

# **Not There Yet, but Getting There – Death Penalty for Drug Offenses in International and Viet Nam’s Laws**

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**Abstract:** The twenty-first century has witnessed a robust trend towards death penalty abolitionism worldwide. The trajectory quickly spreads to even Asia, a die-hard supporter of this practice and also “the next frontier” for abolitionist enthusiasts. Yet controversies revolving around the application of the death penalty for drug offenses still trigger Southeast Asian countries given their divergent understanding. On the one hand, in justifying the zero-tolerance punishment on drug criminals, Southeast Asian countries often invoke the spillover impacts of narcotic drugs on human beings and social order. On the other hand, international human rights law has reshaped the punitive approach to drug crimes. Relevantly, this paper argues that drug crimes do not meet the threshold of the term “most serious crimes” in light of international standards. The Human Rights Committee’s interpretation of this term is refined and developed in an evolving manner, thus limiting the application of the death penalty for drug offenses. At the national level, this paper documents the dynamic understanding of drug crimes within Viet Nam’s criminal law. It shows that the country’s understanding of drug crimes has changed incrementally, corresponding to international standards albeit not entirely consistent with such. This change is mainly attributed to international integration and Viet Nam’s reputational cost-benefit analysis. The paper then presents the question of whether any room left for a change on this matter by drawing on comparative determinants for inducing abolition of the death penalty. Given that many factors are lacking in Viet Nam’s context the paper concludes with a cautiously optimistic view about Viet Nam’s possibility of the abolition of capital drug offenses.

*Key words: death penalty, drug offences, retentionist, abolitionist.*

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## 1. The State Killing: An Overview of Southeast Asian Nations

In 2008, David Johnson and Franklin Zimring identified Asia as “the next frontier” for abolitionist enthusiasts.<sup>3</sup> Asia, where the majority of humankind is residing, remains the slaughterhouse in the world. The future of the death penalty in this Continent will unveil whether the campaign against state killing that has gained momentum since World War II is a global phenomenon. The nations of Asia are also an important laboratory for learning about the major influences on death penalty policy and the impact of policy changes on society and government. Most knowledge of capital punishment and penal policy comes from the study of a few developed nations in the West—especially the United States—over a relatively short period.

Based on official national and regional statistics, the production, trade in, and use of some illicit drugs tend to increase or remain relatively high in Southeast Asia in recent years. According to the UNODC report, poppy cultivation in Southeast Asia was lowest in 2006, then grew steadily, and in 2014, the rate was relatively high. UNODC also points out that at least 250 million people, or about 5% of the world’s population, are using drugs; Of which, in Southeast Asia, there are more than 3 million people using heroin and more than 5 million people using synthetic drugs.<sup>4</sup>

Southeast Asia has seen a steady increase in methamphetamine<sup>5</sup> seizures over the past decade, more than any other country in the world. At the present time, countries in the region have confirmed the amount of drug seized up to 115 tons in 2019.<sup>6</sup> UNODC Chief Representative for the Southeast Asia-Pacific region Jeremy Douglas stressed: “While the world has shifted its attention to the COVID-19 pandemic, all indications are that production and trafficking of synthetic drugs and chemicals continue at record levels in the region”.<sup>7</sup> The Southeast Asia region has also seen a continued increase in dangerous synthetic opioids.<sup>8</sup> While as of 2014, the region’s illegal drug supply market detected

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<sup>3</sup> David Johnson & Franklin Zimring, *The Next Frontier: National Development, Political Change, and the Death Penalty in Asia* (OUP 2008).

<sup>4</sup> UNODC, *The Challenge of Synthetic Drugs in East and South-East Asia: Trends and Patterns of Amphetamine-type Stimulants and New Psychoactive Substances*, A Report from the Global SMART Program (2017), [https://www.unodc.org/documents/southeastasiaandpacific/Publications/2017/The\\_Challenge\\_of\\_Synthetic\\_Drugs\\_in\\_East\\_and\\_South-East-Asia.pdf](https://www.unodc.org/documents/southeastasiaandpacific/Publications/2017/The_Challenge_of_Synthetic_Drugs_in_East_and_South-East-Asia.pdf) accessed 30 Jan 2021.

<sup>5</sup> Methamphetamine is a powerful, highly addictive stimulant that affects the central nervous system. Also known as meth, blue, ice, and crystal, among many other terms, it takes the form of a white, odorless, bitter-tasting crystalline powder that easily dissolves in water or alcohol, <https://www.drugabuse.gov/publications/research-reports/methamphetamine/what-methamphetamine> accessed 30 Jan 2021.

<sup>6</sup> Bảo Yên, Trọng Quỳnh, “AIPACODD 3: Biến lời nói thành hành động hướng tới một cộng đồng ASEAN không ma túy” (Công thông tin điện tử Quốc Hội Việt Nam, 29/06/2020), <http://quochoi.vn/tintuc/pages/tin-hoat-dong-cua-quoc-hoi.aspx?ItemID=46710> accessed 31 Jan 2021.

<sup>7</sup> UNODC, *Report on East and Southeast Asia: continued growth in the supply of methamphetamine while synthetic opioids spread* (2020), <https://www.unodc.org/southeastasiaandpacific/en/2020/05/regional-synthetic-drugs-report-launch/story.html>, accessed 31 Jan 2021.

<sup>8</sup> Synthetic opioids are a class of psychoactive drugs that relieve pain like opiates. They’re produced in laboratories, and they’re made to have an internal structure that’s similar to natural opioids. All the compounds that make up synthetic opioids are man-made and produced in a pharmaceutical lab. They’re not naturally occurring substances, but they have the same effect as drugs created from the opium poppy plant species, which are used to produce popular opiates like morphine, heroin and codeine, at: <https://baartprograms.com/what-are-synthetic-opioids/>, accessed 31 Jan 2021.

only three types of synthetic opioids, by 2019, this figure had reached 28. Also, the total consortium was seized in new locations as the organized crime states continuously boosted the size of the business.<sup>9</sup>

In Southeast Asia, 8 out of 11 countries impose the death penalty for drug-related offenses,<sup>10</sup> as these countries consider such acts as the most serious crime. The table below shows the policy perspectives and the application of the death penalty in this region.

**TABLE 1**

**Southeast Asian countries and the death penalty: policy positions and how the law is applied**

Abolitionist for all crimes (3)	Cambodia, Philippines, Timor-Leste
De facto abolitionist (3)	Brunei Darussalam, Lao PDR, Myanmar
Retentionist (5)	Indonesia, Malaysia, Singapore, Thailand, Viet Nam
Mandatory death sentence for drug offenses (4)	Brunei Darussalam, Lao PDR, Myanmar, Singapore
Discretionary death sentence for drug offenses (4)	Indonesia, Thailand, Viet Nam, Malaysia

Eight Southeast Asian countries currently maintain that drug-related offenses are the most serious crimes in light of international law for which the death penalty may be imposed. As argued in the next section, international law norms do not support this claim.<sup>11</sup> The laws of Brunei Darussalam, Lao PDR, Myanmar, Singapore provide for a mandatory death sentence for drug-related crimes.

Below is a table of figures on the number of death penalty cases in general, the death sentence cases related to drug crimes, and the number of death penalty executions from 2015 to 2019 in 8 Southeast Asia countries.

<sup>9</sup> Nhật Anh, “Sản xuất và mua bán ma túy tổng hợp tại khu vực Đông – Nam Á vẫn ở mức kỷ lục” (Nhân dân điện tử, 15/05/2020), <https://nhandan.com.vn/tin-tuc-the-gioi/san-xuat-va-mua-ban-ma-tuy-tong-hop-tai-khu-vuc-dong-nam-a-van-o-muc-ky-luc-458389/>, accessed 31 Jan 2021.

<sup>10</sup> Includes: Brunei Darussalam, Indonesia, Lao PDR, Malaysia, Myanmar, Singapore, Thailand, Viet Nam.

<sup>11</sup> Office of the United Nations High Commissioner for Human Rights Regional Office for South-East Asia, *Drug-related Offenses, Criminal Justice Responses and the Use of the Death Penalty in South-East Asia* (2018), <https://bangkok.ohchr.org/wp-content/uploads/2020/01/Drug-Related-Offenses-2018.pdf> accessed 31 Jan 2021

**TABLE 2**

**Recorded death sentences and executions in South-East Asian countries, 2015–2019 and other last known years.<sup>12</sup>**

States	Last known execution	Recorded executions in 2019	Recorded executions in 2018	Recorded executions in 2017	Recorded executions in 2016	Recorded executions in 2015	Recorded death sentences in 2019	Recorded death sentences in 2018	Recorded death sentences in 2017	Recorded death sentences in 2016	Recorded death sentences in 2015	
<b>Brunei Darussalam</b>	1957	Abolitionist in practice					0	0	0	0	0	1
<b>Indonesia</b>	2016	0	0	0	4	14	At least 80 (60 for DO <sup>13</sup> )	At least 48 (39 for DO)	At least 47 (33 for DO)	At least 60 (40 for DO)	At least 46 (29 for DO)	
<b>Lao PDR</b>	1989	Abolitionist in practice					0	0	At least 1 (for DO)	At least 3 (3 for DO)	At least 20	
<b>Malaysia</b>	2017	0	0	4	9	N/A	At least 26	190 (136 for DO)	At least 38 (21 for DO)	At least 36 (17 for DO)	At least 39 (24 for DO)	

<sup>12</sup> The data in table 2 are compiled from Amnesty International’s annual global report series Death Sentences and Executions for the years 2015 (<https://www.amnesty.org/en/documents/act50/3487/2016/en/>); 2016 (<https://www.amnesty.org/en/documents/act50/5740/2017/en/>); 2017 (<https://www.amnesty.org/en/documents/act50/7955/2018/en/>); 2018 (<https://www.amnesty.org/en/documents/act50/9870/2019/en/>); 2019 (<https://www.amnesty.org/en/documents/act50/1847/2020/en/>), and the databases of the Cornell Center on the Death Penalty Worldwide and the World Coalition Against the Death Penalty (<https://deathpenaltyworldwide.org/database/>)

<sup>13</sup> DO: drug offenses

<b>Myanmar</b>	1988	Abolitionist in practice					4	At least 9	At least 2	At least 3	At least 17
<b>Singapore</b>	2019	4	13	8	4	4	12 (2 for DO)	17 (11 for DO)	15 (12 for DO)	At least 7	At least 5
<b>Thailand</b>	2018	0	1	0	0	0	At least 16	At least 33 (3 for DO)	75 (86 out of 192 finalized death sentences were for DO)	216 (213 out of 427 on death row convicted of DO)	At least 7
<b>Viet Nam</b>	2018	Insufficient information	85	N/A			At least 76	At least 122	At least 35 (31 for DO)	At least 63 (54 for DO)	At least 47
	<b>TOTAL</b>	<b>At least 4</b>	<b>At least 99</b>	<b>At least 12</b>	<b>At least 17</b>	<b>At least 18</b>	<b>At least 214</b>	<b>At least 419</b>	<b>At least 214</b>	<b>At least 388</b>	<b>At least 182</b>

According to the data, Brunei Darussalam, Lao PDR, and Myanmar have abolished in the practice of the death penalty, but these countries still sentenced the offenders to death in recent years. Indonesia, the death penalty in general and drug crimes, in particular, tend to increase gradually from 2016 to 2019. However, since then, Indonesia has not executed any death sentences. In its recent universal periodic report, the Government of Indonesia “emphasized that the death penalty was still applied, but only after all legal procedures had been exhausted and provided the legal rights of the convicted had been respected”,<sup>14</sup> and “Indonesia highlights the decision by the Constitutional Court that drug-related offenses were one of the most serious crimes, which had led to the maximum punishment, including the death penalty. In the ongoing revision of the Criminal Code, the death penalty was to be restricted as a last resort, with the possibility of commutation”.<sup>15</sup> A similar development has also been witnessed in Malaysia since 2018. Yet the number of people sentenced to death remains high (190 people, including 136 drug-related crimes). Singapore, after the actual suspension from 2011 to 2013, in 2014, Singapore continued to carry out the executions. Thailand has considered an abolitionist for drug offenses since 2019.

In Southeast Asia, data and information related to the execution of the death penalty are not widely, transparently, regularly, and fully disclosed. Some countries such as Lao PDR, Malaysia, Singapore and Vietnam still regard the execution of the death penalty as state secrets and are not publicly reported. Consequently, international human rights mechanisms still recommend retentionist countries in Southeast Asia to make publicly available data regarding execution of the death penalty.

Thus, countries in Southeast Asia can be divided into three main groups: (1) countries that have abolished the death penalty (including Cambodia, the Philippines, Timor-Leste), (2) countries that have abolished in practice (including Brunei Darussalam, Lao PDR, Myanmar), (3) retentionist countries (including Indonesia, Malaysia, Singapore, Thailand, Viet Nam). For retentionist countries, especially for drug crimes, they often make arguments to defend their views: drug crime is a most serious crime, threatening to public security, causing great harm to society; the death penalty is a deterrent to crime, especially drug crime ... However, reality shows that there is no reliable evidence to prove that the death penalty is deterrent and preventive more effective than long-term imprisonment. Countries that maintain the death penalty do not have a lower rate of drug crime than countries that do not. Florence Bellivier, International Federation for Human Rights (FIDH) Deputy-Secretary General said: “The pretext of using the death penalty to fight wars on drugs and terrorism are merely a quick fix for governments who are eager to show they are tough on crime. The reality is that the death penalty has no deterrent effect on the commission of crimes, particularly those that are drug-related or alleged acts of terrorism”.<sup>16</sup> United Nations General Assembly emphasized in December 2007 resolution that “there is no conclusive evidence of the deterrent value of the death penalty and that any miscarriage or failure of justice in the implementation of the death penalty is irreversible and irreparable”.<sup>17</sup>

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<sup>14</sup> United Nations General Assembly, Human Rights Council, *Report of the Working Group on the Universal Periodic Review of Indonesia* (2017), para 22, <https://undocs.org/en/A/HRC/36/7> accessed 1 Feb 2021.

<sup>15</sup> Ibid, para 79.

<sup>16</sup> International Federation for Human Rights, “Going backwards: the death penalty in Southeast Asia” (10/10/2016), <https://www.fidh.org/en/issues/death-penalty/going-backwards-the-death-penalty-in-southeast-asia> accessed 1 Feb 2021

<sup>17</sup> United Nation General Assembly, A/RES/62/149, *Moratorium on the use of the death penalty* (30/10/2020), <https://undocs.org/en/A/RES/62/149> accessed 1 Feb 2021

On 17 Nov 2020, the United Nations General Assembly voted on a resolution calling for a moratorium on the use of the death penalty.<sup>18</sup> It passed convincingly: a total of 120 states voted for the resolution, which called for nations to restrict the use of the death penalty, with the aim of eventually eliminating it altogether. Only three states of ASEAN (includes: Cambodia, Malaysia, Philippines) voted to support the resolution. Singapore and Brunei voted against it, while the remaining five nations abstained. The vote of the General Assembly indicates an increasingly widespread international consensus against the use of the death penalty. But the vote also highlighted ASEAN continuing use of – and defense of – the death penalty, despite the tireless efforts of the region’s abolitionists.<sup>19</sup> The result of the vote suggests that it will be some time before ASEAN move toward full abolition of the death penalty. And yet, despite divergent trajectories, surprisingly, Viet Nam, as observed by Tim Lindsey and Pip Nicholson, is one of the Southeast Asian countries with the most willingness in limiting the application of the death penalty.<sup>20</sup>

## 2. Drug Offenses Punishable by Death in International Law

To begin with, Article 3 of the Universal Declaration of Human Rights provides that everyone has the right to life. It serves as an authoritative basis for the International Covenant on Civil and Political Rights of 1966 (ICCPR) to elaborate on the right as much as legal limits on the general application of the death penalty in the national justice system. Article 6 of the ICCPR begins with a robust guarantee of the inherent right to life and that “[n]o one shall be arbitrarily deprived of his life.” During the lengthy drafting process of the ICCPR, some countries were of the opinion that the death penalty should be abolished in its entirety.<sup>21</sup> Although they failed to muster enough support for the proposal, their attempt had somewhat effects on other countries at the time, thus resulting in a compromise between the abolitionist and retentionist camps.<sup>22</sup>

To be clear, despite the wide scope of “arbitrary deprivation” of the right to life,<sup>23</sup> the application of the death penalty is not considered arbitrariness in circumstances where the national authority has ascertained that legal thresholds for its application are met. Paragraphs 2, 4, 5 and 6 of Article 6 ICCPR deals extensively with the applicable scope of the death penalty as follow:

2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgment rendered by a competent court.

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<sup>18</sup> United Nation General Assembly, A/C.3/75/L.41, *Moratorium on the use of the death penalty* (26/02/2020) <https://undocs.org/A/C.3/75/L.41> accessed 1 Feb 2021

<sup>19</sup> Sebastian Strangio, “Explaining southeast Asia’s addiction to the Death Penalty” (The Diplomat, 25/11/2020), <https://thediplomat.com/2020/11/explaining-southeast-asias-addiction-to-the-death-penalty/> accessed 1 Feb 2021

<sup>20</sup> Tim Lindsey and Pip Nicholson, *Drugs Law and Legal Practice in Southeast Asia: Indonesia, Singapore and Vietnam*, (Bloomsbury Publishing, 2016), p.11.

<sup>21</sup> For example, Uruguay and Colombia, see UN Doc. A/C.3/L.644.

<sup>22</sup> William A. Schabas, *The Abolition of The Death Penalty in International Law* (CUP, 2002) at 96.

<sup>23</sup> *Van Alphen v. the Netherlands* [1988], UN Doc. A/45/40, para. 5.8.

4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.
5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.
6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

Readers of article 6 have been split into two directions. At the one end of the spectrum, death penalty supporters argue that the Covenant gives way to, and therefore the right to life is irrelevant in limiting, its application. At the other end, opponents of the death penalty regrettably admit its *status quo* as a temporary compromise but are deeply convinced that abolitionism is the utmost means in order to ensure the compatibility with the fundamental right to life. In his dissenting opinion, Human Rights Committee member Bertil Wennergren took pain to recognize that the death penalty was a “necessary evil” in retentionist States. Nonetheless, its application shall be subject to “absolute necessity”.<sup>24</sup> Wennergren concluded that “in one form or another, the rule of necessity is inherent in all legal systems; the legal system of the Covenant is no exception.”<sup>25</sup> The necessity test presents the question of when the death penalty is applicable to crimes, more relevantly to the focus of this paper, those related to drugs. In other words, whether drug-related offenses may be regarded as of the most serious nature and thus punishable by death.

The die-hard *status quo* of the death penalty was foreseen in Article 6(2) ICCPR at the time of its adoption. Although the Article 6 recognizes the fact that some countries “have not abolished the death penalty” yet, the abolitionist trend was favored in the view of the Covenant drafters.<sup>26</sup> In its General Comment, the Human Rights Committee (HRC) refers to the significance of “all measures of abolition”, showing that even partial abolition or limitation of the capital punishment should be considered within the gamut of ‘abolition’.<sup>27</sup>

Importantly, Article 6(2) provides that the death penalty shall only be imposed on “the most serious crimes”. This is a critical starting point to shed light on whether drug-related crimes fit in this category. This categorization is considered an innovation compared to the European Convention on Human Rights of 1950, and also finds its presence in Article 4(2) of the American Convention on Human Rights of 1969. It bears noting however, that this term was subject to criticisms because of its generic yet ambiguous scope. It has made much leeway for State’s arbitrary use of the death penalty, with little compelling effect on the propensity for abolitionism.<sup>28</sup> In its response to Amnesty International’s criticism, although Singapore recognized the death penalty shall only be applied to “the

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<sup>24</sup> *Kindler v. Canada* [1991], UN Doc. A/48/40, Vol. II, p. 138, 14 HRLJ 307, 6 Revue universelle des droits de l’homme 165, p. 157.

<sup>25</sup> *Ibid.*

<sup>26</sup> In General Comment 6 (Right to Life) (1982), the Human Rights Committee states that Article 6(2) suggests that ‘abolition is desirable’; See also Manfred Nowak. *UN Covenant on Civil and Political Rights. CCPR Commentary* (2nd rev. ed.) (Kehl am Rhein: Engel, 2005), p.134.

<sup>27</sup> UN Human Rights Committee (HRC), *CCPR General Comment No. 6: Article 6 (Right to Life)*, 30 April 1982, para 6, <https://www.refworld.org/docid/45388400a.html>, accessed 16 February 2021.

<sup>28</sup> Daniel Nsereko, *Arbitrary Deprivation of Life: Controls on Permissible Deprivations*, in *The Right to Life in International Law* 248 (Bertrand Ramcharan, ed., 1985), pp. 254–255; See also Manfred Nowak, *supra* note 24, p. 141.

most serious crimes”, it vigorously rejected the narrow interpretation of the Organization, which excluded drug offenses.<sup>29</sup> Obviously, Singapore is not the sole country viewing drug crimes meet the threshold of this category.<sup>30</sup>

The wording of Article 6(2) ICCPR ostensibly drew aspiration from other sources of international law. In particular, the fourth Geneva Convention prescribes crimes punishable by death may be applicable to non-combatants in occupied territories, including espionage, serious crimes of sabotage of military installations, and intentional murder.<sup>31</sup> The phrase “particularly serious crime” is featured in Article 33 of the Convention of the Status of Refugees as a limit of the non-refoulement principle. Atle Grahl-Madsen has posited that this category includes “any offense for which the maximum penalty in the majority of countries of Western Europe and North America is imprisonment for more than five years or death.” His observation thus rejects the narrow interpretation which limits capital punishment to offenses against life or limb.<sup>32</sup> This view resonated with the result of the 1990 survey conducted by Roger Hood, in which he asked 41 States representatives about their definition of “the most serious crimes”. The responses diverged significantly as some “offenses aimed at the domination of a social class or at overthrowing the basic economic and social orders (as reported by Turkey), and theft in aggravated circumstances, sexual intercourse with a female relative under 15 or arousing of religious and sectarian feelings and propagation of Zionist ideas (as reported by Cuba), may not stand the test of a “most serious crime” in the sense of article 6 of the Covenant.”<sup>33</sup>

In considering the term, the HRC suggested that “most serious crimes” must be interpreted in a restrictive manner, and the application of the death penalty was only justifiable in an exceptional circumstance.<sup>34</sup> Drawing from the HRC’s jurisprudence, William Schabas suggests that the Committee’s interpretation of the term is confined to intentional killings and intentional infliction of grievous bodily harm.<sup>35</sup> In *Lubuto v. Zambia*, the Committee found a violation of Article 6(2) because the member State had imposed a mandatory death sentence on the petitioner for aggravated robbery in which firearms were used. The Committee observed that “use of firearms did not produce the death or wounding of any person and that the court could not under the law take these elements into account in imposing sentence.”<sup>36</sup>

In terms of drug-related offenses, at the outset, the HRC’s view was vague and ambiguous. In addressing country report, it sporadically implied that the death penalty for drug trafficking was congruous with Article 6(2) ICCPR.<sup>37</sup> In its relatively brief General Comment 6 (1982) on the right to

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<sup>29</sup> Ministry of Home Affairs, Press Release, "Singapore-The Death Penalty: A Hidden Toll of Executions" (30 January 2004), <http://www2.mha.gov.sg/mha/detailed.jsp?artid=990&type=4&root=0&parent=0&cat=0>, accessed 1 Feb 2021

<sup>30</sup> For a list of countries retain the imposition of the death penalty for drug offenses, see

<sup>31</sup> Article 68 of Geneva Convention relative to the protection of civilian persons in time of war of 12 August 1949.

<sup>32</sup> A. Grahl-Madsen, *The Status of Refugees in International Law*, Vol. I, [Leyden: Sijthoff, 1966], p. 284. See also: Guy S. Goodwin-Gill, *The Refugee in International Law*, [Oxford: Clarendon Press, 1983], pp. 69–100.

<sup>33</sup> United Nations, Economic and Social Council, *Resolutions and decisions of the economic and social council* (1990), UN Doc. E/1990/38, para. 41.

<sup>34</sup> See Manfred Nowak, *supra* note 24, p. 141

<sup>35</sup> William Schabas, *The Abolition of the Death Penalty in International Law* (CUP 2002), pp. 107-9.

<sup>36</sup> *Lubuto v. Zambia* [390/1990], UN Doc. CCPR/C/55/D/390/1990/Rev.1, para. 7.2.

<sup>37</sup> See HRC, Consideration of Initial Report of Bolivia, UN Doc. A/44/40, p. 95; See also: With regards to Mauritius, UN Doc. A/44/40, paras. 507-8. The HRC merely sought for information regarding Mauritius’s reintroduction and application

life, the HRC left the term “most serious crimes” open without offering any guidance to delimit this category, particularly relating to drug offenses.<sup>38</sup> This “neglect” paved the way for State’s zero-tolerance approach to drug crimes.

However, drug offenses have recently been given more attention in the HRC’s outputs. In considering Iran’s second periodic report, the Committee stated that crimes not resulting in loss of human life were at odds with the ICCPR, which included drug crimes.<sup>39</sup> On various occasions, the HRC also repeated its view that “drug-related offenses” were not “serious crimes” within the ambit of Article 6(2).<sup>40</sup> This view is also held by the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, who has on many occasions reminded states that international law “requires that capital punishment for drug trafficking be abolished and that death sentences already imposed for drug trafficking be commuted to prison terms.”<sup>41</sup> In 2008, in its letter to the Commission on Narcotic Drugs (the UN drug policy-making body), the Special Rapporteurs on torture and on the right to health indicated that the “weight of opinion indicates clearly that drug offenses do not meet the threshold of ‘most serious crimes’ to which the death penalty might lawfully be applied”.<sup>42</sup> To put the controversy to rest, in its latest General Comment 36 (2019) on the right to life, the HRC has made explicit that the interpretation of the term “the most serious crimes” must be highly restrictive and appertain only to crimes of extreme gravity involving intentional killing.<sup>43</sup> While recognizing the seriousness of drug crimes, the Committee maintains that such crimes not resulting directly and intentionally in loss of human life do not constitute “the most serious” nature and can never be punished by death.<sup>44</sup> The application of the death penalty for drug offenses is thus irrelevant to Article 6 ICCPR.

Why did the Committee change its course of interpretation? We suggest that the term “most serious crimes” should be understood as an evolving concept. The Committee’s interpretation of the Covenant is subject to various factors at the time when a provision is construed. In this sense, the Covenant is a living document developed alongside the needs of the international community. The Committee should occasionally revisit its earlier interpretation in order to ascertain the relevance of the Covenant to new circumstances. Apparently, the drug offenses in the past were conceived against the backdrop of the rampant drug trade and its adverse impacts. However, as scientific evidence on this

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of the death penalty for drug trafficking without explicitly raising any concerns about its potential incompatibility with international standards.

<sup>38</sup> See HRC, General Comment 6 (Right to Life) (1982).

<sup>39</sup> United Nations, Human Rights Committee, *Consideration of reports submitted by States parties under Article 40 of the Covenant* (03/8/1993), UN Doc. CCPR/C/79/Add.25, para. 8.

<sup>40</sup> See e.g., ‘Concluding Observations, Sri Lanka’, CCPR/C/79/Add.56 (1997), para. 14; ‘Concluding Observations, Thailand, CCPR/CO/84/THA (2005), para. 14; Also: CCPR/C/THA/CO/2 (2017), para. 17.

<sup>41</sup> UN Human Rights Council, *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions*, (29/05/2009), A/HRC/11/2/Add.1, pp. 188.

<sup>42</sup> Special Rapporteur on the prevention of torture and cruel, inhuman, or degrading treatment or punishment, and Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Letter to Ms. Selma Ashipala-Musavyi, Permanent Representative of Namibia to the United Nations at Vienna and Chairperson of the fifty-second session of the Commission on Narcotic Drugs (10 December 2008). Available at: <https://www.hrw.org/news/2008/12/10/un-human-rights-experts-call-upon-cnd-support-harm-reduction> accessed 5 Feb 2021.

<sup>43</sup> See HRC, *General comment 36 (Right to Life)*, 3 September 2019, CCPR/C/GC/35, para. 35, <https://www.refworld.org/docid/5e5e75e04.html> accessed 5 February 2021; See also *Kindler v. Canada*, para. 14.3.

<sup>44</sup> *Ibid.*

matter has been extensively unfolded and gathered, proponents of capital drug offenses have been in dire straits in justifying its deterring use. It is beyond doubt that the drug trade in many retentionist States remains on the rise, albeit the presence of mandatory death sentences for these crimes.<sup>45</sup> For example, in Malaysia, citing the persistently high number of executions of drug offenders, the International Narcotics Control Board suggested that the punishment did not deter drug offenses due to the high demand for narcotics.<sup>46</sup> This point was actually admitted in a report of the Malaysian Inspector General of Police's published in 1985, noting that the death penalty was considered to be an ineffective deterrent on narcotic traffickers, evidenced by the increasing number of drug traffickers entering the market. In a similar vein, Colman Lynch has indicated that the effect of the capital punishment is limited in deterring illicit drug traffickers in Indonesia, given its high profitability.<sup>47</sup> Besides, there is always a grave concern that drug traffickers are couriers and mules, rather than the kingpins pulling strings from behind.<sup>48</sup> This is likely to leave those vulnerable even more vulnerable to abuses while the criminal masterminds stay unharmed. According to the Human Rights Council, the imposition of the death penalty on drug offenses is disproportionately punitive with little effect on achieving the aim of deterring drug-related crime.<sup>49</sup> If the punishment is short of the deterring effect, perhaps many of death penalty supporters might well consider it, in Roger Hood's words, "useless cruelty".<sup>50</sup>

The "evolving concept" argument is buttressed implicitly in light of the international framework of narcotic drug regulations, including three documents: The Single Convention on Narcotic Drugs of 1961, the Convention on Psychotropic Substances of 1971 and the Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988. These documents play an instrumental role in "establishing [sic] a system of international criminal drug control law that uses criminalization and penalization to combat global drug trafficking."<sup>51</sup> These three treaties allow member States to adopt "more strict or severe measure" than those prescribed therein.<sup>52</sup> In explaining the term, the Commentaries for the 1961 and 1971 drug conventions exhibit the death penalty as "permissible substitute controls" under the relevant provisions.<sup>53</sup> In contrast, the Commentary for the 1988 Convention does not make any mention of the death penalty to illustrate a "permissible sanction" in

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<sup>45</sup> Sidney Haring, "Death, Drugs and Development: Malaysia's Mandatory Death Penalty for Traffickers and the International War on Drugs", *Columbia Journal of Transnational Law* 29 (1991), p.365–401.

<sup>46</sup> Ibid; International Narcotics Control Board (INCB), *Report of the International Narcotics Control Board for 1994*, New York: United Nations (1995).

<sup>47</sup> Colman Lynch, "Indonesia's Use of Capital Punishment for Drug Trafficking Crimes: Legal Obligations, Extralegal Factors, and the Bali Nine Case", *Columbia Human Rights Law Review* 40 (2009), p. 523–527.

<sup>48</sup> Michael Hor, "Misuse of Drugs and Aberrations in the Criminal Law" (2001) 13 *Singaporean Academy of Law Journal* 54.

<sup>49</sup> A/73/260, para. 60. See also A/HRC/33/20, para. 62; General Assembly resolution 71/187, seventh preambular paragraph; and Roger Hood, "The question of the death penalty and the new contributions of the criminal sciences to the matter: a report to the United Nations Committee on Crime Prevention and Control" (1988).

<sup>50</sup> Roger Hood and Carolyn Hoyle, *The Death Penalty: A Worldwide Perspective* (OUP, 2008), p. 7.

<sup>51</sup> Martin Gottwald (2006), "Asylum Claims and Drug Offenses: The Seriousness Threshold of Article 1F9B) of the 1951 Convention Relating to the Status of Refugees and the UN Drug Conventions", 18 *International Journal of Refugee Law*, p. 93.

<sup>52</sup> Art 39 Single Convention on Narcotic Drugs of 1961; Art 23 Convention on Psychotropic Substances of 1971; Art 24 Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988

<sup>53</sup> Commentary on the Single Convention on Narcotic Drugs of 1961, UN Doc E.73.X.1 (1962), p. 449-50; Commentary on the Convention on Psychotropic Substances of 1971, UN Doc. E.76.XI.5 (1971), p. 370.

Article 24 thereof.<sup>54</sup> This implicit “neglect” shows opinion shifting under the international framework of drug controls with regard to the application of the death penalty for such offenses.

Besides international human rights law, there is scant evidence in other international treaties to suggest drug offenses amount to “the most serious” nature. For example, international criminal law falls short of characterizing drug offenses as the most serious crimes. As observed by William Schabas, “international crimes” are so heinous that they touch upon the concerns of the international community. This category includes genocide, crimes against humanity, war crimes and the crime of aggression, and shall be subject to the jurisdiction of the International Criminal Court (ICC). To be sure, during the drafting process of the Rome Statute, the backbone document of the ICC, there were various attempts to include drug offenses within the ICC’s jurisdiction.<sup>55</sup> However, such attempts failed to garner support from the international community, and the insertion was eventually set aside. This failure indicates a lack of consensus on the definition of drug offenses and their seriousness in international criminal law.

It is safe to say that State practice and *opinio juris*, two constitutive elements of customary international law, on capital drug offenses are far from coherent and clear to produce a binding customary norm.<sup>56</sup> The definition of drug offenses diverges considerably even in retentionist countries’ legislations. For example, the death penalty is applicable for trafficking in 100 grams of heroin under Viet Nam’s law, while in Singapore and Malaysia 15 grams and Thailand 20 grams carry death sentences. In Indonesia, the quantity that attracts capital punishment is 1 kilogram of plants, or 5 grams of non-plant substances. Rick Lines has concluded that the divergent thresholds for a capital drug offense in national legislations reflect the disagreement and incoherence among retentionist countries on whether drug offenses are of the most serious nature.<sup>57</sup> This suggests a lack of general consensus at best, and arbitrariness at worst, in making drug-related laws and policies at the national level.

### **3. The Dynamic of Viet Nam’s Laws on Capital Drug Offenses**

#### ***3.1. A Glance of the Death Penalty in Viet Nam***

Albeit efforts to limit its application, Viet Nam has remained a stalwart supporter of the death penalty. Its practice was dated back to the medieval time when offenders were executed in cruel and savage forms such as being thrown into tigers’ cages or boiling cauldron of oil, dismemberment.<sup>58</sup> The death sentence could extend as far as to the close relatives of the offenders, “chu di tam toc” (three exterminations). The harshest punishment is aimed at setting example, “duc phat bat nhi bach” (punishing a person to warn others).<sup>59</sup> Crimes attracting death sentences included murder, high treason,

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<sup>54</sup> Commentary on the Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988, UN Doc E/CN.7/590 (1988), pp. 390-2.

<sup>55</sup> William Schabas, “An Introduction to the International Criminal Court”, 4<sup>th</sup> edition (CUP, 2011), p. 69.

<sup>56</sup> Ann H. Geraghty (2004), “Universal Jurisdiction and Drug Trafficking: A Tool for Fighting One of the World’s Most Pervasive Problems”, 16 Florida Journal of International Law, pp. 374-88.

<sup>57</sup> Rick Lines, “A ‘Most Serious Crime?’ – The Death Penalty for Drug Offenses and International Human Rights Law” (2010), Amicus Journal, No. 21, pp. 21-28.

<sup>58</sup> Vu, T.P. *Giao Trinh Lich Su Nha Nuoc va Phap Luat Viet Nam (Textbook on the History of State and Law of Vietnam)* (Vietnam National University Press: Hanoi, Vietnam, 2007).

<sup>59</sup> Bui Xuan Dinh, “Hình phạt và việc áp dụng hình phạt thời Nguyễn giai đoạn 1802-1858” (Situation on crimes and the application of penalties under Nguyen Dynasty in the period of 1802–1858), State Law J. 2000, p.8.

corruption, and embezzlement. Capital offenses are rampant in various medieval Codes, including The Le's Code of the fifteenth century or the Hoang Viet Luat Le of the Nguyen dynasty of the nineteenth century.<sup>60</sup>

The draconian penal system had persisted until the 19<sup>th</sup> century when the feudal Viet Nam was colonized by the French. Also, the French colonization brought with it a new idea of criminal justice on a deeper theoretical basis, helping reshape the instrumental view of the death penalty in the country.<sup>61</sup> Crimes are categorized into three groups based on their severity, namely minor, serious, and grossly serious offenses.<sup>62</sup> Correspondingly, each category will invite fixed types of penalties. This categorization is a “revolutionary” device to restrict arbitrariness in dictating on an offender's life, thus contributed to a significant plunge in the number of death sentences in colonial times.<sup>63</sup>

In 1945, Viet Nam Communist Party's Revolution successfully toppled the French colonial administration and the puppet monarch. At the outset, amidst the volatile independence war, the nascent State of Viet Nam was predetermined to keep all French-made legal documents in place, including the Criminal Code, because of a lack of resources for building a brand new comprehensive criminal system. Moreover, as the class-driven struggle intensified, the State adopted a zero-tolerance approach to suppress counterrevolutionary elements and bourgeois class so as to ascertain the ruling power of the proletariat and a crime-free communist ideal. Thus the introduction of the death penalty seemed a “necessary evil” for that end.<sup>64</sup> Against that backdrop, the number of capital crimes from 1945 to 1959 rose to 53.<sup>65</sup> Between 1959 and 1985, this number dropped to 35 due to the suspension of colonial law.

In 1985, the very first comprehensive Criminal Code since Viet Nam's reunification was approved and took effect since 1 January 1986. It consisted of 280 provisions in total divided into 20 chapters. The adoption of the Code was characterized as a landmark transformation of Viet Nam's criminal law.<sup>66</sup> However, still bearing the strong imprint of class struggle together with considering socio-economic changes, the 1985 Criminal Code provided for 44 crimes that might trigger death sentences. This is an increase of 25 percent compared to the period of 1959-1985, and accounts for 20.5 percent of the total 216 articles in the 1985 document.<sup>67</sup> As suggested by John Quigley, the

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<sup>60</sup> Ibid.

<sup>61</sup> Tran Kien & Vu Cong Giao, “The Changing Nature of Death Penalty in Vietnam: A Historical and Legal Inquiry” (2019), *Societies*, p. 16.

<sup>62</sup> Đắc Lập. *Hoàng Việt Hình Luật*, (Đắc Lập: Huế, Vietnam, 1933).

<sup>63</sup> Tran Kien & Vu Cong Giao, *supra* note 59.

<sup>64</sup> Gillespie, J, *Changing Concepts of Socialist Law in Vietnam*, In *Asian Socialism Legal Change: The Dynamics of Vietnamese and Chinese Reforms*; (Gillespie, J., Nicholson, P., Eds.); (Australian National University E Press: Canberra, Australia, 2005); Los, M. *Communist Ideology, Law and Crime: A Comparative View of the USSR and Poland*; (Macmillan Press: London, UK, 1988).

<sup>65</sup> Tran Kien & Vu Cong Giao, *supra* note 59.

<sup>66</sup> John Quigley (1988), “Vietnam at a Legal Crossroads Adopts a Penal Code”, 36 *American Journal Comparative Law*, pp. 351–357. Phuong-Khanh, T. Nguyen, “The Criminal Code of the Socialist Republic of Vietnam”, *Rev. Soc. Law* 1987, 13, 103–105.

<sup>67</sup> In the 1985 Criminal Code, capital punishment was specified in 29 articles, accounting for 15% out of the total 195 articles on crimes. However, after four amendments (1989, 1991, 1992, and 1997), the number of articles providing for the death penalty under the 1985 Criminal Code had grown considerably.

practice of the death penalty in Viet Nam during this period continued to be extensively informed by its political ideology and economic circumstances.<sup>68</sup>

However, since the Doi Moi (Renovation) era, there has been a consistent trend towards abolitionism, at least partially, in Viet Nam. With the introduction of the concepts of the market economy, the rule of law, human rights, Viet Nam's criminal law has found itself on a new theoretical ground that showed more tolerance towards capital offenses. To mingle with the international community and ensure its regime durability, Viet Nam is required to play by international rules, including human rights standards. These norms found their way into the debates on the amendment of the Criminal Code. Therefore, as argued by Tran Kien & Vu Cong Giao, the underlying foundation of the death penalty has been shifting towards a more humane, rather than retributive, stance.<sup>69</sup>

As a result, the 1999 Criminal Code replacing the 1985 document comprised 24 chapters and 267 provisions. Amongst which were 29 articles attracting capital punishment, which accounted for 11% of the total crimes. This is a significant reduction. The reductionist trend gained momentum in the later amendment of the Criminal Code. In 2015, a new Code was introduced with 18 capital crimes. The death penalty is now reserved for the worst types of crimes, mostly in relation to national security, murder, war crimes, crimes against mankind and drug-related crime.

### ***3.2. The Death Penalty for Drug Offenses in Viet Nam***

Illegal production of and trafficking in narcotic drugs have been a perennial woe in developing countries, including Viet Nam. Since Doi Moi era, Viet Nam has struggled to deal with narcotic drug trafficking given the fact that the country resides in the vicinity of the Golden Triangle, an intersection among Myanmar, Laos and Thailand. The opium poppy is suggested to have reached Viet Nam via Laos between 1600 and 1660.<sup>70</sup> Afterwards, its production and use spread exponentially, touching upon concerns of every household and jeopardizing social stability and order. As early as 1965, Vietnamese authorities forbid opium cultivation.<sup>71</sup> Also, consumers and traffickers of this forbidden fruit were faced with severe penalties.<sup>72</sup> And yet, despite the presence of the death penalty, the drug regulations at the time focused mainly on “rehabilitative based education”, rather than retribution.<sup>73</sup> The drug restrictions were lifted during the French colonization. The country's reunification in 1975 marked a new chapter as the administration aggressively tightened control on opium cultivation and use.

At the outset, the 1985 Criminal Code reserves death sentences exclusively for “very serious cases”. This category however does not extend to drug crimes. In particular, the 1985 document provides only one drug-related crime, namely organizing the illegal use of narcotic drugs (Article 207).

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<sup>68</sup> John Quigley (1988), “Vietnam's First Modern Penal Code”, 9 *Journal of International Comparative Law*, pp. 143–193.

<sup>69</sup> Tran Kien & Vu Cong Giao, *supra* note 59.

<sup>70</sup> Hoa Phuong T. Nguyen & Gregory L. Rose, “Criminalization of Drug Trafficking in Vietnam: Developments and Challenges” (2016), *Columbia Journal of Asian Law* 146-177.

<sup>71</sup> Hoa Phuong T. Nguyen, *Các tội phạm về ma túy: đặc điểm hình sự, dấu hiệu pháp lý, các biện pháp phát hiện điều tra* (Drug-Related Crimes: Criminal Characteristics, Legal Constituents, Measures to Discover and to Investigate) (Ha Noi: Nha Xuat Ban Cong An Nhan Dan, 1998);

<sup>72</sup> N. B. Vu, *Phòng chống ma túy trong nhà trường* (Narcotic Drug Prevention in Education Institutions) (HaNoi: NXB Cong an nhan dan, 1997).

<sup>73</sup> Hoa Ngoc Nguyen (2001), *Textbook on the Criminal Law of Vietnam*, University Law of Hanoi Press; See also Tiep, Quang Tran (2003), *The History of Criminal Code of Vietnam*, Hanoi, Vietnam, National Politics Publication.

However, in response to rampant criminal drug-related activities, the first amendment to the Criminal Code supplementing capital crimes concerning narcotics was introduced in 1989. These include illegally producing, stockpiling, transporting, trading in narcotics (Article 96a). In 1997, another amendment introduced two more capital drug crimes, namely illegally appropriating narcotics (Article 185e) and Forcing, inducing other persons into the illegal use of narcotics (Article 185m). Also according to the 1997 Amended Criminal Code, the penalty for organizing the illegal use of narcotics is aggravated to death (Article 185i).

Since Doi Moi reform initiatives took root in Viet Nam, the authority doubled down their effort to bring its laws closer in line with international standards in various aspects. The promulgation of the 1992 Constitution signifies a rupture from the country's "closed door and isolated" past, in which many novelties were introduced such as a customized market economy, promotion of international integration and multilateralism. The Viet Nam Communist Party issued two important normative documents, Resolution No. 08 of the Political Bureau on Forthcoming Principal Judiciary Tasks (2002) and Resolution No. 49 of Political Bureau on Judiciary Reform up to 2020 (2005) with a view to gradually reduce the practice of the death penalty in the country. It bears noting that this development is seen in light of international human rights treaties as Viet Nam expressed its willingness to be bound by such documents, particularly the international bill of rights in 1982.<sup>74</sup>

Although total abolitionism was arguably nowhere within sight,<sup>75</sup> the 1999 Criminal Code was observed as a move towards partial reduction of capital crimes, at least those related to narcotic drugs. The 1999 document abandons the death penalty for the crime of forcing, inducing other persons into illegal use of narcotics (Article 200). In 2009, the NA approved the Law amending and supplementing the 1999 Criminal Code. A law-maker even posited that the abolition of the death penalty for drug crimes was a "retrogression" given the shifting sands of the new context.<sup>76</sup> Citing the perils and the interwoven nature of drug crimes, many legislators also rejected the motion to separate the illegally stockpiling, transporting, trading in or appropriating narcotics capital crimes into two provisions: the illegally stockpiling, transporting narcotics crimes and the trading in or appropriating narcotics.<sup>77</sup> However, the NA did abolish one more capital drug offense, namely organizing the illegal use of narcotics, given the State's refined understanding of "most serious crimes" in light of international human rights law.<sup>78</sup> In justifying the proposal, a Ministry of Justice delegate stated before the NA that the abolition is based on a thorough study and assessment of three factors: the seriousness of the crime, deterring effect, and the global trend towards abolitionism and reduction of the use of the death penalty.<sup>79</sup> It bears noting that the non-retroactivity of the Amended 1999 Code prevented the imposition of the death penalty to the accused of such crime committed prior to 1 January 2010. For those affected by the newly introduced provision, they will have their sentences commuted by the People's Supreme

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<sup>74</sup> Hai Thanh Luong, "The application of the Death penalty for Drug – Related Crimes in Vietnam: Law, Policy and Practice" (2014), 17(1) Thailand Journal of Law and Policy.

<sup>75</sup> Tim Lindsey and Pip Nicholson, *supra* note 18, p. 273.

<sup>76</sup> Minh Thúy, "Đại biểu Quốc hội tranh luận về án tử hình" (VnEconomy, 14/11/2008), <https://vneconomy.vn/doanh-nhan/dai-bieu-quoc-hoi-tranh-luan-ve-an-tu-hinh-2008111402395241.htm> accessed 7 Feb 2021.

<sup>77</sup> Tran Kien & Vu Cong Giao, *supra* note 59, p. 16.

<sup>78</sup> <https://thuvienphapluat.vn/tintuc/vn/thoi-su-phap-luat/thoi-su/-9588/tham-o-hoi-lo-se-khong-con-an-tu-hinh>

<sup>79</sup> *Ibid.*

Court President to life imprisonment.<sup>80</sup> Hence, capital drug crimes under the Amended 1999 Criminal Code are reduced from 7 to 5.

The reductionist trend becomes clearer with the promulgation of the 2015 Criminal Code. Instead of lumping stockpiling, transporting, trading in, and appropriating narcotic drugs altogether in one provision as in the 1999 document, the 2015 Criminal Code sees the different level of seriousness of each act. It thus splits these commissions into three separate provisions. Accordingly, the death penalty is applicable for illegal production of narcotics (Art 248(4)), illegal transport of narcotics (Art 250(4)), and illegal trade in narcotics (Art 251(4)). Meanwhile, illegally stockpiling and appropriating narcotic drugs are now free from the death penalty. Therefore, capital drug crimes in Vietnamese criminal law are reduced to 3.

Tracing the drafting process of the 2015 Criminal Code, it is observed that the abolition of the death penalty for the two drug crimes was predominantly informed by the rule of law and human rights,<sup>81</sup> whether rhetoric or not. In its explanatory report for the amendment of the 1999 Criminal Code, the Government has expressed the willingness to renovate its perception of crime and justice policy with a view to strike a balance between crime deterrence and protection of citizen's and human rights as guaranteed in the 2013 Constitution and international human rights treaties to which Viet Nam is a party. Thus human rights argument has gained increasing prominence in the debate against the death penalty. It was widely acknowledged among the drafters and law-makers that in order to comply with Viet Nam's international human rights obligations and the Party's lines and direction, criteria for the application of the death penalty shall be tightened in a clearer and stricter manner, while the new Code should narrow down offenses entailing the death penalty.<sup>82</sup> Moreover, those not subject to the death penalty should be expanded to better reflect the humanitarian principle in Viet Nam's criminal law.<sup>83</sup>

**TABLE 3: The Dynamic of Capital Drug Crimes in Viet Nam's Criminal Codes**

No.	1985 Criminal Code (Amended 1997)	1999 Criminal Code (Amended 2009)	2015 Criminal Code
1	Illegally producing narcotics Art 185 (b)	Illegally producing narcotics Art 193 (4)	Illegally producing narcotics Art 248 (4)
2	Illegally stockpiling narcotics Art 185 (c)	Illegally stockpiling, transporting, trading in or appropriating narcotics Art 194 (4)	Illegally transporting narcotics Art 250 (4)
3	Illegally transporting narcotics Art 185 (d)		Illegally trading in narcotics Art 251 (4)

<sup>80</sup> Art 1(2)(a) of the Amended 1999 Criminal Code.

<sup>81</sup> Chính phủ, *Tờ trình về dự án Bộ luật hình sự sửa đổi*, <https://www.bqllang.gov.vn/142-du-thao-bo-luat-hinh-su-sua-doi/4093-to-trinh-ve-du-an-bo-luat-hinh-su-sua-doi.html> accessed 7 Feb 2021.

<sup>82</sup> Ibid.

<sup>83</sup> Ibid.

4	Illegally trading in narcotics Art 185 (đ)		
5	Illegally appropriating narcotics Art 185 (e)		
6	Organizing the illegal use of narcotics Art 185 (i)		
7	Forcing, inducing other persons into illegal use of narcotics Art 185 (m)		

#### 4. Mapping the Road to Abolitionism for Capital Drug Offenses in Viet Nam

Section 2 has provided us a starting point from the perspective of international law. It is suggested that the application of the death penalty is subject to very rigorous safeguards. Of which, drug offenses do not meet the thresholds of the “most serious crimes”. Of course, this is a dynamic process of learning and opinion shifting, rather than an abrupt moment. It took international actors some time to refine their understanding before explicitly ruling out the application of capital punishment for drug offenses.

It is worth noting that the HRC’s output has a normative value.<sup>84</sup> Like other human rights treaty bodies, the HRC plays the interpretative role that is normally assumed by States under international law. Its interpretation has dual roles: on the one hand, it recognizes State practice on the (non) application of the death penalty for drug offenses. So far, there are only 37 countries punish drug offenses by death, while the majority have abandoned such punitive approach<sup>85</sup>. In so doing, the HRC crystallizes the death penalty-related norms to which major importance and authority are attached. There are also rare cases where the views of a treaty body and of states parties differ clearly. And yet, any direct or indirect rejection of a treaty body’s views requires a detailed analysis of how convincingly each side has argued its case and how widely the objecting state’s views are endorsed by other states.<sup>86</sup> On the other hand, through its output, the Committee also acts as the principal generators of “subsequent practice” in the sense of Article 31(3)(b) of the 1969 Vienna Convention on the Law of Treaty. Subsequent practice has been understood as states’ realizations of rights and their participation in the supervisory mechanisms, where they have the opportunity to express their views on the

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<sup>84</sup> Many scholars attach particular normative significance to General Comments because they represent an important body of experience in considering matters from the angle of the respective treaty. Some even accept the legal weight of General Comments. For a discussion, see Kerstin Mechlem (2009), “Treaty Bodies and the Interpretation of Human Rights”, 42 *Vanderbilt Journal of Transnational Law*, pp. 905-46.

<sup>85</sup> See more at annex 1 below.

<sup>86</sup> An example is the recent challenge to the validity and substance of the HRC’s views by the United States, which expressed concern about the HRC’s interpretation that the ICCPR applies outside a country’s territory.

interpretation of a treaty by a committee.<sup>87</sup> The HRC's activism has, to a certain extent, signified a general consensus on the abolitionist trend and drug offenses.

Section 3 has shown some incremental changes in limiting the death penalty for drug offenses in Viet Nam's criminal law. Also, it has been suggested that the change was made possible during the process of Viet Nam mingling with the international community with its willingness to play by international rules. This section will probe the second research question as to whether any room left for a change towards abolitionism in Viet Nam in terms of drug crimes. The first subsection will expound on factors spurring such a change, while the next will contextualize these determinants corresponding to Viet Nam to test out this possibility. It concludes that many catalysts are lacking in Viet Nam's climate, thus impeding the abolitionist trajectory at least in the near future.

#### **4.1. Catalysts for Abolitionism**

Why must/should a country abandon the death penalty? Relevant comparative scholarship has suggested that there is an agreement among prominent scholars on the relation between abolitionism and the presence of certain factors.<sup>88</sup> These include democratization, political leadership, economic development, the omnipresence of human rights, external pressure, regional dynamics, and existing low execution rates.

First, democratization seems to be a reasonable answer to the struggle against the death penalty. As observed by David Johnson and Franklin Zimring, States are likely to rid of capital punishment as they begin the democratization process in an attempt to distance themselves from the deplorable past.<sup>89</sup> In this sense, the death penalty is seen as an arbitrary tool at the disposal of the ruling class to suppress opposition. South Africa is a textbook example of the abolition of capital punishment during the early stage of democratization and with the hope to distance itself from the Apartheid regime. And yet, the United States and Japan, two long-standing democracies, stand out as an exception to this factor.

The second factor is political leadership. Those with progressive agendas are expected to reform criminal justice penalty regardless of prevailing public opinion.<sup>90</sup>

Third, economic development is seen as a force driving countries away from the death penalty.<sup>91</sup> This often associates with the development of education within the community. It thus equates education with the "civilized" and humane treatment of people. However, quantitative studies have found no strong correlation between economic development and the death penalty.<sup>92</sup>

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<sup>87</sup> Kerstin Mechlem, *supra* note 79, p. 920.

<sup>88</sup> Dave McRae (2017), "Indonesian Capital Punishment in Comparative Perspective", *Bijdragen tot de Taal-, Land- en Volkenkunde* 173, pp. 1–22.

<sup>89</sup> David Johnson & Franklin Zimring, "The next frontier: National development, political change, and the death penalty in Asia" (OUP 2009).

<sup>90</sup> Eric Neumayer (2008). "Death penalty: The political foundations of the global trend towards abolition", 9 *Human Rights Review*, pp. 250-1; David F. Greenberg & Valerie West (2008). "Siting the death penalty internationally", 33 *Law & Social Inquiry*, pp. 295–343.

<sup>91</sup> Johnson & Zimring, *supra* note 83.

<sup>92</sup> David F. Greenberg & Valerie West (2008). "Siting the death penalty internationally", 33 *Law & Social Inquiry*, p. 320); Eric Neumayer, *supra* note 84, p. 259.

The fourth recurring factor is the framing of the death penalty as a human rights issue, rather than a matter of criminal justice. This way of putting it makes the death penalty a reputational issue. As the jurisprudence of UN-based and treaty-based bodies has become crystal clear with regard to drug offenses, States are faced with the dilemma of abiding by international law or coming under fire in international forums.

A fifth and relevant factor is external pressure. As observed by Roger Hood and Carolyn Hoyle, the European Union has been highly active in exerting political pressure.<sup>93</sup> Sangmin Bae has made similar remarks about the role of the European Union in simultaneously persuading and compelling countries, such as Poland, Ukraine, to drop the death along the way to its membership and full integration.<sup>94</sup>

A sixth factor is regional dynamics. This is a learning process in which States are likely to mimic its neighboring countries with similar circumstances where they face similar policy choices.<sup>95</sup> The increasing likelihood of abolition may reflect the enactment of binding, regional human-rights charters or through the diplomatic channel.<sup>96</sup> Relevantly, the absence of intra-regional pressure in Asia is seen as a catalyst for retentionism.<sup>97</sup>

Finally, existing low execution rates are an indicator to show a State's reluctance in killing its citizens. As observed by Johnson and Zimring, the majority of countries that reached full abolitionism were able to do so at "practically no pecuniary cost and without the need to refashion their systems of criminal justice or crime control" owing to their low rates of execution.<sup>98</sup> In a similar vein, Hood and Hoyle opine that abolition is possible if the death penalty can no longer prove its practical role in the criminal justice system.<sup>99</sup> This may be facilitated further by a change in the criminal context, such as crime rates drop sharply.<sup>100</sup> However, other commentators remain suspicious of the effect of low execution rates as they argue few executions trigger little attention and opposition and thus little incentive to abolish.<sup>101</sup>

All of these factors have a contributory impact on spurring a State to abandon the death penalty. However, it does not necessitate all of them to be present in a particular circumstance. In certain cases, some factors are robust enough to compel a country to relinquish its claim for the death penalty. In contrast, the presence of the majority of these factors does not guarantee a cease of the state killing. To be sure, as observed by Dave McRae, Indonesia experienced almost all of these factors to a certain

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<sup>93</sup> Roger Hood & Carolyn Hoyle (2009), "Abolishing the death penalty worldwide: The impact of a 'new dynamic' ", 38 *Crime and Justice*, pp. 1–63.

<sup>94</sup> Sangmin Bae (2009). "South Korea's De Facto Abolition of the Death Penalty", 82 *Pacific Affairs*, pp. 407–425; Sangmin Bae, "When the State No Longer Kills: International Human Rights Norms and Abolition of Capital Punishment" (SUNY Press, 2007).

<sup>95</sup> Eric Neumayer, *supra* note 84.

<sup>96</sup> Sangmin Bae, "Human security, capital punishment, and East Asian democracies", in: Benny Teh Cheng Guan (ed.), *Human security: Securing East Asia's future* (Springer 2012), pp. 217–30.

<sup>97</sup> Johnson & Zimring, *supra* note 83; Sangmin Bae, *Ibid.*

<sup>98</sup> David Johnson & Franklin Zimring, *supra* note 83.

<sup>99</sup> Roger Hood & Carolyn Hoyle, *supra* note 84.

<sup>100</sup> Sangmin Bae (2007), *supra* note 88.

<sup>101</sup> Greenberg & West, *supra* note 88, p. 335

extent, and yet its execution of 14 narcotics prisoners in 2015 dealt a blow to the abolitionist camp. These catalysts are an indicator for a *possible* change in the foreseeable future.

#### **4.2. Contextualize Viet Nam's Abolitionist Trajectory of Capital Drug Offenses**

Putting these factors in Viet Nam's perspective, it can be observed that many factors do not take shape yet or bear little relevance to Viet Nam. First, although the democratization process is witnessed in the country, its understanding of democratization and democracy is different from the Western viewpoint.<sup>102</sup> Democratic centralism practiced within the State power structure is informed heavily by Marxist-Leninist principles. On many occasions, its leaders implicitly rule out the application of the Western-style democracy, claiming the latter does not match Viet Nam's idiosyncratic cultural and political climate.

Second, the exercise of State power places much emphasis on the role of the Communist Party and its coordination with the State, although the two entities' spheres are often overlapping. It is not that public opinion does not matter; it just matters not as much as in other democracies since the State is less responsive to the public. Tracing the debate on the drafting of the 2015 Criminal Code, many law-makers still hold a strong view that the death penalty for drug crimes is of deterring effect to prevent its prevalence despite unsubstantiated evidence.<sup>103</sup> A retributive stance still bears a strong imprint as they often claim death sentence is the proportionate punishment for heinous crimes, including those related to narcotic drugs.<sup>104</sup> On top of it, the practice and statistics of the death penalty in Viet Nam remain a state secret. The disclosure of information on this matter is forbidden. It thus speaks volume to the outsiders that this is solely the business of the State. This, in turn, impedes efforts to discuss the nature and effectiveness of the death penalty for drug crimes in the country.

Third, there is no need to boast about the economic fruits that Viet Nam has reaped since its audacious Doi Moi reform in 1986, together with surprisingly outstanding records of poverty alleviation and decent education. The open-up policy has made increasingly potent impacts on the country's legal system. With easier access to education, Vietnamese people are better equipped to meet the world's needs in various sectors. However, it is debatable if people are shifting away from the death penalty. As indicated in some surveys, public opinion on the death penalty is mixed and even conflicting.<sup>105</sup> In one of the rare surveys on this topic, Vu Thi Thuy found that in 2006 91% of respondents expressed support for the death penalty; this percentage rose to 94% in 2016.<sup>106</sup>

Vietnamese people were actually inspired by the idea of human rights and fundamental freedom, especially in the fight for national independence. In his extensive study, Bui Ngoc Son argues that despite the international criticisms of Viet Nam's human rights record, human rights have secured a

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<sup>102</sup> See more John Gillespie, Albert H.Y. Chen (eds), "Legal Reforms in China and Vietnam A Comparison of Asian Communist Regimes" (Routledge 2011).

<sup>103</sup> <https://vov.vn/chinh-tri/quoc-hoi/dai-bieu-quoc-hoi-tranh-luan-ve-de-xuat-bo-an-tu-hinh-voi-7-toi-danh-403629.vov>

<sup>104</sup> Ibid.

<sup>105</sup> Tran Kien & Vu Cong Giao, *supra* note 59, pp. 21-3.

<sup>106</sup> Vu Thi Thuy, *Limiting the Death Penalty in Vietnamese Criminal Law: Changes from the Criminal Code 1999 to Criminal Code 2015*; Ho Chi Minh City Law University: Ho Chi Minh, Vietnam, 2017.

solid footing in its four constitutions over the past 60 years.<sup>107</sup> With the State gradually loosens its control on many forums, the country has seen a considerable rise in human rights discourse among policy-makers, scholars, and ordinary people. Therefore, framing an argument against the death penalty in human rights language has a potent effect in redirecting the State's attention. However, the impact of this factor should not be overstated since public and elite opinions remain nuanced. Although naturalist camp has gained currency, the statist view of human rights remains strong within Viet Nam's culture.<sup>108</sup>

It bears noting that Viet Nam remains a strong supporter of Asian Values in countervailing the influence of the global human rights movement.<sup>109</sup> And yet, the claim that Asian Values, particularly Confucianism, promotes the death penalty is a fallacy or misinterpretation of such doctrine. As argued by Sangmin Bae, traditional Confucian doctrine actually deems the death penalty neither necessary nor desirable in countries that govern benevolently and virtuously.<sup>110</sup> “‘If excellent people managed the state for a hundred years, then certainly they could overcome cruelty and do away with executions’ – how true this saying is!”, wrote Confucius.<sup>111</sup>

External pressure seems to be a relevant factor in the climate of Viet Nam. In becoming a middle-power country, Viet Nam has committed itself to abiding by international rules, as a result, various legal reforms have ensued. To be sure, policy-makers are acutely aware of State obligations under international law. For example, during the drafting of the 2013 Constitution, the international bill of rights was heeded thoroughly. Some constitutional drafters even made use of international human rights treaties to which Vietnam is a party as the benchmark to ensure its compatibility with international obligations.<sup>112</sup> Following three cycles of the universal periodic report of Viet Nam (2009, 2014, 2019), the progress towards at least reductionist could be observed. During its third cycle, the delegation stated:

“... [G]iven the country's particular circumstances, the death penalty remained a necessary measure to prevent the most serious crimes, in line with article 6 of the International Covenant on Civil and Political Rights ... Viet Nam was currently studying the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.”<sup>113</sup>

However, the effect of external pressure remains difficult to gauge. Viet Nam stands out from Poland or Ukraine in the way that there is no regional or international mechanism with teeth that could compel it into one single direction. So far, Viet Nam has ratified 7 out of 9 core international human rights treaties, yet it always puts forward reservations on dispute settlement mechanisms entailing a

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<sup>107</sup> Bui Ngoc Son (2017), “The Global Origins of Viet Nam's Constitutions: Text in Context”, University of Illinois Law Review, p. 525.

<sup>108</sup> For a discussion, see Bui Ngoc Son (2017), “Globalization of Constitutional Identity”, 26(3) Washington International Law Journal, pp. 463-533.

<sup>109</sup> See Ngo T.M Huong, Vu Cong Giao, Nguyen Minh Tam (2018), “Asian Values and Human Rights: A Vietnamese Perspective”, 2(1) Journal of Southeast Asian Human Rights, pp. 302-322.

<sup>110</sup> Sangmin Bae (2008), “Is the Death Penalty an Asian value?”, 39 Asian Affairs, pp. 47-56.

<sup>111</sup> Confucius, Confucius's Analects, trans. Edward Slingerland, (Hackett Publishing Company, 2003), p. 144, cited in Sangmin Bae, *ibid*.

<sup>112</sup> Interview with a National Assembly officer in Hanoi, Vietnam conducted by Bui Ngoc Son, see Bui Ngoc Son, *supra* note 98, p. 505-506.

<sup>113</sup> Report of the Working Group on the Universal Periodic Review: Viet Nam, A/HRC/41/7 (2019), para. 22.

binding decision. These claw-back clauses serve as a face-saving provision to shield Viet Nam from harsh criticisms and detrimental consequences that might be produced by those mechanisms. It, therefore, signifies that while the country pushes hard for international integration, this process also has its limit. In a recent report sponsored by UN Development Program and the European Union, the Vietnamese authors are skeptical of the possibility of Viet Nam's accession to the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty, at least for the time being.<sup>114</sup>

That situation could be worsened against the backdrop of regional inertia. As shown in Section 1, Southeast Asian nations are staunch advocates of capital punishment. Singapore appears to be the most vocal in invoking the sovereignty principle to ward off external intervention in its policy-making.<sup>115</sup> Ironically, “regional dynamic” seems to be an impeding factor, rather than facilitating, to the abolition of the death penalty in Viet Nam.

Finally, as observed by Tran Kien and Vu Cong Giao, Viet Nam's number of executions is presumed high, mostly reserved to murder and drug-related offenses.<sup>116</sup> This is a source of criticisms labeling Viet Nam as one of the world's biggest executioners. The country locates in the intersection of the Golden Triangle, among Myanmar, Laos and Thailand, which is a hyperactive hub for drug trade and trafficking. During 2007 and 2017, there were 151,570 drug-related cases (19.29% out of a total of 785,542 criminal cases) with 192,577 drug offenders (15.92% out of a total of 1209,391 defendants).<sup>117</sup> Amongst all drug-related crimes, illegally transporting and trading narcotics substances, a crime that is likely to be punished by the death penalty above a certain amount of drugs, has featured as the most prevalent crime throughout this period, with 143,878 cases and 182,411 defendants, accounting for 99.35% of the number of drug-related cases and 99.12% of the suspects.<sup>118</sup> Worse yet, these numbers are just “the tip of the iceberg,” given the fact that cunning traffickers always have their way to evade the law enforcement agencies.<sup>119</sup> Saturated in this volatile drug environment, the Vietnamese Government is definitely standing between a rock and a hard place in striking a balance between crime prevention and international law compliance.

## 5. Conclusion

The twenty-first century has witnessed a robust trend towards death penalty abolitionism worldwide. The trajectory quickly spreads to even Asia, a die-hard supporter of this practice and also “the next frontier” for abolitionist enthusiasts. Yet controversies revolving around the application of the death

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<sup>114</sup> Nguyen Thi Thanh Hai, Nguyen Van Hoan, Nguyen Minh Khue (2019), “On the possibility of Viet Nam ratifying the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty”, [https://www.vn.undp.org/content/vietnam/en/home/library/democratic\\_governance/on-the-possibility-of-vietnam-ratifying-the-second-optional-pro.html](https://www.vn.undp.org/content/vietnam/en/home/library/democratic_governance/on-the-possibility-of-vietnam-ratifying-the-second-optional-pro.html).

<sup>115</sup> Singapore's letter to the Special Rapporteur on extrajudicial, summary or arbitrary executions of 27 June 1997, UN Doc. E/CN.4/1998/13.

<sup>116</sup> Tran Kien & Vu Cong Giao, *supra* note 59, pp. 21-2.

<sup>117</sup> Do Thanh Truong, Một số vấn đề về tình hình tội phạm ma túy trên toàn quốc (2007-2017) (Phần 1), <https://www.vksndtc.gov.vn/thong-tin/mot-so-van-de-ve-tinh-hinh-toi-pham-ma-tuy-tren-to-d12-t7697.html>.

<sup>118</sup> Do Thanh Truong, Một số vấn đề về tình hình tội phạm ma túy trên toàn quốc (2007-2017) (Phần 2), <https://vksndtc.gov.vn/thong-tin/mot-so-van-de-ve-tinh-hinh-toi-pham-ma-tuy-tren-to-d12-t7698.html>

<sup>119</sup> Hai Thanh Luong (2021), “Why Vietnam continues to impose the death penalty for drug offenses: A narrative commentary”, 88 *International Journal of Drug Policy* 88 (2021), pp. 5-6.

penalty for drug offenses still trigger Southeast Asian countries given their divergent understanding. On the one hand, in justifying the zero-tolerance punishment on drug criminals, Southeast Asian countries often invoke the spillover impacts of narcotic drugs on human beings and social order. On the other hand, international human rights law has reshaped the punitive approach to drug crimes.

This paper has argued that drug crimes do not meet the threshold of the term “most serious crimes” in light of international standards. The Human Rights Committee’s interpretation of this term is refined and developed in an evolving manner, thus limiting the application of the death penalty for drug offenses. At the national level, this paper also documents the dynamic understanding of drug crimes within Viet Nam’s criminal law. It shows that the country’s understanding of drug crimes has changed incrementally, corresponding to international standards albeit not entirely consistent with such. This change is mainly attributed to international integration and Viet Nam’s reputational cost-benefit analysis in the eye of the international community.

This paper then presents the question of whether any room left for a change on this matter by drawing on comparative determinants for inducing the abolition of the death penalty. Given the fact that many factors do not take shape yet or bear little relevance to Viet Nam, it concludes with a cautiously optimistic view about Viet Nam’s possibility of the abolition of capital drug offenses. Over 35 years of reform, the country has definitely drifted towards reductionism, or perhaps partial abolitionism. However, various militant factors are likely to stay in place will overstretch its penalty reform. A change is still possible if a discourse on the application of the death penalty for drug offenses can be generated in an open and frank manner. More importantly, elite opinion matters a great deal. Hence, if the course of action still persists at the top, the change is unlikely to materialize at all. A continuing process of learning and acculturation is imperative for the road to abolitionism for drug offenses in Viet Nam.

## ANNEX 1

### RETENTIONIST COUNTRIES WITH DRUG OFFENCES<sup>120</sup>

NO.	STATES	THE EXTEND OF THE DEATH PENALTY APPLICATION FOR DRUG OFFENCES	THE IMPISITION OF DEADTH PENALTY FOR DRUF OFFENCES
1	Bahrain	Low application <sup>121</sup>	<ul style="list-style-type: none"> <li>- Production (for the purpose of trafficking)</li> <li>- Possession (for the purpose of trafficking)</li> <li>- Trafficking</li> <li>- Storing (for the purpose of trafficking)</li> <li>- Financing drug crimes</li> </ul>
2	Bangladesh	Symbolic application <sup>122</sup>	<ul style="list-style-type: none"> <li>- Production</li> <li>- Possession</li> <li>- Trafficking</li> <li>- Storing</li> </ul>
3	Brunei Darussalam	Symbolic application	<ul style="list-style-type: none"> <li>- Production</li> <li>- Possession</li> <li>- Trafficking</li> </ul>
4	China	High application <sup>123</sup>	<ul style="list-style-type: none"> <li>- Production</li> <li>- Trafficking</li> <li>- Aiding/abetting</li> </ul>
5	Cuba	Symbolic application	<ul style="list-style-type: none"> <li>- Production (for the purpose of trafficking)</li> <li>- Possession (for the purpose of trafficking)</li> <li>- Trafficking</li> <li>- Storing</li> <li>- Involving minors in drug crimes</li> </ul>
6	Egypt	Low application	<ul style="list-style-type: none"> <li>- Production (for the purpose of trafficking)</li> <li>- Possession (for the purpose of trafficking)</li> <li>- Trafficking</li> <li>- Aiding/abetting</li> <li>- Financing drug crimes</li> <li>- Involving minors in drug crimes</li> </ul>
7	India	Symbolic application	<ul style="list-style-type: none"> <li>- Production (if recidivist)</li> <li>- Possession (if recidivist)</li> <li>- Trafficking (if recidivist)</li> <li>- Aiding/abetting</li> <li>- Financing drug crimes</li> </ul>

<sup>120</sup> The figures are extract from Harm Reduction International’s report: “*The Death Penalty for Drug Offences: Global Overview 2019*”, available at: <https://www.hri.global/death-penalty-2019>, accessed 4 Feb 2021.

<sup>121</sup> **Low Application States** are those where executions for drug offences are an exceptional occurrence, although executions for drug offences may have been carried out, while death sentences for drug offences are relatively common.

<sup>122</sup> **Symbolic Application States** are those that have the death penalty for drug offences within their legislation but do not carry out executions, or at least there has not been any record of executions for drug offences in the past ten years; although some of these countries occasionally pass death sentences for drug offences.

<sup>123</sup> **High Application States** are those in which the sentencing of those convicted of drug offences to death and/or carrying out executions is a regular and mainstream part of the criminal justice system.

			- Involving minors in drug crimes
8	Indonesia	High application	- Production - Possession (for the purpose of trafficking) - Trafficking - Storing (as organized crimes) - Involving minors in drug crimes
9	Iran	High application	- Production - Possession - Trafficking - Storing
10	Iraq	Low application	- Trafficking
11	Jordan	Symbolic application	- Trafficking
12	Kuwait	Low application	- Trafficking - Involving minors in drug crimes
13	Lao PDR	Low application	- Production - Possession - Trafficking
14	Libya	Insufficient data	- Production (for the purpose of trafficking) - Trafficking
15	Malaysia	High application	- Production - Possession (for the purpose of trafficking) - Trafficking - Storing - Aiding/Abetting
16	Mauritania	Symbolic application	- Production (if recidivist or aggravated) - Possession (if recidivist or aggravated) - Trafficking (if recidivist or aggravated)
17	Myanmar	Symbolic application	- Production - Possession (for the purpose of trafficking) - Trafficking - Aiding/abetting - Financing drug crimes - Involving minors in drug crimes
18	North Korea	Insufficient data <sup>124</sup>	Sources not available
19	Oman	Symbolic application	- Production (for the purpose of trafficking) - Trafficking - Financing drug crimes - Involving minors in drug crimes
20	Pakistan	Low application	- Production - Possession - Trafficking - Financing drug crimes - Involving minors in drug crimes
21	Palestine	Symbolic application	- Trafficking
22	Qatar	Symbolic application	- Production (for the purpose of trafficking)

<sup>124</sup> **Insufficient data**, is used to denote instances where there is simply not enough information to classify the country accurately.

			- Trafficking
23	Saudi Arabia	High application	- Production (for the purpose of trafficking) - Trafficking - Aiding/Abetting
24	Singapore	High application	- Production - Possession (for the purpose of trafficking) - Trafficking
25	South Korea	Symbolic application	- Production (for profit or for habit) - Trafficking (for profit or for habit) - Aiding/Abetting (for profit or for habit)
26	South Sudan	Symbolic application	- Production (for the purpose of trafficking) - Trafficking - Storing - Aiding/Abetting - Involving minors in drug crimes
27	Sri Lanka	Low application	- Production - Possession - Trafficking - Storing - Aiding/Abetting - Financing drug crimes
28	Sudan	Symbolic application	- Production (for the purpose of trafficking) - Possession (for the purpose of trafficking) - Trafficking - Involving minors in drug crimes
29	Syria	Insufficient data	Sources not available
30	Taiwan	Symbolic application	- Production - Trafficking
31	Thailand	High application	- Possession (for the purpose of trafficking) - Trafficking - Involving minors in drug crimes (if heroin)
32	United Arab Emirates	Symbolic application	- Production (for the purpose of trafficking) - Possession (for the purpose of trafficking) - Trafficking
33	USA	Symbolic application	- Trafficking (as a part of continuing criminal enterprise)
34	Vietnam	High application	- Production - Possession (for the purpose of trafficking) - Trafficking
35	Yemen	Symbolic application	- Production (for the purpose of trafficking) - Possession - Trafficking