

# Changing the Narrative

## Fair trials for People Who Use Drugs (PWUD)

A legal practice primer for defence lawyers

| For whom                                                                                                                         | How to use this                                                                                                                                      | Jurisdiction and adaptation                                                                                                                                                                                                                                                                 |
|----------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Practising defence lawyers, legal aid providers, CSOs and bar association members working with people who use drugs across Asia. | Work through sections in sequence or move to the stage most relevant to your case. Each section contains tools and draft language for immediate use. | This is a generic resource. Before applying any strategy, legal framework, verify your domestic drug scheduling, health policy provisions, sentencing guidelines, and prosecutorial discretion policies. International standards support domestic authority; they do not substitute for it. |

## Who are people who use drugs (PWUD) and why it matters in law

The International Drug Policy Consortium and UNAIDS define people who use drugs as individuals who use any psychoactive substance, whether licit or illicit, covering recreational use, problematic use, and drug dependence recognised as a health condition under the World Health Organization's International Classification of Diseases, Eleventh Revision, code 6C4. In Asia, this population includes people who inject drugs and face HIV risk 35 times higher than the general population (UNODC 2024), women who progress to dependency faster and are significantly underserved by both treatment systems and legal aid providers, landmine survivors managing chronic pain, trauma survivors, people in conflict affected settings, and individuals caught in punitive systems that have never offered a health-based pathway. Poverty and structural inequality are not incidental to drug use in these contexts they are among its principal drivers, and a lawyer who understands who their client is, and who refuses the reductive label, changes what is possible in court.

### Scope of this primer

This primer makes no moral judgement about drug use in any form. It focuses on people who use drugs facing criminal proceedings, with particular attention to those experiencing dependency, poverty, trauma, or other compounding vulnerabilities. Where a client uses drugs recreationally and without dependency, the clinical framing sections will not apply in the same way, but the fair trial principles, language guidance, and advocacy strategies remain fully relevant.

### The gender dimension

Women who use drugs are more likely to have experienced sexual violence, intimate partner violence, or childhood trauma, and are more likely to be sole caregivers. Stigma for women is compounded by

judgements about motherhood and respectability. Courts are required under the Convention on the Elimination of All Forms of Discrimination Against Women and under domestic equality provisions to consider these intersecting disadvantages. The United Nations Bangkok Rules on the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders apply directly to this population: they require courts to give preference to non-custodial measures for women, particularly primary caregivers and women with histories of abuse, and to consider these factors at sentencing and when reviewing pre-trial detention. Each one belongs in the mitigation bundle.

#### Sample language: sentencing submissions involving women who use drugs

*"My client is a woman who has used drugs in the context of [domestic violence / poverty / loss / trauma]. She is the sole carer of [number] children aged [ages]. Her drug use began following [circumstances] and she has received no treatment or support during this period. The court is invited to consider her circumstances under Article 14 of the International Covenant on Civil and Political Rights, the Bangkok Rules on the Treatment of Women Prisoners, and [domestic equality provision], each of which requires an individualised and gender-sensitive assessment before any sentence is imposed."*

### Poverty, inequality and structural context

Drug use among criminalised populations in Asia is inseparable from poverty, displacement, and structural exclusion. Courts across Asia are receptive to social background reports, adverse childhood experience evidence, and socioeconomic context as mitigating factors. The argument is not that poverty excuses criminal conduct. It is that proportionate sentencing requires the court to understand the whole person before it, and that a custodial sentence imposed on someone whose dependency was produced by poverty, trauma, and structural neglect serves no public interest that a community-based alternative would not serve better.

## 1. Why language matters in law

Labels carry legal weight. The language a lawyer uses in a submission, a bail application, or before a judge shapes how the court frames the issue: as a crime to be punished or a health condition to be addressed. Person-first, rights-affirming language is not merely a courtesy. It is the foundation of a different legal argument, and it belongs in every document, every submission, and every exchange in court.

### Terms used in courts that carry stigma into the legal record

The list below is drawn from documented practice across criminal courts in Asia. It is not exhaustive. The language in the left column is not simply impolite. It frames the person before the court as a moral failure rather than a human being with a health condition, and that framing affects outcomes.

| Avoid: carries stigma into the legal record | Use instead: grounded in health, rights, and clinical evidence |
|---------------------------------------------|----------------------------------------------------------------|
| Addict, junkie, druggie, crackhead          | Person who uses drugs                                          |
| Drug abuser, substance abuser               | Person with drug dependence, person experiencing               |



| Avoid: carries stigma into the legal record                        | Use instead: grounded in health, rights, and clinical evidence                                                                         |
|--------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------|
|                                                                    | dependency                                                                                                                             |
| <b>Drug menace, social evil, social pest</b>                       | Person charged with a drug-related offence                                                                                             |
| <b>Moral failure, weak-willed, lacking character</b>               | Person with a health condition affecting behaviour                                                                                     |
| <b>Clean (meaning drug-free), habit (meaning dependency)</b>       | Drug-free, in recovery, abstinent; drug dependence, substance use disorder (WHO ICD-11 6C4)                                            |
| <b>Criminal, offender, felon, convict, ex-convict</b>              | Client, person charged, person in proceedings, person with a prior conviction                                                          |
| <b>Drug seeker, non-compliant, difficult, degenerate, deviant</b>  | Person seeking pain management, person experiencing withdrawal, person whose circumstances this court has not yet heard                |
| <b>Victim of their own choices, hopeless case, reformed addict</b> | Person whose dependency developed in [specific circumstances], person who has not yet accessed appropriate support, person in recovery |

### How to change language in court without antagonising the bench

Do not correct the court directly. Open your first submission by establishing the WHO ICD-11 clinical framing and use it as the reference point for every subsequent exchange. When dehumanising terms appear, formally request that the record reflect rights-affirming language, citing the clinical classification and your domestic health policy. A judge who resists a direct correction will often accept a clinical reframing presented as the medically accurate description. Where a judicial officer resists, note for the record the language your client requests, continue, and return to the clinical framing at the next opportunity. The accumulation of those requests across cases is itself a form of advocacy.

### Sample language: clinical framing in the first written submission

*"Drug dependence is classified under the WHO International Classification of Diseases, Eleventh Revision, as a recognised health condition with established neurological and psychosocial dimensions. [Country]'s [national health policy] reflects this classification. The defence invites this court to apply an individualised, evidence-based assessment as it would in any case involving a chronic health condition affecting behaviour. Courts are required under Article 14 of the International Covenant on Civil and Political Rights and domestic sentencing principles to consider proportionality and individual circumstances, including health status."*

### Sample language: when a stigmatising term appears in a prosecution document

*"At paragraph [X] of the prosecution submissions, the defendant is described as [term]. This characterisation is inconsistent with the WHO ICD-11, which classifies drug dependence as a recognised health condition. The defence formally objects and*

*requests that the court record reflect the clinically accurate description: person with drug dependence. The defence reserves its position on the impact of this characterisation on the fairness of these proceedings."*

## When the courts resist: what a lawyer can do

Resistance to language change takes several forms. Judges use stigmatising terms without awareness. Prosecutors frame submissions around moral failure. Police affidavits describe clients as degenerates. The lawyer's role is not to accept this as the baseline but to shift it, case by case.

| Situation                                              | What to do                                                                                                              | What to say or file                                                                                                                                                                                                       | Why it matters                                                                                                                                                         |
|--------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Term in a prosecution document</b>                  | Object in writing the same day. Annotate the specific paragraph in your response submission.                            | <i>"At paragraph [X], the defendant is described as [term]. This is inconsistent with WHO ICD-11. The defence requests the record reflect: person with drug dependence."</i>                                              | Creates an appeal ground. Signals to the court that language will be monitored throughout proceedings.                                                                 |
| <b>Term used from the bench</b>                        | If a direct challenge is counterproductive, raise it in writing at the next opportunity rather than in the moment.      | <i>"The defence respectfully notes that at the hearing of [date], the court referred to the defendant as [term]. The defence requests the record reflect the WHO ICD-11 classification: person with drug dependence."</i> | An oral protest not transcribed does not exist in the legal record. The written record is what matters for appeal.                                                     |
| <b>Court refuses to adopt clinical framing</b>         | Make a formal objection and request written reasons for the refusal.                                                    | <i>"The defence formally objects to the court's refusal to adopt the WHO ICD-11 clinical framing and requests the court's written reasons for that refusal. The defence preserves its position for appeal."</i>           | Written refusals support appeal grounds and provide evidence for systemic complaints to judicial conduct bodies and national human rights institutions.                |
| <b>Pattern across multiple cases in the same court</b> | Log every instance across cases. Share with colleagues and bar association. Build the pattern into a formal submission. | <i>"This association has documented [number] instances between [dates] in which defendants were described as [terms]. We request the court administration issue guidance on appropriate terminology."</i>                 | Pattern evidence from multiple cases is the most powerful tool for systemic change. A bar association submission carries weight that an individual objection does not. |

## Building awareness beyond individual cases

- ▶ **Document and share:** Record stigmatising terms used, the court, the judicial officer, and the context. Share de-identified patterns with colleagues and your bar association.
- ▶ **Request bar association guidance:** Advocate for a plain language note on rights-affirming terminology in drug cases. A document issued by the bar carries weight that an individual objection does not.



- ▶ **Engage judicial education bodies:** Advocate in writing for the inclusion of language and stigma training in drug cases in continuing professional development programmes. This requires one practitioner to make the request to the right body.
- ▶ **Share stories of change:** Every case where a clinical framing was accepted or a judge corrected their own language is worth recording and sharing. These stories are evidence that change is possible.

### Rapid advocacy checklist: use when you have 60 seconds

| 3 key bail submissions                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | 3 key sentencing submissions                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | 3 fallback arguments                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"><li>▶ <b>Health:</b> Drug dependence is a WHO ICD-11 recognised health condition. Detention without treatment worsens outcomes and increases HIV risk 35 times (UNODC 2024).</li><li>▶ <b>Evidence-based alternative:</b> A harm reduction or treatment-based response is the clinically grounded alternative. A structured plan exists and is ready.</li><li>▶ <b>Legal obligation:</b> Article 14 of the International Covenant on Civil and Political Rights requires the court to consider proportionality including health status. This is obligatory, not discretionary.</li></ul> | <ul style="list-style-type: none"><li>▶ <b>Clinical classification:</b> Dependency is a WHO ICD-11 recognised health condition. Proportionate and individualised sentencing is required, not optional.</li><li>▶ <b>No deterrent effect:</b> There is no evidence that imprisonment deters drug use (Johns Hopkins Lancet Commission 2018). Diversion reduces reoffending and costs less.</li><li>▶ <b>Ready today:</b> A community treatment plan is available now. Name the provider, start date, and monitoring milestones in your submission.</li></ul> | <ul style="list-style-type: none"><li>▶ <b>If bail is refused:</b> Request written reasons. Reapply with medical evidence. Preserve the refusal for appeal as a fair trial record.</li><li>▶ <b>If sentencing goes against you:</b> Apply to vary conditions. File treatment progress reports at every review. Keep building the record.</li><li>▶ <b>If the court resists:</b> Cite Article 14 of the International Covenant on Civil and Political Rights and domestic sentencing principles. Put it on the record even if refused. Every refusal is an appeal ground.</li></ul> |

### Common errors in drug defence cases: avoid these

- ▶ Waiting to raise dependency: raise the clinical framing at the very first hearing, not at sentencing
- ▶ Failing to gather evidence in the first 24 to 48 hours after arrest
- ▶ Accepting the presumption of intent to supply without a clinical challenge to the threshold quantity
- ▶ Over-arguing policy when the submission should be grounded in legal obligation
- ▶ Missing the post-trial window: most relapses occur in weeks two to six after release

*All submissions must be grounded in honest and supportable evidence. Mischaracterising your client's circumstances risks undermining both the individual case and the wider advocacy for people who use drugs.*

## 2. Why fair trials matter for people who use drugs

People who use drugs are among the most criminalised populations across Asia. Despite obligations under the three United Nations Drug Conventions of 1961, 1971, and 1988, each of which explicitly permits alternatives to conviction and punishment for minor drug offences, most legal systems in the region continue to favour punitive responses. The United Nations System Common Position on Drug Policy, endorsed in 2019 by all United Nations agencies, makes clear that criminalisation is not required by international drug control treaties. It is a policy choice. Lawyers who bring evidence of its failures into the courtroom, one case at a time, are contributing to the shift in how courts understand the issue.

A trauma-informed approach means understanding that behaviours which appear uncooperative, inconsistent, or evasive in court may reflect trauma responses rather than dishonesty. The question is not what is wrong with this person, but what happened to this person. Drug dependence understood through a public health lens is not a moral failing to be minimised. It is a health condition with clinical pathways, treatment evidence, and community support structures that courts can and should engage with.

Portugal's 2001 decriminalisation of personal drug possession, administered through regional Dissuasion Commissions that route people who use drugs toward health and social services rather than criminal courts, remains the most cited international precedent for a public health approach to drug policy. Its outcomes, including reduced HIV transmission and drug related deaths, are relied on by the United Nations System Common Position 2019 and by the Global Commission on Drug Policy in their case for decriminalisation. Few jurisdictions in Asia have adopted anything comparable, and a lawyer should not expect a court to import the Portuguese model directly. What it offers instead is evidence: proof that treating dependency as a health matter measurably improves outcomes, and that evidence supports every argument in this primer for diversion, community treatment, and proportionate sentencing over incarceration.

### Core advocacy principles

| Principle                                    | What it means in practice                                                                                                                                                                                                                           |
|----------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Harm reduction over punishment</b>        | Frame community treatment and diversion as evidence-based public health strategies endorsed by the United Nations System Common Position 2019, not as leniency.                                                                                     |
| <b>Dependency as a health condition</b>      | The WHO ICD-11 classifies substance use disorders as recognised health conditions. Ground every submission in this clinical framing before moving to legal argument.                                                                                |
| <b>Proportionality is a legal obligation</b> | Article 14 of the International Covenant on Civil and Political Rights requires individual circumstances, including health status, to be considered. This is not a favour. It is a right.                                                           |
| <b>Judicial discretion exists</b>            | In virtually every Asian jurisdiction some sentencing discretion exists even under mandatory minimum regimes. Identify it in your domestic law and use it actively for diversion, community treatment, suspended sentences, or conditional release. |

| Principle                                          | What it means in practice                                                                                                                                                                                                                             |
|----------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Poverty and inequality are part of the case</b> | Structural conditions that produced vulnerability, including poverty, displacement, absence of healthcare, and gender-based violence, belong in the mitigation bundle and should be argued as compounding factors requiring a proportionate response. |
| <b>Every case builds the record</b>                | Where the law leaves little formal room, lawyers shift what happens through the quality of their submissions. Every argument raised, even when rejected, becomes part of the evidentiary record that supports systemic change.                        |

### Common fair trial violations: check each on every case

- ▶ Disproportionate surveillance and targeting based on drug use history rather than evidence of criminal conduct
- ▶ Coerced confessions, arbitrary detention, extortion, or extrajudicial action at the point of arrest
- ▶ Denied or inadequate access to legal assistance from the moment of arrest
- ▶ No access to bail, conditional release, or alternatives to remand for minor charges
- ▶ Denial of healthcare, withdrawal management, or harm reduction services during detention
- ▶ Disproportionate sentencing including automatic presumption of intent to supply above threshold quantities
- ▶ Drug use history used to attack character or credibility in proceedings
- ▶ Withdrawal symptoms unaccommodated during hearings, which constitutes a due process violation
- ▶ Stigma visibly influencing judicial or prosecutorial decision-making in ways not grounded in evidence

## 3. Evidence and data for court submissions

Arguments that move judges are grounded in evidence, not moral assertion. Connect each data point below to a specific fact in your client's case. General citation is weaker than a submission that says: 'The evidence establishes that detention increases HIV risk 35 times, and my client is a person who injects drugs currently held without access to harm reduction services.'

### Core argument for bail applications and sentencing submissions

Incarceration of a person with drug dependence does not reduce drug use. Evidence from the Johns Hopkins Lancet Commission and UNODC confirms that detention without treatment increases health risk, including HIV and hepatitis C transmission, and reduces the likelihood of sustained recovery. Community-based treatment produces measurably better public health outcomes at significantly lower cost (International Drug Policy Consortium, Drug Decriminalisation: Grounding Policy in Evidence, 2023). Courts are required, not merely invited, to consider proportionality and individual circumstances, including health status, under Article 14 of the International Covenant on Civil and Political Rights.

| Key data point                                                                                                   | How to use it in a specific submission                                                                                                                                                                          |
|------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| People who inject drugs are 35 times more likely to acquire HIV than the general population (UNODC 2024)         | Bail applications: detention without harm reduction exponentially increases health risk. Connect directly to your client's situation.                                                                           |
| People in prison are 7.2 times more likely to be living with HIV than the general adult population (UNAIDS 2023) | Sentencing submissions: incarceration operates as a health intervention in reverse. Frame proportionality around this evidence.                                                                                 |
| Approximately 39.4 per cent of people who inject drugs have hepatitis C infection (Global Burden of Disease)     | Detention applications: denial of hepatitis C treatment in custody engages the Mandela Rules, Rules 24 to 35, and the right to health under the International Covenant on Economic, Social and Cultural Rights. |
| No evidence that imprisonment deters drug use (Johns Hopkins Lancet Commission 2018)                             | Countering deterrence arguments: where the prosecution relies on general deterrence to justify custody, this evidence directly rebuts it. Cite the Commission explicitly.                                       |
| Women who use drugs progress to dependency faster and face greater barriers to treatment (UNODC 2023)            | Gender-specific mitigation: compound vulnerability justifies heightened consideration of non-custodial alternatives and gender-sensitive sentencing.                                                            |

## 4. Building trust with your client: a trauma informed approach

Many clients will have been coerced, mistreated, or let down by state actors before you meet them. Effective representation begins before the legal strategy does.

### Before you meet

- ▶ Review the arrest report for coercion indicators: timing of any confession, access to counsel, conditions of initial detention
- ▶ Check whether your client is likely to be in withdrawal and arrange a medically appropriate setting if needed
- ▶ If a harm reduction worker already has a relationship with your client, ask whether they can support the introduction

### During the meeting

- ▶ Open with a clear explanation of your role, confidentiality, and its limits
- ▶ Ask open questions first and allow an uninterrupted account before probing for detail
- ▶ Do not correct or redirect early. Memory gaps and inconsistencies are clinically consistent with trauma and dependency, not indicators of dishonesty

- ▶ Confirm understanding using teach-back: ask your client to explain their situation back to you in their own words
- ▶ Allocate time for underlying needs: housing, family, healthcare, and employment, as these inform your mitigation
- ▶ If your client is in withdrawal or acute distress, defer detail-heavy legal discussion and schedule a follow-up promptly

### Three-sentence mitigation narrative: a working template

*Background: My client began using drugs following [trauma, circumstances, or structural context, be specific]. Turning point: This offence occurred at a point of untreated dependency, not as a calculated criminal choice. Future: Today, with structured support, there is a clear and evidenced pathway away from reoffending. Expand this into a fuller narrative covering your client's background, the structural conditions that shaped their drug use, and the concrete steps they are taking now. The human story behind the charge is not a supplement to the legal argument. It is the legal argument.*

### Sample language: connecting poverty and trauma to mitigation

*"My client grew up in [circumstances: poverty, displacement, conflict-affected area]. She had no access to mental health services following [event]. Her drug use began at age [age] as a response to [circumstances] and has never been addressed by any state service. She is a person whose dependency was shaped by conditions the criminal justice system did not create and cannot resolve through incarceration. The defence submits that the proportionate response is a structured community treatment programme, the details of which are set out in the mitigation bundle at Annex [X]."*

## 5. Legal practice checklist: first contact to sentencing

### A. Early identification and case intake

*First contact | case opening | health and dependency screening*

**Legal framework:** Article 14 ICCPR | WHO ICD-11 | United Nations System Common Position 2019 | Domestic drug and health policy

| Checklist item                                                                                                                                                                             | Legal basis                                                   | What to do                                                                                                                  | What to say and file                                                                                                                                                                                                                                                                                            |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Health and dependency screening at first contact</b><br>Ask at first contact whether your client uses drugs, experiences dependency, or needs healthcare, harm reduction, or withdrawal | Article 14 ICCPR<br>WHO ICD-11 6C4<br>UN Common Position 2019 | Make screening a standard intake field. Brief all staff on how to ask respectfully. Never rely on appearance or assumption. | <i>"Is there anything about your health or wellbeing I should know about to make sure I can represent you properly? Have you received any medical treatment recently or is there anything you need right now?"</i> FILE: Record health and dependency status in a confidential intake field. Note any immediate |



| Checklist item                                                                                                                                                                                                                                  | Legal basis                                                       | What to do                                                                                                                                                                                                                                                                                                                                                                                                                                    | What to say and file                                                                                                                                                                                                                                                                                                    |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| support. Use plain language.                                                                                                                                                                                                                    |                                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                               | <i>healthcare needs.</i>                                                                                                                                                                                                                                                                                                |
| <b>Raise the clinical framing at the very first hearing</b><br>Establish that drug dependence is a WHO ICD-11 recognised health condition at the earliest possible opportunity. Failure to do so limits your options at every subsequent stage. | Article 14 ICCPR<br>WHO ICD-11<br>Domestic sentencing principles  | Draft a short framing paragraph ready to use at the first hearing. Do not wait for a mitigation report.                                                                                                                                                                                                                                                                                                                                       | <i>"Your Honour, at the outset the defence puts the court on notice that our client is a person living with drug dependence, a recognised health condition under the WHO ICD-11. This will be central to our submissions on [bail and sentencing]." FILE: Note on court record. Repeat in every written submission.</i> |
| <b>Gather evidence in the first 24 to 48 hours</b><br>Evidence establishing dependency and health status is time-sensitive. Its absence is a common cause of unsuccessful bail and sentencing applications.                                     | Article 14 ICCPR<br>Mandela Rules 24 to 35 ICESCR right to health | <ul style="list-style-type: none"> <li>▶ Statements from family members, noting admissibility rules in your jurisdiction</li> <li>▶ Letters from community health workers or harm reduction services</li> <li>▶ Pharmacy or clinic receipts showing treatment-seeking behaviour</li> <li>▶ Prior possession records showing personal use pattern</li> <li>▶ Clinical or psychosocial assessment: contact addiction services on day</li> </ul> | <i>FILE: Evidence log with dates, sources, and chain of custody. Note any gaps and the steps taken to address them.</i>                                                                                                                                                                                                 |

| Checklist item | Legal basis | What to do | What to say and file |
|----------------|-------------|------------|----------------------|
|                |             | one        |                      |

## B. Bail applications

*Detention | health grounds | withdrawal | proportionality*

**Legal framework:** Article 14 ICCPR | Article 7 ICCPR | Mandela Rules 24 to 35 | Convention Against Torture | ICESCR Article 12 | Domestic criminal procedure

| Checklist item                                                                                                                                                                                                                                                              | Legal basis                                                                             | What to do                                                                                                                                                                                   | What to say and file                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Apply for bail on health and withdrawal grounds</b><br>Detention without treatment for a person with drug dependence creates immediate health risks and constitutes a disproportionate response where a community-based alternative exists.                              | Article 14 ICCPR<br>Mandela Rules 24 to 35 UNODC 2024 HIV data IDPC 2023                | Obtain a clinical or psychosocial assessment before the bail hearing. Name a specific treatment provider and confirm availability. Frame bail as the evidence-based, proportionate response. | <i>"Detention of a person with drug dependence without access to treatment or harm reduction services is disproportionate under Article 14 of the International Covenant on Civil and Political Rights and inconsistent with [domestic health legislation]. A structured community treatment plan has been arranged with [provider]. The defence applies for bail on these grounds and invites the court to consider this as a public health matter." FILE: Clinical assessment, treatment provider letter, written bail application with full legal basis.</i> |
| <b>Address withdrawal as a due process issue</b><br>A person in acute withdrawal cannot meaningfully participate in proceedings. This is a fair trial violation engaging Article 14 of the International Covenant on Civil and Political Rights, not only a health concern. | Article 14 ICCPR<br>Mandela Rules 24 to 35 Convention Against Torture ICESCR Article 12 | File an urgent application for medical assessment if withdrawal symptoms are observed. Request adjournment. Document every refusal formally as part of your fair trial record.               | <i>"Your Honour, my client is exhibiting signs of acute drug withdrawal. I apply urgently for a medical assessment and for an adjournment until my client can meaningfully participate. I formally record this application and note that any refusal will be documented as a fair trial issue preserved for appeal." FILE: Medical documentation of withdrawal signs. Record of any refusal to adjourn. Preserve as fair trial violation for appeal.</i>                                                                                                        |

### When bail is refused and no diversion programme exists

In jurisdictions where formal diversion is unavailable and bail is routinely refused, the following steps remain available.

- **Identify the domestic rehabilitation provision:** In Indonesia, for example, Articles 54, 103, and 127(3) of Narcotics Law Number 35 of 2009, read together, mandate medical and social rehabilitation for a person established as an abuser rather than a trafficker. The Supreme Court Circular SEMA Number 4 of 2010 provides the mechanism. Ensure your client is assessed under Article 127(3) and not charged under Articles 111 or 112, which carry mandatory minimum sentences.

- ▶ **Where no state facility exists:** Contact community health organisations, harm reduction services, and faith-based providers. A letter from any credible organisation confirming readiness to receive your client can substitute for a formal programme in a judicial assessment.
- ▶ **File for rehabilitation in lieu of sentence:** Even where refused, the refusal and your client's demonstrated readiness for treatment become part of the sentencing record and support any appeal or sentence variation application.
- ▶ **Request written reasons:** A written refusal grounded in judicial discretion rather than legal prohibition can be challenged on appeal as disproportionate under Article 14 of the International Covenant on Civil and Political Rights.

#### Sample language: no diversion programme exists

*"The defence acknowledges that no formal diversion programme is available in this jurisdiction. Nevertheless, the court retains the power under [domestic provision] to order medical and social rehabilitation. A letter from [community provider] confirming readiness to receive the defendant is at Annex A. A custodial sentence in the absence of any treatment or support, for a person whose offence was driven by dependency, is disproportionate under Article 14 of the International Covenant on Civil and Political Rights. We invite the court to record its reasons should it decline to make this order."*

### C. Courtroom advocacy: challenging stigma and building the narrative

*Submissions | clinical evidence | language | cross-examination | narrative reframing*

**Legal framework:** Article 14 ICCPR | WHO ICD-11 and DSM-5 | IDPC and UNAIDS language standards | Domestic sentencing principles

| Checklist item                                                                                                                                                                                                              | Legal basis                                                                                         | What to do                                                                                                                                                | What to say and file                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Challenge stigmatising language on the record at the first opportunity</b><br>Intervene the moment dehumanising terms are used. Formally request that the record reflect rights-affirming, clinically accurate language. | Article 14 ICCPR<br>WHO ICD-11 IDPC and UNAIDS language standards<br>Domestic fair trial provisions | Open your first written submission by establishing the WHO ICD-11 clinical framing. Cite your country's own national health policy as domestic authority. | <i>"Your Honour, the defence notes for the record that the term [addict / abuser] has been used in these proceedings. Drug dependence is classified under the WHO ICD-11 as a recognised health condition. The defence respectfully requests that proceedings and the court record refer to my client as a person with drug dependence." FILE: Formal objection where dehumanising terms are used. Written reasons requested if the court declines. Document as a potential fair trial issue.</i> |
| <b>Establish dependency as mitigation through clinical evidence, not assertion</b><br>Dependency must be proved with evidence. A psychosocial or clinical assessment is the foundation of the mitigation                    | Article 14 ICCPR<br>WHO ICD-11 and DSM-5 ICESCR right to health<br>Domestic sentencing principles   | <b>A strong mitigation bundle includes:</b> <ul style="list-style-type: none"> <li>▶ Cover letter: the human story and the legal argument in</li> </ul>   | <i>FILE: Mitigation bundle filed before the sentencing hearing. Ensure the psychosocial assessment is obtained early enough to form the cover letter narrative.</i>                                                                                                                                                                                                                                                                                                                               |



| Checklist item                                              | Legal basis | What to do                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | What to say and file |
|-------------------------------------------------------------|-------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------|
| case and should be obtained at the earliest possible stage. |             | <p>two pages or fewer</p> <ul style="list-style-type: none"><li>▶ Psychosocial assessment: clinical diagnosis, dependency history, and social background including poverty and trauma</li><li>▶ Treatment readiness: a letter from a provider confirming they will receive your client</li><li>▶ Evidence of steps taken: clinic attendance, community contact, or any attempt to access treatment</li><li>▶ Post-sentence support plan: named referrals, a monitoring timeline, and measurable milestones</li><li>▶ Domestic authority: national health policy or sentencing</li></ul> |                      |



| Checklist item                                                                                                                                                                                                                                                                              | Legal basis                                                                                                     | What to do                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | What to say and file                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                                                                                                                                                                                                                                                             |                                                                                                                 | guideline that supports your argument                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| <p><b>Counter the presumption of intent to supply with clinical and consumption evidence</b></p> <p>Many Asian jurisdictions apply a presumption of trafficking intent above threshold quantities. This shifts the evidential burden but does not extinguish the legal burden of proof.</p> | <p>Article 14 ICCPR (presumption of innocence)<br/>UNODC threshold guidance<br/>Domestic criminal procedure</p> | <p>Commission an addiction medicine expert or community health practitioner to evidence daily consumption pattern. Challenge the threshold by citing UNODC guidance recommending calibration to supply behaviour rather than arbitrary weight.</p>                                                                                                                                                                                                                                                                    | <p><i>"The quantity in our client's possession is consistent with their established daily consumption pattern, as evidenced by the clinical assessment at Annex A. Quantity alone does not establish supply intent. The prosecution retains the burden of proving intent beyond reasonable doubt notwithstanding any evidential presumption."</i></p> <p><i>FILE: Expert or clinical report on daily consumption pattern. Proportionality argument in full. Domestic departure provisions identified and cited.</i></p> |
| <p><b>Cross-examination strategies in drug cases</b></p> <p>Use cross-examination to challenge the prosecution case, surface fair trial violations, and expose the assumptions underlying the evidence.</p>                                                                                 | <p>Article 14 ICCPR<br/>Domestic criminal procedure</p>                                                         | <ul style="list-style-type: none"> <li>▶ <b>Arresting officer:</b> Challenge targeting patterns. Was your client selected because of their drug use history rather than evidence of supply?</li> <li>▶ <b>Confession evidence:</b> Probe the timing, whether your client had access to a lawyer, and the conditions in which the confession was obtained.</li> <li>▶ <b>Threshold quantity:</b> Challenge the absence of weighing equipment, cash, buyer contact details, or packaging indicative of sale.</li> </ul> | <p><i>FILE: Cross-examination plan prepared before the hearing. All admissibility challenges documented and filed where applicable.</i></p>                                                                                                                                                                                                                                                                                                                                                                             |



| Checklist item | Legal basis | What to do                                                                                                                                                                          | What to say and file |
|----------------|-------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------|
|                |             | <ul style="list-style-type: none"> <li>▶ <b>Prosecution expert:</b> Probe clinical expertise in addiction medicine and whether the expert assessed your client directly.</li> </ul> |                      |

## D. Diversion and alternatives to incarceration

*Diversion | community treatment | conditional release | where no resources exist*

**Legal framework:** UN Drug Conventions 1961, 1971, and 1988 (alternatives to conviction permitted) | Article 14 ICCPR | IDPC 2023 | Domestic health and criminal law

| Checklist item                                                                                                                                                                                                                                                            | Legal basis                                                                     | What to do                                                                                                                                                                                                                                                                                                                                               | What to say and file                                                                                                                                    |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><b>Map every diversion pathway available in your jurisdiction before the first hearing</b></p> <p>Formal diversion may exist on paper while being routinely unavailable in practice. Establish what the legal landscape actually permits before the first hearing.</p> | UN Drug Conventions 1961, 1971, 1988 IDPC 2023 Domestic health and criminal law | <ul style="list-style-type: none"> <li>▶ Pre-arrest diversion, where it exists</li> <li>▶ Prosecutorial discretion to divert or withdraw charges for possession by a person with established dependency</li> <li>▶ Judicial powers to order treatment in lieu of or alongside sentence</li> <li>▶ Conditional release, suspended sentence, or</li> </ul> | <p><i>FILE: Diversion pathway memo prepared at the start of each new case. Share across your team and update as the domestic landscape changes.</i></p> |



| Checklist item                                                                                                                                                                                                                                                                                                                | Legal basis                                                                                                        | What to do                                                                                                                                                                                                                                                                                                                                                                                                                                                              | What to say and file                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                                                                                                                                                                                                                                                                                               |                                                                                                                    | <p>probation provisions</p> <ul style="list-style-type: none"> <li>▶ Community treatment programmes, state or non-governmental, that the court could reference as a destination</li> </ul>                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| <p><b>Where no formal diversion programme or rehabilitation facility exists</b></p> <p>The absence of formal diversion does not eliminate the lawyer's role. Judicial discretion, creative use of existing provisions, and community resources can together produce an outcome that differs from automatic incarceration.</p> | <p>Article 14 ICCPR<br/>Domestic sentencing discretion UN Drug Conventions (alternatives permitted) WHO ICD-11</p> | <ul style="list-style-type: none"> <li>▶ Identify community health organisations, harm reduction services, faith-based providers, or peer support networks that could offer structured support</li> <li>▶ A letter from any credible organisation confirming readiness to support your client can function as a treatment plan</li> <li>▶ Use every point of sentencing discretion, even under mandatory minimum regimes; mitigation often remains available</li> </ul> | <p><i>"The defence acknowledges that no formal rehabilitation programme is prescribed in this jurisdiction. Nevertheless, the court retains sentencing discretion under [domestic provision] and is required under Article 14 of the International Covenant on Civil and Political Rights to consider proportionality. A letter from [community organisation] at Annex A confirms readiness to provide structured support. We invite the court to record its specific reasons should it decline to make this order." FILE: Community organisation letter. Monitoring plan. Record of every advocacy attempt, whether successful or not.</i></p> |



| Checklist item                                                                                                                                                                                                                                            | Legal basis                                                                  | What to do                                                                                                                                                                                                                                                                                                    | What to say and file                                                                                                                                                                                                                                                                                                                                                                                                     |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                                                                                                                                                                                                                           |                                                                              | <ul style="list-style-type: none"> <li>▶ Frame community support as serving the public interest: reduced reoffending, lower health costs, maintained family and employment ties</li> </ul>                                                                                                                    |                                                                                                                                                                                                                                                                                                                                                                                                                          |
| <p><b>Submit a structured post-sentence support plan with specific detail</b></p> <p>A named, concrete, measurable plan demonstrates to the court that release is not a risk but the beginning of a health intervention with accountability built in.</p> | <p>Article 14 ICCPR<br/>IDPC 2023<br/>Domestic health and sentencing law</p> | <p>The plan must name the provider, confirm the start date, specify the frequency of contact, identify monitoring milestones, name a supervisor, set out what happens if your client does not attend, and establish how the court will be informed of progress. Vague plans fail. Specific plans succeed.</p> | <p><i>"The defence submits the structured support plan at Annex A, confirmed by [provider] and commencing within [number] days of release. Progress will be reported to the court at [monthly / quarterly] intervals by [named supervisor], who has agreed to notify the court within 48 hours of any missed appointment."</i><br/> <b>FILE:</b> Signed provider letter and monitoring plan. Update at every review.</p> |

## E. Gender, poverty, and intersecting vulnerabilities

*Women who use drugs | structural drivers | compounding disadvantage | intersectional mitigation*

**Legal framework:** Convention on the Elimination of All Forms of Discrimination Against Women | Bangkok Rules | Article 14 ICCPR | UNODC Gender and Drugs 2023 | Domestic equality and sentencing provisions

| Checklist item                                                                                                                   | Legal basis                                                                                         | What to do                                                                                                                    | What to say and file                                                                                                                                                                                                                                                                      |
|----------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><b>Document and argue gender-specific vulnerabilities as a distinct mitigating factor</b></p> <p>Women who use drugs face</p> | <p>Convention on the Elimination of All Forms of Discrimination Against Women<br/>Bangkok Rules</p> | <ul style="list-style-type: none"> <li>▶ Obtain evidence of any history of gender-based violence, sexual abuse, or</li> </ul> | <p><i>"My client is a woman who has experienced [gender-based violence / coercion / poverty / caring responsibilities] throughout the period relevant to this offence. The Bangkok Rules require courts to consider non-custodial alternatives for women, particularly those with</i></p> |



| Checklist item                                                                                                                                          | Legal basis                    | What to do                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | What to say and file                                                                                                                                                                                                                                                                                                                                                                   |
|---------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| compounding disadvantages that are not incidental to their case. They are central to proportionate sentencing. Document them and argue them explicitly. | Article 14 ICCPR<br>UNODC 2023 | <p>intimate partner violence</p> <ul style="list-style-type: none"> <li>▶ Document caring responsibilities: children, elderly dependants, and family members who depend on your client</li> <li>▶ Establish barriers to treatment: were services unavailable, unaffordable, culturally inaccessible, or made unsafe by stigma?</li> <li>▶ Identify gender dimensions: was your client coerced into drug-related activity by a partner or family member?</li> <li>▶ Cite the Bangkok Rules, which require courts to consider the specific vulnerabilities of women and apply non-custodial alternatives wherever</li> </ul> | <p><i>dependent children. A custodial sentence would separate her from [number] children aged [ages] and serve no rehabilitative purpose that a structured community programme would not serve more effectively."</i></p> <p><i>FILE: Social background report covering gender-specific factors. Evidence of caring responsibilities. Bangkok Rules cited in full submissions.</i></p> |

| Checklist item                                                                                                                                                                                                                                                                                         | Legal basis                                               | What to do                                                                                                                                                                                                                     | What to say and file                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                                                                                                                                                                                                                                                                        |                                                           | possible                                                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| <p><b>Argue structural poverty and inequality as context for the offence</b></p> <p>Courts are required to consider individual circumstances. Where those circumstances include poverty and structural exclusion, the argument for a proportionate non-custodial response is stronger, not weaker.</p> | Article 14 ICCPR<br>ICESCR Domestic sentencing principles | Commission or request a social background report documenting the structural conditions that shaped your client's drug use. Frame these not as excuses but as the context without which proportionate sentencing is impossible. | <p><i>"My client is a person whose drug dependence developed in circumstances of extreme poverty and structural exclusion. He had no access to healthcare, no stable housing, and no educational or employment opportunities. He has never received any state support for his dependency. Incarceration will deepen each of these disadvantages without addressing a single one of them. The defence submits that proportionate sentencing requires the court to engage with the conditions that produced this offence." FILE: Social background report. Poverty and inequality cited as mitigating factors with specific reference to domestic sentencing principles.</i></p> |

## F. Accountability, documentation, and systemic change

Record-keeping | patterns | precedent | coalition | stories of change

| Checklist item                                                                                                                                                                                                                                                                        | Legal basis                                                                           | What to do                                                                                                                                                                                                                              | What to say and file                                                                                                                                                                                                                                                                                                         |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><b>Document all advocacy activity in drug-related cases</b></p> <p>Documentation creates an accountability trail, supports any appeal or complaint, and builds the evidentiary base for systemic advocacy. Personal notes are not enough. The record must be in the case file.</p> | Article 14 ICCPR<br>IDPC monitoring frameworks<br>Professional ethics                 | Create a dedicated section in your standard case file. Record: health screening result, advocacy arguments raised, court responses, stigmatising language encountered, diversion arguments and outcomes, and any accommodation refused. | <p><b>FILE note template:</b></p> <p><i>[Date]: Health or dependency identified: [description]. Advocacy raised: [bail, sentencing, diversion, language challenge]. Court response: [granted, refused, deferred, no ruling]. Appeal ground preserved: [yes or no]. Systemic issue identified: [yes or no, describe].</i></p> |
| <p><b>Capture and share stories of change at the court level</b></p> <p>Every case where a health-based argument shifted a judicial response, even partially, is a story of change. These stories are the</p>                                                                         | IDPC monitoring frameworks<br>Global Commission on Drug Policy<br>Professional ethics | After every drug-related case, complete a brief anonymised case note recording what argument was raised, how the court responded, and what changed. Share with                                                                          | <p><b>Reflection prompts:</b></p> <ul style="list-style-type: none"> <li>▶ What health-based argument worked and why?</li> <li>▶ What judicial resistance arose and how was it met?</li> <li>▶ What one piece of evidence would have strengthened this</li> </ul>                                                            |

| Checklist item                     | Legal basis | What to do                                               | What to say and file                                                                                        |
|------------------------------------|-------------|----------------------------------------------------------|-------------------------------------------------------------------------------------------------------------|
| evidence base for systemic reform. |             | your team, bar association, and harm reduction partners. | <p>case?</p> <p>► Is there a pattern across cases in this court that should be documented and reported?</p> |

## 6. Legal basis reference guide

| Instrument                                                                                              | Relevance to legal practice for people who use drugs                                                                                                                                                                   |
|---------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Article 14 ICCPR</b>                                                                                 | Fair trial; presumption of innocence; proportionality; individual circumstances including health status must be considered at bail and sentencing. This is the primary instrument for every submission in this primer. |
| <b>Article 7 ICCPR</b>                                                                                  | Freedom from cruel, inhuman, or degrading treatment. Denial of withdrawal management during detention or proceedings engages this provision and the Convention Against Torture.                                        |
| <b>UN Drug Conventions 1961, 1971, and 1988</b>                                                         | All three explicitly permit alternatives to conviction and punishment for minor drug offences. Domestic laws eliminating all judicial discretion may exceed what the treaties require.                                 |
| <b>United Nations System Common Position 2019</b>                                                       | Endorsed by all United Nations agencies: the criminalisation of people who use drugs is not required by international law and is incompatible with human rights standards.                                             |
| <b>WHO ICD-11 code 6C4</b>                                                                              | Drug dependence is a recognised health condition with neurological and psychosocial dimensions. The authoritative clinical framing for every court submission in this primer.                                          |
| <b>Mandela Rules 24 to 35</b>                                                                           | Healthcare in custody must be equivalent to community standards. Denial of drug dependency treatment or harm reduction services in custody is a violation.                                                             |
| <b>ICESCR Article 12</b>                                                                                | Right to the highest attainable standard of health. Treatment for drug dependence is a health right. Denial of harm reduction services in custodial settings engages this provision.                                   |
| <b>Convention on the Elimination of All Forms of Discrimination Against Women and the Bangkok Rules</b> | Gender-sensitive sentencing; non-custodial alternatives for women; compounding disadvantages of women who use drugs must be addressed in sentencing submissions.                                                       |
| <b>IDPC Drug Decriminalisation: Grounding Policy in</b>                                                 | Comprehensive evidence base for arguing against punitive approaches. Cite directly in submissions on bail, diversion, and sentencing.                                                                                  |

| Instrument                                        | Relevance to legal practice for people who use drugs                                                                                                                                                                                                   |
|---------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Evidence (2023)</b>                            |                                                                                                                                                                                                                                                        |
| <b>Johns Hopkins Lancet Commission (2018)</b>     | No evidence that imprisonment deters drug use. Cite in every sentencing submission where the prosecution relies on deterrence to justify a custodial sentence.                                                                                         |
| <b>UNODC and UNAIDS 2023 to 2024 data</b>         | HIV risk data (35 times for people who inject drugs); prison HIV rates (7.2 times); hepatitis C prevalence (39.4 per cent); women's barriers to treatment. Connect each statistic to your client's specific circumstances.                             |
| <b>Global Commission on Drug Policy 2024</b>      | Beyond Punishment: documents the failure of punitive approaches and evidences harm reduction as the effective alternative. Cite alongside IDPC materials for systemic submissions.                                                                     |
| <b>Domestic law: verify in every jurisdiction</b> | Drug scheduling and threshold quantities; national drug master plan or health policy provisions; sentencing guidelines; treatment and diversion provisions. Domestic authority is your primary tool. International standards support and reinforce it. |

Authored by Miriam Chinnappa (Centre for Law and Transformative Change (CLTC), developed jointly with BABSEACLE. Presented at the Asia Fair Trials Roundtable 2025 (co-organised by BABSEACLE and CLTC) and peer reviewed by Bruce Lasky, Lionel Blackman and Gloria Law (IDPC). Open source; use with acknowledgement of CLTC and BABSEACLE.

Drawing on IDPC and UNAIDS language standards, WHO ICD-11, Johns Hopkins Lancet Commission, UN System Common Position 2019, UNODC/UNAIDS data, Global Commission on Drug Policy 2024, the Bangkok Rules, and CEDAW.

This primer is a generic resource and must be adapted to domestic law and policy in your jurisdiction. It does not constitute legal advice.