field of deflection and pre-arrest diversion. It is now comprised of 45 national and international organizations. PTACC works to grow and develop the entire field of deflection and diversion, across all five pathways and all approaches to maximize opportunities for communities to implement alternatives to conviction or punishment.

Another form of support that can be important in spreading good practice mentioned by the USA in their response is funding programmes. As an example, they mention that there have been several important federal grant programs have targeted re-entry services and have supported the development of innovative and comprehensive re-entry programs, including those for persons who have behavioural health disorders. Federal grant programmes have facilitated the development of integrated pre-release planning, in-reach services to jails and prisons, re-entry case management, and post-release housing, education, employment, and treatment services.

Australia also has a federal system of government and all states have developed alternatives to conviction and punishment and every state and territory has at least one police-based diversion programme. The development of these has been supported by the National Illicit Drug Diversion Initiative which provides a nationally consistent framework through which police and courts may refer eligible drug offenders towards appropriate assessment, education, or drug treatment. There have also been national evaluations which highlights lessons that may lead to improvements in provision, one of which is discussed below.

Similarly, **Zambia** reported that government agencies and some NGOs are implementing “The National Diversion framework” spearheaded by the Ministry of Community Development and Social Services (MCDSS), which aims at diverting child (aged 8 to 18 years) offenders from the criminal justice system by facilitating restorative measures, which focus on psychosocial counselling and life skills development. This also allows them to receive treatment and care in hospitals and health care centres as well. The implementation of the National Diversion Framework started in 2019. It is being piloted in four districts along the line of the railway, which is the most populated region of the country. The districts are Lusaka, Kitwe, Ndola and Kapirimposhi. This approach has been used for some time, as a measure to help individuals especially novices caught experimenting with drug use. However, the introduction of the National Diversion Framework has accelerated and formalized its implementation. Also, **Zimbabwe** reported that alternatives have been in place for a long time. However, a drug master

³⁵ See <https://ptaccollaborative.org/>

plan framework is now in place for standardisation of treatment procedure relating to drug use disorder, spearheaded by the Ministry of Health and Child Care.

4.2.3 Improving inter-departmental collaboration, particularly between health sectors and the criminal justice system

Delivering alternatives to conviction or punishment generally involves numerous different departments so establishing strong collaborative relationships will be important for success. The responses to the NVs included many examples of different mechanisms for encouraging inter-departmental collaboration often at the national level but also, in some cases, at regional and local levels.

At the highest level, several countries mentioned inter-ministerial meetings as important for improving collaboration, including: **Liberia** (monthly Inter-Ministerial Coordination meetings); **Luxembourg** (an interministerial group on drug addiction, “Groupe Interministeriel Toxicomanies” (GIT), chaired by the National Drug Coordinator, which is the main coordination structure at the interministerial level involved in the set up and evaluation of the national drug strategy and drug action plan; **Tanzania** (the National Drug Control Council, 11 ministers including ministers responsible for legal affairs, home affairs, health and community development, which meets twice a year, principally to oversee implementation of the drug control policy); and the **Philippines** (the Dangerous Drugs Board - members of which are the Secretaries of the Dept of Justice and the Dept of Health and the Director General of the Philippine Drug Enforcement Agency while the Chief of the Philippine National Police and Director of the National Bureau of Investigation are consultants to the Board).

Inter-departmental Task Forces or working groups were also quite frequently reported. It appears these are often created to address particular issues. Examples of these include: the Taskforce on Trafficking in **Liberia**; and meetings of the National Task Force on Drug Trafficking in **Tanzania**.

In large countries, mechanisms for coordination will be needed at several levels, such as national, regional, and local. **Turkey** described a layered structure. Firstly, the Higher Anti-Drug Board (UMYK) under chairmanship of Deputy Prime Minister and containing Ministers of the relevant departments, which meets 6 monthly. Next there is the Anti-Drug Board (UMK), the chair is the Head of the Commission on Health, Family, Labour and Social Affairs of the Grand National Assembly and it also includes deputy undersecretaries of relevant ministries and others, and meets monthly; thirdly, the Anti-Drug Technical Board (UMTK) brings together experts (31 people from relevant ministries and other bodies) to work on technical aspects, and they meet every 2 weeks; Finally there are the Anti-Drug Provincial Coordination Boards, that ensure the activities in the action plans are implemented locally. It is intending that District level boards will also be set up.

In some cases, formal protocols or memoranda of understanding may be used to ensure collaboration between different departments and organisations. For example, **Cyprus** described how the Cyprus National Addictions Authority, the Drug Law Enforcement Unit (DLEU) – Cyprus Police, the State Health Services and the NGO Treatment Centers signed up to the “Protocol of Cooperation for the Referral of Young Offenders from the Drug Law Enforcement Unit – Cyprus Police to Public and NGO Treatment Centers” in 2010. This facilitated collaboration is a selective prevention project that provides an alternative to prosecution for young drug offenders arrested for the first time (in the pre-trial phase). Similarly, in **Italy**, proper functioning of alternative measures requires inter-institutional cooperation between Regions, Health Services, Judiciary and the Supervisory Office of External Criminal Execution. To strengthen this cooperation the Ministry of Justice established memoranda of understanding with the regions, local authorities, and the Courts (particularly the Tribunale di Sorveglianza) to establish, in a more efficient and effective way, what is foreseen in the Italian Constitution with regard to the criminal enforcement’s principles. As a result of the signing of such memoranda, the signatory regions (Abruzzo, Campania, Emilia Romagna, Friuli Venezia Giulia, Lazio,

Liguria, Lombardy, Molise, Piedmont Puglia, Sicily, Tuscany, Umbria) have undertaken steps to enhance the accommodation capacity of therapeutic communities, so as to accommodate drug addicts under house arrest or under alternative measures to detention. This is important for meeting the Ministry of Justice's commitment not to transfer, except in exceptional cases, the detainees suitable for the admission to therapeutic communities and to promote shared projects with the regions and with the local authorities aimed at achieving those objectives.

Tanzania also reported that, when initiating new programmes of treatment, especially when introducing medically assisted treatment of opioid dependence using methadone, they conducted a series of sensitization meetings that brought together high and low ranked law enforcement officials and health care providers. The meetings focused on increasing access for people who use drugs into drug dependence treatment without any harassment, stigma or discrimination. Such joint training can be very valuable for improving collaboration.

4.2.4 The importance of monitoring and evaluation

The NV responses indicated that in many countries there were no statistics available on the extent to which alternatives to conviction and punishment were being used and whether they were successful. This information is important for improving provision. Many countries do have statistics on the numbers of people charged with drug offences, which are often a significant contributor to the numbers of people in prison.

Global estimates of the number of people in the criminal justice system for drug offences from the World Drug Report 2020³⁶ demonstrate the huge burden on the criminal justice system caused by these offences. They also shed light on how much relate to the drug use or possession for personal use offences (Figure 2). These estimates indicate that over 3 million people are arrested for drug offences of which almost 2 million (61%) are arrested for personal possession related offences. About half this number, 1.6 million, are convicted for drug offences, over half of which are related to drug possession for personal use and there are 2.5 million people sentenced for drug offences in prison including almost half a million people imprisoned for drug use-related offences. It is noteworthy that a higher proportion of women (35%) than men (19 %) are in prison for drug-related offences.³⁷ These figures suggest that alternatives to conviction or punishment are having some impact on the numbers of people being convicted and imprisoned for low level drug offences but also that there are still many who do not benefit from these measures, which also are often not gender-responsive.

As indicated above, several countries in their responses to the NVs indicated that available alternative measures were rarely used. For example, **Algeria** reported that the number of drug possession and consumption cases registered at the level of judicial authorities during the year 2019 was 25,974. However, the number of cases undergoing treatment by order of investigative judge in 2019 was one and the number exempt from punishment after completing treatment was three. Such statistics can provide a baseline for evaluating efforts to improve use of treatment alternatives and can also be useful evidence of importance of taking action to address the issue. Some other countries reported on the outcomes of monitoring and/or evaluation activities and these illustrate the importance of these activities in ensuring the alternatives are used and are successful, and also provide insights into how they can be improved.

As highlighted in section 3.2.2 above, in **Australia**, alternatives to conviction and punishment are widely used and have been positively evaluated, but there are variations between states. Information

³⁶ World Drug Report 2020 (United Nations publication, Sales No. E.20.XI.6).

³⁷ World Drug Report 2018.

from the Australian Crime Commission³⁸ showed that, in 2012–13, police diversion for cannabis applied to at least 65% of all illicit drug arrests in South Australia, 40% in the Northern Territory, 21% in the Australian Capital Territory, and 12% in Western Australia. Importantly, analysis of these data allowed them to highlight some key issues for diversion policy, such as the varying treatment needs of clients in different diversion programmes and ethnic disparities in the application of diversion alternatives, to assist in the improvement and appropriate targeting of these provisions.

The response from **Cabo Verde**, which was largely about prison treatment provision, described how monitoring and evaluation are carried out by Commission for the Coordination of Alcohol and other Drugs (CCAD). They send monthly data on the entry and exit of inmates from the drug treatment services, the out-patient Psychosocial Support Space (EAP) and the residential Drug Free Unit (ULD). These reports include the profile of the beneficiaries, the type of drugs, the age group, the drugs consumed, among others.

In **Canada**, a Summative Evaluation of DTC sites funded through the Drug Treatment Court Funding Program between (December 2004 to March 2009) was completed in March 2009 and found strong support for the Drug Treatment Court Funding Program model among criminal justice professionals, addictions specialists, and community or government organizations. The 2015 Drug Treatment Court Funding Program Evaluation confirmed the effectiveness of DTCs in reducing recidivism.

As discussed in section 4.3.1, **Poland** made some changes to their Act on countering drug addiction to try and increase the use of alternatives to conviction and punishment. Following this, the analyses of the available data showed noticeable trends in the structure of convictions in the field of drug possession crimes despite a relatively short time that elapsed since the changes were introduced. The data from the Ministry of Justice showed that out of all drug possession cases in 2012, 30% were discontinued, conditionally discontinued or the suspects were acquitted by the prosecution or courts. In 2013, this percentage rose to 34%. Moreover, the analysis of the cases dropped by the prosecution indicates a clear rise in the absolute numbers. In 2011, not a single case of this sort was entered in the statistics. In 2012, there were 2,154 such cases and in 2013 the number rose to 3,132. Changes in the structure of judicial decisions are also evidenced by the data for the first half of 2013 when compared with the previous years. There is a slow but steady fall in the number of convictions in relation to drug possession under the provisions of the Act on counteracting drug addiction with a simultaneous rise in the number of discontinuances and conditional discontinuances both at the level of courts and prosecutor's offices. Data from the Ministry of Justice also showed positive trends in the application of probationary measures, with the number of probationary measures ordered by district courts increasing, which was one of the aims of the amendment of the Act.

The response from the **USA** included a lot of information on the numbers of individuals going through different types of programmes as well as highlighting the outcomes of evaluations, in particular in relation to special courts. This information has been provided earlier where these types of intervention have been described. In summary, they reported that drug treatment courts (also known as "treatment courts" or "drug courts") courts achieve up to 58% reductions in recidivism. These reductions are particularly noteworthy since these courts are designed to provide court-supervised treatment for individuals at high risk for failure under regular probation. These evaluations highlight the value of providing a range of alternatives that are matched to different groups of people who have different levels/types of drug use problems.

Romania described making several changes to procedures in order to monitor and improve the assessment of drug users in the Centres for anti-drug prevention, assessment and counselling which enabled centralised quarterly collection of specific indicators. This allowed them to better understand the geographical spread of assessment requests which highlighted the fact that much the highest rate

³⁸ Australian Crime Commission (2014). Illicit drug data report 2012–13. Canberra: ACC p.230.

was reported by Bucharest Municipality. As a result, in order to provide more efficient and harmonised drug user assessment activities and to ensure continuity of the integrated assistance programmes in Bucharest, from August 2014, Bucharest Municipality has been implementing the Single Program for the Evaluation of drug users. The territorial scope of this programme covers Bucharest Municipality and 5 neighbouring counties. The data also allows an assessment of trends and it showed that in 2020 the Directorate for the Investigation of Organized Crime and Terrorism Offences (DIICOT) issued 3124 evaluation ordinances for drug users (1394 in Bucharest and 1730 in the rest of the country), which was an increase of 12.98%, at national level, compared to the year 2019. The evaluation ordinances issued in Bucharest registered a slight decrease.

As discussed earlier in the report, several countries described piloting alternatives to conviction or punishment, which is good practice, and allows the approach to be tested and amended as necessary before rolling it out more widely. However, these pilots do need to be properly resourced, and time must be allowed for the lessons from the evaluation to be learned before rolling the approach out. Unfortunately, programmes can get stuck in the pilot stage due to lack of resources for roll out.

4.2.5 Screening and assessment processes and monitoring of compliance/progress

For alternatives to conviction or punishment to be successful it is important that individuals are appropriately matched to the appropriate educational/treatment/rehabilitation programmes. The processes for screening and assessment are therefore central to the establishment of such alternatives. As these programmes can be lengthy monitoring of progress and compliance is also very important. The NV responses highlighted a variety of models for these processes.

Several countries, mostly from Europe, highlighted the important role of probation services in these functions. The response from the **Netherlands** described the probation service as a continuous and stable factor in the whole criminal justice process, not only for the justice system (public prosecutors, courts, prisons etc.), but also for the offenders³⁹. An offender is assigned to the probation organization that can provide him or her with the most added value. In every court district, the Probation Services have a shared service point, where all new clients are distributed over the three probation agencies. Allocation criteria include the characteristics of the case, e.g. is there problematic behaviour in relation to addiction and is there a relationship between the offence and addiction? If so, the offender is then assigned to the Addiction Probation Service (SVG). This holds for about 20% of all offenders. Other countries who reported that the probation service have responsibility for these processes include **Albania, Belgium, Bulgaria, Croatia, Czechia, Italy** (Uffici di Esecuzione Penale Esterna – Parole Offices).

In other countries, the judiciary were commonly involved in requesting assessments and monitoring progress and compliance. This was the case in **Algeria, China** (People's Court), **Ecuador** (Judges of Criminal/Penitentiary Guarantees), **Morocco** (Royal Prosecutor), **Nicaragua** (Judge for the Execution of the Sentence and Penitentiary Surveillance), **Sierra Leone** (the Court). In these cases, the assessments were generally done by medical specialists or special bodies established for this purpose.

In **El Salvador** the Department of Testing and Assisted Freedom of the Supreme Court (DPLA) has been established to oversee alternative measures generally, not just for drug offenders. In the **Russian Federation** the Criminal Enforcement Inspectorate appears to have a similar role. In other countries multi-disciplinary bodies have been established to administer therapeutic alternatives. For example, in **Lebanon**, an addiction committee (a multi-disciplinary body in the Ministry of Justice headed by a judge with representatives from the Ministry of Public Health, Ministry of Interior, Ministry of Social

³⁹ For a description of the different stages of the Criminal Justice Process see the publication 'Probation in Europe The Netherlands', chapter 5 (<https://www.cep-probation.org/knowledgebases/netherlands/>)

Affairs, and NGOs) refers subjects to specialised centres for required tests and the treatment of physical dependence followed by psychosocial interventional treatment. In addition, a person using drugs has a right to be assigned a social assistant from the Ministry of Social Affairs to evaluate their socioeconomic and living situation to identify needs and provide support if necessary. In **Portugal**, the Drug Addiction Dissuasion Commissions (CDT's), have been especially created outside of the criminal justice system to handle cases of drug use and possession for personal use. The Dissuasion Commissions were established in 2001 in each capital of district (18) and in the Autonomous Regions of Madeira e Azores. CDT's hear all the offenders, found in possession or use of drugs, whether in a public place, in prison, or being judge by other crimes. The Commissions comprise three members, one of which shall serve as chairman. One of the members of the Commission is a legal expert appointed by the Ministry of Justice, and the Minister of Health appoints the other two, who shall be chosen from doctors, psychologists, sociologists, social services workers or others with appropriate professional expertise in the field of drug addiction. There is also a multidisciplinary technical unit, 3 to 5 experts – psychologists, social service workers, lawyers and administrative workers – that prepare all the facts and made a previous evaluation to support the Commission's decision. In **Cyprus**, a committee has been established, which consists of a representative of the Attorney General, a Psychiatrist of the Mental Health Services of Ministry of Health and a health professional with 5 years practice in drug use disorder treatment.

Examples of bodies or institutions that undertake the assessment of individuals to ascertain their level of drug use disorder include the Addictive Behaviours Unit in **Andorra**, the Psychiatric Commission in **Armenia**, Treatment Assessment Panels in **Bhutan** and **Sierra Leone**.

In the **USA**, the Center for Court Innovation has pioneered several centralized screening and referral models in New York and New Jersey, including Newark Community Solutions, Bronx Community Solutions, Brooklyn Justice Initiatives, and Manhattan Justice Opportunities. These programs operate within or adjacent to large courthouses, screening court-involved individuals to identify their needs, creating individualized case plans, referring participants to community-based services, and often providing on-site services as well. These programs give courts options other than jail and fines and help tens of thousands of individuals get the help they need in the community.

4.2.6 Ensuring adequate provision of appropriate educational or treatment and rehabilitation programmes

For alternatives to conviction or punishment for people with drug problems in contact with the criminal justice system to be successful, a range of educational, treatment and rehabilitation options need to be available appropriate to the different types or levels of use among these individuals. However, a number of countries responding to the NVs indicated that insufficient treatment availability limits their ability to implement alternatives.

Gambia reported that the lack of a specialised drug treatment facility in the Gambia to treat SUD limits their ability to implement alternatives to conviction and punishment. In **Italy** the numbers receiving alternatives has remained stable despite efforts to increase use and they suggest that capacity in treatment services, particularly therapeutic community places, is potentially part of the reason for this. The response from **Sudan** reported great scarcity in care and treatment centres, the costs of treatment for the individual are very expensive, and the governmental centres and measures are weak. Similarly, **Madagascar** reported that people dependent on drugs must pay for their treatment without subsidy, their socio-professional rehabilitation is precarious or does not even exist and this is the cause of recidivism. Where people have to pay for their treatment this is likely to limit the numbers who can benefit from it. **Liberia** also indicated a need for more capacity especially in psychosocial treatments.

While individuals with drug use disorders will require treatment services other groups who are only occasional or experimental users require other types of provision. This will apply to many young people but potentially to other groups, such as those charged with driving under the influence.

In **Belgium**, the police court can refer people charged with driving under the influence of drugs to the VIAS Institute. VIAS provides special courses in the framework of alternatives to prison in order to make the offender aware of his or her behaviour and the related consequences.

Examples of special programmes for people sentenced to alternative measures include the CHOICE and CHOICE 18+ programmes for young cannabis users in **Luxembourg**, described in section 3.1.1 above. Also, Spain described a drug dependency awareness programme, "Count on you". This is a treatment programme for people sentenced to alternative measures, specifically for people sentenced to community service, who present problems of misuse of prohibited substances. This psycho-educational intervention, developed by the General Secretariat of Penitentiary Institutions, aims to reinforce awareness and changes in attitude on the part of people with psychoactive substance abuse problems with the goal of preventing the person sentenced to this alternative measure from coming back into contact with the penal system and using drugs. The operational objectives of the programme are: the improvement of social skills and the reduction of positive attitudes towards drug use. The programme is based on an integral concept of health: "Prevention begins with my health, I have to take care of myself in order to take care of my environment". It works from the particular to the global. The programme is composed of 21 sessions (details of the content of the sessions provided in the Spanish pdf). **Togo** reported that, when passing through law enforcement agencies, people with substance use disorders generally benefit from information sessions on their health and national legislation on drugs. They have been experimenting with the use of awareness-raising, and the Screening, Brief Intervention and Referral to Treatment approach (SBIRT) since 2010 and they may be offered other services such as individual counselling, educational chats, guidance, family mediation, motivational sessions, and psychological support is provided for parents. However, it should be noted that this activity is not yet well structured and formalised and is currently only available in the capital, Lomé.

Another important type of provision for successful alternative measures is social reintegration services. Although generally not covered in detail it was mentioned in passing by many countries.

There was little explicit information in the NV responses on the providers of services, and there may be an expectation that many of the services will be provided by the government. Nevertheless, in some countries NGOs may play a role. For example, **Spain** described a programme "Implementation of alternatives to sentencing for drug-related offences through intervention programmes in courts and tribunals". These programmes are being successfully implemented by a non-governmental organisation called SIAD (Asociación Servicio Interdisciplinar de Atención a las Drogodependencias (SIAD)), a non-profit association, founded in 1987, which intervenes in all social fields, mainly in the legal-penitentiary field. The programmes consist of multidisciplinary teams that attend to people who use drugs with legal problems, advising them and professionals of the care network on legal issues and judicial operators on issues related to drug use disorders.

Quality Assurance and consistency in provision also needs to be considered although it was not specified in the NV requests. However, **Turkey** reported that they have developed a standardised implementation manual (SAMBA – tobacco, alcohol & drug intervention programme), cognitive behavioural therapies as well as motivational interviews have been applied the psychologists and psychiatrists working in the probation units of hospitals in Turkey. Moreover, in order to implement laboratory services effectively, a standardized implementation manual is used.

5 A discussion of key principles for the provision of alternatives to conviction or punishment for people with drug use disorders in contact with the criminal justice system in the context of the NV responses

The UNODC-WHO (2019) publication on alternatives to conviction or punishment highlights some key questions to consider when reviewing or considering establishing such alternatives: (a) What offences are eligible for an alternative to conviction or punishment, in line with the international legal framework? (b) What principles and guidelines are enshrined in the different legal instruments concerning the treatment of persons with drug use disorders in contact with the criminal justice system? (c) How can the international legal framework be implemented in the domestic legal framework of specific countries? It also describes seven fundamental principles concerning the treatment of persons with drug use disorders in contact with the criminal justice system.

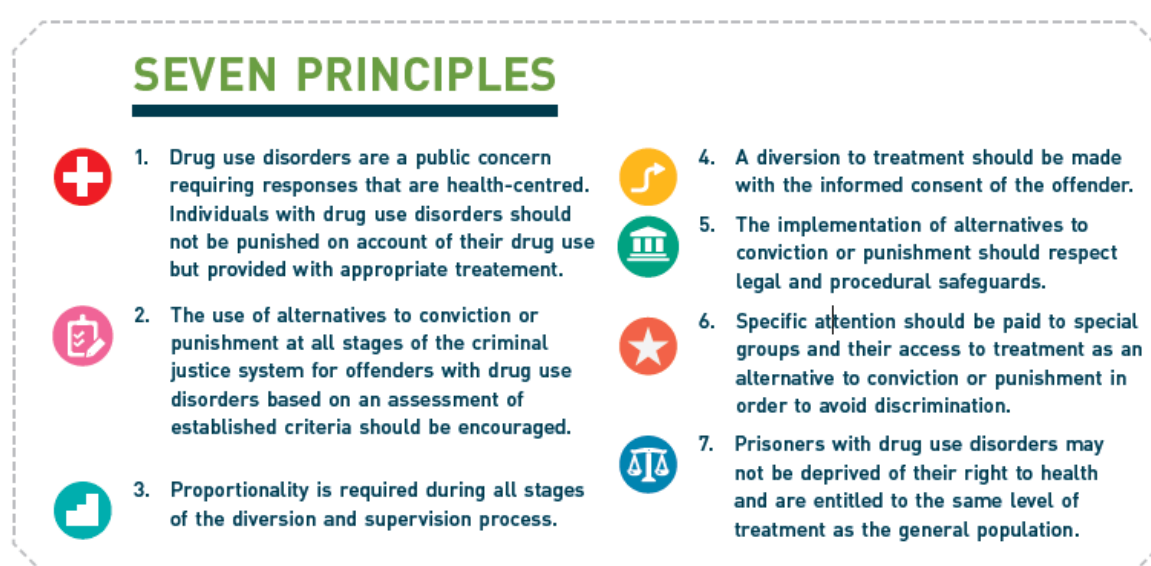


Figure 8: UNODC-WHO seven principles of treatment and care for people with drug use disorders in contact with the criminal justice system: alternatives to conviction or punishment

While countries were not asked to address the key principles highlighted in the UNODC-WHO publication directly, some of the responses to the NVs reported on here provide some insight into these areas and highlighted numerous important implementation issues which may be useful for people establishing or reviewing their provision of alternatives to conviction or punishment for people in the criminal justice system for drug offences or who have drug use disorder. Many of these examples have been included earlier in the sections of types of alternatives available but here they are brought together to highlight key issues when establishing alternatives to conviction or punishment.

5.1 Application of key principles

Principle 1: Drug use disorders are a public health concern requiring responses that are health-centred. Individuals should not be punished for their drug use disorder but provided with appropriate treatment.

It is clear from the responses received that there is widespread recognition of the need to take a therapeutic approach in dealing with people with drug use disorder in the criminal justice system and support for establishing alternatives to conviction and punishment, as highlighted in the UNGASS 2016 Outcome Document⁴⁰. As described above, the majority of respondents already have provision for some type of alternative in their legislative framework.

One very clear example of this approach cited earlier is in **Austria**, where the principle "therapy instead of punishment" has been codified within their drug law, the Narcotic and Psychotropic Substances Act (Suchtmittelgesetz, BGBl. I Nr. 112/1997, SMG) and the provision of alternatives to punishment to law breaking drug users has been a cornerstone of Austria's drug policy for decades. They highlighted how their health-led approach increases the efficiency of health-related measures by preventing the establishment of potentially risky consumptive patterns and the development of drug dependence at an early stage.

There was also welcome evidence from the NVs that even in countries that reported that they have no alternatives currently available these may be under consideration.

Principle 2: The use of alternatives to conviction or punishment at all stages of the criminal justice system for offenders with drug use disorders based on an assessment of established criteria should be encouraged.

Some countries have been using such alternatives for many years and they have been shown to be effective and as a result have expanded. In their responses to the NVs, nine countries described alternatives available at all stages across the criminal justice continuum. Several of these highlighted the value of diversion at the earliest possible stage, with pre-arrest alternatives being important for prevention of escalation of both drug use and offending behaviour. However, the responses received and evidence from evaluations shows that having diverse opportunities for diversion allows the needs of a greater number and types of offenders to benefit from these programmes making the criminal justice system more efficient.

Principle 3: Proportionality is required at all stages of the process⁴¹.

Many responses to the NVs highlighted the importance of the principle of proportionality, including the notion that the severity of a potential punishment or the consideration of alternatives should be in proportion to the seriousness of the offence, within the criminal justice process. In some countries, the principle of proportionality is codified in the Penal Law as the main or a key principle of sentencing, as there needs to be a proportion between the severity of the offence and the sentence. The availability of alternative measures to conviction or punishment for people who use drugs or have a drug disorder in contact with the criminal justice system at the various stages of the criminal justice system are an important mechanism to comply with the principle of proportionality.

For many countries a starting point is focusing alternatives from the criminal justice system on minor drug offences such as drug use and cannabis use in particular. As a legal principle, the reaction to an offence committed by a person using drugs must be proportional to the harm it aims to prevent. As long as a person remains simply a user, the legal response should remain minimal (is any) as long as public order is not greatly disturbed, and health and social services should be made available and

⁴⁰ UNODC (2016): Outcome Document of the 2016 United Nations General Assembly Special Session on the World Drug Problem. Available at: <https://www.unodc.org/documents/postungass2016/outcome/V1603301-E.pdf>

⁴¹ See Kyoto Declaration, which addresses the issue of proportionality in national sentencing policies in para. 50: "Promote national sentencing policies, practices or guidelines for the treatment of offenders in which the severity of penalties for offenders is proportionate to the gravity of offences in accordance with national legislation"
https://www.unodc.org/documents/commissions/Congress/21-02815_Kyoto_Declaration_ebook_rev_cover.pdf

accessible as needed. However, if the person using drugs causes harm to others, the response will need to reflect the impact of the offence and the level of need as well. Some countries have attempted to achieve this by specifying different levels of drug trafficking or supply or by setting a quantity threshold for distinguishing possession for personal use. This means that the increase in the scale of trafficking is associated with longer sentences, whereas lower-level offences, possession for personal use and minimum and medium level trafficking are eligible for alternatives to conviction or punishment.

The 2019 UNODC-WHO handbook⁴² indicates that proportionality should also guide the response to non-compliance or breaches of conditions attaching to alternatives to conviction or punishment. The failure of an alternative measure (for example, when breaching the treatment conditions) should not automatically lead to the imposition of a custodial measure. There was less evidence of this sort of proportionality in the NV responses reported on here with a custodial option being often used in event of a failure to adhere to treatment conditions and in some cases refusal to participate in treatment options being a crime in itself. However, there were also some examples that allow for relapse and failure by adjusting the alternative provision rather than moving to more punitive measures such as custodial measures. This tailoring of responses to the needs of individuals can be important for alternative measures to be successful.

Principle 4: A diversion to treatment should be made with the informed consent of the offender.

In general, no treatment should be given to a patient without his or her informed consent, and nobody should be compelled to undergo medical treatment against his or her will.⁴³ This has also been discussed in the UNODC paper “From coercion to cohesion – Treating drug use disorders through healthcare, not punishment”⁴⁴ and UNODC and partner agencies have called for closing of compulsory and rehabilitation centres, where people suspected of using drugs are detained, without due process, in the name of treatment or rehabilitation.⁴⁵ In line with the Tokyo Rule 3.4, non-custodial measures imposing an obligation on the offender, applied before or instead of formal proceedings or trial, shall require the offender's consent, in the light of the presumption of innocence that applies to non-convicted offenders.

Providing access to treatment as part of alternatives to conviction or punishment can be essential to fulfil the right to health of offenders with drug use disorders in need of treatment or care. Judicial pressure may be effective for people in contact with the criminal justice system to consider starting treatment, but like any other medical intervention it should not be compulsory. Even if considered a “quasi-compulsory” referral, with starting treatment made a condition by the justice system for the consideration of alternatives to conviction or punishment, individuals should still have the right not to choose treatment. Offenders with drug use disorder should be able to choose between accepting treatment and care or facing criminal or administrative consequences and be aware of the legal consequences of opting out of treatment under such circumstances.

In their NV responses, several countries described compulsory or mandatory treatment as alternatives to conviction or punishment, which would not be in line with the Tokyo Rules to the extent that they

⁴² UNODC/WHO (2019). Treatment and care for people with drug use disorders in contact with the criminal justice system: Alternatives to conviction or punishment. Available at: https://www.unodc.org/documents/drug-prevention-and-treatment/UNODC_WHO_Alternatives.pdf

⁴³ See, for example, General Assembly resolution 46/119 (1991): Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care, principle 11.

⁴⁴ UNODC (2010): From coercion to cohesion. Treating drug dependence through health care, not punishment. Available at: https://www.unodc.org/docs/treatment/Coercion_Ebook.pdf

⁴⁵ UNODC, WHO, UNAIDS AND OHCHR (2020): Joint Statement on Covid-19 in Prisons and other Closed Settings. Available at: https://www.unodc.org/documents/Advocacy-Section/20200513_PS_covid-prisons_en.pdf

involve institutional treatment or care and would not be in line with the International Standards for the Treatment of Drug Use Disorders⁴⁶ if the clinical intervention is not evidence-based or provided without informed consent. However, such measures exist on a continuum, and it is not clear whether those reported are truly compulsory, or whether they are quasi-coercive or quasi-compulsory interventions – ‘hard choices’ – which are acceptable and have been shown to be effective. Some of these have been included in this report because of this uncertainty but it is an important principle for alternatives that they should be voluntary. Treatment offered always needs to be evidence-based to be effective.

Principle 5: The implementation of alternatives to conviction or punishment should respect legal and procedural safeguards.

While some NV responses made mention of considerations of human rights and, for example on occasion mention ensuring that participation in an alternative programme did not extend the sentence period, there was not a large amount of consideration of these issues in the responses. It is important that any alternative measures put in place, including those that result in diversion from the criminal justice system, have appropriate safeguards and oversight built into them to prevent abuse.

Principle 6. Specific attention to special groups and their access to treatment as an alternative to conviction or punishment is required to avoid discrimination.

The vast majority of people with drug use problems in contact with the criminal justice system are young men. It is therefore perhaps unsurprising in responses to a general request for information that there was only limited information provided in the NV responses relevant to the need to provide special attention to the needs of women or special groups to avoid discrimination.

Quite a few countries described specific responses for young people, particularly alternative provision seeking to divert young people from the criminal justice system, which is very important because of the damage that involvement in the criminal justice system be done to the life chances of children in conflict with the law. A much smaller number mentioned specific provision for women with drug use disorder, and these were not always specific to the criminal justice system. As mentioned previously, it is important to develop programmes tailored to the specific needs of women in the criminal justice system despite their comparatively small numbers, as a higher proportion of women (35%) than men (19 %) are in prison for drug-related offences.⁴⁷ Effective rehabilitation of women with drug use disorders requires gender-responsive care, with a greater focus on emotional well-being, community and family.

The NV responses received contain very little reference to ethnicity, whether the need for ethnically appropriate therapeutic programmes or ethnic disparities in receipt of alternatives to conviction or punishment. This would therefore appear to be an area deserving of more attention in data collection and analysis as in many countries there are disparities in criminal justice experiences and outcomes for people in different ethnic groups due to factors both internal and external to the criminal justice system, such as poverty, unequal opportunities available in the society, or policies that have a disparate impact on minority communities and individuals.

While addressing racial inequalities need to be addressed in a holistic and comprehensive manner, alternative justice processes may be a useful complementary tool for addressing these issues and there may be potential to harness cultural practices in community resolution processes as in New Zealand with the restorative community panel process called Te Pae Oranga and in the Tribal healing

⁴⁶ https://www.unodc.org/documents/drug-prevention-and-treatment/UNODC-WHO_International_Standards_Treatment_Drug_Use_Disorders_April_2020.pdf

⁴⁷ World Drug Report 2018

to wellness courts in the USA. There may be value in other countries incorporating traditional culturally appropriate approaches to justice in alternatives to conviction and punishment.

Principle 7. Prisoners with drug use disorders may not be deprived of their right to health and are entitled to the same level of treatment as the general population.

As the treatment for people with drug use disorders in prison has been the subject of another paper,⁴⁸ this report focuses on treatment as an alternative to conviction, punishment and imprisonment. Nevertheless, many of the NV responses reported on here referenced this general principle.

⁴⁸ E/CN.7/2022/CRP.9 UNODC (2022): Treatment of Drug Use Disorders and Associated Mental Health Disorders in Prison Settings and Forensic Hospitals. Available at: https://www.unodc.org/documents/drug-prevention-and-treatment/UNODC_TX_in_Prisons_March22.pdf

6 Conclusions

In general, there was high level agreement reported by Member States on the need for alternatives to conviction or punishment in the responses to the NVs. Many countries already have legal provision for these to be applied to people with drug use disorder in contact with the criminal justice system and in some cases they have them at all stages in the criminal justice process (and even a range of different types of measures available at each stage).

Nevertheless, despite the high level of policy commitments, the realities of implementing alternative options are striking; some countries reported having no alternatives available, and others have legal provision for alternatives that are never or rarely used. This may be a reflection of wider issues around the overall availability of treatment for drug use disorders. According to the 2021 UNODC World Drug Report,⁴⁹ only 1 in 8 persons with a drug use disorder has access to treatment. This is a challenge that needs to be addressed jointly with developing the legal framework and the implementation of alternatives to conviction or punishment for people with drug use disorders in contact with the criminal justice system.

Alternatives can be challenging to establish as it is essential to have the infrastructure and trained human resources for evidence-based assessment, treatment, supervision, and other health and social support available and they should be evaluated to demonstrate their effectiveness and positive health, social and justice outcomes. Alternative measures also need to be designed so that those who should benefit from them are legally eligible – making the criteria for who can qualify overly complex and prescriptive can make alternatives difficult to be applied in practice. Also, both professionals and the public need to be supportive of the approach if it is to be successful so programmes need to be developed to ensure they have the information and knowledge and see the benefits of providing health services and other effective alternatives to conviction or punishment for people who use drugs in contact with the criminal justice system.

The establishment of networks and mentoring programmes for the sharing of good practice and experience of implementing alternative measures can be helpful for those setting alternatives up. Some are already in existence.

There is a wide variety of options for providing alternatives to conviction or punishment for people with drug problems in contact with the criminal justice system. Ideally, alternative measures available at all stages of the criminal justice system need to be appropriately tailored to different groups. Despite the availability of alternatives to conviction or punishment for people who use drugs and with drug use disorders in all regions, there is still relatively little information on their accessibility, implementation and impact in most places – more monitoring and evaluation is needed to ensure the alternatives are used and are successful. Taking an incremental approach to monitoring and evaluating to allow for changes is important for making them work in the national context.

In summary, there is a need to build on the existing policy consensus and the interest expressed by Member States in their NV responses summarized in this paper. At the same time, legal framework and drug use disorder treatment infrastructure along a continuum of care and in line with the International Standards for the Treatment of Drug Use Disorders must be developed. Such efforts need to be incrementally monitored and evaluated to contribute to a growing body of evidence, including from low- and middle-income countries, on the individual and community benefits of providing treatment of drug use disorders as an alternative to conviction or punishment for those in need.

⁴⁹ UNODC (2021): World Drug Report 2021 Global Overview: Drug Demand. Available at: https://www.unodc.org/res/wdr2021/field/WDR21_Booklet_2.pdf