

Institution: University of Nottingham		
Unit of Assessment: UOA18 Law		
Title of case study: Reforming Life Imprisonment Globally		
Period when the underpinning research was undertaken: 2001-2019		
Details of staff conducting the underpinning research from the submitting unit:		
Name(s): Dirk van Zyl Smit (DvZS) Catherine Appleton (CA)	Role(s) (e.g. job title): DvZS: Emeritus Professor of Comparative and International Penal Law CA: Senior Research Fellow	Period(s) employed by submitting HEI: DvZS: 2001-2020 CA: 2014-present
Period when the claimed impact occurred: 2013-2020		
Is this case study continued from a case study submitted in 2014? No		
<p>1. Summary of the impact DvZS and CA's research has impacted significantly the imposition and implementation of life imprisonment worldwide. DvZS's research established a principle of international human rights law, that life prisoners have a 'right to hope' for release. It underpinned a key judgment of the European Court of Human Rights outlawing life sentences without a reasonable prospect of release. This principle has led directly to demonstrable changes in law and practice globally that ensure life prisoners are considered for release. DvZS and CA's joint research further extended the importance of the right to be considered for release by critically assessing for the first time the practice of life imprisonment worldwide. Their research not only changed the law in Namibia, outlawing very long fixed-term sentences, but put the issue of life imprisonment firmly on the international penal policy reform agenda. On the basis of this research, the NGO Penal Reform International (PRI) developed a new objective to reform the practice of life imprisonment globally. Together with PRI, CA and DvZS have succeeded in placing the issue of life imprisonment on the United Nation's criminal justice and human rights agendas, thus impacting life imprisonment reform worldwide.</p>		
<p>2. Underpinning research Between 2001 and 2014, DvZS's comparative research (R1-R4) highlighted a significant shift in Europe away from the imposition of irreducible life sentences (whole life imprisonment) towards life sentences with a realistic prospect of release. DvZS's 2002 book <i>Taking Life Imprisonment Seriously in National and International Law</i> (R1) was the first major comparative study of life imprisonment ever attempted. It focused on life imprisonment in the USA, England and Wales and Germany, as well as at the international level and began to address the policies that would be required to reshape life imprisonment in a way that would make it compatible with human rights principles. These arguments were developed further in 2006, in an updating article (R2) that emphasised it was essential that life prisoners have a prospect of release. In 2010, DvZS addressed the European debate directly (R3). His research reflected on the growing recognition of a human right that life prisoners have to a process that gives them hope of release. It also developed arguments about how such a right should be implemented in practice. DvZS called on the European Court of Human Rights (ECtHR) to clarify its thinking, both in law and in fact, on what life imprisonment with the prospect of release would mean in practice. As a member of the legal team for an applicant to the ECtHR, Douglas Vinter, DvZS was able subsequently to apply his research in litigation. The global impact of the resultant judgment of the Grand Chamber of the ECtHR in <i>Vinter and Others v. UK</i>, 9 July 2013 during the review period, is highlighted below. In 2014 DvZS, together with his fellow trial advocates, carefully analysed the <i>Vinter</i> decision and pointed out its implications for future practice relating to the release of life prisoners in the research article R4. Between 2014 and 2017, DvZS and CA carried out further research funded by the Leverhulme Trust on 'Life Imprisonment Worldwide' (R5, R6). This work expanded their earlier work on the importance of the right to be considered for release and critically assessed the practice of life imprisonment, for the first time on a fully global scale. Its main aims were to describe life imprisonment worldwide, to evaluate the imposition and implementation of life imprisonment and to provide guidance to policymakers and practitioners on the imposition of life imprisonment in a human-rights compliant way. DvZS and CA's first co-edited book from the project (R5) brought together scholars and practitioners to highlight the problematic use of life imprisonment across jurisdictions. Their final</p>		

co-authored book– *Life Imprisonment: A Global Human Rights Analysis* (R6) – showed that in 2014, life imprisonment was the ultimate penalty in far more countries than the death penalty (127 compared to 57). 33 countries had no formal provision for life sentences, but 65 (almost twice as many) imposed life imprisonment without the possibility of parole sentences, the harshest form of life imprisonment. The research also found that, at the end of 2014, an estimated 479,000 people were serving formal sentences of life imprisonment, many of whom had little or no prospect of release. Analysis of the findings made it clear that life imprisonment is a severe sanction that is often imposed excessively, implemented too harshly and can lead to significant breaches of the fundamental human rights of those subject to it.

3. References to the research

(R1) **Van Zyl Smit, D.** (2002) *Taking Life Imprisonment Seriously* (Kluwer). On request.

(R2) **Van Zyl Smit, D.** (2006) “Life Imprisonment: Recent Issues in National and International Law”, *International Journal of Law and Psychiatry*, 29: 405-421. DOI: <https://doi.org/10.1016/j.ijlp.2006.01.002>

(R3) **Van Zyl Smit, D.** (2010) “Europe Outlawing Irreducible Life Sentences – Europe on the brink?” *Federal Sentencing Reporter*, 23(1): 39-48. DOI: 10.1525/fsr.2010.23.1.39

(R4) **Van Zyl Smit, D.**, Weatherby, P. and Creighton, S. (2014) “Whole Life Sentences and the Tide of European Human Rights Jurisprudence: What is to be Done?” *Human Rights Law Review*, 14: 59-84. Listed in REF2. DOI: <https://doi.org/10.1093/hrlr/ngt046>

(R5) **Van Zyl Smit, D.** and **Appleton, C.** (2016) (eds.) *Life Imprisonment and Human Rights* (Hart/Bloomsbury). On request.

(R6) **Van Zyl Smit, D.** and **Appleton, C.** (2019) *Life Imprisonment: A Global Human Rights Analysis* (Harvard University Press). **Awarded the 2020 ESC Book Award and ASC Division of International Criminology Outstanding Book Award.** Listed in REF2.

Grants awarded:

Leverhulme Trust Research Grant RPG-2013-369 ‘Life Imprisonment Worldwide’, GBP222,785 to DvZS and CA, 2014-2016; ESRC Impact Accelerator Account (IAA) Grant, GBP8,605 to DvZS and CA, 2016; ESRC IAA Grant, GBP10,000 to DvZS and CA, 2018; ESRC IAA Grant, GBP9,932 to CA and DvZS, 2020.

4. Details of the impact

DvZS and CA’s pioneering body of work on life imprisonment has impacted both law and practice in two inter-related and significant ways. First, their research has changed the law on life imprisonment by ensuring a prospect of release for life-sentenced prisoners across several jurisdictions. Secondly, they have influenced international prison reform institutions in their approach to dealing with the issue of life imprisonment.

Ensuring a prospect of release for life-sentenced prisoners

DvZS’s extensive research (R1-R3) shaped the ECtHR’s seminal judgment on life imprisonment (*Vinter and Others v. UK*, ECtHR GC 9 July 2013). The QC, leading the team for the applicant, has commented that as a member of the applicant’s legal team, DvZS used his research (R1-R3) and “encyclopaedic knowledge” (A) to develop arguments that persuaded the Court to apply the ‘right to hope’ principle to life imprisonment. R3 was directly cited at first instance (*Vinter v. UK*, 17 January 2012, para. 55), and its arguments followed by the ECtHR Grand Chamber in 2013. The QC commented: “*The Grand Chamber judgment adopted much of the Applicants’ argument, determining that imprisonment for whole life, without a real and effective means of eventual conditional release, was an affront to human dignity which underpins the Convention rights. Whole life imprisonment without an effective mechanism for release was inhuman and degrading, in violation of Article 3. ... Based on his [DvZS’s] research, his constructive criticism and development of our extensive written submissions was invaluable, and his input into the oral submissions assisted in identifying the points that might be exercising the seventeen-judge panel from across the Council of Europe countries. This last point is of great importance. Oral submissions to the Grand Chamber are strictly time-limited and there is no time to develop the full legal argument. Professor van Zyl Smit’s research brought to the team a nuanced knowledge of relevant issues, which would be of particular note to judges from different jurisdictions, allowing focus on those points.*” (A)

The *Vinter* judgment has been more influential than any other in establishing as a worldwide human rights principle, that all prisoners sentenced to life imprisonment must have a realistic

prospect of release from prison and that appropriate procedures should be put in place to give effect to the hope of release. Although the *Vinter* decision was given in July 2013, the establishment of the 'right to hope' as propagated in the research of DvZS (R1-R4) through the *Vinter* judgment, has changed the law and practice of life imprisonment across the world since (A), and it is these changes since August 2013 that we are claiming in this impact case study. In the first instance, the effects were felt in Europe where all countries are bound to apply the European Convention on Human Rights as interpreted by the ECtHR:

- In the *United Kingdom*, the principles developed in *Vinter* were clearly accepted as binding in England and Wales by the Court of Appeal in *McLoughlin* (2014). However, the Court of Appeal found that no change to domestic statutory law was required as it could be applied in a way that incorporated these principles. This view was upheld by the Grand Chamber of the ECtHR in *Hutchinson v. UK* (2017), which left the *Vinter* principles in place by confirming (at para 72, B) that, “the whole life sentence can now be regarded as reducible [in England and Wales] in keeping with Article 3 of the ECHR [European Convention on Human Rights]”, but that they could be implemented without changing English statutes. The practical impact of *Vinter* in England and Wales is therefore that the existing law relating to prisoners serving whole life sentences now has to be interpreted in a way that is more favourable to their possible release (A, B).
- In the *Netherlands*, the Supreme Court relied on the reasoning developed in the *Vinter* decision, based on R1-R3, to order the government to change the law to provide an effective procedure for the release of life-sentenced prisoners (Decision of the *Hoge Raad*, 5 July 2016, para. 3.2) (C). Prior to this, there was no effective procedure for the release of life prisoners, except for a pardon, which in practice was never granted. In response, in 2017, the rules governing release in the Netherlands were amended to establish a process of release of such prisoners (*Besluit Adviescollege levenslanggestraften Strct.* 2017, 32577) (C). These were reviewed by the Supreme Court, which found explicitly that they met the *Vinter* standards (Decision of the *Hoge Raad*, 2017, para. 2.3) (C). The result is that all life prisoners in the Netherlands now have their cases reviewed after a set period and their prospects of release have increased.
- *Lithuania*, is an example of where the absence of an appropriate release procedure was challenged before the ECtHR and changes resulted from the ECtHR applying the *Vinter* principles (based on R1-R3) and ordered Lithuania to amend its legislation (*Matiošaitis v. Lithuania*, 23 May 2017) (D). Lithuania enacted new legislation on the release of life prisoners (Amendment to Article 51 of the Criminal Code of Lithuania adopted on 19 March 2019). The ECtHR has confirmed explicitly that it meets the *Vinter* standards (*Dardanskis v. Lithuania*, (2019, para.27) (D), thus confirming that life prisoners will now be entitled to be considered for release after a prescribed period, by a fairer procedure than before.

The arguments about a 'right to hope' and a 'right to be considered for release', as developed in the *Vinter* case which was underpinned by R1-R3 and propagated in R4, have had a reach and impact far beyond Europe, as courts around the world have found them persuasive:

- In *Zimbabwe*, the Supreme Court were persuaded by the reasoning in *Vinter* (underpinned by R1-R3) to rule that it was unconstitutional to leave decisions on the release of life-sentenced prisoners to the President alone (*Makoni v. Commissioner of Prisons* (2016) (E). The Court also ordered that, until the government of Zimbabwe came up with new legislation, all life-sentenced prisoners should be considered for parole in the same way as other sentenced prisoners, thus significantly increasing their prospects of release.
- In *Belize*, the Court of Appeal relied on the reasoning in *Vinter* (based on R1-R3) to declare life sentences without parole unconstitutional (*R v. August*, 4 November 2016) (F). The government of Belize responded in 2017 by amending the sentencing provisions in the Criminal Code relating to murder and by introducing a parole board to consider the release of life-sentenced prisoners. These changes were approved by the Caribbean Court of Justice, which also relied on the reasoning developed in *Vinter* (*August and Gabb v. The Queen*, 2018, para. 88) (F). The impact of *Vinter* was to bring about a legal change that has given all life-sentenced prisoners in Belize a realistic prospect of release.
- In *Canada*, in *R v. Klaus* (2018, paras. 132-134) (G) the Queen's Bench in Alberta, referred to DvZS's research (R2, R3), as well as to the arguments applied in the *Vinter* judgment, based on R1-R3, to establish the principle that every prisoner must have a prospect of release. In

this case, the prisoner had committed three murders. He received a life sentence with a minimum term of 25 years before release should be considered for each murder. The question was whether the minimum terms should run consecutively, meaning that 75 years would have to elapse before he could be considered for release. By applying the arguments in *Vinter*, that the prospect of release had to be realistic (R1-R3), the court held that the minimum periods had to run concurrently, and that it should be 25 years in all. The direct impact of the *Vinter* principle was therefore that this life prisoner was given a much clearer prospect of release than he would otherwise have had.

In addition, in *Namibia*, the research of DvZS and CA (R6) has also ensured that all prisoners should have a prospect of release, albeit by a different legal route. Namibian law has long recognised that prisoners sentenced to life imprisonment have a right to a prospect of release. However, fixed term sentences of 100 years plus were being imposed by judges to ensure that certain offenders would never be considered for release, and the Namibian Supreme Court had to decide whether such sentences were acceptable. When asked for advice by the Court, DvZS and CA were able to provide a draft chapter of their co-authored book (R6) that explained that such sentences were informal forms of life imprisonment and should be subject to the same safeguards as formal life sentences. In 2018 in *S.v. Gaingob* (H), the Supreme Court of Namibia referred to R6 as an “illuminating work” and discussed the research at length (paras. 61ff). The judgment relied directly on the arguments in R6 to outlaw very long fixed-term sentences as a type of ‘informal life imprisonment’, and as an unconstitutional means of avoiding the requirements that life sentences should meet. The practical impact of this declaration of unconstitutionality has been that offenders in Namibia cannot have any have sentences imposed on them that effectively deny them a prospect of release.

Influencing the international penal policy reform agenda

DvZS and CA’s research project on ‘life imprisonment worldwide’ (R5, R6) has impacted the international penal policy reform agenda on the imposition and implementation of life sentences. The findings from R6 have shaped and advanced the work of PRI, an independent, international human rights NGO that develops and promotes fair and effective responses to criminal justice problems worldwide. This is corroborated by the Director for Policy and International Advocacy at PRI: *“PRI has used this key publication (R6) to advance its work on reforming life imprisonment...The research has enabled us to build a legitimate evidence base, strengthening our influence and increasing our visibility to an international policy and practitioner audience...[It] has provided the foundation on which we have built our reform and advocacy work...[And] has gone on to shape the priorities of our organisation more than any other academic publication during the last ten years...”* (I).

In 2018, PRI published a jointly authored policy briefing on ‘Life Imprisonment’ with DvZS and CA to draw attention to the human rights issues raised by the sanction of life imprisonment (J). The briefing (published in Arabic, English, French, Japanese and Russian), which draws on the research findings and statistics from R5 and R6, highlights key concerns to policymakers and practitioners who impose and implement life sentence regimes, and calls on the United Nations and its member states to reconsider and update international guidance on the sanction of life imprisonment. *“These pressure points work together to create momentum for change through reforms. The policy briefing was significant in raising international awareness with policymakers, civil society and academic networks”* (I). Collectively, this work resulted in PRI and the researchers taking leadership for a new world coalition involving an international network to tackle the issues raised by the research (R5, R6) and galvanised momentum for change (J). This has resulted in a targeted programme of events, and has led to an increased focus on the issue of life imprisonment at the United Nations Office of the High Commissioner for Human Rights (OHCHR), and at the United Nations Office on Drugs and Crime (UNODC) (I-K). *“The collaboration including the research has created a major opportunity for PRI to help shape the thinking and actions of the United Nations OHCHR in Geneva and New York, and the UNODC in Vienna. Guided by the research, PRI organised a series of events including two key ‘side-events’ at the UN Crime Commission in Vienna (in 2018 and 2019), where we engaged with national delegates representing their countries, diplomats, UN officials, civil society, etc. and gained momentum in highlighting the human rights issues raised by life imprisonment...”* (I).

In September 2019, following the campaign and key meetings, the OHCHR agreed that life imprisonment was an issue that had been neglected at the international level, compared to their

human rights work on the death penalty, and invited PRI and the researchers to run a workshop to present the research and recommendations (R5, R6) to 20 Human Rights Officers, including the Secretariat of the Subcommittee for the Prevention of Torture and also high-level staff members in the OHCHR. In addition, in October 2019, PRI was granted an extended meeting in New York with the then UN Assistant Secretary-General for Human Rights to discuss life imprisonment, which led to him openly praising PRI and the research findings on social media, and a request for a joint event at the UN General Assembly. On 17 October 2019, in response to discussing the research findings with PRI, the UN Assistant Secretary General for Human Rights stated on Twitter: *“Death penalty rightly gets attention. But far more people serve life sentences. Many with no hope of parole and extra violence in prison. Understandably, some call it ‘civil death’. Hats off to PRI for flagging these largely unknown concerns”* (J). Furthermore, as a result of the advocacy by PRI and the researchers, the UNODC agreed to have two sessions at their Crime Commission meetings in Vienna in 2018 and 2019 that focussed specifically on life imprisonment and the need for global reform (I). This increased focus at the UN has led to the following significant impacts:

- Firstly, Austria (who leads the annual resolution on the administration of justice at the Human Rights Council) committed to supporting life imprisonment reform. This led to the issue of life imprisonment being added to the resolution adopted by the Human Rights Council in September 2019 (K). Specifically, it called for more proportionate sentencing, including a review of life sentences. *“This is significant as it is an important reference at the UN level and will form one of hopefully many recognitions that life imprisonment sentences are problematic, have a human rights impact and that action needs to be taken... it forms a basis for advocacy around standard-setting on life imprisonment at the UN level which can result in new international law and ultimately accountability.”* (I)
- Secondly, the UNODC has agreed to work with the researchers to produce a ‘Handbook on Life Imprisonment’, based on the findings from R5 and R6 and to include technical guidance on the practice of life imprisonment for prison operation, staff and management as part of the UNODC’s international criminal justice series. *“This decision is significant, as the last guidance from the UN on life imprisonment was published in 1994, and the Handbook series is seen as the cornerstone for establishing practical implementation of criminal justice systems at the national level.”* (I)

This extensive engagement and influence led to the researchers being invited to co-host an event dedicated to life imprisonment reform at the UN Crime Congress in Kyoto, Japan in April 2020 with PRI (I). Due to Covid-19, the event was postponed to March 2021. Based on the research (R5, R6) it was confirmed by the Assistant Secretary General of the United Nations at the event on 9 March 2021 that life imprisonment reform, with a particular focus on the abolition of whole life sentences and life imprisonment for children, will be a major item of the UN’s agenda. As the Crime Congress sets the UN priorities for worldwide criminal justice reform for the next five years, it is anticipated that the research (R5, R6) will demonstrate further significant global impact.

5. Sources to corroborate the impact

- (A) Letter from QC in *Vinter and Others v. UK* [GC], 9 July 2013, on global impact of *Vinter*.
 (B) UK: *McLoughlin* [2014] EWCA Crim 188, *Hutchinson v. UK* ECtHR GC, 17 Jan 2017.
 (C) Netherlands (in Dutch): *Hoge Raad*, 5 July 2016; *Hoge Raad*, 19 Dec 2017; and the Netherlands amended process of release (*Besluit Adviescollege levenslanggestraften Stcrt.* 2017, 32577)
 (D) Lithuania: *Matiošaitis v. Lithuania*, 23 May 2017; *Dardanskis v. Lithuania*, 19 June 2019.
 (E) Zimbabwe: *Makoni v. Commissioner of Prisons* CCZ 8/16, 13 July 2016.
 (F) Belize: *R v. August*, Court of Appeal of Belize, 4 Nov 2016; *August and Gabb v. The Queen*, Caribbean Court of Justice CCJ 7 AJ, 29 March 2018.
 (G) Canada: *R v. Klaus* ABQB 97, 14 Feb 2018.
 (H) Namibia: *S v. Geingob and Others* (SA 7/2008, SA 8/2008) (2018) NASC 4, 6 Feb 2018.
 (I) Letter from the Director of Policy and International Advocacy, PRI.
 (J) Sources from PRI: [Life Imprisonment: A Policy Briefing](#), [UN Assistant Secretary General for Human Rights on Twitter](#), [International Advocacy Work](#), and a [New World Coalition](#).
 (K) Human Rights Council (2019) [Report of the UN HCHR](#), A/HRC/42/20, 21 August 2019.