

PI: Rachel Murray and Malcolm Evans

Scheme: Standard Research Grant

Project Title: [An examination of the role of soft law in international human rights law: the Robben Island Guidelines on the Prevention of Torture in Africa](#)

Case Study Title: Transforming torture prevention legislation in Africa

Across the world there are laws regarding the prevention of torture, both international and domestic laws. This Arts and Humanities Research Council (AHRC)-funded project looks at the relationship between the two, along with the status of soft law in African states.

Are African states more willing to comply with international human rights law or with soft law, as created internally by local states? And what role does soft law play – if any – alongside international, legally binding treaties?

Soft law refers to guidelines, policy declarations and codes of conduct which set standards for conduct. They are not legally binding. But they can have a certain amount of legal status, depending on how and where they are used.

“There is often a good deal of weight put on court decisions because they are legally binding,” says **Professor Rachel Murray, professor of International Human Rights at University of Bristol Law School**. “But when you have pronouncements that are not legally binding, do they still carry weight?”

That’s what Murray and her colleagues set out to establish when they embarked on the AHRC-funded project: ‘**An examination of the role of soft law in international human rights law: the Robben Island Guidelines on the Prevention of Torture in Africa**’.

Standards relating to torture prevention have been created through international law. The United Nation’s ‘Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment’ is a treaty that aims to prevent torture and other inhuman acts around the world.

However, African states also have localised soft law, such as the Robben Island Guidelines (RIG), which were adopted in 2002 by the African Commission on Human and Peoples’ Rights, the regional human rights body for Africa. These guidelines were the first regional instrument for the prohibition and prevention of torture in Africa.

Before the AHRC project in 2008, little research had been carried out into if and how soft law is put into practice in Africa. This piece of research focused on RIG in particular to establish how well known it is, how much legal clout it has and whether it is being implemented. The researchers choose to focus on this one piece of soft law partly as a way of finding out the status of soft law in general.

“The research finding is that it’s not a simple answer!” says Murray. “A lot of it is down to politics, chance and how clear the law is. It is not a case of nobody complies or everybody complies. Some states are very vocal, saying they will not comply because it’s not legally binding. And when people do choose to comply, it is dependent on a whole range of factors.”

As a result of the project, what emerged was that RIG is not widely known about. What also emerged is that individuals and institutions – be they government officials, lawyers, local government or national human rights institutions – are more inclined to use documents that have come from the UN, rather than documents that have come out of Africa.

“I think the UN has more global and political weight than the African system,” says Murray. However, in some instances, states are more likely to draw on African pronouncements, often for political reasons. “It depends on the country, the issue and the political system,” says Murray.

“Take the example of sexual orientation. That is very political in Africa and there’s lots of pressure on the international stage and there has been a backlash.”

In these instances, Murray says states and lawyers might prefer to steer clear of using international law because of the reaction it might cause. Instead, they might reference African law, approaching cases from a political and strategic position.

“It is about knowing your field and being strategic about what instruments you use,” says Murray. “If you know the system well, you might look at African domestic law and draw on comments by politicians. Soft law might be legally less weighty. But it might be more powerful in some cases.”

The project team held seminars on issuing guidance on the implementation of RIG, bringing together important bodies, such as NGOs, the government and national police and prison bodies, the Committee for the Prevention of Torture in Africa and the UN Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

Murray and her colleagues concluded that the case for both international law and soft law is very context-specific and highly-dependent on local and national politics.

“This is a lot more subtle than legally binding documents are important and forget the rest. Keep the RIG on the agenda,” says Murray.

Intended outcomes and impact

- Raised the profile and awareness of RIG and soft law, both in Africa and with international bodies
- Helped to draft and inform policy and standards at Commission level, for example, by having the CPTA draft and adopt a general comment in its charter
- Brought together the CPTA with the UN Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.