

Institution: University of Nottingham
Unit of Assessment: 20
Title of case study: Shaping International and National Prison Law, Policy and Practice through Legal and Penological research
<p>1. Summary of the impact</p> <p>Comparative legal and penological research conducted by Professor Dirk van Zyl Smit (DvZS) and Dr Róisín Mulgrew (RM) has had a significant effect internationally and nationally in shaping law and policy relating to the implementation of imprisonment in general, and on life imprisonment, sanctions for young offenders and the transfer and treatment of foreign and international prisoners in particular. This research has underpinned the creation and development of penal law and policy in states (e.g. Bangladesh and Malaysia), international and regional organisations (e.g. European Union, Council of Europe, United Nations Office on Drugs and Crime), as well as in the judgments and policies of international and regional human rights and criminal courts and tribunals (e.g. European Court of Human Rights and the International Criminal Court).</p>
<p>2. Underpinning research</p> <p>The researchers recognised that the implementation of punishment had not been subject to in-depth international or comparative research that could inform penal policy. Cooperation with scholars abroad and regional and international bodies and courts provided research opportunities in this area. Within the relevant period, this research focused on:</p> <p>(1) Prisons: General and Comparative: The key research insight is that carefully crafted penal and prison law, based on a sound understanding of human rights, can have a significant impact on prison conditions and penal outcomes generally. This is reflected in the international comparative research that DvZS, together with Prof. Frieder Dünkel (University of Greifswald), undertook to establish the underlying principles of prison law and policy (Output 1a). Throughout the 2000s, DvZS continued to pursue further research on prison law and policy. Research undertaken to inform the drafting of the 2006 European Prison Rules (EPR) for the Council of Europe (see below) formed the basis for work on a definitive monograph on European prison law and policy, co-authored by DvZS and Prof. Sonja Snacken (Free University of Brussels) (Output 1b). Through detailed legal analysis of the judgments of the European Court of Human Rights (ECtHR), the reports of the European Committee for the Prevention of Torture (CPT), and the Rules and Recommendations of the Council of Europe, this book develops a principled position on the rights and duties of prisoners and prison authorities.</p> <p>(2) Life Imprisonment: DvZS has pursued, largely independently, research on life imprisonment across the world. This work dealt with both the imposition and implementation of life imprisonment and argued that standards should be developed to ensure both that life imprisonment was used only for the most serious offences and that all persons sentenced to life imprisonment should have the prospect of being considered for release at some equitably determined point during their sentences. DvZS' initial study of life imprisonment in the USA, the UK and Germany (as well as in international criminal tribunals) was published in 2002 (Output 2a). It was followed by an intensive study of irreducible life sentences in Europe (2010) (Output 2b).</p> <p>(3) Sanctions for Young Offenders: DvZS undertook research with Professor Frieder Dünkel on the application of general prisoners' rights law to incarcerated young offenders (Output 3a). Similarly, DvZS and his co-advisers on the European Rules for Juvenile Offenders subject to Sanctions or Measures produced a series of publications on the topic in order to explain the principles that underlie it and to publicise it more widely (Output 3b).</p> <p>(4) Transfer and Treatment of International and Foreign Prisoners: The general rights-based approach to imprisonment was taken further by RM, who developed additional insights about prisoners' rights in general as well as about specific questions relating to the enforcement of international sentences of imprisonment and the transfer of sentenced prisoners from one country to another. RM's research on the issue of international imprisonment began during her PhD studies, supervised by DvZS, who had published on the topic, and continued upon her appointment to a lectureship in September 2010. RM's findings from an extensive period of empirical research formed the basis of a substantial monograph on the topic (Output 4a). Both publications outline the current systems used to detain and imprison persons accused or convicted for the commission of international crimes, and make recommendations for the strategic and</p>

Impact case study (REF3b)

structural development of the international penal system. Further research comparing the international and inter-state systems for the transfer of prisoners was also published as an article (Output 4b).

3. References to the research

1. Prisons: general and comparative

(1a) Dirk van Zyl Smit and Frieder Dünkel (eds) *Imprisonment today and tomorrow: international perspectives on prisoners' rights and prison conditions* (2nd ed.) (Kluwer Law International; The Hague, 2001). [available on request]

(1b) Dirk van Zyl Smit and Sonja Snacken *Principles of European Prison Law and Policy: Penology and Human Rights* (Oxford University Press; Oxford, 2009). The completion of this book was facilitated by a grant awarded to DvZS by the Arts and Humanities Research Council of £36,836 [listed in REF2].

2. Life imprisonment

(2a) Dirk van Zyl Smit *Taking Life Imprisonment Seriously in National and International Law* (Kluwer Law International; The Hague, 2002) [available on request].

(2b) Dirk van Zyl Smit "Outlawing irreducible life sentences - Europe on the brink?" (2010) 23 (1) *Federal Sentencing Reporter* 39-48 [listed in REF2].

3 Sanctions for Young Offenders

(3a) Frieder Dünkel and Dirk van Zyl Smit "The implementation of youth imprisonment and constitutional law in Germany" (2007) 9 *Punishment and Society* 347-369 [doi: 10.1177/1462474507080470].

(3b) Andrea Baechtold, Frieder Dünkel and Dirk van Zyl Smit "Die Europäische Grundsätze über Sanktionen an jugendlichen Straftätern" (2009) 9(2) *Schweizerische Zeitschrift für Kriminologie* 49-59 [Does not have DOI number. See Stämpfli Verlag login: <http://www.szk.recht.ch/>].

4 Transfer and Treatment of International and Foreign Prisoners

(4a) Róisín Mulgrew, *Towards the Development of the International Penal System* (Cambridge University Press, 2013). Research funded by an Economic and Social Research Council studentship and an additional Overseas Research Fund. [Listed in REF2].

(4b) Róisín Mulgrew, "The International Movement of Prisoners" (2011) 22(1) *Criminal Law Forum* 103-143 [doi: 10.1007/s10609-011-9139-z].

4. Details of the impact

The general principles of prison law and policy developed in the research of DvZS and RM have shaped the legal framework for modern prison regimes and changed their practices in various ways. This has occurred both at the international and the national level in relation to imprisonment generally, but also more specifically in relation to life imprisonment, sanctions for young offenders and the systems used to detain and transfer international and foreign prisoners.

(1) Prisons: General and Comparative: DvZS's research on imprisonment (Output 1a) led to his appointment as a scientific expert by the Council for Penological Cooperation (PCCP) of the Council of Europe. Along with other experts, Prof. Andrew Coyle (King's College London) and Prof. Gerard de Jonge (University of Maastricht), DvZS had a key part in developing and drafting the 2006 EPR and writing the accompanying official commentary. These Rules have had an enormous impact in the period under review. Between 2008 and August 2012, the CPT (the main body responsible for inspecting places of detention in Europe) cited these Rules 88 times, in 37 of its reports. These references are significant as the CPT used the Rules in its reports to states to indicate how they should improve their prison practices (See <http://cpt.coe.int/en/>).

During the same period, the EPR were also cited with approval by the ECtHR in 110 of its judgments. In these cases reference was made to 751 different rules, as in several cases more than one Rule was cited. In some instances the impact on practice was particularly direct. In the case of *Gülmez v. Turkey* (Application no. 16330/02, 20 May 2008), for example, the Court held that the existing prison disciplinary system did not protect prisoners' human rights adequately and then ordered the Turkish government specifically "to bring its legislation in line with the principles set out in Articles 57 § 2 (b) and 59 (c) of the European Prison Rules", i.e., the specific provisions in the EPR dealing with the requirements for proper prison disciplinary practices.

Moreover, on 17 October 2011, the Council of Europe published its own survey of the "implementation of the most recent Council of Europe Standards related to the Treatment of Offenders while in custody" (Source 1a). This survey provided evidence of the widespread

influence of the EPR in individual countries. In particular, 24 of the 31 respondent states reviewed their national legislation in the light of the EPR. Training courses were implemented in 29 countries based on the EPR. Some countries made specific changes to bring national practice into line with the rules. For example, the Russian Federation reported that, as a result of the EPR, it was allowing the children of female prisoners to remain with their mothers and granting extended visits to prisoners by their family members.

The European Union is also beginning to take an interest in prison policy. DvZS was invited as an independent expert to a number of meetings where the government members debated policy in this area. The 2011 *Green Paper on the application of EU criminal justice legislation in the field of detention* (Source 1b) refers to the book by Van Zyl Smit and Snacken (Output 1b) - the only "non-official" source on which it relies. The Green Paper is expected to have an important impact on EU policy.

The influence of the general principles of prison law established by DvZS and Snacken in their book (Output 1b) can also be seen in the Model Detention Code that DvZS developed together with a barrister, Adam Stapleton, for the US Institute for Peace (USIP) in 2009-2011. The Detention Code follows the structure of prison law propounded in the book. The Detention Code forms part of a series of related Model Codes covering the whole area of criminal justice, which are designed to be used in post-conflict or failed states where a new legal framework is required to be introduced quickly. USIP has reported that the Model Detention Code has been used by lawmakers in Haiti, Liberia and South Sudan, and that it was also requested by the International Committee of the Red Cross to give to a number of further countries, the names of which are confidential. USIP also plans to distribute it to colleagues in Libya and Syria. (Testimonial 1).

The same general principles of prison law were fully deployed in a new Prison Act that DvZS and Adam Stapleton developed in 2010-2011 for the GIZ (the German government development agency) to present to the government of Bangladesh. There has been intensive interaction with the government of Bangladesh about the new law, in which DvZS has been closely involved. This work has, at the very least, shaped debate about prison policy in that country. (Testimonial 2).

(2) **Life Imprisonment:** Since 2008 DvZS's work on life imprisonment has had considerable international impact. The ECtHR has referred to his article on outlawing irreducible life sentences (Output 2b) as an authoritative portrayal of the use of such sentences in Europe on three separate occasions in 2012 (Source 2). In 2013, he advised the successful applicant to the Grand Chamber in the case which finally declared irreducible life sentences to infringe the European Convention on Human Rights (Source 2). More generally, there has been a renewed interest in life imprisonment as an alternative to the death penalty. On 25 and 26 April 2011, DvZS spoke in Astana to senior representatives of the governments of Kazakhstan, Uzbekistan and Tajikistan about what they should do with the increasing numbers of lifers in their prisons (Output 2b was made available to the government representatives at the meeting in Russian by the NGO Penal Reform International (Testimonial 3)), since their adoption of a moratorium on the death penalty and contributed to the drafting of a resolution supported by all participants (Sources 3a and 3b). In December 2011 DvZS advised members of the Tunisian Constitutional Assembly in Tunis about life imprisonment as a viable alternative to the death penalty (Output 2a).

(3) **Sanctions for Young Offenders:** As a result of their research on youth imprisonment (Output 3a) both DvZS and Prof. Frieder Dunkel (along with Prof. Andrea Baechtold, University of Berne) were appointed as scientific experts by the PCCP to draft a recommendation and accompanying commentary on the treatment of juvenile offenders (Output 3b). The resulting 2008 Recommendation of the Committee of Ministers on the European Rules for Juvenile Offenders subject to Sanctions or Measures has had measurable impact in a wide range of states. A Council of Europe report (Source 1a) revealed that a majority of member states used this Recommendation to train their juvenile justice staff. Several states have also introduced specific reforms based on these Rules, ranging from additional access to correspondence and cultural and sports events for detained juveniles in Bulgaria, the creation of a new social integration unit for such juveniles in Lithuania. The impact of the Juvenile Offender Rules has been enhanced by the CPT, which referred to them in nine of its reports to states on their detention systems, between 2008 and August 2012. See <http://cpt.coe.int/en/>

(4) **Transfer and Treatment of International and Foreign Prisoners:** The research that DvZS and RM conducted on the international transfer of prisoners (Output 4b) enabled DvZS to advise

the government of Malaysia in 2009 on both the substantive law, and key requirements for drafting legislation in this field. The impact of this research was significant as it enabled Malaysia to develop both a new policy and draft legislation in an area where it had no clear prior policies (Testimonial 4). The legislation was adopted by the Malaysian Parliament in November 2012. RM and DVZS were also invited in 2010 by the United Nations Office on Drugs and Crime in Vienna to develop a handbook for policy makers around the world on the transfer of sentenced prisoners. The UN Handbook on the International Transfer of Sentenced Persons (Source 4) is freely available to states to use as a guide for legislative and policy development in this field.

These outputs also helped to inform the development of regional penal policy in relation to the treatment of non-national prisoners. From 2010-2012, DVZS and RM (and Prof. Herzog-Evans of the University of Rheims) worked with the Council of Europe's PCCP and member states to develop a new and updated recommendation on the treatment of foreign prisoners (CM/Rec(2012)12) and its accompanying commentary. As with the other Council of Europe Recommendations, its application in 47 member states will ensure that it will have significant impact. In particular, this Recommendation will be of considerable value and use to national prison authorities struggling to cope with overcrowded prisons with an over-represented foreign prisoner population and striving to ensure the equal and individual treatment of all prisoners (Testimonial 5). In recognition of RM's research into the systems for detaining and imprisoning those indicted and convicted by international criminal courts (Outputs 4a and 4b), the International Criminal Court invited her to participate in seminars focused on developing international detention law and policy. In particular, at a seminar on 9-10 2008 discussed amendments to the ICC's Regulations of the Registry RM's views were requested in relation to changes to international detention law. See Report of the Court on family visits to indigent detained persons' ICC-ASP/7/24, 5 November 2008.

5. Sources to corroborate the impact

1. European Reports
 - a. Report presented to the 16th Conference of Directors of Prison Administration: Strasbourg 17.10.2011 *Summary of the replies given to the questionnaire regarding the implementation of the most recent Council of Europe standards related to the treatment of offenders while in custody as well as in the community*. See http://www.coe.int/t/dghl/standardsetting/prisons/Conference_16_en.asp
 - b. European Union 'Strengthening mutual trust in the European judicial area – A Green Paper on the application of EU criminal justice legislation in the field of detention' COM/2011/0327 (Brussels, 2011). See <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0327:FIN:EN:PDF>
2. ECtHR Case-Law

Vinter and others v. the United Kingdom (Applications nos. 66069/09 and 130/10 and 3896/10) 17 January 2012; *Harkins and Edwards v. the United Kingdom* (Application nos. 9146/07 and 32650/07) 17 January 2012; *Babar Ahmad and others v. the United Kingdom* (Applications nos. 24027/07, 11949/08, 36742/08, 66911/09 and 67354/09) 10 April 2012; *Vinter and others v. the United Kingdom* (GC) (Applications nos. 66069/09 and 130/10 and 3896/10) 9 July 2013.
3. *Penal Reform International: Death Penalty in Central Asia*
 - a. conference information is available at [http://www.penalreform.org/files/PR_regional%20conference_260411_eng%20\(2\).doc](http://www.penalreform.org/files/PR_regional%20conference_260411_eng%20(2).doc)
 - b. conference resolutions are available at <http://www.penalreform.org/publications/partial-death-penalty-abolition-central-asia-recommendations>
4. UN Office on Drugs and Crime *Handbook on the International Transfer Of Sentenced Persons* (Vienna, 2012) at http://www.unodc.org/documents/justice-and-prison-reform/11-88322_ebook.pdf

Testimonials

1. Dr. Vivienne O'Connor, Senior Rule of Law Advisor, United States Institute for Peace.
2. Promita Sengupta, Human Rights Director, Gesellschaft für internationale Zusammenarbeit.
3. Andrea Huber, Policy Director, Penal Reform International.
4. Datuk Azailiza binti Mohd. Ahad, Head of International Affairs Division, AG's Chambers.
5. Carlo Chiaromonte, Directorate General of Human Rights and Legal Affairs, Council of Europe.