

## **What Next Steps If Vietnam Still Remain Death Penalty for Drug-Related Offences?**

Dr Hai Thanh Luong  
Associate Research Fellow, RMIT University  
Jack Ta  
Fellow, the Migration Institute of Australia

### **Abstract**

In recent responses at the United Nations' highest dialogues, Vietnam still confirms their rights and responsibilities to remain the death penalty in the criminal code system. Almost rates of capital punishment and its related executions have been applied to drug-related offences accordingly. What will happen, and what should action if Vietnam continues to use this punishment for drug offences? While the death penalty in Vietnam is a legal matter and an indicator of political and social attitudes, there is still difficult to obtain valid and reliable data to conduct an accurate assessment of the use of executions in Vietnam. Ironically, though researchers fluent in Vietnamese can understand and collect relevant data, it remains unclassified. Yet Vietnamese scholars are often concerned about researching death-penalty policies. They are unlikely to share their findings without official permission from the authorities because they fear reprisals for investigating the data. Rather than empirical studies without direct fieldwork's observation in the spreading of COVID-19 pandemic, using grey literature, reports by international observers, and informal interviews with colleagues, the present article explores the policies and provisions of Vietnam's Party-State in regulating capital punishment for drug offences. This paper expects at least two primary goals. First, we help the audience understand Vietnam's perspectives and maintain the death penalty for drug-related crimes as retentionist while still abolishing or at least de facto abolition for others. Second, we highly recommend some main changes and readjust in policy and research in the progress of reduction and abolishment of the death penalty for drug-related crimes.

**Keywords:** Death penalty, drug-related offences, abolishment, retention, Vietnam

## Introduction

The death penalty is a significant concern in the legal and humanitarian subjects. The death penalty can be the most severe in the history of each country's penal system's formation and development.<sup>1</sup> In addition to being the most severe penalty in the criminal law system of penalties for convicted persons, the death penalty is intended to prevent convicts' recidivism completely. It is not designed to educate or provide the convicted the opportunity to reintegrate into the community.<sup>2</sup> In other words, the death penalty does not allow judicial authorities to change or correct mistakes in the course of law enforcement. Since established in 1961, Amnesty International has been trying to call and re-call almost all countries worldwide to abolish. However, the four most crowded populations, including China, India, Indonesia, and the United States, had continued to maintain this sentencing as one of the most critical tools for prosecutors and necessary for an effective criminal justice system.

In Vietnam, the death penalty has recorded as one of the harshest punishments in the legal system since the feudal regimes. However, there was not much official evidence, both written law (*ius scriptum*) and unwritten law (*ius non-scriptum*) to identify objectively what and when is the first one. However, as noted in Vietnam's encyclopedia historical documents, since the Ngo – Dinh – Pre-Le dynasties regulated this punishment with many cruel forms, including throwing offenders into tiger's cages boiling cauldrons of oil as well as head-cutting or garrotting.<sup>3</sup> These formats have been continuing to apply and even formalise into 'Five Penalties' (*Ngu hình* in Vietnamese), including 'flogging' (*xuy*), 'cudgel penalty' (*truong*), 'servitude' (*do*), 'exile' (*luu*), and 'death' (*tu*). Accordingly, all these regulations with its related executions were recorded officially in the 'National Penal Code' (*Quoc Trieu Hinh Luat* or *Bo luat Hong Duc* in Vietnamese) in 1483 and the 'Gia Long Code' (*Hoang Viet Luat Le* in Vietnamese) since 1483 and 1815, respectively. While the former issued at least 149 death's articles out of 722 offences, the latter covered 105 capital punishment's crimes among 398 articles.<sup>4</sup> These high volumes of death's criminal code regulations were likely to confuse the ideological orthodoxies (Confucianism and Buddhism) and traditional culture's values regarding benevolence and humanity. However, requests to reduce and limit these brutal death's forms have urged the feudal regimes, regulations capital punishment with inhumanities approaches maintained until the last governments in the 1940s when moving in the colonial period. Moreover, although the Revolution time in 1975 and the Renovation period in 1986 (known as *Doi Moi* in Vietnamese) have changed both political and social formats, there is no official regulation for the death penalty without the penal code. Until the early the 2000s, stemming from the socio-economic development and international integration, the process of judicial reform requested to change based on the rule of law to ensure human rights in criminal justice. Accordingly, a complete study of the death penalty with its related abolishments, have taken on a table as an official request. As the first documents of the Communist Party of Vietnam (CPV), the Resolution No. 08 / NQ-TW (dated 2 January 2002) of the Politburo requested to limit death penalties in CCV, which reinitiated officially in the Resolution No. 49/NQ-TW later three years in 2005 on the Judicial Reform Strategy to 2020. Accordingly, after 30 years, from 44 articles in the 1985 CCV reduced to 18 articles in the 2015 CCV.

---

<sup>1</sup> Nicholson P, *The Death Penalty and Its Reduction in Asia: An Overview* (Briefing Paper, 2017); Johnson D and Zimring F, *The Next Frontier: National Development, Policy Change, and the Death Penalty in Asia* (Oxford University Press 2009)

<sup>2</sup> Hood R and Hoyle C, *The Death Penalty: A Worldwide Perspective* (4<sup>th</sup> edn, Oxford University Press 2008)

<sup>3</sup> Tran Kien and Vu Cong Giao, 'The Changing Nature of Death Penalty in Vietnam: A Historical and Legal Inquiry' 9 *Societies* 1; Ho TN, *Some Issues Related to Death Penalty Judiciary in Vietnam* (International Association of Democratic Lawyers (IADL) 2009)

<sup>4</sup> *Supra* n 3

The current paper will not re-discuss controversial opinions between abolishment and de facto, which the first author has analysed as specific details as possible in his previous publications.<sup>5</sup> Instead, we discuss main reasons to maintain the death penalty for drug offences at retentionists before explaining why Vietnam is one of those countries continuing to apply this harshest punishment in the current CCV. The last section will be introduced some practical recommendations when Vietnam remains their most offensive policies to drug offences to both policymakers and scholars.

### **Retentionists for Drug-Related Offenders**

Abolishing the death penalty to ensure fundamental 'rights of life' is ongoing and will become an inevitable trend shortly.<sup>6</sup> However, other countries have continued to maintain and enforce the death penalty in their criminal-law systems. Geographically, Asia remains central to the quest to abolish the death penalty worldwide: more than 90% of the world's executions have taken place in Asia in the last ten years. Notably, in the previous decade, the number of performances in 35 countries retaining this sentence for drug offences has fluctuated, with known executions peaking at 755 in 2015.<sup>7</sup> Despite the diversity of political, religious, historical, and social systems involved, Asia continues to be the region where the vast majority of executions for drug offences are carried out.<sup>8</sup> In 2019 there were at least 122 drug-related executions, which accounted for approximately 18% of the total known executions worldwide, excluding China, Iran, and Saudi Arabia (Sander et al., 2020, p. 9).<sup>9</sup>

There are at least two primary ways for those who argue for retaining capital punishment for drug-related crimes. One way is through mandatory sentences. The other is by including articles in criminal law that impose the death sentence for certain crimes, but allow them to commute to life imprisonment. On the one hand, a mandatory sentencing scheme is one where capital punishment is automatic upon conviction of a crime under their legislative regulations. Here Singapore can be cited as a notable example in Southeast Asia. According to section 17 of the Misuse of Drugs Act, those who possess, consume, manufacture, import, export, or traffic illegal drugs (above a certain amount) will be sentenced to death regardless of any mitigating factors that may apply. At least one-third of the 1,500 Singaporeans, aged between 17 and 74, support this issue when involving the national survey.<sup>10</sup> On the other hand, based on specific considerations and practical contexts, some states decide to temporarily suspend the death penalty for drug-related offences or rarely execute those convicted of them.<sup>11</sup> For example, although Thailand still officially imposes the death penalty for narcotics trafficking, there were only 12 out of 281 potential executions between 1935 and 2001 for drug-related crimes; between 2009 and 2018, executions were even rarer.<sup>12</sup> However, this nine-year moratorium ended in 2018 with at least ten death-row executions, including a Myanmar

---

<sup>5</sup> Luong TH, 'Why Vietnam Continues to Impose the Death Penalty for Drug Offences: A Narrative Commentary' (2021) 88 *International Journal of Drug Policy* 1; Luong TH, 'Why Vietnam Continue to Maintain the Death Penalty with Drug-Related Crimes?' (2019) (1st Asian Regional Meeting for Drug Policy); Luong TH, 'Death Penalty to Drug-Related Crimes: A Vietnam Perspective' (2018) (Drug-related Offences, Criminal Justice Responses and the Use of the Death Penalty in South-East Asia); Luong TH, 'The Application of the Death Penalty for Drug-Related Crimes in Vietnam: Law, Policy, and Practice' (2014) 17 *Thailand Journal of Law and Policy*

<sup>6</sup> *Supra* n 1

<sup>7</sup> Sander G, Girelli G and Fernandez A, *The Death Penalty for Drug Offences: Global Overview 2019* (2020)

<sup>8</sup> Nicholson P, *The Death Penalty and Its Reduction in Asia: An Overview* (Briefing Paper, 2017)

<sup>9</sup> *Supra* n 4, 9

<sup>10</sup> Cheong C and others, *Public Opinion on The Death Penalty in Singapore: Survey Findings* (the National University of Singapore 2018) xv, xix

<sup>11</sup> *Ibid*

<sup>12</sup> Leechaianan Y and Longmire D, 'The Use of the Death Penalty for Drug Trafficking in the United States, Singapore, Malaysia, Indonesia and Thailand: A Comparative Legal Analysis' 2 *Laws* 115

woman's drug offence, though the executions again dropped to zero in 2019.<sup>13</sup> In other words, Thailand is one of the most typical cases in Asia applied a *de facto* abolition of executions for drug-related crimes. However, they still regulate it in the law.<sup>14</sup> Besides that, six Asian nations have retained capital punishment, including drug offences but not conducted any executions for at least ten years, namely the Maldives since 1953, Brunei Darussalam since 1957, Sri Lanka since 1976, both Myanmar and Laos since 1989, and South Korea since 1997.<sup>15</sup> Meanwhile, although there were no executions in Indonesia from 2008 till 2012, they recently resumed in 2013.<sup>16</sup> Alongside Indonesia, Botswana, Gambia, India, Japan, and Pakistan in 2012 and Kuwait and Nigeria in 2013 also re-started.<sup>17</sup> In a survey of 1,200 Filipino adults 18 years old and above, 71% of voters approved the death penalty's reinstatement for drug trafficking. Filipino President Duterte still permits police to apply harsh measures to curb drug users and dealers, including shooting them on sight.<sup>18</sup>

In short, the death penalty continues to be debated, legislated, and applied in different ways in different parts of the world. Although eliminating the death penalty is becoming more common among nations, this is not a leading trend, particularly concerning drug-related offences. Each country's legislative traditions, political leadership, religious history, and social norms affect how the death penalty is applied in law and practice. As Pip Nicholson states, 'countries may be reductionist without being abolitionist, and "de facto abolitionist" countries may, and indeed have, resumed executions.'<sup>19</sup> Almost all countries, whether abolitionists or retentionists, express their intention to apply capital punishment for severe crimes; meanwhile, other countries exemplify a dual format, either abolition and de facto abolition or retention and de facto abolition.<sup>20</sup> Currently, sixty-seven retentionist nations continue to use capital punishment. Nearly half of these countries have laws that impose the death penalty for drug-related offences, with sixteen countries belong to Asia.<sup>21</sup> Except for Cambodia and Philippines, which have adopted an abolitionist policy, the rest of the nations in Southeast Asia resort to various approaches to using the death penalty for those convicted of drug-related offences, among other crimes. These include de facto abolitionism (Brunei, Laos, Myanmar, Indonesia, and Thailand) and retentionist (Malaysia, Singapore, and Vietnam).

### **Vietnam's Ideologies to Punish Drug Offences**

Drug-related crimes and its punishments have been defined in Vietnam since early time in history.<sup>22</sup> However, depending on each period, based on the economic situation-specific social state, the appropriate documents will be issued under requirements prevention of and fight against this crime. One of the first drug plants has been introduced into Vietnam that is opium poppy in the northern provinces since the 1600s.<sup>23</sup> Meanwhile, cannabis some South-West and Southern provinces selected to plant cannabis and coca which had introduced later than opium.

<sup>13</sup> Supra n 7

<sup>14</sup> Supra n 2

<sup>15</sup> Reggio M, *History of the death penalty* (Springer 2014)

<sup>16</sup> Amnesty International, *Death Sentences and Executions 2012* (2013)

<sup>17</sup> Based on the latest updates of Amnesty International, in 2019, there are 28 abolitionists in practice and 56 retentionists (available at <https://www.amnesty.org/en/what-we-do/death-penalty/>)

<sup>18</sup> Mangosing F, 'Pulse Asia: Most Filipinos still Support Death Penalty' (*Inquirer*, 2017)

<<https://newsinfo.inquirer.net/894552/pulse-asia-most-filipinos-still-support-death-penalty#ixzz5ZXZ3dZJA>> accessed 11 December

<sup>19</sup> Supra n 8, 6

<sup>20</sup> Schabas W, *The Abolition of the Death Penalty in International Law* (3<sup>rd</sup> ed, Cambridge University Press 2002)

<sup>21</sup> Supra n 7

<sup>22</sup> Nguyen TPH, 'Legislative Implementation by Vietnam of its Obligations under the United Nations Drug Control Conventions' (University of Wollongong 2008); Nguyen TPH, *Drug-Related Crimes Under Vietnamese Criminal Law: Sentencing and Clemency in Law and Practice* (the University of Melbourne 2015)

<sup>23</sup> Supra n 3

Initially considered poppy flowers are a thing that can cure some diseases such as rheumatism, intestinal pain. The government also sees the great harm it in the villages, where many poppy cultivations are also home to many addicts, opium and has since formed the progressive ideology, condemned to struggle with this trend.<sup>24</sup> Early emergence of conventions and regulations in the village of prohibited drug use, but its effect is minimal, poppy status and drug use still spread very fast. Therefore, Vietnam feudal state had first issued on Prohibition Act poppy in 1665 to ban and punish anyone with no discriminating gender, either male or female. Accordingly, if they use opiate for lustful satisfaction or thieves used it to commit a crime into resident properties.<sup>25</sup> Furthermore, to prevent overseas' drugs sources into Vietnam, the King also prohibited and banned any the trading ships from Jinzhou (China) into domestic coastland and checked and examined all foreign merchant ships to ports along the coast under Vietnamese authorities.<sup>26</sup> However, no death penalty applies to these opium's activities at this time until the final feudal regime in the middle years of the 1940s.

After King Tu Duc's period, Vietnam has been colonised by France's regime until 1945. There is neither available statistics nor official data to record death sentences under French colonial rule.<sup>27</sup> Almost death penalty cases have been executed to opponents of France's regime by guillotine punish those who protested their colonial policies more than focusing on specific offences.<sup>28</sup> However, for drug-related issues, both opium cultivation and trading are expected for lucrative benefits for France colonial ambitions. Thus, they did not mention the death penalty to apply for those offences.<sup>29</sup> Notably, for drug-related issues, both opium cultivation and its trading are expected to benefit France's colonial ambitions. Thus, they did not mention the death penalty to apply for those offences. To some extent, Ho Chi Minh (1961: 96) explained this issue that<sup>30</sup>

Justice is represented by a good lady holding scales in one hand and a sword in the other. As the greatness of the distance between Indochina and France was so great, so excellent that, on arrival there, the scales lost their balance and the pans melted and turned into *opium pipes* and official bottles of spirits, the poor lady had only the sword left with which to strike [*emphasised highlight*]

Ending France's war by the Revolution in August 1945 and the United States' war by the Unification in 1975, Vietnam built a new regime to re-construct the country. At that time, to establish and improve society and nation, the legal system and punishment were also required to reform.<sup>31</sup> For example, in some regulations in the law dated 14 July 1960, when mentioning capital punishment, it must be reviewed by the plenary council of judges of the Supreme People's Court before executing. Noticeably, among these periods, there was no codified legal regulating death penalty and its related implementations for drug-related crimes in the total of 29 death's articles when this harshest punishment legalised in the first CCV by the Socialist Republic of Vietnam (1985). Accordingly, although narcotics crimes were stipulated in this CCV (illegal organising for drug use – article 203; illegally trading drugs in the domestic

---

<sup>24</sup> Supra n 22

<sup>25</sup> Ibid

<sup>26</sup> Supra n 3

<sup>27</sup> Tran TG, 'Colonial Policies on Culture of France and Some Cultural Movements Prior 1945 in Vietnam' 2 Journal of Cultural Research 72

<sup>28</sup> Nguyen NC, 'Some Thoughts on the Death Penalty in Vietnam Criminal Law' 28 Journal of Law 42; Ho TN, *Some Issues Related to Death Penalty Judiciary in Vietnam* (International Association of Democratic Lawyers (IADL) 2009); Dao TU, 'Basic Information for Legal Research - A Case Study of Vietnam' in IDE (ed), *Doing Legal Research in Asian Countries*, vol IDE Asian Law Series (Institute of Developing Economies (IDE-JETRO) 2003) <[http://d-arch.ide.go.jp/idedp/IAL/IAL002300\\_008.pdf](http://d-arch.ide.go.jp/idedp/IAL/IAL002300_008.pdf)>

<sup>29</sup> Supra n 3

<sup>30</sup> Nicholson P, 'The Vietnamese Courts and Corruption' in Lindsey T and Dick H (eds), *Corruption in Asia: Rethinking the Governance Paradigm* (The Federation Press 2002), 204

<sup>31</sup> Supra n 28

market – article 97; and illegally trading drugs across borders – article 166), the death penalty did not treat those drug offences.

Due to the changes Vietnam underwent after *Doi Moi*, the 1985 CCV was amended four times (1989-1997), just as both the supply and demand for drugs began to increase. Thus, enhancing the drug control with stricter punishments, the death penalty was codified as the harshest sentence for drug-related offences in article 96a in the first amendment and supplementation of the 1985 CCV in December 1989. These regulations have re-specialised into four separate articles in the fourth version of the amended 1985 CCV and formalised officially in the 1999 CCV.<sup>32</sup> Recently, while reprieving and commuting could be applied to economic offences (e.g., embezzled property and bribed property), reducing the capital drug-related offences and its related reprieves have not yet implemented as much as possible. Among eight death's articles abolished in the 1999 CCV, the illegal organisation for drug use (article 197) passed; meanwhile, the four death's drug-related activities (stockpiling, transporting, trading, and appropriating) merged into one article in the 1999 CCV (article 194). However, in the latest amendment of the 2015 CCV (2017), this article has re-separated as similar to the 1985 CCV with four independent articles, but illegal stockpiling and appropriating narcotics abolished. Currently, in Vietnam, there are only three capital narcotics' crimes may be captured by the death penalty: namely illegal producing narcotics (article 248), illegal transporting narcotics (article 250), and unlawful trading in drugs (article 251).

The death penalty in Vietnam is not an only legal matter but also covers political and social attitudes.<sup>33</sup> It is tough to obtain valid and reliable data to assess the practical application and executions in Vietnam.<sup>34</sup> Ironically, though Vietnam's scholars, including myself, can understand and collect the data by their Vietnamese language pathways, it does not mean to official statistics of authorities when regulation 'secret state' for the death penalty still applicable in law. Accordingly, all court's documents, records, reports, and statistics regarding the death penalty belong to the 'highly official secret level' of the People's Supreme Court (2004) and Law on Secret State (2018). Therefore, lacking the official data of death rows and its related executions relating to drug offences from 2016 until the present,<sup>35</sup> the section on executing practices in Vietnam will be excluded. Though we tried to share and analyse based on secondary data with the cautious warning in some previous studies, we still confirm that specific data on the number of executions carried out is challenging to obtain and limited by the authority.

### **Why Vietnam Still Persist to Apply the Death Penalty for Drug-Related Offences**

The maintenance or abolition of the death penalty in criminal law should be based on the specific characteristics and conditions and the requirements of each nation to fight against crime. Almost law enforcement agencies, both policymakers and practitioners, and the national assembly delegations preferred to maintain the severest punishment when those crimes are original resources of many various crimes.<sup>36</sup> Accordingly, they considered that applying

---

<sup>32</sup> *Supra* n 5

<sup>33</sup> Pascoe D, *Clemency in Southeast Asian Death Penalty Cases* (Asian Law Centre 2014); Johnson D and Zimring F, *The Next Frontier: National Development, Policy Change, and the Death Penalty in Asia* (Oxford University Press 2009)

<sup>34</sup> Luong TH, 'Why Vietnam Continues to Impose the Death Penalty for Drug Offences: A Narrative Commentary' 88 *International Journal of Drug Policy* 1

<sup>35</sup> During 2013 when I started my PhD journey, I have received several official and unofficial requests to update data and specific information regarding the death penalty for drug offences in Vietnam since the first paper published. Unfortunately, as I claimed officially in the latest articles (*supra* n 34), between 2016 and now, no more 'unveiled' database with capital narcotics in Vietnam, although someone can look for Vietnamese press or social media some anecdotal resources.

<sup>36</sup> Nguyen DD and others, *Some Necessary Issues about the Death Penalty* (National University of Hanoi 2014); Pham VB, 'Abolishing or Retention the Death Penalty for Some Crimes?' *Journal of Legal Studies*

the death penalty for this group of criminals is entirely reasonable because it violates the state's monopoly on the management and control of narcotics. This crime also contributes to society a new class of people who are drug addicts, especially adolescents, causing harmless consequences and damages of great magnitude in terms of economic development, social stability, and traditional culture. All these arguments have presented and explained in specific detail with specific demonstrations in our previous studies including national legal policies, humanitarian treatments, the rule of law, fairness principles, and proportionality approaches, among other Vietnamese scholars in this paper's reference cited. Therefore, now we only use the blurred points in some international treaties that Vietnam based on to explain their rights and obligations in applying the death penalty for drug-related offences.

First of all, based on international legal standards, the use of the death penalty is neither entirely contrary to international laws nor violate the right to life. In line with the arguments of most retentionists, who point to the need for harmony between international standards and domestic legislation, the death penalty in Vietnam's law only applies to 'most serious crimes', including drug-related offences under their legislative doctrine. The right to life is the right of every human being, is universal no-one has the right to deprive.<sup>37</sup> Based on the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR), proponents point out the death penalty violate human rights and should be eliminated. More particularly, the Article 3 of the UDHR stated 'everyone has the right to life, liberty and safety' and 'no one can suffer a cruel punishment or reduce human dignity' (Article 5, UDHR). To balance in understanding 'right of life' principle, one considers the freedom of a life of human beings is the absolute authority with any person. Others argue that this core principle to protect a person from being killed by the state the right is not unlimited. In other words, with the former, nations have abolished the death penalty explained that the application of the death penalty is a violation of the content of the statement above, means that human rights violations.<sup>38</sup> With the latter, supporters of the 'rule of law' in human rights can base on 'ever-shrinking scope' of the ICCPR's exception for 'most serious crime' to apply the capital punishment as one of their international standard and domestic legislative regulations.<sup>39</sup> According to this institution, in other instances, depending on their specific conditions from different countries with their distinguished criminalisation with most serious crimes, the death penalty applies to those offenders considered a cautious approach with national no abolishing this punishment in law practice.<sup>40</sup> According to Jiang Na, the non-reintroduction's principles in Article 6(2) and (6) of the ICCPR are limitations of legislative agenda that led to 'the vague formulation' to define precisely and clearly 'most serious crimes' between nations. Logically, it

---

<<http://lapphap.vn/Pages/tintuc/tinchitiet.aspx?tintucid=208505>> accessed 11 December 2017; Tran K and Vu CG, 'The Changing Nature of Death Penalty in Vietnam: A Historical and Legal Inquiry' 9 *Societies* 1; Nguyen TTH, Nguyen VH and Nguyen MK, *On the Possibility of Vietnam Ratifying the Second Optional Protocol to the International Covenant on Civil and Political Rights Aiming at the Abolish of the Death Penalty* (2019)

<sup>37</sup> This general provision as stipulated in the Universal Declaration on Human Rights, adopted on 10 December 1948 (Article 3), the American Declaration on the Rights and Duties of Man, adopted on 4 May 1948 (Article 1), and the African Charter of Human and People's Rights, adopted in 1981.

<sup>38</sup> Edwards G and others, 'Drug trafficking: time to abolish the death penalty' 104 *Addiction* 1267; Gallahue P and others, *The Death Penalty for Drug Offences: Global Overview 2012 - Tipping the Scales for Abolition* (International Harm Reduction Association 2012); Rahman F, 'Capital Punishment for Drug Offenses' in Rahman F and Crofts N (eds), *Drug Law Reform in East and Southeast Asia* (Lexington Books 2013)

<sup>39</sup> Jiang N, 'The Death Penalty and International Human Rights Law' in *China and International Human Rights* (Springer 2014)

<sup>40</sup> Trevaskes S, 'China's Death Penalty: The Supreme People's Court, the Suspended Death Sentence and the Politics of Penal Reform' 53 *British Journal of Criminology* 482; Thao P, 'To Reduce the Death Penalty's Applications in the 1999 Criminal Code of Vietnam' Research and Discussion <<http://www.noichinh.vn/ngghien-cuu-trao-doi/201312/thu-hep-pham-vi-ap-dung-hinh-phat-tu-hinh-trong-bo-luat-hinh-su-nam-1999-293434/>> accessed 20 September 2017

also seems to create the perception that 'States are completely free to qualify a crime' as 'serious' or 'most serious.'<sup>41</sup> Thus, they have been universally authorised to stipulate the death penalty to any criminal behaviours lined in with their domestic law, no except for drug-related offences. Of course, even when executing this argument for the death penalty, including drug-related crimes, these nations must be obligated for the primary criterion of the UDHR and ICCPR that is no apply the capital punishment for juvenile offenders and pregnant women as well.<sup>42</sup>

Secondly, in turn, with vulnerable groups as children and women, in Vietnam, according to official information and report of authorities, there are not any death penalty cases applied to both of those objectives, involving drug-related crimes.<sup>43</sup> For example, ages subject to penal liability is full sixteen or older for all crimes they commit. If persons aged top 14 or older but under 16 shall have to bear penal liability for severe crimes intentionally committed or particularly serious crimes (section 2, Article 12, the 2015 CCV). However, the current criminal code declared officially that capital punishment should not apply to juvenile offenders, even they commit among three illegal narcotics' articles (Article 248, 250, and 251). By doing this, Vietnam exposes their respectful attitudes to abide by international laws to guarantee children's civil, political, economic, social, health, and cultural rights. Notably, Vietnam is considered one of the first States in the Asian region; it has signed and ratified the United Nations Convention on the Rights of the Child (UNCRC), adopted on 20 November 1989.<sup>44</sup> Furthermore, Vietnam has ratified the United Nations Convention on Elimination of All Forms of Discrimination against Women (CEDAW) since 1982. As one of the permanent promises of the official member, Vietnam shall not execute the death penalty to women who are pregnant women and women nursing children under 36 months old when committing crimes or being tried.<sup>45</sup> Furthermore, this commutation will be applied with a drug-related female inmate if their pregnant situation is clarified and examined by authorities.<sup>46</sup> All of these circumstances, under Vietnam's policy, prisoners will convert the death penalty into life imprisonment. It is different to compare with some states continuing to execute as legal requirements (Saint Kitts and Nevis). In contrast, others delay execution until after delivery (Morocco with 40 days, Egypt with two months, Bahrain with three months, even longer three years in Thailand and the Central African Republic).<sup>47</sup> Also, apart from pregnant women committing a crime shall not apply capital punishment, a few were expected a baby during living at imprisonment. They will also be converted from death to life imprisonment when they were living at the prison.<sup>48</sup> It is not rare, but is one of the exciting points in the criminal law of Vietnam, particularly with

---

<sup>41</sup> Sapienza R, 'International legal standards on capital punishment' in Ramcharan BG (ed), *The Right to Life in International Law* (Martinus Nijhoff Publishers 1985)

<sup>42</sup> Loyal A, 'The Decline of the Death Penalty: As seen through a Legislative Perspective' (University of North Carolina 2013); Jiang N, 'The Death Penalty and International Human Rights Law' in *China and International Human Rights* (Springer 2014)

<sup>43</sup> Amnesty International, *Death Sentences and Executions 2012* (2013); World Coalition against the Death Penalty, *The Death Penalty Facts and Figures* (2013)

<sup>44</sup> The Government of Vietnam ratified the UNCRC in 1990, establishing the Committee for the Protection and Care of Children in 1991, with branches extending to district and commune levels. In the same year, it enacted the law on the Protection, Care and Education of Children. It adopted a National Programme of Action for the Survival, Protection and Development of Children. It is a source of considerable national pride that, in 1992, Vietnam was the first nation in Asia to report to the Committee on the Rights of the Child, under the obligations of the UNCRC (re-cited by Khanh in Burr, 2002); see more detail at Burr R, 'Global And Local Approaches to Children's Rights in Vietnam' 9 *Childhood* 49

<sup>45</sup> *Supra* n 2

<sup>46</sup> Lam DTT, 'Death Penalty: Pregnant Woman Execution in Vietnam' (*IPS*, 2006) <<http://www.ipsnews.net/2006/10/death-penalty-pregnant-woman-escapes-execution-in-vietnam/>> accessed 30 October.

<sup>47</sup> Death Penalty Worldwide, *Death Penalty and Women* (2012)

<sup>48</sup> *Supra* n 2, 195

drug-related offences, such as drug females at Ha Nam prison and others at Chi Hoa prison.<sup>49</sup> Under Vietnam's strict regulations for the death penalty's bearer at the prison, their pregnancies have no way unless some correctional officers were directly or those female inmates seduced and volunteered different genders in jail. After all, however, both of these unique cases, they shall be commuted to life imprisonment instead of the death penalty as one the humanity's policies of the current criminal law of Vietnam. Furthermore, their babies will be delivered to the prison health centre and will be allowed to stay with their mothers until age three, after breastfeeding has finished. The mother can then decide whether to keep the child with her or have the child looked after outside's opportunities. It is proven the humanity in a criminal legal institution with children and women. It affirms that even when Vietnam maintains the death penalty with drug-related offences, it is not contrary to international law on human rights.

For the past ten years (2009-2019), responding to at least 46 out of 611 recommendations from other nations, from the UN's Human Rights Council, Vietnam has consistently affirmed its commitment to ensuring human rights, including those of drug traffickers (e.g., their access to justice), when applying the death penalty. Recently, in the Report of the Working Group on the Universal Periodic Review at the 41st Session of the Human Rights Council, Vietnam confirmed officially that 'though Viet Nam did not publish statistics on the death penalty, all verdicts and executions were announced in the media.'<sup>50</sup> Perhaps, as Pip Nicholson suggests, most abolitionists and activists want to introduce 'reductionist methods as inevitably culminating in abolition [which] may obscure other trends.'<sup>51</sup> Opponents of the death penalty may be making exaggerated claims of success in their efforts to reduce the scope of capital punishment while 'ignoring country-specific nuances, disregarding negative repercussions.'<sup>52</sup> Of course, three current articles in the 2015 CCV still impose capital punishment for drug offences, and these have not been changed by the work of any activists or by human rights protests. Yet at least the rule of law in Vietnam cannot be compromised so long as Hanoi continues to apply this harsh punishment based on international permissions and conditions. The death penalty application does not mean that Vietnam is an arbitrary Party-State executing all convicted drug offenders or applying capital punishment as a mandatory approach when the drugs involved exceeding a certain quantity, as in Singapore. Instead, having already created part of the roadmap that leads to reduction and abolition, Vietnam does not apply capital punishment to juveniles, elderly offenders, or pregnant women who commit crimes, including drug-related offences.

### **What Vietnam Should Do If They Still Remain the Death Penalty for Drug-Related Offences**

In contrast with recent arguments by scholars and non-government organisations who rank Vietnam among the top non-humanitarian states with the highest applications of the death penalty, Vietnam has implemented many changes reducing capital punishment since the first CCV in 1985, with their reductions exceeding those of other current retentionists. It may be that analysts are making those arguments lack information about legislative actions, practical applications, international reviews, and humanitarian policies in Vietnam regarding the use of

---

<sup>49</sup> Supra n 46

<sup>50</sup> United Nations General Assembly, *Report of the working group on the Universal Periodic Review* (28 March edn, United Nations 2019), 4

<sup>51</sup> Supra n 8, 5

<sup>52</sup> Akers K and Hodgkinson P, 'A Critique of Litigation and Abolition Strategies: A Glass Half Empty' in Hodgkinson P (ed), *Capital Punishment: New Perspectives* (Routledge 2013), 29

the death penalty for drug offences. As one of the rare scholars to support abolishing the death penalty for those narcotics crimes, Nguyen argued that<sup>53</sup>

Although almost capital punishment in Vietnam was applied for drug-related crimes, these offences' rate did not control and reduce as much as possible. It increased considerably with more complicated trends and patterns. The severe coercive measure of punitive application does not work for it, and even, the rate of drug-related crimes still rises. Only applying capital punishment will not practical; we have to implement synchronised measured combinations... Thus, we should not maintain capital regulations for those drug-related crimes in the CCV.

That said, many experts have highlighted that Vietnam needs a more detailed roadmap, with accurate assessments, to build up a comprehensive framework that will enable the VPS to make suitable progress towards abolishing the death penalty entirely after 2020.<sup>54</sup> Likely, Vietnam will not abolish capital punishment for all crimes, including drug offences, until the fourth cycle of the national report for the Universal Periodic Review of the Human Rights Council, scheduled for 2024. In any case, the roadmap leading to abolition will need to be synchronised with a one-term meeting of the National Assembly period. Doing this will allow for a review and re-balancing of international standards with national priorities, further facilitating the abolition or continued reduction of articles involving death sentences.

We close by proposing some basic recommendations for drawing the necessary roadmap leading to abolition for drug offences' groups, if applicable for Vietnam:

- Firstly, regarding scientific evidence, only one national survey had conducted by School of L National University of Hanoi since 2011 alongside some internal research (if so, not public). Yet, this survey is a general assessment – '*Survey on Impacts of Some Sentences in the Penal Code*', which did not design and focus on the death penalty as an independent issue. Furthermore, these findings with some statistics relating to surveyors' attitudes, either pros or cons, have not yet reflected the trend and patterns of public opinion to assess objectively abolish or retain the death penalty for drug-related crimes accordingly. Therefore, we call for a national survey focusing on drug-related crimes, if applicable.
- If approval, this survey should be referred to and learnt in both design and conduct as professional and academic approaches in the Asia region as possible.<sup>55</sup> To do it, we can look carefully for the public opinion with each drug-related offence itself, both pros and cons. These findings should also be compared to the rest of capital crimes in the current CCV (15 articles) to understand capital punishment's trend and pattern in general.
- Additionally, although the death penalty is still frequently applied, its effectiveness in deterring drug-related crimes is still questionable, as Nguyen's proposed above statement since the 2010s. At the first national survey, we need to design three separate sections with each relevant article in the 2015 CCV to collect and analyse data more objective and accurate what, how, and why Vietnam should or not maintain the capital punishment for those offences.
- Furthermore, some specific circumstances and scenarios relating to drug's activities should be included and explained for surveyors. For example, with illegally transporting

---

<sup>53</sup> Nguyen NC, 'Some Thoughts on the Death Penalty in Vietnam Criminal Law' 28 *Journal of Law* 42, 47

<sup>54</sup> In June 2019, a group of Vietnamese scholars worked with the Ministry of Justice and the Ho Chi Minh National Academy of Politics, with support from the EU Justice and Legal Empowerment Program in Vietnam, as well as UNDP and UNICEF, to organise a national workshop. A 30-interview was conducted with government agencies, law enforcement officers, criminal justice officials, lawyers, and legal scholars. Also, they discussed how the appropriate ways for Vietnam to enter into the Second Optional Protocol of the ICCPR and abolish the death penalty.

<sup>55</sup> We suggest kindly to look at the recent survey public opinion on the death penalty in Singapore, particularly at the section of drug-related offences, see more detail at *Supra n 10*

drugs (article 250), if drug mule belongs to some circumstances such as 1) the first time to commit a crime; 2) vulnerable groups including homeless with poor economic, ethnic minorities, disabled persons or mental health; and 3) people who are seduced, forced or coerced to join trafficking networks.

- Secondly, there is a need for an open-access workshop or seminar among experts in the field of drug-related offences, including policymakers, law enforcement agencies, and scholars. Such a workshop or conference will allow participants to discuss the use of the death penalty for drug offences in Vietnam and how Vietnam can reduce and abolish it in the future.

- Thirdly, we still support further data collection and analysis relating to the three current drug offences for which capital punishment remained applicable after the 2015 CCV took effect on 1 January 2018. Perhaps a target date for a report on the relevant date could be set five years later, on 31 December 2023. This first step should be conducted by Vietnam's authorities, particularly those working in the context of the criminal justice system. Although Vietnam still classifies the database of cases involving the death sentence as 'state secrets' and therefore non-public, internal exchanges among those agencies should clarify the trends and patterns of the three-drug offences and the application rate of the death penalty for each. Taking this step can help Vietnam re-consider and re-scale the best pathway forward concerning these three articles.<sup>56</sup>

- Finally, Vietnam should assess objectively and analyse three de facto abolitionists' procedures and values in the Golden Triangle—the second-largest drug-producing area in the world. Precisely, Laos, Myanmar, and Thailand have not executed any offenders for drug-related offences for at least the past ten years. A key question is why the drug trafficking situation in Southeast Asia region, including Vietnam and these three countries, continues to expand? Furthermore, these countries are recognised as primary sources, international hubs, and potential destinations for drugs, although they remain the death penalty for drug-related crimes in place? As a first step toward reductionism, Vietnam can follow these three countries by allowing capital punishment to stay in law but without practising executions, to achieve physical and economic benefits. Doing so is likely to provide evidence for the argument that Vietnam should end killings for drug offences by taking the second step – namely, abolishing capital punishment.

---

<sup>56</sup> Based on some informal conversation between the first author and anti-narcotics police officers in recent years, we can confirm that some of the officers are against imposing the death penalty for illegally transporting substances (article 250, the 2015 CCV), particularly with minority groups. Other officers confessed that implementing the death penalty, either by shooting or injecting prisoners with poison, could lead to adverse psychological effects for themselves, including chronic stress after participating in executions.

## References:

- Gallahue P and others, *The Death Penalty for Drug Offences: Global Overview 2012 - Tipping the Scales for Abolition* (International Harm Reduction Association 2012)
- Hood R and Hoyle C, *The Death Penalty: A Worldwide Perspective* (4<sup>th</sup> edn, Oxford University Press 2008)
- Johnson D and Zimring F, *The Next Frontier: National Development, Policy Change, and the Death Penalty in Asia* (Oxford University Press 2009)
- Nguyen DD and others, *Some Necessary Issues about the Death Penalty* (1st edn, The Social Labor Publishing 2010)
- Schabas W, *The Abolition of the Death Penalty in International Law* (3<sup>rd</sup> edn, Cambridge University Press 2002)
- Akers K and Hodgkinson P, 'A Critique of Litigation and Abolition Strategies: A Glass Half Empty' in Hodgkinson P (ed), *Capital Punishment: New Perspectives* (Routledge 2013)
- Dao TU, 'Basic Information for Legal Research - A Case Study of Vietnam' in IDE (ed), *Doing Legal Research in Asian Countries*, vol IDE Asian Law Series (Institute of Developing Economies (IDE-JETRO) 2003) <[http://d-arch.ide.go.jp/idedp/IAL/IAL002300\\_008.pdf](http://d-arch.ide.go.jp/idedp/IAL/IAL002300_008.pdf)>
- Hao VL, 'Child Rights and Duties. Laws on Child Protection in Vietnam' in Clarke S-J and others (eds), *Positive Discipline Training Manual Vietnam* (Plan in Vietnam 2009)
- Jiang N, 'The Death Penalty and International Human Rights Law' in *China and International Human Rights* (Springer 2014)
- Nicholson P, 'The Vietnamese Courts and Corruption' in Lindsey T and Dick H (eds), *Corruption in Asia: Rethinking the Governance Paradigm* (The Federation Press 2002)
- Rahman F, 'Capital Punishment for Drug Offenses' in Rahman F and Crofts N (eds), *Drug Law Reform in East and Southeast Asia* (Lexington Books 2013)
- Sapienza R, 'International legal standards on capital punishment' in Ramcharan BG (ed), *The Right to Life in International Law* (Martinus Nijhoff Publishers 1985)
- Luong TH, 'Death Penalty to Drug-Related Crimes: A Vietnam Perspective' (Drug-related Offences, Criminal Justice Responses and the Use of the Death Penalty in South-East Asia)
- , 'Why Vietnam Continue to Maintain the Death Penalty with Drug-Related Crimes?' (1st Asian Regional Meeting for Drug Policy)
- Ho TN, *Some Issues Related to Death Penalty Judiciary in Vietnam* (International Association of Democratic Lawyers (IADL) 2009)
- Thao P, 'To Reduce the Death Penalty's Applications in the 1999 Criminal Code of Vietnam' Research and Discussion <<http://www.noichinh.vn/nghien-cuu-trao-doi/201312/thu-hep-pham-vi-ap-dung-hinh-phat-tu-hinh-trong-bo-luat-hinh-su-nam-1999-293434/>> accessed 20 September 2017
- Reggio M, *History of the Death Penalty* (Springer 2014)
- Burr R, 'Global And Local Approaches to Children's Rights in Vietnam' 9 *Childhood* 49
- Chi NN, 'Một số suy nghĩ về hình phạt tử hình trong Luật hình sự Việt Nam' 28 *Tap chi Luật học* [trans: Chi, Ngoc Nguyen 2012, 'Some thoughts on the penalty of death in Vietnam criminal Law' 22 *Journal of Law* 42] 42
- Edwards G and others, 'Drug trafficking: time to abolish the death penalty' 104 *Addiction* 1267
- Leechaianan Y and Longmire D, 'The Use of the Death Penalty for Drug Trafficking in the United States, Singapore, Malaysia, Indonesia and Thailand: A Comparative Legal Analysis' 2 *Laws* 115
- Luong TH, 'The Application of the Death Penalty for Drug-Related Crimes in Vietnam: Law, Policy, and Practice' 17 *Thailand Journal of Law and Policy*
- , 'Why Vietnam Continues to Impose the Death Penalty for Drug Offences: A Narrative Commentary' 88 *International Journal of Drug Policy* 1
- Tran K and Vu CG, 'The Changing Nature of Death Penalty in Vietnam: A Historical and Legal Inquiry' 9 *Societies* 1
- Tran TG, 'Colonial Policies on Culture of France and Some Cultural Movements Prior 1945 in Vietnam' 2 *Journal of Cultural Research* 72
- Trevaskes S, 'China's Death Penalty: The Supreme People's Court, the Suspended Death Sentence and the Politics of Penal Reform' 53 *British Journal of Criminology* 482
- Thu tuong Chinh phu, *Quyết định của Thủ tướng Chính phủ về Danh mục Bị mất Nhà nước do Toi mất của Ngành Toan an nhân dân* (2004)
- United Nations General Assembly, *Report of the working group on the Universal Periodic Review* (28 March edn, United Nations 2019)
- Amnesty International, *Death Sentences and Executions 2012* (2013)
- Death Penalty Worldwide, *Death Penalty and Women* (2012)
- Nicholson P, *The Death Penalty and Its Reduction in Asia: An Overview* (Briefing Paper, 2017)
- Sander G, Girelli G and Fernandez A, *The Death Penalty for Drug Offences: Global Overview 2019* (2020)
- World Coalition against the Death Penalty, *The Death Penalty Facts and Figures* (2013)

- Cheong C and others, *Public Opinion On The Death Penalty In Singapore: Survey Findings* (the National University of Singapore 2018)
- Nguyen TPH, *Drug-Related Crimes Under Vietnamese Criminal Law: Sentencing and Clemency in Law and Practice* (the University of Melbourne 2015)
- Pascoe D, *Clemency in Southeast Asian Death Penalty Cases* (Asian Law Centre 2014)
- Loyal A, 'The Decline of the Death Penalty: As seen through a Legislative Perspective' (University of North Carolina 2013)
- Nguyen TPH, 'Legislative Implementation by Vietnam of its Obligations under the United Nations Drug Control Conventions' (Law, University of Wollongong 2008)
- BBC News, 'Vietnam Death Row Inmate Pregnant' (*BBC News*, 2006) accessed 13 October
- Lam DTT, 'Death Penalty: Pregnant Woman Execution in Vietnam' (*IPS*, 2006) <<http://www.ipsnews.net/2006/10/death-penalty-pregnant-woman-escapes-execution-in-vietnam/>> accessed 30 October
- Mangosing F, 'Pulse Asia: Most Filipinos still Support Death Penalty' (*Inquirer*, 2017) <<https://newsinfo.inquirer.net/894552/pulse-asia-most-filipinos-still-support-death-penalty#ixzz5ZXZ3dZJA>> accessed 11 December