

Columbia University  
Graduate School of Arts & Sciences  
Human Rights Studies Master of Arts Program

**(Re)framing Sexual Violence in Prison (SVP):**

**An Assessment of the Response to Non-State Actor SVP in England and Wales with  
Regard for the Positive Obligations Associated with the Non-Derogable Right to Freedom  
from Torture and Other Inhuman or Degrading Treatment or Punishment**

Adam Stephen Jones

Thesis Advisor: Professor Belinda Cooper

Submitted in partial fulfilment of the  
requirements for the degree of  
Master of Arts

January 2016

© 2016

Adam Stephen Jones

All rights reserved

## ABSTRACT

### **(Re)framing Sexual Violence in Prison (SVP):**

### **An Assessment of the Response to Non-State Actor SVP in England and Wales with Regard for the Positive Obligations Associated with the Non-Derogable Right to Freedom from Torture and Other Inhuman or Degrading Treatment or Punishment**

Adam Stephen Jones

This paper seeks to draw the issue of sexual violence in prison (SVP) closer to the principles and practices of the human rights system, with a particular focus on non-State actor SVP and the right to freedom from torture and other inhuman or degrading treatment or punishment. Through an exploration of the response to non-State actor SVP in prisons in England and Wales, a series of procedural and systematic issues are identified that obstruct the fulfilment of the strict due diligence obligations under the Convention Against Torture and Article 3 of the European Court of Human Rights. Despite the presence of these due diligence failings, the paper finds that independent institutions that ought to be conveying concern are neglecting to do so and, as such, are contributing to the veiling of SVP. It is thus argued that understanding and framing non-State actor SVP as a violation of the supposedly non-derogable right to freedom from torture and other inhuman or degrading treatment or punishment when the State fails to exercise due diligence represents a fertile avenue for drawing much needed attention to SVP, amplifying the gravity of SVP, and heightening the degree of priority placed upon its resolution.

## TABLE OF CONTENTS

- I. Introduction 6
- II. Sexual Violence in Prison 11
  - A. The Marginalization of Male-Male Sexual Violence 11
  - B. SVP: Selected Issues from the Existing Literature 12
  - C. SVP and the PREA in the United States 13
  - D. A Note on Terminologies 14
- III. The Rights of Persons Deprived of their Liberty, SVP, and the Prohibition of Torture and Other Inhuman or Degrading Treatment or Punishment 15
  - A. Common Principles Across International Human Rights Instruments 16
  - B. The Prohibition of Torture and Other Inhuman or Degrading Treatment or Punishment 17
  - C. SVP and the Prohibition of Torture and Other Inhuman or Degrading Treatment or Punishment 21
  - D. SVP, Non-State Actors, and the Prohibition of Torture and Other Inhuman or Degrading Treatment or Punishment 23
- IV. The Prison System in England and Wales 26
  - A. The Management and Monitoring of Prisons and the Current State of the Prison System 26
  - B. The Rights of Persons Deprives of their Liberty in England and Wales 27

C.	The Neglect of SVP in England and Wales and Research Challenges	28
V.	The Response to SVP in England and Wales	30
A.	Procedural Inadequacies: Prison Officer Responses to SVP	31
B.	Systematic Deficiencies: Veiling SVP	35
C.	Engagement with the International Prohibition of Torture and Other Inhuman or Degrading Treatment or Punishment	37
VI.	Moving Forward: Positive Obligations for Both Independent and State Institutions	40
A.	The Failure of Independent Bodies to Induce Change	40
B.	Initial Steps to be Taken by Prison Authorities in England and Wales	46
VII.	Concluding Remarks	48
VIII.	List of References	50

*Prison is a place where people are sent as a punishment, not for further punishments  
[...] Human beings whose lives have been reckoned so far in costs – to society, to the  
criminal justice system, to victims and to themselves – can become assets – citizens  
who can contribute and demonstrate the human capacity for redemption*

Michael Gove, Secretary of State for Justice

(Ministry of Justice 2015a)

## **I. Introduction**

Sexual violence in prison (SVP) remains a global problem that has historically been and in the majority of cases continues to be misunderstood, concealed, and inadequately addressed. Whilst within the last twenty years, State officials, advocates, and scholars have given substantial attention to this issue in the United States in particular<sup>1</sup>, SVP has gained much less productive attention or traction in other contexts. Consequently, beyond the United States, there is considerable uncertainty over the true extent of SVP and indeed there is a paucity of knowledge on how SVP is handled in practice.

Despite the enduring prevalence of SVP, the international human rights system has addressed this issue in only limited ways, with three points in particular in need of highlighting. Firstly, though SVP has been increasingly addressed by the Committee Against Torture - the body of independent experts responsible for monitoring the implementation of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ('the CAT') – cases

---

<sup>1</sup> See, for example, the *Prison Rape Elimination Act* (2003), the work of the non-government organizations Human Rights Watch (2001) and Just Detention International (2009, 2013), and academic contributions such as Donaldson (2001, 2003), Hensley *et al.* (2002), Moster and Jeglic (2009), Fowler *et al.* (2010), Trammell (2011), Gonsalves *et al.* (2012), and Struckman-Johnson *et al.* (2013).

brought before the committee have, to date, always involved a State-actor perpetrator. Whilst the Committee Against Torture has recurrently sought to stress the responsibility of the State for acts of ill-treatment perpetrated by non-State actors in instances where the State fails to exercise due diligence, they are yet to have the opportunity to apply this stance in the context of SVP and thus there is no case law that offers a thorough exploration of State due diligence vis-à-vis SVP perpetrated by non-State actors.

Secondly, advancements on this issue at the General Assembly have not only been infrequent but also highly gendered. Whilst the 2010 approval of the ‘Rules for the treatment of women prisoners and non-custodial measures for women offenders’ (‘the Bangkok Rules’) represented a notable step forward given the inclusion of a number of initial minimum standards in relation to SVP, these Rules, as their title indicates, address women specifically. Whilst it is the case that women face unique challenges in the prison context and as such a document addressing these specific concerns is necessary, it is of note that there exists no other United Nations resolution that presents or begins to consider minimum standards in this area. Consequently, SVP involving men has been inadvertently marginalized, despite the fact that men are – in quantitative terms – overwhelmingly the victims of SVP for the reason that men make up more than ninety percent of the world’s imprisoned persons.

Finally, the majority of the non-political agencies of the United Nations are yet to specifically address SVP and of those that have the issue has typically been couched within research and standard-setting papers addressing more established and accepted goals such as reducing the transmission of the human immunodeficiency virus (HIV; see, for example, Møller *et al.* 2007). As a result, the issue of SVP is approached through only certain lenses, and by persons whom have a specific mandate. What is more, the message conveyed – though intentional – is that the issue of SVP warrants attention in light of its impact on efforts to address more acknowledged and legitimate issues, when in fact SVP should be gaining recognition as an issue in and of itself.

That SVP has been addressed in these limited ways at the international level has had a notable impact on how this issue has come to be discussed and approached more broadly, with SVP yet to fully benefit from the international exchange and production of ideas, theories, and potential responses that other specific forms of sexual violence have. Furthermore, despite the multitude of theoretical and thematic links, SVP is yet to become fully embedded within rights discourse or be regularly discussed using rights language. This disconnection is only further reified by the existing academic literature which, with the United States empirical case at the forefront, has rarely engaged with international human rights law or explored State (non)compliance vis-à-vis SVP. This represents a significant scholarly lacuna and one which, if filled, would foster more diverse debate within and outside of the academy and potentially contribute to more productive responses to – and monitoring of – SVP.

This paper thus seeks to address this concerning gap, drawing the issue of SVP more closely to the principles and approaches of the human rights agenda. This exercise will be conducted through an exploration of the response to non-State actor SVP in male prisons in England and Wales<sup>2</sup>, with specific regard for the right to freedom from torture and other inhuman or



degrading treatment or punishment. The paper focuses on non-State actor SVP specifically as this has been least interrogated by the international human rights system. The decision to specifically focus on the right to freedom from torture and other inhuman or degrading treatment or punishment is taken for two reasons. Firstly, on the basis that it is through this right that SVP more broadly has begun to be addressed by the international human rights system and, as such, there exists relevant case law and practice to draw upon in examining non-State actor SVP, and secondly, on the basis that the right to freedom from torture and other inhuman or degrading treatment or punishment is considered non-derogable and, as such, an allegation of a violation of this right carries particular weight internationally. The empirical case of prisons in England and Wales is adopted for the reason that the prison administration claim to address SVP ‘extremely seriously’<sup>3</sup> yet a number of resources to which this paper will refer indicate that SVP remains a poorly addressed issue. As such prisons in England and Wales represent fertile ground for, firstly, exploring what issues continue to impede responses to SVP; secondly, for examining how these issues impact (non)compliance with international instruments protecting the right to freedom from torture and other inhuman or degrading treatment or punishment; and finally, for considering what initial steps must be taken by the State and by independent organizations in order to better address non-State actor SVP. This paper leads, then, with the following research question:

---

<sup>2</sup> There are three separate prison services in the United Kingdom. Prisons in England and Wales are managed by the National Offender Management Service, while Scotland and Northern Ireland have their own management services. This paper will focus on prisons in England and Wales as there are, at present, more primary and secondary resources relating to this system available to draw upon. Given the comparability of all three systems, however, it is put forth that the findings of this paper should be considered relevant to the Northern Irish and Scottish systems as well.

<sup>3</sup> Written communication received via posted mail from the National Research Committee of the NOMS, November 2015 (Available upon request).

*What issues continue to impact the due diligence obligations of prison authorities in England and Wales to address SVP and what steps are required by both the State and independent organizations in order to protect the right of persons deprived of their liberty to freedom from torture and other inhuman or degrading treatment or punishment?*

In approaching this question this paper will demonstrate that whilst neither the Committee Against Torture nor the European Court have addressed cases of SVP perpetrated by non-State actors, the practice of these institutions indicates that both can hold the State accountable for such acts and reach a finding of any one of the forms of ill-treatment covered by the instruments, including torture, when a State fails to exercise due diligence.

With this point as a basis, the paper then explores responses to non-State actor SVP in England and Wales, drawing upon a range of sources, including direct communications with the National Offender Management Service, relevant cases brought to the attention of the Prisons and Probation Ombudsman, and a number of English- and Welsh-based academic studies. The empirical analysis identifies a number of procedural and systematic issues that obstruct the fulfilment of the due diligence obligations under the CAT and Article 3 of the European Convention on Human Rights.

In shifting attention to relevant independent institutions, the paper finds that in the main such institutions are neglecting to effectively address SVP and, as such, must be seen as contributing to the institutional malaise that pervades the National Offender Management Service's approach to responding to SVP.

It is thus argued that positive steps must be taken to ensure that non-State actor SVP is understood as a violation of the supposedly non-derogable right to freedom from torture and other inhuman or degrading treatment or punishment when the State fails to exercise due diligence, and that such a framework has considerable potential to draw greater attention to SVP, amplify the gravity of SVP, and heighten the degree of priority placed upon its resolution.

## **II. Sexual Violence in Prison**

### *A. The Marginalization of Male-Male Sexual Violence*

Sexual violence can be defined as ‘a sexual act committed against someone without that person’s freely given consent’ (CDC 2016). Though there exists much literature on sexual violence, research and commentary on male-male sexual violence specifically has been more sporadic. Similarly, within public policy and debate, whilst female-male sexual violence has received considerable attention, male-male sexual violence has been frequently overlooked and even discounted<sup>4</sup>. Such oversight is largely a consequence of the normative regime of heterosexuality that draws upon socially constructed notions of masculinity and femininity in rendering certain identities more legitimate than others in the context of ‘victimhood’. As Turchik and Edwards (2012: 213) note, masculinity within this regime is inconsistent with the dominant construction of the victim of sexual violence as ‘weak’ and ‘defenseless’. As such, the idea that men cannot be victims of sexual violence has become a widespread ‘myth’, such that when men are in fact victims, justifications are sought that facilitate the upholding of the masculine ideal. For example, Sivakumaran (2005: 1301) has noted contentions that since men are apparently capable of defending themselves from sexual violence, male victims must have ‘wanted it’ for they

---

<sup>4</sup> It is likewise the case that female-male and female-female sexual violence have been under-examined within both the academy and public policy. The issues raised within Part A of this section in regards to the marginalization of male-male sexual violence are also relevant to the marginalization of these other forms of sexual violence.

‘allowed it’ to happen. Such claims relate to a broader equating of male-male sexual violence with same-sex sexuality, with the ‘taint’ of ‘homosexuality’ attached to victims and the act itself (Sivakumaran 2005). It is this element that has further fueled a widespread propensity to ‘make light’ of male-male sexual violence and has indeed exacerbated its neglect.

### *B. SVP: Selected Issues from the Existing Literature*

The existing scholarship on SVP overwhelmingly addresses the United States context. A review of this literature reveals that SVP can be broadly understood to occur in one of two ways. Firstly, SVP may take the form of an unsuspected attack, perpetrated by an individual whom may have had no prior contact with the victim (see, for example, incidents documented in the 2001 Human Rights Watch report). Secondly, SVP may result from acts of coercion and intimidation, where a victim’s awareness of their vulnerability is exploited by a perpetrator. This second form of SVP may take on a transactional nature, with ‘protection’ from wider violence provided to persons positioned on the lower rungs of the prison hierarchy within an arrangement that includes (violent) sexual conduct (see, for instance, the research of Donaldson 2001, 2003). Vulnerability in such situations can be informed by a wide range of identities and characteristics, including youthfulness, nonconforming gender performance, minority sexuality, disability, physical stature, and criminal history (Human Rights Watch 2001). Prisoners with intersectional identities – such as young, first-time offenders – are at a particularly high risk of being victimized in the prison estate, and their experiences in prison may be characterized by intimidation and sexual violence, including ‘grooming’ by more experienced prisoners.

Research from the United States context has also documented how prison officers conceptualize and respond to SVP. In one such study a sample of prison officers were provided with a series of scenarios and were asked to determine whether they considered the scenario to amount to SVP

(Moster and Jeglic 2009). When presented with the scenario in which a prisoner is solicited for sex in exchange for protection from broader violence, one in five prisoner officers stated that they did not consider such a scenario a form of sexual violence (Moster and Jeglic 2009). Of further concern is that research has found some prison officers to be ‘callous and irresponsible’ in handling incidences of SVP, responding to victims with comments such as ‘stand up and fight’; reflecting the heteronormativities that have impacted responses to male-male sexual violence more broadly (Human Rights Watch 2001). This has led some researchers to contend that prison officer training on SVP is fundamental to its elimination (Eigenberg 2002).

SVP can have a substantial and lasting impact on both the physical and mental health of victims. Human Rights Watch (2001) have noted the depression, shame, and anxiety that can develop following victimization, as well as physical consequences such as injuries sustained during the act and the potential for transmission of infections and viruses, including HIV. What is more, such impacts can be exacerbated as a result of the stigma attached to sexual violence that oftentimes discourages victims from seeking the support of health care services (Turchick and Edwards 2012). That SVP can lead to adverse impacts on mental health is also consequential for rehabilitative efforts, and Human Rights Watch (2001) have demonstrated that SVP can impact a victim’s ability to reintegrate into society upon release from prison. SVP is also a significant public health issue given its role in the transmission of infections and viruses (Mair 2007; Just Detention International 2009). In recognizing that the vast majority of prisoners will return to their communities, Mair (2007) has noted the possibility of such persons unknowingly transferring viruses and infections acquired whilst in prison to their partners, thus placing greater strain on the public health response to these issues.

### *C. SVP and the PREA in the United States*

In 1994 the Supreme Court of the United States argued in *Farmer v. Brennan* that ‘deliberate indifference’ of prison officers to the risk of sexual assault faced by prisoners in the United States amounted to Cruel and Unusual Punishment under the Eighth Amendment (Supreme Court of the United States 1994). The case brought the issue of SVP into public debate and in subsequent years a number of investigations by non-government organizations revealed the enormity of SVP in the United States (see Human Rights Watch 2001). By the early 2000’s Congress was compelled to step in, and in 2003 the *Prison Rape Elimination Act* was introduced which established a ‘zero tolerance’ policy and a comprehensive national system for combatting SVP. This included the establishing of the Prison Rape Elimination Commission, charged with undertaking in-depth research into all aspects of SVP. Whilst a number of factors led to the decision of Congress to take action, it is of note that within the Prison Rape Elimination Act itself it is stated that a central purpose of the legislation is to ensure the protection of ‘the Eighth Amendment rights of Federal, State, and local prisoners’ (*Prison Rape Elimination Act* 2003). The legislation can thus be understood to at least in part demonstrate how the framing of SVP in the United States as a grave domestic human rights violation heightened the degree of priority placed upon its resolution.

#### *D. A Note on Terminologies*

This paper adopts the term ‘sexual violence’ in recognizing its inclusiveness in encapsulating all forms of nonconsensual sexual conduct, contact, and abuse (CDC 2016). In the prison context the term sexual violence has rarely been used to describe nonconsensual sexual acts. Rather, a host of terminologies have been employed across public policy, rights advocacy, and the academy including, but not limited to, ‘prison rape’, ‘sexual assault’, ‘sexual abuse’, ‘sexual victimization’, ‘male rape’, and ‘homosexual rape’. Of concern is that these terms are frequently

used interchangeably, an example being the 2013 scholarly contribution of Struckman-Johnson *et al.* which uses ‘prison rape’, ‘sexual victimization’, and ‘sexual assault’ within its opening paragraphs. Given that the definitional scope of all of these terms will vary among different persons and within legal instruments, fielding such a diverse array of terminologies and using these interchangeably only heightens the risk of misperception, including among persons responding to SVP, such as prison officers. This paper thus advocates for the use of more consistent terminology when possible.

### **III. The Rights of Persons Deprived of their Liberty, SVP, and the Prohibition of Torture and Other Inhuman or Degrading Treatment or Punishment**

The rights of persons deprived of their liberty have been addressed in both binding treaties and non-binding guidelines at the international and regional levels. Part A of this section will discuss a number of these instruments, finding common principles relating to the rights of persons deprived of their liberty. Part B will then specifically examine the right to freedom from torture and other inhuman or degrading treatment or punishment<sup>5</sup>, with a particular focus on the practice of the Committee Against Torture and the European Court, with Part C offering an exploration of how SVP has been understood to meet the necessary thresholds for a finding of torture under international human rights law. Finally – in recognizing that the jurisprudence of these bodies has been limited to acts of SVP perpetrated by State actors – Part D engages in an analysis of the practice of both the Committee Against Torture and the European Court concerning acts of ill-treatment perpetrated by non-State actors in order to establish how supportive the international

---

<sup>5</sup> Whilst the CAT and the Committee Against Torture have adopted the phrase ‘torture and other cruel, inhuman or degrading treatment or punishment’, the ECHR and the European Court have adopted the alternative ‘torture and inhuman or degrading treatment or punishment’. This paper follows the CAT and the Committee Against Torture in employing the word ‘other’ given that all forms of torture are also cruel, inhuman, and degrading, but will drop the word ‘cruel’ for this has not been central to the assessment of ill-treatment within the practice of the Committee Against Torture.

framework on the prohibition of torture and other inhuman or degrading treatment or punishment may be in addressing SVP in all its devastating forms.

#### *A. Common Principles Across International Human Rights Instruments*

One of the earliest sources of guidance on the treatment and rights of persons deprived of their liberty came with the adoption of the United Nations Standard Minimum Rules for the Treatment of Prisoners in 1955. These rules represented the first reference at the international level to rehabilitation as a necessarily fundamental aim of any penitentiary system, with Rule 61 stating, *inter alia*, that ‘the treatment of prisoners should emphasize not their exclusion from the community, but their continuing part in it’, with ‘community agencies [...] enlisted wherever possible to assist staff of the institution in the task of social rehabilitation’ (*Standard Minimum Rules for the Treatment of Prisons* 1957). In having regard for the fact that imprisonment is afflictive through the deprivation of one’s liberty, the Minimum Rules also stipulate that ‘the prison system shall not, except as incidental to justifiable segregation or the maintenance of discipline, aggravate the suffering inherent in such a situation’ (*Standard Minimum Rules for the Treatment of Prisons* 1957).

The legally binding ICCPR also addresses prisoners’ rights with Article 10 stating that ‘all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person’ (*ICCPR* 1976). This article also provides further weight to the importance of rehabilitation in stipulating that the ‘penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation’ (*ICCPR* 1976). Legal traction for prisoners’ rights is not confined to Article 10 alone however, for persons deprived of their liberty retain ‘all the rights set forth in the Covenant, subject to the restrictions that are unavoidable in a closed environment’ (U.N. HRC 1992).



The rights of persons deprived of their liberty have also been addressed at the regional level most relevant to this paper, with the case law of the European Court mirroring many of the principles accepted at the international level. In *Hirst v. the United Kingdom* the Court emphasized ‘that prisoners in general continue to enjoy all the fundamental rights and freedoms guaranteed under the Convention save for the right to liberty’, and in *Gelfmann v. France* the Court required that States ensure that ‘prisoners are detained in conditions which are compatible with respect for human dignity’ and that the well-being of prisoners is ‘adequately secured’ (European Court of Human Rights 2004; European Court of Human Rights 2005). The Council of Europe has likewise provided leadership on the rights of prisoners with the adoption of the European Prison Rules in 2006. Though non-binding on States, the Council recommends that governments of member States use the Rules to guide their ‘legislation, policies and practice’, with the Rules including the provision that ‘procedures [...] be in place to ensure the safety of prisoners [...] and to reduce to a minimum the risk of violence and other events that might threaten safety’ (European Prison Rules 2006).

Taken together these international and regional instruments point to a number of overarching principles in relation to persons deprived of their liberty. That such persons be treated with regard for their inherent dignity and that such persons retain all of the human rights set forth in international human rights law (save for those restrictions that are unavoidable in a closed setting) are principles widely acknowledged. That said, one right in particular has been extensively availed across systems and regions in cases relating to persons deprived of their liberty: namely, the right to freedom from torture and other inhuman or degrading treatment or punishment.

#### *B. The Prohibition of Torture and Other Inhuman or Degrading Treatment*

That the right to freedom from torture and other inhuman or degrading treatment has become one of the most developed areas of rights in relation to persons deprived of their liberty is perhaps to be expected given not only the severity of the crime of torture, but also the significant prospect of such acts occurring in prison as a consequence of the impunity that so often pervades closed environments. This right has been addressed within the CAT and within Article 3 of the ECHR<sup>6</sup>, and this section will explore how the Committee Against Torture and the European Court have addressed torture and other inhuman or degrading treatment, finding common ground between the two systems.

Article 1 of the CAT defines torture as:

*[A]ny act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity*

*Convention Against Torture (1984)*

---

<sup>6</sup> Whilst it is of note that the ICCPR also includes the provision – under Article 7 – that ‘no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment’, this paper considers the jurisprudence of the Human Rights Committee concerning SVP to be less developed still than that of the Committee Against Torture and the European Court, not least because there have been less explicit links to the concept of torture. For instance, in 2004, the Human Rights Committee heard *Turaeva v. Uzbekistan* – concerning various acts of ill-treatment, including rape – and though the Committee had the opportunity to assess rape as torture, the terms ‘torture’ and ‘rape’ were recurrently stated separately, thus avoiding a thorough exploration of whether rape in itself constitutes torture (U.N. HRC 2009). As such, it is argued that – at present – the practice of the Committee Against Torture and the European Court represent more fertile ground for an assessment of how supportive the international framework on torture and other inhuman or degrading treatment or punishment can be in addressing all forms of SVP. The ICCPR remains relevant to this paper in light of its broader provisions, including those within Article 10.

This definition thus comprises three main elements: firstly, a ‘material’ element (‘severe pain or suffering’); secondly, an ‘intentional and purposive element’ (‘intentionally inflicted’, ‘for such purposes as’); and finally, a ‘qualified perpetrator’ element (‘inflicted by’, ‘at the instigation of’, or ‘with the consent or acquiescence of’ a ‘public official’ or ‘other person acting in an official capacity’) (Special Rapporteur on Torture 1986:10; Gaer 2012). A finding of torture under the CAT therefore requires that the ill-treatment in question satisfies these three elements. The CAT also addresses other forms of inhuman or degrading treatment that do not meet the threshold of severity necessary for a finding of torture. This threshold is guided by a number of factors, with the Committee Against Torture of the view that, in comparison to torture, other forms of inhuman or degrading treatment ‘differ in the severity of pain and suffering’ and, notably, ‘may not require proof of impermissible purposes’ (U.N. Committee Against Torture 2008). A former United Nations Special Rapporteur on Torture has also contended that the powerlessness of the victim may likewise influence a finding of torture under the CAT (OHCHR 2010). In regards to the distinction between inhuman treatment and degrading treatment, it is understood that this is guided by the material element of harm with degrading treatment representing the lowest threshold of harm within the framework (OHCHR 2010).

Unlike the CAT, the ECHR does not provide a specific definition of torture (or indeed of other inhuman or degrading treatment). The European Court has at times relied on the definition of torture within the CAT and turning to the Court’s case law provides an insight into the assessment of ill-treatment under Article 3. In the judgement of *Ireland v. the United Kingdom* the Court emphasized that ‘ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3’, and that the assessment of such a minimum is relative and dependent upon an array of circumstances, including ‘the duration of the treatment, its physical

or mental effects and, in some cases, the sex, age and state of health of the victim'; a view later reaffirmed in *Selmouni v. France* (European Court of Human Rights 1978; European Court of Human Rights 1999). In regards to the distinction of torture from other inhuman or degrading treatment, the European Court has taken the view that both the level of intensity and the purpose of the ill-treatment are principle factors, with the latter encompassing such aims as the obtaining of information or the intimidation of the victim (Reidy 2002). Ill-treatment that has not reached the threshold for a finding of torture but which has been held as 'inhuman' has been considered so on the basis of, *inter alia*, the duration of the treatment, the extent of bodily injury, the degree of mental suffering, and whether the harm was premeditated (Reidy 2002). Findings of degrading treatment alone have been reached by the European Court when the ill-treatment concerned has aroused in victims 'feelings of fear, anguish and inferiority capable of humiliating and debasing' (Reidy 2002: 13).

The right to be free from torture and other inhuman or degrading treatment or punishment is considered absolute; a right from which no derogations are permitted. Both the Committee Against Torture and the European Court have regularly referred to the international prohibition of torture as a peremptory, *jus cogens* norm, and in regards to other inhuman and degrading treatment the Committee Against Torture has highlighted that the conditions that give rise to such ill-treatment oftentimes facilitate torture and, consequently, the prohibition of such ill-treatment is to be considered non-derogable as well (U.N. Committee Against Torture 2008; Reidy 2002). As such, the employment of the international framework relating to torture and other inhuman or degrading treatment or punishment represents 'one of the strongest protections that international law can offer' (Fortin 2008: 146) and compliance requires that States parties exercise due diligence to prevent such ill-treatment and to respond effectively and punish

appropriately if such ill-treatment occurs. For example, Article 2 of the CAT stipulates that States parties ‘shall take effective legislative, administrative, judicial or other measures to prevent acts of torture’, and the European Court requires that there be in place ‘preventive and protective safeguards against ill-treatment’ and that if such ill-treatment occurs these acts be thoroughly and effectively investigated (*Convention Against Torture* 1984; Reidy 2002).

*C. SVP and the Prohibition of Torture, Inhuman, and Degrading Treatment or Punishment*

The application of the international framework on torture and other inhuman or degrading treatment or punishment to the issue of SVP is relatively recent, with the European Court and the Committee Against Torture first having addressed the issue during the mid-1990’s and mid-2000’s respectively. One reason for this may be found in the broader historical isolation of sexual violence from the human rights agenda, with sexual violence having rarely gained legal traction at the international level until the 1990’s (Copelon 1994; REDRESS 2003). A second reason – in part linked to the first – may be found in the extent of the stigma surrounding this issue, which has silenced victims and depressed public discussion. Within recent years, however, there have been a number of notable cases before both the Committee Against Torture and the European Court concerning SVP that have reached a finding of torture.

Two asylum cases brought before the Committee Against Torture led to the unequivocal recognition that rape perpetrated by State actors in prison constitutes torture. In the 2006 case *C.T. and K.M. v. Sweden* – concerning a female complainant who had been imprisoned and interrogated in Rwanda and subjected to rape under the threat of execution – the Committee noted that the complainant ‘was repeatedly raped in detention and as such was subjected to torture’ (U.N. Committee Against Torture 2006). In the 2007 case *V.L. v. Switzerland* –

concerning a female complainant who had been interrogated and raped by police officers in Belarus – the Committee Against Torture was more specific still, arguing that the multiple rapes surely constituted ‘infliction of severe pain and suffering perpetrated for a number of impermissible purposes, including interrogation, intimidation, punishment, retaliation, humiliation and discrimination based on gender’ and, therefore, the ill-treatment ‘constitutes torture’ (U.N. Committee Against Torture 2007).

The European Court has also increasingly unpacked the concepts of torture and other inhuman or degrading treatment vis-à-vis acts of SVP and has found that in certain circumstances rape can amount to torture under Article 3 of the ECHR. In *Aydin v. Turkey*, for instance – concerning the rape of a 17-year-old female in detention by Turkish Security Forces – the Court contended that ‘the accumulation of acts of physical and mental violence inflicted on the applicant and the especially cruel act of rape to which she was subjected amounted to torture in breach of Article 3 of the Convention’, before clarifying that ‘the Court would have reached this conclusion on either of these grounds taken separately’ (European Court of Human Rights 1997).

This recent practice demonstrates that acts of sexual violence in detention can constitute the most severe form of ill-treatment in torture under both the CAT and the ECHR. That said, it is of significance that the jurisprudence to date has been confined to cases that have involved a State perpetrator and ‘a traditional purposive approach to torture, being ostensibly for political purposes’ (McGlynn 2009: 581). Accordingly, in order to determine how supportive the international framework on torture and other inhuman or degrading treatment or punishment can be in addressing all forms of SVP, Part D will turn to an analysis of relevant practice of the Committee Against Torture and the European Court in relation to non-State actors.

*D. SVP, Non-State Actors, and the Prohibition of Torture and Other Inhuman or Degrading Treatment or Punishment*

Within recent years there has been an increasingly widespread understanding among international human rights bodies that when the State fails to adequately protect individuals from rights violations perpetrated by non-State actors, the international human rights framework is necessarily invoked. The rationale behind this development is that it is only with such an approach that human rights norms can have a full and consistent impact on an individual's lived reality. This view is evident in the practice of both the Committee Against Torture and the European Court.

The Committee Against Torture authoritatively addressed the accountability of States for ill-treatment perpetrated by non-State actors within its General Comment of 2008, stating that:

*Where State authorities or others acting in official capacity [...] know or have reasonable grounds to believe that acts of torture or ill-treatment are being committed by non-State officials or private actors and they fail to exercise due diligence to prevent, investigate, prosecute and punish such non-State officials or private actors consistently with [the CAT], the State bears responsibility and its officials should be considered as authors, complicit or otherwise responsible under the Convention for consenting to or acquiescing in such impermissible acts*

(U.N. Committee Against Torture 2008)

That the Committee has adopted such a stance is unsurprising given not only the development of the due diligence standard within international human rights law more broadly but because, as

Fortin (2008) notes, the term ‘acquiescence’ was proposed for inclusion within Article 1 precisely amid concern that the terms ‘instigation’ and ‘consent’ did not cover ‘the omission or failure of a public official to act when he had reasonable grounds to believe that torture had been or was being committed’ (Boulesbaa 1999: 26). Read in conjunction with the Committee’s General Comment of 2008 – that recognizes that men are subject to ‘certain gendered violations of the Convention’, including acts of sexual violence – there can be no doubt that the Committee considers acts of SVP perpetrated by non-State actors to fall within the scope of the CAT when the State fails to exercise due diligence (U.N. Committee Against Torture 2008).

The European Court has likewise developed the concept of due diligence vis-à-vis acts of ill-treatment perpetrated by non-State actors, with the 2001 case *Z and Others v. the United Kingdom* – concerning the severe ill-treatment inflicted upon four children by their parents – particularly authoritative. In noting the failure of State actors to take effective steps to bring the ill-treatment to an end, the Court argued that States are required ‘to take measures designed to ensure that individuals... are not subjected to torture or inhuman or degrading treatment or punishment, *including such ill-treatment administered by private individuals*’, and that, moreover, these measures must ‘include reasonable steps to prevent ill-treatment of which the authorities had or ought to have had knowledge’ (emphasis added; European Court of Human Rights 2001). Based on this and in recognizing that the ill-treatment amounted to the classifications of ‘inhuman’ and ‘degrading’, the Court found the United Kingdom in violation of Article 3 of the ECHR. Importantly, there was nothing within the Court’s finding to indicate that had the ill-treatment amounted to torture as opposed to inhuman or degrading, a different verdict in regards to the State’s accountability would have been reached (McGlynn 2009).



The practice of the Committee Against Torture and the European Court in relation to acts of ill-treatment perpetrated by non-State actors thus clearly re-affirms the notion of positive obligations vis-à-vis compliance with the CAT and the ECHR. When the State ‘refrains’ from inflicting ill-treatment upon persons within its jurisdiction (a ‘negative’ duty), compliance is only partially fulfilled. Full compliance with these bodies of law requires that the State adopts ‘positive’ duties, which include reasonable measures to protect persons from ill-treatment at the hands of non-State actors and an effective response to such ill-treatment if it occurs.

In considering the practice of the Committee Against Torture and the European Court this paper understands SVP to always meet the minimum standard of severity necessary to invoke the CAT and the ECHR. All instances of SVP have the potential to humiliate and debase the victim, and indeed to potentially arouse fear, and in this regard SVP can always satisfy a ‘degrading treatment’ classification under the CAT and Article 3 of the ECHR. Further, though, empirical cases have demonstrated the severe physical and mental harm that can result from SVP, and indeed the potentially extended duration of such ill-treatment, indicating that SVP may also reach a classification of ‘inhuman treatment’. Finally, since all acts of sexual violence are informed by unequal, gendered power relations (regardless of the gender of the perpetrator or the victim), it can be said that SVP is always discriminatory on the grounds of gender and, as such, SVP can also potentially reach a finding of torture since discrimination is an impermissible purpose<sup>7</sup> (McGlynn 2009).

In light of this and the broader discussions within this section it is evident that the international framework relating to torture and other inhuman or degrading treatment or punishment

---

<sup>7</sup> The purpose of this paper is not, however, to assess these thresholds at length in relation to SVP. Rather, the aim is to demonstrate that SVP always satisfies the minimum level of severity necessary to fall within the ambit of the CAT and Article 3 of the ECHR and that, as such, in the context of SVP the State is obliged to abide by the strict due diligence obligations associated with these instruments.

represents fertile ground for challenging and responding to all forms of SVP, yet in practice the framework has been employed and cited sporadically and unevenly. Given the non-derogable nature of the right to freedom from torture and other inhuman or degrading treatment or punishment, establishing the incidence of SVP in all its forms as a violation of this right has the potential to drastically change how this issue is understood and managed and what level of priority is placed upon its prevention. As Gaer (2012: 307) has contended in the context of sexual violence more broadly, a link with the torture framework is critically important in ensuring that sexual violence is recurrently regarded ‘as one of the gravest human rights violations having peremptory or *jus cogens* status’.

This paper will now turn to the empirical case of prisons in England and Wales in order to assess what issues pervade responses to SVP and how these issues engage the international prohibition of torture and other inhuman or degrading treatment or punishment. The following section will provide an account of the prison system in England and Wales and outline the rights of persons deprived of their liberty in the United Kingdom more broadly. Section V will then present and discuss the research findings.

#### **IV. The Prison System in England and Wales**

##### *A. The Management and Monitoring of Prisons and the Current State of the Prison System*

Public prisons in England and Wales are managed by Her Majesty’s Prison Service, which is part of the National Offender Management Service (NOMS); an executive branch of the United Kingdom’s Ministry of Justice. Independent inspections of these facilities are undertaken at least once every five years by Her Majesty’s Inspectorate of Prisons for England and Wales (HMIP),

which reports on the conditions for – and treatment of – those in prison (HMIP 2016). The criteria on which HMIP assess facilities are grounded in international human rights standards (HMIP 2012). In addition to this process, every prison in England and Wales is allocated an Independent Monitoring Board (IMB) which comprise qualified members of the public who are tasked with monitoring day-to-day life in the prison and ensuring that accepted standards of care are maintained (IMB 2016). Members of IMBs can speak with prisoners in private and prisoners can also request to speak with members of IMBs to raise any concerns that they may have (IMB 2016). Prisoners can also raise complaints with the Prisons and Probation Ombudsman (PPO), which carries out independent investigations.

Over the past twenty years the prison population in England and Wales has increased by more than 90 percent, with the total population at 85,641 as of December 2015, of which more than 95% is accounted for by male prisoners (Prison Reform Trust 2015; Ministry of Justice 2015b). The system as a whole has been overcrowded in every year since 1994, and the current rate of incarceration is the highest in Western Europe at 148 per 100,000 persons, contrasting starkly with the rates in Germany (78 per 100,000) and France (100 per 100,000) (Prison Reform Trust 2015). Despite the ever-increasing prison population, within the past four years alone the number of staff employed in public prisons has dropped by 29 percent, resulting in almost thirteen thousand fewer staff (Prison Reform Trust 2015). Combined with an alarming rise in the number of recorded acts of violence (Ministry of Justice 2015c), the prison system in England and Wales can be said to be in a state of deterioration (Prison Reform Trust 2014).

#### *B. The Rights of Persons Deprived of their Liberty in England and Wales*

The United Kingdom has signed and ratified the ICCPR and the CAT and, as such, prisoners in England and Wales are protected by the provisions of these treaties. The government has also

ratified the Optional Protocol to the CAT which requires that States parties establish a National Preventive Mechanism (NPM) to facilitate visits to places of detention by domestic bodies and the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment ('the Subcommittee on Prevention of Torture'; established pursuant to the treaty).

At the regional level, the United Kingdom has signed and ratified the ECHR and is bound by the decisions of the European Court. Moreover, the United Kingdom has incorporated the provisions of the ECHR into its domestic law through the Human Rights Act of 1998, to the extent that Article 3 of this Act entirely reflects Article 3 of the ECHR (that 'no one shall be subjected to torture or to inhuman or degrading treatment or punishment'; *Human Rights Act* 1998). The European system also promotes visits to places of detention via the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ('the European Committee for the Prevention of Torture'), which also produces annual reports guiding States on expectations and standards.

The treatment of prisoners in England and Wales is also regulated by the United Kingdom Prison Rules, a statutory instrument that entered into force in 1999. These Rules include the provision that at 'all times the treatment of prisoners shall be such as to encourage their self-respect' and to 'assist them to lead a good and useful life' (The Prison Rules 1999); a provision that has been linked to the concept of rehabilitation (Ploch 2012).

### *C. The Neglect of SVP in England and Wales and Research Challenges*

The issue of SVP has rarely been addressed in the context of the United Kingdom at large or in England and Wales specifically. Academic contributions have been few and far between and public actors have typically shied away from making reference to SVP or establishing it as an

issue in need of attention. This status quo is of concern given that when research has been conducted it has been able to demonstrate the occurrence of SVP in prisons in England and Wales (see, for instance, Banbury 2004 and Stevens 2015). Further, this research has been able to highlight some of the problems found in other empirical contexts. Banbury (2004: 125), for example, notes the presence of coercive SVP, with one interviewee describing their behavior towards a younger, less experienced prisoner:

*I started giving Colin [...] food and advice. [...] This of course led me to wanting Colin paying me back for all the things I'd given him, whether he wanted to or not. This can either take the form of a group of us taking the bloke or as in this case just me and him. [...] The boy gave in of course...*

In recognizing the neglect of SVP in England and Wales the British charity 'The Howard League for Penal Reform' established an independent 'Commission on Sex in Prison' in 2012. Comprising fourteen commissioners of various professions including two Members of Parliament and several academic professors, the purpose of this Commission was to undertake the first ever review of all forms of sexual conduct inside prison. In particular, the aim was to conduct interviews with existing prisoners. However, a research proposal prepared by the Commission and submitted to the NOMS for review was rejected on two grounds. Firstly, it was claimed that the methodology was not sufficiently robust given the proposed self-selection of prisoners and the prospect of a small sample and, secondly, because the project supposedly failed to adequately incorporate the priorities of the NOMS (which include the organization's strive to identify ways to maximize resources)<sup>8</sup>.

---

<sup>8</sup> Written communication received via posted mail from the National Research Committee of the NOMS, November 2015 (Available upon request).

The decision demonstrated the challenge in conducting research in prisons. Prison systems may considerably constrict or deny access including if a project fails to conform to the specific management direction of an institution at a given point in time (Banbury 2004). Despite the fact that an underlying aim of the NOMS is to establish ‘positive, safe, secure and decent environments for managing offenders’, the organization still rejected the Commission’s proposal. The occurrence of SVP undoubtedly works against this aim and, as such, one can only assume that the decision of the NOMS represents not only a failure to recognize that even a small sample of qualitative data could have a significant impact on the perception of this issue and how it is tackled but that, moreover, there is likely a broader failure to appreciate the potential extent of SVP in England and Wales.

This researcher has faced similar barriers to those faced by the Commission, with a research proposal that sought to interview prison staff rejected by the NOMS on the basis that the project could not garner support from a ‘Business Lead’ within the organization. Whilst a number of prison governors expressed interest in the research they could not commit to participating unless the research was approved by the NOMS. Evidently there are significant obstacles to human rights fact-finding relating to SVP in England and Wales. This however does not appear to be a matter that will be addressed in the near future. When this researcher contacted the Office of the Prime Minister expressing concern over the decision taken by the NOMS to reject the proposal submitted by the Commission on Sex in Prison, the Office did not provide comment and chose to defer to the opinion of the NOMS<sup>9</sup>.

## **V. The Response to SVP in England and Wales**

---

<sup>9</sup> *Ibid.*

Neither the Ministry of Justice nor the NOMS have established a dedicated framework for responding to SVP. Prison Service Order (PSO) 64/2011 addresses the management of violence in a generalized manner, stating that ‘all incidents of violence must be challenged’, with options available to staff ranging from imposing sanctions on a perpetrator through to referral to the police (NOMS 2011a). Sexual violence is not specifically referenced within PSO 64/2011 though the NOMS have recently stated that all ‘sexual assaults’ are treated ‘extremely seriously’ and are ‘referred to the police for prosecution’<sup>10</sup>. The NOMS does not explicitly define the term ‘sexual assault’ but has indicated that it covers ‘a wide range of incidents from rape to inappropriate touching’ (Ministry of Justice 2015d).

Drawing upon a variety of sources, Part A of this section will demonstrate that, in reality, prison staff fail to consistently respond to SVP in a manner that reflects the claims of the NOMS, with incidents of SVP ‘hushed up’ and minimized. Part B identifies two deficiencies in the approach to SVP that are more systematic and can be understood to contribute to the veiling of SVP. Finally, Part C explores how the empirical evidence documented impacts compliance with the CAT and the ECHR, with reference to the notions of due diligence and positive obligation as understood by the Committee Against Torture and the European Court.

#### *A. Procedural Inadequacies: Prison Officer Responses to SVP*

In documenting the experiences of former prisoners, Stevens (2015) notes the case of Aiden, a young prisoner raped by five assailants in a cell who required in-prison medical treatment as a result. Aiden could think of no other reason for his victimization than his young and thin appearance which, in his words, rendered him ‘easy prey’ (Stevens 2015: 9-10). On receiving medical treatment Aiden was encouraged by the nurse to report the sexual violence to a principle

---

<sup>10</sup> *Ibid.*

officer. However, the officer dissuaded Aiden from officially reporting, advising that to do so could put Aiden at future risk of ill-treatment given the unwritten code among prison populations against informing staff of prisoner misconduct. The officer instead moved Aiden to another wing before transferring him to another prison entirely, all the while without officially reporting the violence.

The incident is a clear example of a prison officer failing to fulfil in practice broader expectations relating to the handling of SVP. Whilst the violence to which Aiden was subjected to necessitated the involvement of the police and the undertaking of a criminal investigation, this could not be facilitated for the simple reason that the incident went undocumented. Whilst the officer may have had a degree of good intention in advising against reporting, the decision to move Aiden to another prison without officially documenting the case certainly did not eliminate the possibility of Aiden being victimized elsewhere and, moreover, served to uphold the notion that SVP can be perpetrated with impunity. Similarly, given that the violence undoubtedly reflected uneven power dynamics relating to age and physique, which inform the social hierarchy of the prison and, by extension, the likely victims of SVP (Donaldson 2001, 2003; Human Rights Watch 2001; Trammell 2011), the officer's decision to discourage official reporting can be said to convey a *de facto* acceptance of these inequalities and a disinclination to challenge their pervasiveness. This is in direct conflict with the expectations of HMIP, which require that prison staff identify and protect vulnerable prisoners and confront violent behavior that results from power imbalances (HMIP 2012).

The poor handling of Aiden's case is by no means an anomaly. Around the prison estate staff have been found to respond to reports of SVP in a manner that humiliates the victim and further discourages future reporting. For example, Banbury's (2004: 126) research highlights the case of



a gay prisoner who had reported his victimization to a prison officer only to be met with the following response: ‘come on mate, you’re gay, how’s that gonna sound?’ This incident reflects a broader linking of male-male sexual violence with same-sex sexuality, as noted in the work of Sivakumaran (2005), and demonstrates how this link can play out alarmingly in the dictating of both the validity and the legitimacy of certain forms of violent lived reality.

That staff may fail to appreciate that persons of minority sexual orientations can find themselves in situations that amount to SVP (rather than consensual sexual conduct), is further demonstrated in the research of Stevens (2015). One interviewee noted the case of a young prisoner who had disclosed to a senior officer that he was ‘confused’ about his sexuality, with the officer in response moving the prisoner into the cell of an older, openly gay prisoner so that the young prisoner could ‘sort himself out’ (Stevens 2015: 11-12). Such practice entirely overlooks the reality of coercive, transactional relationships in prisons, as documented in England and Wales and in the United States, and places a prisoner at heightened risk of ill-treatment (Banbury 2004; Donaldson 2001, 2003; Human Rights Watch 2001; Stevens 2015; Trammell 2011).

Examining the execution of the Cell Sharing Risk Assessment (CSRA) process further illustrates how staff have placed prisoners at greater risk of SVP. The NOMS require that all prisoners have an up to date CSRA that supports staff in assessing the ‘risk a prisoner poses to another prisoner in a locked cell’ (NOMS 2011b). Whilst it is recognized that the risk presented by most prisoners will not change over time, the risk associated with some will, and with this mind a CSRA is considered a ‘live document’ by the NOMS (NOMS 2011b). Reviewing CSRA-related cases brought to the PPO reveals that, in the context of SVP, some prison officers are inadequately employing the CSRAs to raise awareness of risk and thus assist in the prevention of ill-treatment. In 2011, for example, a case was brought to the attention of the PPO that concerned a prisoner

who had reported that he had been the victim of sexual violence perpetrated by the prisoner with whom he was sharing a cell (PPO 2013). An investigation into the incident took place and it was discovered that there was security intelligence relating to the perpetrator's history in prison and, specifically, that in previous prisons the perpetrator had committed similar acts of violence. Despite this knowledge among some staff in the prison system, the perpetrator's CSRA did not reference his violent background and, as such, he was considered 'low risk' and therefore a suitable candidate for cell sharing.

In another case, brought to the attention of the PPO in 2008, a prisoner had been violently attacked and killed by a prisoner with whom he had been sharing a cell (PPO 2013). When this incident was investigated further it was discovered that the perpetrator had been accused of sexual violence in another facility by two prisoners on separate occasions, and that there had been concerns of possible 'grooming'. Given this information the prisoner should have been considered a high risk under the CSRA and, as such, on transfer to the subsequent prison facility, should have been identified as unsuitable for cell sharing.

Both of these cases demonstrate the potentially devastating consequences of staff failing to effectively document incidences of SVP in CSRAs. With prisoners at times moving from one facility to another, it is critical that a shared resource such as a prisoner's CSRA is a comprehensive and complete document. When the CSRA process fails, staff exponentially raise the risk of inter-prisoner violence including SVP. In considering these cases in conjunction with the incidents highlighted by Banbury (2004) and Stevens (2015), it is evident that not all prison officers are recognizing the gravity of SVP or indeed identifying the conditions that may facilitate SVP. Such a reality reflects particularly poorly on any training that prison officers receive and leads one to question whether officers in fact undergo training on the handling of

SVP specifically. When this researcher contacted the NOMS to clarify this point, the NOMS refused to confirm whether SVP was covered, stating that all staff receive ‘general training’ that should enable them to ‘manage any incident that might occur in prison’<sup>11</sup>. Citing the United Kingdom’s Freedom of Information Act, the NOMS contended that information relating to staff training is exempt from disclosure as it holds ‘commercial value’ and therefore the release of this information would prejudice ‘commercial interests’<sup>12</sup>. The NOMS did however concede that their decision to withhold the information limits levels of transparency and accountability<sup>13</sup>. Given this it is perhaps very telling that the organization did not recourse to even a ‘yes’ or ‘no’ response as to whether SVP is addressed (the provision of such a response unlikely to jeopardize commercial interests).

#### *B. Systematic Deficiencies: Veiling SVP*

Focus will now turn to two broader concerns that relate to how the prison system in England and Wales is approaching the issue of SVP and how these approaches may lead to the veiling of some incidences of SVP. The first of these concerns relates to the documenting of violence. Under policy of the NOMS the obligation to determine whether an act of violence be considered sexual for the purposes of an investigation is placed solely upon the victim and their perception of the violence. If we are to assume that the NOMS aims to effectively document and respond to all forms of SVP then an approach to classification that is entirely guided by the victim seems counterproductive to this objective given two underlying assumptions made by the organization. Firstly, in adopting this approach, the NOMS assumes that all prisoners will be comfortable in

---

<sup>11</sup> Written communication received via email from the Policy and Regulation Team of the NOMS (Freedom of Information reference 101497), 17 December 2015 (Available upon request).

<sup>12</sup> *Ibid.*

<sup>13</sup> *Ibid.*

discussing their experiences as ‘sexual assaults’ and will be prepared to explicitly report them as such.

This overlooks the fact that existing research demonstrates that the prevailing stigmas surrounding male-male sexual violence impede the extent to which some victims are prepared to label their experiences as ‘sexual violence’ (Human Rights Watch 2001). Further, this requisite to specifically label is not made any easier in England and Wales given that the complaints and reporting form that prisoners can complete makes reference to violence in the broadest sense, asking whether the complaint is about ‘violent or threatening behavior’ (NOMS 2012). The form does not provide an additional option for specifying that the violence was of a sexual nature, which not only represents a missed opportunity to convey to prisoners that SVP is a recognized issue but, moreover, means that the system depends on the prisoner articulating their experience of sexual violence in written form.

Secondly, in adopting this approach to documentation the NOMS assumes that all prisoners are acutely aware of the full spectrum of ill-treatment that can be considered a ‘sexual assault’ and will report such acts accordingly. Yet this assumption cannot be said to carry considerable weight given that prisoners in England and Wales are not provided with any specific information relating to SVP. For example, whilst prisoners have access to a leaflet that explains the process for reporting violence generally, this leaflet does not offer any clarity on the classification of violence or indeed provide any explanation of the term ‘sexual assault’ and the conduct that this entails (NOMS 2012). As such, we simply do not know whether the definitional scope of ‘sexual assault’ as understood by prisoners will mirror that held by the NOMS, and therefore we cannot be sure if this aspect is exacerbating the veiling of SVP. In sum, an approach to documentation that relies on prisoners solely determining the classification of their violent experiences should

not be considered a ‘water-tight’ method for ensuring that all incidences of violence that constitute SVP are officially recorded as such.

The second systematic concern relates to the framing of ‘sexual assault’ more broadly, and the potential impact on how SVP is understood and the degree of severity prison officer’s place upon a resolution. Whilst indicating that the term ‘sexual assault’ covers a ‘a wide range of incidents from rape to inappropriate touching’, the NOMS have also posited that such assaults fall within the organization’s existing definition of a ‘serious assault’. Unlike the term ‘sexual assault’, the term ‘serious assault’ has a specific definition, that is, acts of violence that ‘result in serious injuries, hospitalization as an in-patient or treatment for concussion’, with ‘serious injuries’ considered ‘a fracture, scald or burn, stabbing, crushing, extensive or multiple bruising, black eye, broken nose, lost or broken tooth, cuts requiring suturing, bites or temporary or permanent blindness’ (Ministry of Justice 2015d). In regards to SVP specifically however, it is the case that a significant proportion of such violence does not lead to these physical outcomes (Human Rights Watch 2001). As such, the Procrustean manner by which the NOMS have sought to address the conceptualization of SVP inadvertently establishes confusion, raising the risk of acts of SVP that do not result in the outcomes listed above becoming disassociated from the notion of a ‘serious assault’ and even the notion of a ‘sexual assault’ and therefore perceived as a less severe form of ill-treatment by prison staff, which may in turn influence their approach to resolution. Consequently the organization jeopardizes their stated aim to report to the police all forms of sexual assault – irrespective of the presence of physical injuries – and further contributes to the veiling of SVP.

*C. Engagement with the International Prohibition of Torture and Other Inhuman or Degrading Treatment or Punishment*

Section III highlighted that both the Committee Against Torture and the European Court consider the State accountable for acts of ill-treatment perpetrated by non-State actors when the State fails to exercise due diligence. This Section will now turn to a discussion of how the empirical evidence outlined within Parts A and B relates to (non)compliance with both the CAT and the ECHR.

Part A demonstrated that State actors in prisons in England and Wales are failing to consistently document and investigate SVP. Under both the CAT and the ECHR the obligation to investigate *prima facie* any act of ill-treatment perpetrated by non-State actors has been consistently espoused. Article 12 of the CAT requires that ‘competent authorities proceed to a prompt and impartial investigation’ and the European Court requires that all investigations into torture and other inhuman or degrading treatment or punishment lead to the identification and punishment of perpetrators (*Convention Against Torture* 1984; Reidy 2002). In the case of Aiden, the decision of the prison officer to discourage reporting renders the State in violation of these provisions, as does the case of the prison officer who rejected a report of SVP on the basis that the victim was gay. In addition, the reasons behind the respective decisions violate additional positive obligations. Specifically, Article 13 of the CAT States *inter alia* that ‘steps shall be taken to ensure that the complainant [is] [...] protected against all ill-treatment or intimidation as a consequence of his complaint’. As such, in the context of the prison, officers cannot simply draw upon prevailing understandings within the prison subculture and contend that reporting misconduct places a prisoner at future risk of harm. Rather, officers must take positive steps to reasonably avoid such risk, all the while ensuring that a competent investigation goes ahead with the involvement of the police. In regards to the case of the complaint raised by the prisoner whom identified as gay, the Committee Against Torture and the European Court have considered

the specific protection of marginalized groups (whom are at particular risk of ill-treatment) to be embedded in the obligation to prevent ill-treatment more broadly. ‘Making light’ of an incident of SVP on the basis of a victim’s sexual orientation wholly fails in this regard, and in fact heightens the risk of ill-treatment faced by persons of minority sexual orientations. As the Committee Against Torture have argued, the inaction of State actors to respond to ill-treatment offers ‘a form of encouragement’, bolstering the conditions for the perpetration of non-permissible acts with impunity (U.N. Committee Against Torture 2008).

Part A also established how State actors in prisons in England and Wales have, in certain instances, facilitated the perpetration of SVP by non-State actors, including through the failure to consistently follow the CSRA process (a positive measure that aims to reduce the risk of ill-treatment). In *E and Others v. the United Kingdom* the European Court argued that State authorities ‘knew of the risk of future ill-treatment’ to the complainants yet failed to take reasonable steps to avoid such risk (European Court of Human Rights 2002). In both CSRA cases brought to the attention of the PPO, State actors within the prison system knew of the risks posed by the individuals in question and, given the presence of the CSRA process, State actors within the prisons that later received these high risk prisoners ought to have known of these risks. Consequently prison officers and the State more broadly undoubtedly failed in their obligation to be duly diligent and – to employ the words of the Committee Against Torture – the prison officers must be regarded as ‘authors, complicit or otherwise responsible under the Convention for [...] acquiescing in such impermissible acts’ (U.N. Committee Against Torture 2008). In sum it is incumbent upon the State to segregate prisoners who pose risk to the wellbeing and even life of other prisoners, and when authorities fail to do this the State violates both the CAT and the ECHR.

Both the CAT and the ECHR require that administrative steps taken by a State to address the perpetration of ill-treatment by non-State actors be effective in principle and in practice. In light of the empirical evidence documented in Part A the United Kingdom cannot be understood to meet this requirement, for any steps that are being taken are not translating into effective practice. This point links to the broader, systematic concerns referenced within Part B; in particular the framing and documenting of SVP. Though the NOMS state that all sexual assaults should be referred to the police for prosecution there has been no questioning by the NOMS of how this interacts with the policy of victim-led documentation, or indeed with the decision to situate ‘sexual assaults’ within the physical harm-oriented definition of a ‘serious assault’. Further, in failing to expound SVP, whether that be within complaints forms, or information leaflets for prisoners, or documentation accessible to prison officers, the NOMS demonstrate an approach to SVP that can be described as inchoate at best. It is simply not adequate for the NOMS to claim that sexual assaults are treated ‘extremely seriously’<sup>14</sup>; the State must develop a framework that allows such a view to translate into practice. As Gaer (2012: 298) notes, compliance is judged by ‘results accomplished’, ‘not a State party’s aspirations’. The empirical evidence documented throughout this section certainly does not reflect the aspirations of the NOMS, and points to the need for a more comprehensive and inclusive approach to SVP that better facilitates its documentation and investigation. It is only in moving in this direction that the right to be free from torture and other inhuman or degrading treatment or punishment can be considered substantive for persons deprived of their liberty in England and Wales.

## **VI. Moving Forward: Positive Obligations for Both Independent and State Institutions**

### *A. The Failure of Independent Bodies to Induce Change*

---

<sup>14</sup> Written communication received via posted mail from the National Research Committee of the NOMS, November 2015 (Available upon request).



Analyzing the response to the perpetration of SVP by non-State actors in England and Wales through a rights lens and with regard to the practice of the Committee Against Torture and the European Court demonstrates how incidences of such violence can amount to human rights violations of considerable magnitude. In exploring due diligence obligations under the CAT and the ECHR State actors can be exposed as directly acquiescing in acts of ill-treatment that surpass the minimum levels of severity necessary for invoking the international discourse on torture and other inhuman or degrading treatment or punishment. Despite such circumstance, the United Kingdom has rarely faced questioning or condemnation from international human rights bodies or domestic inspectorates. For example, though in 2013 the Committee Against Torture examined the United Kingdom's Fifth Periodic Report on the implementation of the provisions of the CAT, the Committee did not take this opportunity to probe State representatives on what was being done to address SVP (U.N. Committee Against Torture 2013). Similarly, organizations well placed to develop standards and recommendations relating to this issue and to contribute to its framing as an issue of concern for the human rights field have not taken up this opportunity. Two such organizations are the Subcommittee on Prevention of Torture and the European Committee for the Prevention of Torture.

Each year the Subcommittee on Prevention of Torture produces an annual report which represents an opportunity to raise issues of concern with all States parties. To date however SVP has seldom been raised, and on the rare occasion that it has the focus has typically been on specific groups. For example, the annual report for 2015 noted the perpetration of SVP against transgender persons, but the opportunity to address SVP more broadly including male-male SVP was bypassed, as was the chance to discuss the particular challenges to addressing SVP, including staff malpractice (Subcommittee on Prevention of Torture 2015). Such oversight is

despite the fact that the associated Committee Against Torture raised the issue of male-male sexual violence within its General Comment of seven years ago (U.N. Committee Against Torture 2008). The absence of references to male-male SVP is of further significance given that the Sub-Committee on Torture directly advises on the operation of the National Preventive Mechanisms of States parties that monitor local practice. If the Subcommittee on Prevention of Torture is only tangentially addressing SVP then the likelihood that the National Preventive Mechanisms will comment on SVP within their reporting is slim. Indeed, a review of the reports produced by the United Kingdom's National Preventive Mechanism reveals no reference to SVP at all<sup>15</sup>.

The European Committee for the Prevention of Torture has also failed to fully expound the issue of non-State actor SVP. In a similar manner to the United Nations Sub-Committee on Torture, the European Committee produces general reports in which it outlines issues of concern with the aim of providing States with 'advance indication [...] of its views regarding the manner in which persons deprived of their liberty ought to be treated' (European Committee for the Prevention of Torture 2006: 3). Whilst its Eleventh General Report included a specific section on inter-prisoner violence, the issue of SVP was not discussed (European Committee for the Prevention of Torture 2000). Though a more recent report commented on the need to protect juvenile prisoners from violence, including sexual violence, SVP more broadly including male-male SVP in adult facilities again went unaddressed (European Committee for the Prevention of Torture 2015). The practice of both the United Nations Sub-Committee and the European Committee can thus be said to reflect the broader trend within the international human rights system in regards to SVP:

---

<sup>15</sup> All annual reports of the United Kingdom's National Preventive Mechanism are available via the following link: <http://www.nationalpreventivemechanism.org.uk/publications-resources/>.

namely, that the issue is infrequently addressed and, when it is, it is typically discussed in the context of specific groups (see, for example, *the Bangkok Rules* 2010).

At the ‘local’ level there is also reason for concern as the extent to which prison authorities are being guided or challenged in regards to their handling of SVP. When this researcher contacted HMIP to establish the extent of the organization’s knowledge of, firstly, the procedures in place in prisons in England and Wales for reporting SVP and, secondly, the types of resources available to prisoners and whether these resources address SVP, the Deputy Chief Inspector of Prisons responded as follows:

*The NOMS are best placed to provide information on the processes in place for reporting acts of sexual violence in prisons, as they are responsible for the management of prison services<sup>16</sup>*

This response is concerning given that it is the mandate of HMIP to report on the conditions for – and treatment of – those in prison (HMIP 2016). If HMIP are not fully aware of the procedures in place for reporting SVP, then surely we cannot anticipate that HMIP are able to comprehensively assess the welfare of prisoners vis-à-vis the issue of SVP and ‘name and shame’ when appropriate. Further, HMIP claim that the criteria on which prison facilities are assessed are grounded in international human rights standards (HMIP 2012). If the organization wishes to uphold this notion then it must begin to engage with the issue of SVP more rigorously.

The IMBs are also well-placed to engage with this issue and challenge prison authorities, particularly since members have ‘unrestricted access’ to the prison to which they have been assigned and have the capacity to visit prisons far more regularly than HMIP (IMB 2016).

---

<sup>16</sup> Written communication received via email from the Deputy Chief Inspector of Prisons, 22 October 2015 (Available upon request).

Moreover, their mandate is largely equivalent to that of HMIP (to ‘ensure that proper standards of care and decency are maintained’) and must be regarded as encompassing a responsibility to identify the issues at play in addressing SVP (IMB 2016). Yet there is little evidence to indicate that these local-level bodies are investigating the handling of SVP specifically, with the 2015 annual reports devoid of references to SVP and its management<sup>17</sup>. Likewise, in a 2012 report of the National Council of the IMBs, the issue of SVP went unaddressed (IMB 2012).

In considering together these aspects of international, regional, and local neglect, it becomes increasingly clear that the United Kingdom has not had to be answerable to any organization regarding the way in which State authorities respond to SVP. Add to this status quo a general public largely apathetic to the plight of persons deprived of their liberty and the conditions are set for the British State to deprioritize the confronting of a deplorable human rights issue, and to do so with relative impunity. This must change.

The human rights frameworks are in place and the opportunities are available to draw the issue of SVP closer to the principles of the human rights agenda and, in particular, to the right to freedom from torture and other inhuman or degrading treatment or punishment. These links must now be made more consistently so that the United Kingdom is pressured into a review of the practices relating to SVP within prisons in England and Wales. Understanding acts of SVP as violations of the supposedly non-derogable right to be free from torture and other inhuman or degrading treatment or punishment, and ‘naming and shaming’ accordingly, represents a fertile avenue for drawing attention to SVP, amplifying the gravity of SVP, and heightening the degree of priority placed upon its resolution. Whilst international human rights law no doubt faces enforcement challenges, time has shown that drawing historically neglected issues closer to the

---

<sup>17</sup> All annual reports of the Independent Monitoring Boards for the year 2015 are available via the following link: <http://www.imb.org.uk/reports/2015-annual-reports/>.

human rights framework can have a multitude of benefits that oftentimes proliferate as the issues become more openly discussed and debated. Violence against women and sexual violence in conflict are two such issues that have undoubtedly benefitted from this process. Both forms of violence are being addressed in more comprehensive ways now than at any point in the recent past; best response practices are being exchanged among States; the voices of victims are being heard on the international stage; more non-government organizations are dedicating more time and resources to raising awareness; community organizations and members of the public are challenging elected representatives; international forums of the highest level, including the General Assembly, are debating the prevailing challenges and future steps. It is long overdue that the issue of SVP benefits from these processes as well.

Making this a reality though, and framing SVP as a human rights problem and, in particular, a problem that invokes the strict due diligence obligations of the international prohibition of torture and other inhuman or degrading treatment or punishment requires that steps be taken by the institutions and organizations that work to uphold the very values that SVP challenges. In this regard, positive obligations do not just lie with the State. As the Special Rapporteur on Violence Against Women has contended, the obligation to be duly diligent stretches to organizations such as the United Nations that have a duty to ‘establish coherent inter-agency strategies’ that work towards the resolution of issues that defy the principles of the organization (Special Rapporteur on Violence Against Women 2006).

This section has already pointed towards a number of positive steps that can and should be taken by entities of the United Nations and the European human rights system. When given the opportunity, the Committee Against Torture must give credence to its General Comment of 2008 and probe States parties on how they are tackling the perpetration of SVP by non-State actors.

Likewise, the Subcommittee on Prevention of Torture must make more effective use of this general comment and raise the issue of SVP more frequently and in more inclusive ways. The European Committee for the Prevention of Torture can take a comparable approach. It is one thing for United Nations affiliated entities such as the World Health Organization to address SVP through only specific lenses (such as reducing the transmission of HIV); it is a quite different situation when bodies specifically mandated to address torture and other inhuman or degrading treatment or punishment approach SVP in a constricted manner.

At the national level, steps must be taken by inspectorate bodies such as HMIP and the IMBs to ensure that monitoring and inspection criteria are inclusive of the issue of SVP. Additionally, National Human Rights Institutions (NHRIs) must take steps to engage with SVP. When this researcher contacted the Equality and Human and Rights Commission – the NHRI for England and Wales charged with protecting and promoting human rights – the Commission claimed that the issue of SVP is outside of their remit<sup>18</sup>. If SVP is tied more closely to the human rights agenda through the work of international and regional bodies then there is a greater likelihood of NHRIs involving themselves in the monitoring of this issue and advocating for change.

#### *B. Initial Steps to be Taken by Prison Authorities in England and Wales*

Based on the findings of this paper's empirical research there are a number of areas that the NOMS should consider examining if the organization is to take a more diligent approach to addressing SVP. The framing and defining of SVP within the prison system has been identified as a point of concern and an issue that effects both prison officers and prisoners. An explicit definition of sexual violence is needed and the NOMS could draw upon the United Kingdom's

---

<sup>18</sup> Written communication received via email from the Equality and Human Rights Commission (reference EHRC-CU05459), 5 October 2015 (Available upon request).

Sexual Offences Act of 2003 for this, which provides definitions for the concepts of ‘rape’, ‘assault by penetration’, and ‘sexual assault’ (*Sexual Offences Act 2003*). The NOMS must also revise their notion of a ‘serious assault’, with the aim of developing a violence classification system that is more inclusive of acts of ill-treatment that inflict severe mental harm upon a victim, such as acts of SVP. Such changes will help ensure that SVP is not merely assimilated into existing frameworks but rather, existing frameworks are reviewed and reshaped in recognition of the occurrence and particularities of SVP.

The development of custom guidelines for the handling of SVP would also be an important step forward, and the U.S. Department of Justice’s ‘National Standards to Prevent, Detect, and Respond to Prison Rape’ would be a constructive source of direction in this area (Department of Justice 2012). Specific training on SVP for prison officers must be a high priority, with a focus on the vulnerabilities that manifest so destructively in the context of SVP. Further, and as according to the European Prison Rules, staff must be educated in the area of international human rights standards and how these standards relate to SVP (Rule 81.4, European Prison Rules 2006). If the prison system in England and Wales can ensure that prison officers are documenting all instances of SVP and referring to the police, then the system can secure a higher number of prosecutions and therefore strengthen the deterrent to perpetrate SVP. Alongside this, the prison system in England and Wales must better inform prisoners about SVP, the associated power imbalances, and the types of conduct that constitute SVP so that victims can accurately report incidences of violence. In the United States the PREA has required that every prisoner be informed about ‘their absolute right to be free’ from SVP, and the education of prisoners is being achieved through mandatory instruction during orientation periods, and the provision of written materials, videos, and presentations (Evans 2014; Thompson *et al.* 2008). Such practice

reinforces the notion that this issue can and should be reported, and ultimately empowers victims to realize their right to be free from such ill-treatment whilst in prison.

To respond to SVP more effectively the NOMS must also adopt a more consistent and sophisticated approach to research and analysis. Regular and systematic review of the handling of SVP is critical to identifying shortfalls and should be considered a requirement in light of Article 11 of the CAT, which stipulates that States parties recurrently review the treatment of persons deprived of their liberty (*Convention Against Torture* 1984). The NOMS and the Ministry of Justice have produced little in the form of written or statistical reports on SVP, with the first written bulletin published only in January 2015 (Ministry of Justice 2015d). Parallel to its own research efforts, the NOMS should also encourage and facilitate independent research projects in prisons that seek to explore the issue of SVP. Learning more about this issue will inevitably result in better targeted and more efficient and effective responses. At present we cannot claim to know which factors and variables have the most influence on the incidence of SVP for there exists insufficient quantitative and qualitative data. Even in the United States, where SVP has been far more rigorously explored, it has been recognized that uncertainty remains over which solutions work best (Struckman-Johnson *et al.* 2013). As Struckman-Johnson *et al.* (2013: 351) have posed: ‘are screening and classification the key to prevention, or are training and education equally or more important?’ The facilitation of research on SVP in prisons in England and Wales could offer much-needed additional insight necessary to answer this question. And indeed we will answer this question sooner rather than later if we employ the human rights framework to full effect and encourage the international exchange of ideas, theories, and best practices relating to the issue of SVP.

## **VII. Concluding Remarks**



The international human rights system has addressed the issue of SVP in a limited and uneven manner, with the perpetration of SVP by non-State actors particularly overlooked. This paper has sought to draw the issue of SVP closer to the principles and practices of the human rights system, with a particular focus on non-State actors and the right to freedom from torture and other inhuman or degrading treatment or punishment. In recognizing a dearth of scholarship assessing SVP vis-à-vis State (non)compliance with international instruments protecting this right, this paper explored the practice of the Committee Against Torture and the European Court and found:

- (i) that both the Committee Against Torture and the European Court consider the State accountable for acts of ill-treatment perpetrated by non-State actors when the State fails to exercise due diligence;
- (ii) that in light of the debasing nature of SVP and the potentially substantial impact on mental and physical health, acts of SVP always meet the standard of severity necessary to invoke the CAT and the ECHR;
- (iii) and that whilst neither the Committee Against Torture nor the European Court have addressed cases of SVP perpetrated by non-State actors, the practice of these institutions indicates that both can hold the State accountable for such acts and reach a finding of any one of the forms of ill-treatment covered by the instruments, including torture

As such, the paper has put forth the notion that the CAT and the ECHR represent effective tools for framing non-State actor SVP as a human rights issue of considerable magnitude.

Putting these tools into practice, the paper examined the response to SVP in prisons in England and Wales and demonstrated a failure of authorities to consistently exercise due diligence both

procedurally and systematically, and thus considered the United Kingdom to be in violation of both the CAT and Article 3 of the ECHR. Despite the presence of these due diligence failings, the paper argued that independent institutions that ought to have vested greater interest in monitoring SVP or working towards ‘naming and shaming’ the practice of authorities in England and Wales have failed to do this and, as such, the United Kingdom has not had to be answerable in regards to the handling of SVP. This status quo has exacerbated the inexcusable erasure of the violent lived realities of persons deprived of their liberty in England and Wales, and bolstered the misguided notion that SVP is uncommon and thus a low priority for public policy. As such, the independent institutions in question can be regarded as having facilitated the institutional malaise within the United Kingdom in regards to the issue of SVP.

This stagnation cannot continue. There are significant benefits to drawing the issue of SVP closer to the international prohibition of torture and other inhuman or degrading treatment or punishment, and human rights actors and scholarly research must work to establish more concrete links, for all forms of SVP. Though Banbury (2004) called for more research into non-State actor, coercive or ‘transactional’ SVP more than ten years ago, such research has not come about. The human rights field is well placed to finally begin to fill this void. For it is high time that the issue of SVP be addressed with the gravity that it so desperately requires. The human rights framework not only promulgates the notion that the right to freedom from torture and other inhuman or degrading treatment or punishment is non-derogable but has also long recognized the need to treat persons deprived of their liberty with regard for the inherent dignity of the human person. Tackling SVP in all its devastating forms is a critical step in ensuring the international credibility of these norms.

## **VIII. List of References**

- Banbury, S. (2004) 'Coercive sexual behavior in British prisons as reported by adult ex-prisoners', *The Howard Journal*, 43, 2: 113-130.
- Boulesbaa, A. (1999) *The U.N. Convention on Torture and the prospects for enforcement*, Kluwer Law International: The Hague.
- Centers for Disease Control and Prevention (CDC) (2016) 'Sexual violence: definitions', [Online]. Available: <http://www.cdc.gov/violenceprevention/sexualviolence/definitions.html> (Accessed 20 January 2016).
- Convention Against Torture* (1984) General Assembly resolution 39/46 of 10 December (entered into force 26 June 1987).
- Copelon, R. (1994) 'Recognizing the egregious in the everyday: Domestic violence as torture', *Columbia Human Rights Law Review*, 25: 291-367.
- Department of Justice (2012) 'National standards to prevent, detect, and respond to prison rape', 16 May, [Online]. Available: [http://ojp.gov/programs/pdfs/prea\\_final\\_rule.pdf](http://ojp.gov/programs/pdfs/prea_final_rule.pdf) (Accessed 20 January 2016).
- Donaldson, S. (2001) 'A million jockers, punks, and queens', in D. Sabo, T. A. Kupers, and W. London (Eds.) *Prison masculinities*, Philadelphia: Temple University Press, 118-126.
- Donaldson, D. (2003) 'Hooking up: Protective pairing for punks', in N. Scheper-Hughes and P. Bourgois (Eds.) *Violence in war and peace: An anthology*, Williston: Blackwell, 348-353.
- Eigenberg, H. M. (2002) 'Prison staff and male rape', in C. Hensley (ed.) *Prison sex: Practice and policy*, Boulder, CO: Lynne Rienner: 49-65.
- European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (European Committee for the Prevention of Torture) (2000) '11<sup>th</sup> General Report on the CPT's activities covering the period 1 January to 31 December 2000', [Online]. Available: <http://www.cpt.coe.int/en/annual/rep-11.pdf> (Accessed 20 January 2016).
- European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (European Committee for the Prevention of Torture) (2006) 'The CPT standards: "Substantive" sections of the CPT's General Reports', [Online]. Available: <http://www.cpt.coe.int/en/documents/eng-standards-scr.pdf> (Accessed 20 January 2016).
- European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (European Committee for the Prevention of Torture) (2015) '24<sup>th</sup> General Report of the CPT', [Online]. Available: <http://www.cpt.coe.int/en/annual/CPT-Report-2013-2014.pdf> (Accessed 20 January 2016).
- European Court of Human Rights (1978) *Ireland v. the United Kingdom*. 18 January 1978; Application no. 5310/71.
- European Court of Human Rights (1997) *Aydin v. Turkey*. 25 September 1997; 57/1996/676/866.

- European Court of Human Rights (1999) *Selmouni v. France*. 28 July 1999; Application no. 25803/94.
- European Court of Human Rights (2001) *Z. and Others v. the United Kingdom*. 10 May 2001; Application no. 29392/95.
- European Court of Human Rights (2002) *E. and Others v. the United Kingdom*. 26 November; Application no. 33218/96.
- European Court of Human Rights (2004) *Gelfmann v. France*. 14 December 2004; Application no. 25875/03.
- European Court of Human Rights (2005) *Hirst v. the United Kingdom*. 6 October 2005; Application no. 74025/01.
- European Prison Rules (2006) Adopted by the Council of Europe Committee of Ministers at the 952<sup>nd</sup> meeting of the Ministers' Deputies on 11 January.
- Evans, R. (2014) 'Prison rape', *Arena Magazine*, 4, 129: 26-29.
- Fortin, K. (2008) 'Rape as torture: An evaluation of the Committee Against Torture's attitude to sexual violence', *Utrecht Law Review*, 4, 3: 145-162.
- Fowler, S. K., A. G. Blackburn, J. W. Marquart, and J. L. Mullings (2010) 'Would they officially report an in-prison sexual assault? An examination of inmate perceptions', *The Prison Journal*, 90, 2: 220-243.
- Gaer, F. D. (2012) Rape as a form of torture: The experience of the Committee Against Torture, *CUNY Law Review*, 15: 293-308.
- Gonsalves, V. M., K. Walsh, and M. J. Scalora (2012) 'Staff perceptions of risk for prison rape perpetuation and victimization', *The Prison Journal*, 92, 2: 253-273.
- Hensley, C., R. Dumond, R. Tewksbury, and D. Dumond (2002) 'Possible solutions for preventing inmate sexual assault: Examining warden's beliefs', *American Journal of Criminal Justice*, 27, 1: 19-34.
- Her Majesty's Inspectorate of Prisons (HMIP) (2012) 'Criteria for assessing the treatment of prisoners and conditions in prisons', version 4, [Online]. Available: <http://www.justiceinspectrates.gov.uk/prisons/wp-content/uploads/sites/4/2014/02/adult-expectations-2012.pdf> (Accessed 20 January 2016).
- Her Majesty's Inspectorate of Prisons (HMIP) (2016) 'About HMI Prisons', [Online]. Available: <http://www.justiceinspectrates.gov.uk/hmiprisons/about-hmi-prisons/> (Accessed 20 January 2016).
- Human Rights Act* (1998) Act of Parliament, 9 November 1998 (entered into force 2 October 2000).
- Human Rights Watch (2001) 'No escape: Male rape in U.S. prisons', [Online]. Available: <http://www.hrw.org/reports/2001/prison/report.html> (Accessed 20 January 2016).

- Independent Monitoring Boards (IMB) (2012) ‘Issues of concern? Major issues raised in annual reports to the Secretary of State by Independent Monitoring Boards in prisons in England and Wales’, [Online]. Available: <http://www.imb.org.uk/wp-content/uploads/2015/03/imb-issues-concern.pdf>.
- Independent Monitoring Boards (IMB) (2016) ‘About us’, [Online]. Available: <http://www.imb.org.uk/about-us/> (Accessed 20 January 2016).
- International Covenant on Civil and Political Rights (ICCPR)* (1966) General Assembly resolution 2200A of 16 December (entered into force 23 March 1976).
- Just Detention International (2009) ‘Sexual abuse in detention is a public health issue’, *Just Detention International*. [Online]. Available: [http://www.justdetention.org/en/factsheets/Public\\_Health\\_vPrint.pdf](http://www.justdetention.org/en/factsheets/Public_Health_vPrint.pdf).
- Just Detention International (2013) ‘How detention facilities can stop sexual abuse behind bars’, *Just Detention International*. [Online]. Available: [http://www.justdetention.org/en/factsheets/How\\_To\\_Stop\\_Sexual\\_Abuse\\_Fact\\_Sheet\\_2013.pdf](http://www.justdetention.org/en/factsheets/How_To_Stop_Sexual_Abuse_Fact_Sheet_2013.pdf).
- Mair, J. S. (2007) ‘Reducing harm in prisons: Lessons from the United States and worldwide’, in C. Beyrer and H. F. Pizer (eds.) *Public health & human rights: Evidence-based approaches*, Baltimore: John Hopkins University Press, 105-126.
- McGlynn, C. (2009) ‘Rape, torture and the European Convention on Human Rights’, *The International and Comparative Law Quarterly*, 58, 3: 565-595.
- Ministry of Justice (2015a) ‘The treasure in the heart of man – making prisons work’, speech of Secretary of State for Justice Michael Gove before the Prisoners Learning Alliance on 17<sup>th</sup> July 2015, [Online]. Available: <https://www.gov.uk/government/speeches/the-treasure-in-the-heart-of-man-making-prisons-work> (Accessed 20 January 2016).
- Ministry of Justice (2015b) ‘Population bulletin: weekly 18 December 2015’, [Online]. Available: <https://www.gov.uk/government/statistics/prison-population-figures-2015> (Accessed 20 January 2016).
- Ministry of Justice (2015c) ‘Safety in custody summary tables to September 2015’, [Online]. Available: <https://www.gov.uk/government/statistics/safety-in-custody-quarterly-bulletin-june-2015> (Accessed 20 January 2016).
- Ministry of Justice (2015d) ‘Management information bulletin on sexual assaults in prison custody’, 29 January 2015, [Online]. Available: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/399212/sexual-assaults-in-prisons.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/399212/sexual-assaults-in-prisons.pdf) (Accessed 20 January 2016).
- Møller, L., H. Stöver, R. Jürgens, A. Gatherer and H. Nikogosian (2007) *Health in prisons: A WHO guide to the essentials in prison health*, WHO Regional Office for Europe: Copenhagen.
- Moster, A. N. and E. L. Jeglic (2009) ‘Prison warden attitudes toward prison rape and sexual assault’, *The Prison Journal*, 89, 1: 65-78.

- National Offender Management Service (NOMS) (2011a) ‘Prison Service Order 64/2011 – Management of prisoners at risk of harm to self, to others and from others’, Effective 1 April 2012, [Online]. Available: <https://www.justice.gov.uk/downloads/offenders/psipso/psi-2011/psi-64-2011-safer-custody.doc> (Accessed 20 January 2016).
- National Offender Management Service (NOMS) (2011b) Prison Service Order 09/2011 – The cell sharing risk assessment’, Effective 4 April 2011, [Online]. Available: [https://www.justice.gov.uk/downloads/offenders/psipso/psi-2011/psi\\_2011\\_09\\_CSRA\\_final.doc](https://www.justice.gov.uk/downloads/offenders/psipso/psi-2011/psi_2011_09_CSRA_final.doc) (Accessed 20 January 2016).
- National Offender Management Service (NOMS) (2012) ‘Prison Service Instruction 02/2012 – Prisoner Complaints’, Effective 1 April 2012, [Online]. Available: <https://www.justice.gov.uk/downloads/offenders/psipso/psi-2012/psi-02-2012-prisoner-complaints.doc> (Accessed 20 January 2016).
- Ploch, A. (2012) ‘Why dignity matters: Dignity and the right (or not) to rehabilitation from international and national perspectives’, *International Law and Politics*, 44: 887-949.
- Prison Rape Elimination Act* (2003) Public Law 108-79 of 21 July 2003 (entered into force 4 December 2003).
- The Prison Rules* (1999) United Kingdom Statutory Instrument, No. 728 of 10 March 1999 (entered into force 1 April 1999).
- Prison Reform Trust (2014) ‘Bromley Briefings Prison Factfile’, [Online]. Available: <http://www.prisonreformtrust.org.uk/Portals/0/Documents/Bromley%20Briefings/Factfile%20Autumn%202014.pdf> (Accessed 20 January 2016).
- Prison Reform Trust (2015) ‘Prison: The Facts’, [Online]. Available: <http://www.prisonreformtrust.org.uk/Portals/0/Documents/Prison%20the%20facts%20May%202015.pdf> (Accessed 20 January 2016).
- Prisons and Probation Ombudsman for England and Wales (PPO) (2013) ‘Learning lessons bulletin, PPO investigations issue 1: Sexual abuse in prisons’, [Online]. Available: <http://www.ppo.gov.uk/wp-content/uploads/2014/07/LLB-PPO-Sexual-abuse-in-prisons-web-final.pdf#view=FitH> (Accessed 20 January 2016).
- REDRESS (2013) ‘Using international jurisprudence on rape as a form of torture or other ill-treatment’, [Online]. Available: [http://www.redress.org/downloads/final-rape-as-torture-\(1\).pdf](http://www.redress.org/downloads/final-rape-as-torture-(1).pdf) (Accessed 20 January 2016).
- Reidy, A. (2002) *The prohibition of torture: A guide to the implementation of Article 3 of the European Convention on Human Rights*, Council of Europe: Strasbourg.
- Sexual Offences Act* (2003) Act of Parliament, 20 November 2003 (entered into force partially 20 November 2003; in full 1 May 2004).
- Sivakumaran, S. (2005) ‘Male/male rape and the ‘taint’ of homosexuality’, *Human Rights Quarterly*, 27: 1274-1306.

- Special Rapporteur on Torture (1986) Report on torture and other cruel, inhuman or degrading treatment or punishment by Peter Kooijmans; U.N. Doc. E/CN.4/1986/15.
- Special Rapporteur on Violence Against Women, Its Causes and Consequences (Special Rapporteur on Violence Against Women) (2006) Integration of the Human Rights of Women and the Gender Perspective: Violence Against Women, the Due Diligence Standard as a Tool for the Elimination of Violence Against Women by Yakin Erturk; U.N. Doc. E/CN.4/2006/61.
- Standard Minimum Rules for the Treatment of Prisoners* (1957) Economic and Social Council Resolutions 663 C of 31 July 1957.
- Stevens, A. (2015) 'Sex in prison: Experiences of former prisoners', [Online]. Available: [https://d19ylpo4aovc7m.cloudfront.net/fileadmin/howard\\_league/user/pdf/Publications/Sex\\_in\\_prison\\_web.pdf](https://d19ylpo4aovc7m.cloudfront.net/fileadmin/howard_league/user/pdf/Publications/Sex_in_prison_web.pdf) (Accessed 20 January 2016).
- Struckman-Johnson, C. and D. Struckman-Johnson (2013) 'Stopping prison rape: The evolution of standards recommended by PREA's national Prison Rape Elimination Commission', *The Prison Journal*, 93, 3: 335-354.
- Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Subcommittee on Prevention of Torture) (2015) 'Eighth annual report of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment', [Online]. Available: <http://www.ohchr.org/EN/HRBodies/OPCAT/Pages/OPCATIndex.aspx> (Accessed 20 January 2016).
- Supreme Court of the United States (1994) *Dee Farmer, Petitioner v. Edward Brennan, Warden, et al.*. June 6 1994; No. 92-7247.
- Thompson, A., L. S. Nored, K. Cheeseman (2008) 'The Prison Rape Elimination Act (PREA): An evaluation of policy compliance with illustrative excerpts', *Criminal Justice Policy Review* 19, 4: 414-437.
- Trammell, R. (2011) 'Symbolic violence and prison wives: Gender roles and protective pairing in men's prisons', *The Prison Journal*, 91, 3: 305-324.
- Turchik, J. A. and K. M. Edwards (2012) 'Myths about male rape: A literature review', *Psychology of Men and Masculinity*, 13, 2: 211-226.
- United Nations Committee Against Torture (U.N. Committee Against Torture) (2006) C.T. and K.M. v. Sweden. 17 November 2006; U.N. Doc. CAT/C/37/D/279/2005.
- United Nations Committee Against Torture (U.N. Committee Against Torture) (2007) V.L. v. Switzerland. 22 January 2007; U.N. Doc. CAT/C/37/D/262/2005.
- United Nations Committee Against Torture (U.N. Committee Against Torture) (2008) General Comment No. 2, Implementation of Article 2 by States parties; U.N. Doc. CAT/C/GC/2, 24 January 2008.
- United Nations Committee Against Torture (U.N. Committee Against Torture) (2013) 'Committee Against Torture examines report of the United Kingdom', [Online].

Available:

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13312&LangID=E> (Accessed 20 January 2016).

United Nations Human Rights Committee (U.N. HRC) (1992) General Comment 21, Article 10. Forty-fourth session, 1992; U.N. Doc. HRI/GEN/1/Rev.1 at 33/1994.

United Nations Human Rights Committee (U.N. HRC) (2009) Kholida Turaeva and Sodik Kodirov v. Uzbekistan. 3 December 2009; U.N. Doc. CCPR/C/97/D/1284/2004.

United Nations Office of the High Commissioner for Human Rights (U.N. OHCHR) (2010) *Interpretation of torture in the light of the practice and jurisprudence of international bodies*, [Online]. Available: [http://www.ohchr.org/Documents/Issues/Torture/UNVFVT/Interpretation\\_torture\\_2011\\_EN.pdf](http://www.ohchr.org/Documents/Issues/Torture/UNVFVT/Interpretation_torture_2011_EN.pdf) (Accessed 20 January 2016).

*United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders ('the Bangkok Rules')* (2010) Economic and Social Council Resolution 2010/16 of 22 July.