Ethical challenges when representing clients in detention

15 March 2017
What are your ethical concerns?

"Run this by 'Legal,' but sprint it by 'Ethics.'"
Biggest ethical concerns when representing detained clients

- Difficulty accessing clients who are detained in distant prisons: 3%
- Delays in court processes: 3%
- Victimization of client if case fails: 3%
- Touting: 3%
- Balancing mutual injustice of victims and convicted persons' rights (sentencing leads to violations): 13%
- Defending criminals who I am aware are guilty of serious offences: 3%
- Balancing personal value systems v the rights of prisoners: 6%
- Stigmatization of me as a lawyer for representing a criminally-accused or convicted person: 13%
- Lack of confidentiality and privacy: 13%
- Conflict of interest: 6%
- No concerns: 6%
- Limited access: 6%
- Perception that condom provision is aiding a crime: 3%
- Stigma & discrimination - perception that prisoners' have no rights, including by judges: 13%
- Hostile police and prison officials / Refusal by correctional service officers to provide information to counsel on welfare and health of inmates - requesting information leads to reprisals: 6%
- Balancing mutual injustice of victims and convicted persons' rights: 13%
- Defending criminals who I am aware are guilty of serious offences: 3%
- Balancing personal value systems v the rights of prisoners: 6%
- Stigmatization of me as a lawyer for representing a criminally-accused or convicted person: 13%
Concerns in legal practice: TOUTING
Do the professional rules applicable in your country prevent you as a lawyer from touting?

- Yes: 88%
- No: 6%
- I don't know: 6%
What is touting?

- Soliciting for clients: 39%
- A form of advertising: 44%
- Actively seeking clients through unorthodox and unethical means: 6%
- Ambulance chasing: 8%
- Aggressively targeting chases: 3%
Do touting restrictions impact your ability to access clients in detention?

- Yes: 55%
- No: 27%
- I don't know: 18%
Concerns in legal practice: Confidential Consultations
Have you ever been denied a private/ confidential consultation (without the presence of prison officials or other detainees) with a client in detention?

- **Yes**: 43%
- **No**: 41%
- **It is not custom to expect confidential consultations: I do not request it.**: 16%
The Bigger picture: Threats to clients
Are you aware of any detained client of yours facing retributions, threats, or violence as a result of their being party to litigation?

- Yes: 21%
- No: 79%
The Bigger picture: Special needs
Do you think it is problematic to provide improved access to food or sanitation or improved prison conditions to certain inmates (e.g. people living with HIV or persons with disabilities) when ALL inmates are receiving inadequate resources?

- Ethically problematic: 17%
- Morally problematic: 22%
- Legally problematic: 29%
- No: 32%
Healthcare ethics and human rights in detention
Are healthcare workers obliged to ensure that prisoners give their informed consent before administering any form of healthcare services, treatment or testing?
Should prisoners have access to condoms and lubricants in prisons to prevent transmission of HIV?

- Yes: 88%
- No: 12%
Should prisoners have access to pre-exposure prophylaxis (PREP)?

- Yes: 88%
- No: 9%
- No answer: 3%