

UN Special Rapporteur on the promotion and protection of human rights
and fundamental freedoms while countering terrorism
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DOC. NO. 19/01790-2

05 JULY 2019

**CALL FOR SUBMISSIONS: 'SOFT LAW' AND
INFORMAL LAWMAKING IN THE GLOBAL COUNTER-
TERRORISM ARCHITECTURE: ASSESSING
IMPLICATIONS ON THE PROMOTION AND
PROTECTION OF HUMAN RIGHTS AND
FUNDAMENTAL FREEDOMS**

The Danish Institute for Human Rights (DIHR) welcomes the call for input in e-mail of 26 June 2019 by UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (SRCT) to her next thematic report to the seventy-fourth session of the General Assembly.

The Institute would like to draw the Special Rapporteurs' attention to the following points:

Tracing the Roles of Soft Law in Human Rights

Researchers from the Danish Institute explored the roles of soft law in human rights in an edited volume in 2016: Stéphanie Lagoutte, Thomas Gammeltoft-Hansen, and John Cerone (eds.), *Tracing the Roles of Soft Law in Human Rights*, OUP, 2016, available in English at:

<https://global.oup.com/academic/product/tracing-the-roles-of-soft-law-in-human-rights-9780198791409?cc=dk&lang=en&>

Use of soft law in regulating armed conflict

The attached article by Peter Vedel Kessing, *Soft Law Instruments Regulating Armed Conflict – Are International Human Rights Standards reflected, Human Rights & International Legal Discourse*, Vol. 12, No. 1, 2018, p. 79-99, explores the role of soft law in regulating armed conflict and how human rights standards are reflected.

There has been a remarkable change within the last 20 years in how armed conflict is regulated, involving a change from hard law to soft

law standards.¹ The article explores nine new soft law instruments regulating armed conflicts. It concludes that international human rights standards often deliberately are excluded from these new soft law standards, even though there is a strong consensus among judicial bodies, States and international organisations that human rights are a relevant legal source in times of armed. Hence, in the area of armed conflict it might provocatively be argued that existing soft law often plays the role of a norm-excluder rather than a norm-filler or norm-creator.²

Soft law standards on prevention of radicalisation and violent extremism in prisons

In 2017- DIHR undertook a comprehensive study of how anti-radicalisation initiatives have affected the human rights and due process guarantees of prisoners in six different Danish prisons.

The study is briefly described in the attached English article by Peter Vedel Kessing & Lisbeth Garly Andersen, '*Preventing radicalisation in Danish prisons Human rights and due process rights of prisoners*', Prison Service Journal, January 2019, No 241, p. 37-49.

The article examines seven new soft law standards on prevention of radicalisation and violent extremism in prisons adopted in 2015 and 2016 by i.e. the Council of Europe; the EU and the UNODC.³

The article highlights that it is noteworthy that in 2016 alone, four international organisations developed guidelines (soft law) for preventing radicalisation in prisons, namely the Council of Europe; the UNODC; RAN (European Commission); and the International Committee of the Red Cross.⁴ These guidelines that describe best practices within the area were very useful with regard to assessing national Danish regulation and practice. All guidelines emphasize that measures to counter violent extremism in prisons must respect human rights obligations, including the right to privacy, religious freedom and equal treatment. However, they do not provide guidance on how prison staff can secure these human rights in practice, nor when these rights can be restricted legitimately.

It is also noteworthy that the *international guidelines virtually disregard the (human rights) due process issues* inherent in the reporting system. These relate to important procedural guarantees regarding, for example, the prisoner's right to receive adequate grounds for being

¹ Cf. page 95.

² Cf. page 96.

³ Cf. page 38.

⁴ Cf. page 48.

reported and to question these grounds. If and when the international guidelines referred to here are revised, it would be appropriate for them to include these due process concerns and describe in greater detail the human rights issues that arise in connection with preventing violent extremism in prisons.

The Danish Military Manual

Finally, the Danish Institute for Human Rights would like to draw the Special Rapporteurs' attention to the newly adopted Danish Military Manual (although not a soft law instrument as per the definition of the Special Rapporteur) which as the first military manual in the world also includes and refers to international human rights standards (although at a rather general level). The Military Manual is available in English at: <https://fmn.dk/eng/allabout/Documents/Danish-Military-Manual-MoD-defence-2016.pdf>

Yours sincerely,

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