

# DEATH PENALTY AND STATE OF EMERGENCY

Nguyen Dinh Toan \*

**Abstract:** The state of emergency is generally defined as the process when the nation's life is threatened by war, invasion, general insurrection, disorder, natural disaster or other public emergencies. A death penalty is the execution of a person according to a legal process as a punishment for a criminal act. It is considered the most effective crime prevention solution (permanently eliminating the accused from society). The purpose of the death penalty is to punish those who commit serious crimes, and give the most severe warning to those who intend to commit similar crimes, thereby minimizing similar crimes in the future. In some cases, the death penalty is related to the state of emergency. This paper examines the relationship between the death penalty and the state of emergency. Following this, it can be considered whether the death penalty should exist or not.

**Keywords:** State of emergency, death penalty, capital punishment, human rights.

## I. INTRODUCTION

### 1. Death penalty

From a legal perspective, the death penalty can be seen as a punishment for taking away the life of a person who has committed a serious crime under a sentence declared by a lawfully established court in accordance with the law. Historically, this form of punishment has been recognized by most countries' legal system in the world and widely applied to prevent crime and protect society from dangers.<sup>1</sup> The death penalty is the most severe criminal sanction imposed by a state, resulting in deprivation of the right to life, permanently excluding an individual from society.<sup>2</sup>

In the Vietnamese Criminal Law, the death penalty is the most special and severe punishment in the punishment system, depriving convicts of the right to life and only applies to offenders of particular danger for society. The death penalty is specified in the Criminal Code and decided by the Court. Besides, the death penalty is also a kind of punishment to prevent recidivism completely from the convicted person (separate prevention). Existing in criminal law, the death penalty is an objective social phenomenon because it is a means of society's self-

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\* \* Vietnam Administration of Seas and Islands; PhD Candidate, Graduate Academy of Social Sciences, Vietnam Academy of Social Sciences; Email: dinhtoan78@gmail.com.

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<sup>1</sup> Nguyen Minh Hai, Nguyen Van Hoan and Nguyen Minh Khue, 'Khả năng Việt Nam gia nhập Nghị định thư tùy chọn thứ hai về bãi bỏ hình phạt tử hình theo Công ước quốc tế về các quyền dân sự và chính trị (ICCPR) [On the possibility of Viet Nam ratifying the Second Optional Protocol to the ICCPR aiming at the abolition of the death penalty]' (Research Report EU JULE 2019).

<sup>2</sup> Vu Cong Giao, 'Quyền sống và hình phạt tử hình trong pháp luật quốc tế và pháp luật Việt Nam [The right to live and the death penalty in international law and Vietnamese Law]' (Ensuring human rights in legal proceedings, Vinh City, Decmeber 2017).

defense against the violation of its conditions of existence. Crime threatens society's existence, so society has to naturally react to punish offenders (Pham, 2015).<sup>1</sup>

## 2. What is a state of emergency?

The state of emergency/ state of exception/ state of alarm/ state of siege/ stems from a government's declaration to respond to an unusual situation that poses a fundamental threat to the country.<sup>2</sup>

The declaration allows to hang up certain normal functions of government, alert citizens to alter their normal behavior, or authorize government agencies to implement emergency preparedness plans and limit or suspend civil liberties and human rights.

The governmental declaration allows to hang up some normal government functions, alarm citizens to change their normal operations, or empower government agencies to implement emergency preparedness plans. Besides, it also bounds or eliminates civil liberties and human rights.<sup>1</sup>

The need to declare a state of emergency may arise from situations as diverse as an armed action against the state by internal or external elements, a natural disaster, civil unrest, an epidemic, a financial or economic crisis or a general strike.

State of emergency may originate from special circumstances, for example: (1) a natural disaster, (2) an epidemic, (3) civil unrest, (4) a general strike, (5) an armed action against the state by internal or external factors, or (6) financial or economic crisis.

Emergencies are not uncommon, for example, during the Covid-19 epidemic. Especially, emergencies can persist, or even last, in dictatorial regimes. In some emergencies, martial law is also enacted, giving the military greater authority.

## III. DEATH PENALTY AND STATE OF EMERGENCY

### 1. Death penalty in some countries

**In Algeria:** Abdelaziz Bouteflika, who became President on 15 April 1999, in the bones of the conciliation policy, his Justice Minister, Tayeb Belaïz, stated that capital punishment would be abolished from Algerian legislation from 26 June 2004 onwards. Abdelaziz Bouteflika also indicated the declaration was desirable that the Algerian code would be adapted to international developments. Additionally, it would not include: (1) endangering national security; (2) terrorism; (3) crimes of infanticide and parricide; and (4) treason.<sup>3</sup> In other words, the death penalty still applies to these criminals whose action relates to four group behaviours that are listed above. Following this, most group behaviours have a relationship with armed action against the state by internal or external factors leading to state of emergency.

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<sup>1</sup> Pham Van Beo, 'Xóa bỏ hay duy trì hình phạt tử hình đối với một số tội phạm cụ thể [Elimination or maintenance of the death penalty for certain crimes]' (2015) 20 *Tạp chí Nghiên cứu lập pháp* [Journal of Legislation Studies] 300.

<sup>2</sup> DCAF, 'State of emergency' (Security sector governance and reform, October 2005) <[http://www.dcaf-tunisie.org/adminDcaf/upload/ejournal/bg\\_states-emergency.pdf](http://www.dcaf-tunisie.org/adminDcaf/upload/ejournal/bg_states-emergency.pdf)> accessed 28 December 2020.

<sup>3</sup> Mona Chamass, *Fighting against the Death Penalty in the Arab World* (World Coalition 2008) 9.

**In Egypt:** the death penalty applies in Egypt for the crimes subject: terrorism, air hijacking, arson causing death, detaining weapons to endanger public order or national security, endangering national security internally and externally, premeditated murder, espionage, planting, trafficking, producing, detaining and transporting drugs, and perjury leading to a death sentence, offences endangering national security (including internally and externally), and those committed by armed gangs.<sup>1</sup> However, since 1981 and the assassination of President Anouar el Sadate, a state of emergency has been declared. Special courts were established at that time. Accordingly, crimes related to national security attacks are often subject to the death penalty. Anti-terrorism law allows persons suspected of terrorism to be brought before military and exceptional courts, and will permanently incorporate powers established by the state of emergency into law.<sup>2</sup> Following this, Egypt showed that terrorism relates directly to a state of emergency, and of course, these kinds of crimes have to be punished by the death penalty.

**In Jordan:** Jordan remains death penalty sentences for murder, rape and crime against the state.<sup>3</sup>

**In Lebanon:** Lebanese law remains the death penalty. The death sentence is compulsory in the criminal code for terrorism and acts of insurrection and civil war (or religious conflict), murder, collaboration with an enemy state. Those criminals are judged to damage national cohesion (insurrection, etc.).<sup>4</sup>

**In Nepal:** During the period from 1960 to 1970, the country only carried out three executions. However, the death penalty continued in the 1959 Army Act and the Treason Act, so the death penalty is still applied for some crimes. It is severe in the political and military realm. The last death sentence was executed in Nepal in 1979 for the assassination of the king. However, in the 1980s, due to political upheaval, Nepal re-applied the death penalty for murder without going to court, kidnapping, hijacking, and torture, indiscriminate use of weapons and terror. The Special Services Act of 1985 made it a crime that disclosed and improperly used confidential information in the intelligence industry could result in the imposition of the death penalty. Nepal officially abolished the death penalty through a 1990 constitutional amendment, which came into effect in 1991.<sup>5</sup>

**In Korea:** Korea's latest revised criminal law of 2013 still stipulates the death penalty for several crimes, including crimes of rioting, collusion with foreign riots, murder and robbery. However, the death penalty does not apply to people under 18 years old, pregnant women, and people with mental illness.<sup>5</sup>

**In the Philippines:** The Philippines has been a member of the ICCPR since 1986 and is a member of the 2007 Death Penalty Abolition Protocol. The process of abolishing the death penalty in the Philippines is relatively complicated. This country maintained the death penalty as early as a Spanish colony and then a US colony and continued to maintain it after gaining

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<sup>1</sup> Mona Chamass, *Fighting against the Death Penalty in the Arab World* (World Coalition 2008) 11.

<sup>2</sup> Mona Chamass, *Fighting against the Death Penalty in the Arab World* (World Coalition 2008) 11-12.

<sup>3</sup> Mona Chamass, *Fighting against the Death Penalty in the Arab World* (World Coalition 2008) 14.

<sup>4</sup> Mona Chamass, *Fighting against the Death Penalty in the Arab World* (World Coalition 2008) 16.

<sup>5</sup> Nguyen Minh Hai, Nguyen Van Hoan and Nguyen Minh Khue, 'Khả năng Việt Nam gia nhập Nghị định thư tùy chọn thứ hai về bãi bỏ hình phạt tử hình theo Công ước quốc tế về các quyền dân sự và chính trị (ICCPR) [On the possibility of Viet Nam ratifying the Second Optional Protocol to the ICCPR aiming at the abolition of the death penalty]' (Research Report EU JULE 2019).

independence in 1946. With the development of the Philippine legal system, especially under the leadership of President Ferdinand Marcos (1965-1986), the use of the death penalty was expanded, covering also illegal trafficking drug substances. By 1987, the Philippine Constitution abolished the death penalty, although it still maintained a provision permitting the death penalty to the extremely cruel crimes that brought the Philippines to become the first country in Asia to abolish the death penalty. By 1999, the death penalty was restored and maintained until 2006, when the President passed Act No. 9346 on the abolition of the death penalty. The Philippine government approved the Protocol on the Abolition of the Capital Penalty in 2007.<sup>1</sup> However, in 2016, President Rodrigo Duterte promised that he was ready to restore the death penalty to preserve social order and safety and fight crime. Following this promise, the act on the use of the death penalty for many drug-related crimes was passed by the House of Representatives in February 2017. Currently, this act is waiting for the approval of the Senate. As such, it is likely that the Philippines will restore the death penalty. The President supports this, and a public opinion poll on restoring the death penalty shows that more than 67% of Filipinos support the death penalty.<sup>2</sup>

Criminals are executed and sentenced to death by the state as punishment. In some countries, it can be different forms of drug-related offences, terrorism-related acts and “murder”, “treason”, “acts against national security”, “collaboration” with a foreign entity, “espionage”, “questioning the leader’s policies”, participation in “insurrectional movement and terrorism”, “armed rebellion against the ruler” and other “crimes against the state”.

Some of these sentences relate to the state of emergency, for example: (1) State of emergency on 11 September 2001 in America related to terrorism; (2) or a case of Pervez Musharraf: Pakistan ex-leader is an instance. He was convicted to death for treason. The reason is that he suspended the constitution in 2007 and declared an emergency to extend his tenure.

According to Amnesty International,<sup>3</sup> there are 106 countries where the law does not allow the death penalty; 8 countries where the law does not allow capital punishment, except for serious crimes in exceptional circumstances; 28 countries where the use of the death penalty is allowed by law but in fact, these nations have not executed anyone for over 10 years; and 56 countries which retain capital punishment laws.

## **2. Death penalty in Vietnam**

Like some other countries, Vietnam maintains the death penalty in the Criminal Code, according to Article 40 of the 2015 Criminal Code (amended in 2017):

### **“Article 40. Death sentence**

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<sup>1</sup> Nguyen Minh Hai, Nguyen Van Hoan and Nguyen Minh Khue, ‘Khả năng Việt Nam gia nhập Nghị định thư tùy chọn thứ hai về bãi bỏ hình phạt tử hình theo Công ước quốc tế về các quyền dân sự và chính trị (ICCPR) [On the possibility of Viet Nam ratifying the Second Optional Protocol to the ICCPR aiming at the abolition of the death penalty]’ (Research Report EU JULE 2019).

<sup>2</sup> Frances Mangosing, ‘Pulse Asia: Most Filipinos still support death penalty’ (INQUIRER.net, 5 May 2017) <<https://newsinfo.inquirer.net/894552/pulse-asia-most-filipinos-still-support-death-penalty>> accessed 28 December 2020.

<sup>3</sup> Amnesty International, ‘Death sentences and executions 2019’ (Global report Amnesty International 2020) <<https://www.amnesty.org/download/Documents/ACT5018472020ENGLISH.PDF>> accessed 28 December 2020.

1. Death sentence is a special sentence imposed upon people committing extremely serious crimes that infringe national security, human life, drug-related crimes, corruption-related crimes and some other severe crimes defined by this document.

2. Life imprisonment shall not be imposed upon juvenile offenders, women who are pregnant or raising children under 36 months of age and people from 75 years of age or older when they commit the crime or during the trial.

3. The life sentence shall not be executed in the following circumstances:

a) The convict is pregnant or a woman raising a child under 36 months of age;

b) The sentenced person is 75 years of age or older;

c) The person sentenced to death for embezzlement or taking bribes, after being sentenced, has returned at least one third of the property embezzled or bribes taken closely cooperates with the authorities in the process of investigation or trial, or has made reparation in an effort to atone for the crime.

4. In the circumstances specified in Clause 3 of this Article or the death sentence is commuted, the death sentence shall be replaced with life imprisonment.”

Crimes still applying the death penalty under the Penal Code 2015 include: Raping people under 16 years old (Article 142); Producing and trading counterfeit products that are medicines and preventive medicine (Article 194); Murder (Article 123); Property embezzlement (Article 353); Accepting bribes (Article 354); Destroying peace, causing a war of aggression (Article 421); Against humanity (Article 422); War crimes (Article 423); Betraying the Fatherland (Article 108); Illegal trading in narcotics (Article 251); Activities aimed at overthrowing the people's administration (Article 109); Riot (Article 112); Spy (Article 110); Terrorism (Article 299); Terrorism against the people's administration (Article 113); Destroying material and technical foundations of the Socialist Republic of Vietnam (Article 114); Illegally producing narcotics (Article 248); Illegally transporting narcotics (Article 250).<sup>1</sup>

## **2. Death penalty and state of emergency**

The right to live is a basic right of humans. However, as a permissible exception, the death penalty is recognized in the International Covenant on Civil and Political Rights (ICCPR). In particular, the ICCPR provides that the right to live will not be arbitrarily deprived; the use of the death penalty is listed in several specific limitations and restrictions.

Article 6 paragraph 2 of the ICCPR stipulates that: “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 the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out in pursuant to a final judgement rendered by a competent court”.

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<sup>1</sup> Bộ Luật hình sự [Criminal code] (2015) cl3.

Moreover, anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. The death penalty shall not be imposed for crimes committed by persons below 18 years of age and shall not be carried out on pregnant women.

According to Ni Wayan Sinaryati,<sup>1</sup> in law enforcement for crimes that are extraordinary and serious in nature, capital punishment sanctions are still relevant to be carried out. As shown above, in some countries, death penalty still applies for criminals related to extraordinary and state of emergency.

Some death penalty relates directly or indirectly to the state of emergency, for example, 8 countries which permit the death penalty only for serious crimes in exceptional circumstances, such as those committed during times of war, endangering national security. The death penalty is a crucial tool in sentence systems for better application of criminal penalties.<sup>2</sup>

In fact, in some cases, criminals lead to a state of emergency. The situation in Peru is an example. Facing the increasing trend of drug trafficking and violence in many localities across the country, on September 13, 2011, the Peruvian Government issued a state of emergency order in some areas in Amazon. The emergency order will take effect for 60 days, allowing the police force to arrest suspicious objects as well as disperse groups of aggressive behavior, disrupting order and security. Officials of Lima assert that these urgent measures are necessary to protect people, ensure public order and prevent violent acts caused by drug crimes. The orders were issued in Peru amid protests by farmers in many localities, where the government stepped up a program to demolish opium fields, guide farmers in farming, food crops and crops.<sup>3</sup>

Like Peru, President Donald Trump, on February 15, 2018, signed a declaration of a "national emergency", a special measure for him to have necessary funds to build a wall to block the border with Mexico without depending on the budget approved by Congress. The aim is to prevent the "invasion of drugs and criminals" into the US from Mexico.<sup>4</sup>

A similar situation was present in the Philippines, extrajudicial killing for a drug offender was commanded by President Rodrigo Duterte. From July 2016 to January 2017, the police have killed over 7,000 people assumed of drug-related crimes.<sup>5</sup>

In Indonesia, the death penalty is necessary and vital as a crucial criminal punishment to reduce and control the illegal drug trade. The government leadership of the country named

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<sup>1</sup> Ni Wayan Sinaryati, 'Formulative policy of death penalty for corruptors in Indonesia' (2020) 4 Journal of Public Administration, Finance and Law 431.

<sup>2</sup> Joko Sriwidodo, Kristiawanto, 'Death penalty from the perspective of human rights in Indonesia' (2020) 10 International Journal of Scientific and Research Publications 17.

<sup>3</sup> Communist Part of Vietnam Online Newspaper, 'Pêru ban bố tình trạng khẩn cấp do tội phạm ma túy [Peru declared state of emergency due to drug crime]' (Hanoi, 14 September 2011) <<https://dangcongsan.vn/the-gioi/tin-tuc/peru-ban-bo-tinh-trang-khan-cap-do-toi-pham-ma-tuy-88429.html>> accessed 28 December 2020.

<sup>4</sup> Vuong Thanh, 'Nỗ lực xây dựng bức tường biên giới và những thách thức Tổng thống Trump phải đối mặt [Efforts to build border walls and the challenges President Trump faces]' *Tuyen giao* (Hanoi, 18 February 2019) <<http://tuyengiao.vn/the-gioi/no-luc-xay-dung-buc-tuong-bien-gioi-va-nhung-thach-thuc-tong-thong-trump-phai-doi-mat-119078>> accessed 28 December 2020.

<sup>5</sup> Amnesty International, 'More than 7,000 killed in the Philippines in six months, as president encourages murder' (Global report Amnesty International 2020) <<https://www.amnesty.org.uk/philippines-president-duterte-war-on-drugs-thousands-killed>> accessed 28 December 2020.

the illegal drug trade as “drug emergency”. Following this, the government leadership and the National Narcotics Agency (BNN) hold up strongly the capital punishment to fight the ‘drug emergency’.<sup>1</sup> Indonesian President Joko Widodo stated that Indonesia was in a state of emergency due to drug use and trafficking, and criminal subjects could only be faced with capital punishment. The President responded: “there are between 30 and 50 people in Indonesia dying per day because of drugs”.<sup>2</sup>

Regarding the perspective of the public interest, the implementation of capital punishment can help to protect society. Following this, in order to save many others, we put a trafficker to death. This also means that. It helps other people avoid illegal drug trafficking.<sup>1</sup> Illegal drug trafficking not only kills people but also demolishes the lives and future of the nation's next generation. Therefore, it is a rational choice to choose the death penalty for drug traffickers to save the nation as well as the state.<sup>1</sup>

“That drug abuse is an extraordinary crime (extraordinary crime) and transnation crime (transnational crime) because of the effects of drug abuse has not only destroyed themselves drug but also can damage the structure of the life of society, nation and country”.<sup>1</sup>

In another case, rape and sexual assaults can lead to a state of emergency. Examples are shown then. In 2018, after several rapes and sexual assaults occurred in the country, Sierra Leone declared a state of emergency. Sexual assault in the country made the general public be indignant. As a result, the declaration of the state of emergency was stated by Sierra Leone President Julius Maada Bio.<sup>3</sup>

In 2019, in South Africa, Luyanda Botha, a 42-year-old staff of the Cape Town post office, raped and murdered Uyinene Mrwetyana, a 19-year-old student when she went to pick up a parcel. Later, he confessed to the crime. He was convicted of rape and murder with a sentence of life in prison. This is a symbol case of the casual violence women in South Africa have to face. However, many South African women reacted to the sentence. They claimed that capital punishment should be brought back to deter perpetrators of sexual violence.

A petition circulating in recent months calling for the death penalty for rape and other offenses against women is gaining momentum and has garnered more than 600,000 signatures.<sup>4</sup>

According to the World Health Organization report in 2016, female death rate linked to violence in South Africa was recorded fourth highest compared to 183 countries. In 2018, 2,700

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<sup>1</sup> Sefriana, Dodik Setiawan Nur Heriyanto, ‘Ineffective and inhumane: Time to end Indonesia’s death penalty for drug traffickers’ (2020) 13 International Journal of Innovation, Creativity and Change 650.

<sup>2</sup> Matt Payton, ‘Indonesia hope to execute ten foreign death row prisoners without an international ‘soap opera’ Independent (London, 13 May 2016). <<https://www.independent.co.uk/news/world/asia/indonesia-hope-execute-ten-foreign-death-row-prisoners-without-international-soap-opera-a7027951.html>> accessed 28 December 2020.

<sup>3</sup> BBC, ‘Sierra Leone declares emergency over rape and sexual assault’ (8 February 2019).

<<https://www.bbc.com/news/world-africa-47169729#:~:text=Sierra%20Leone%20has%20declared%20a,series%20of%20high%2Dprofile%20attacks>> accessed 28 December 2020.

<sup>4</sup> Bukola Adebayo, ‘A post office worker was given three life sentences for raping and murdering a student. Now South African women are saying enough’ CNN (Atlanta, 15 November 2019). <<https://edition.cnn.com/2019/11/15/africa/south-africa-student-murder-sentence/index.html>> accessed 28 December 2020.

women and 1,000 children were killed in South Africa, and there were 30,626 rape cases between 2018 and 2019.<sup>4</sup>

The death penalty is a useful social protection tool to prevent the public from disasters and the potential or threats of great danger leading to misery and disrupting religious, social and state life.<sup>1</sup>

We still remember 11 September 2001 (9/11 event) President George W. Bush had to declare the state of national emergency after the terrorist attacks. Until recently, Obama stated "The terrorist threat that led to the declaration on September 14, 2001, of a national emergency continues," he said. "For this reason, I have determined that it is necessary to continue in after September 14, 2016, the national emergency concerning the terrorist threat".<sup>2</sup>

Jamaica is another example. The Jamaican authorities on May 23, 2010 said it had put the capital Kingston and surrounding areas in a state of emergency in the context of police forces fighting with armed gangs trying to prevent the arrest of a notorious gang leader in extraditing to America.<sup>3</sup>

However, in some cases, the death penalty caused a state of emergency. For instance, in 2002, a Court in Fiji sentenced a defendant to death on treason charges. This death sentence caused controversy and was not supported by the public, even causing political instability.<sup>4</sup>

In other cases, homicide in the context of war/armed conflict is currently regulated by both international human rights law and humanitarian law. According to the current general opinion, if this behavior takes place between the armed forces of the warring parties that comply with the provisions of international humanitarian law (prohibiting attacks on civilians and civilian targets, prohibiting the killing of enemy soldiers when they have surrendered or are no longer able to resist ...) or in other words, deaths resulting from lawful acts of war (deaths resulting from lawful acts of war) is not considered a violation of the right to life recognized in international human rights law (Vu, 2017).<sup>5</sup>

#### IV. CONCLUSION

According to the law of the countries that still keep the death penalty, this penalty is usually only applied to crimes of particularly serious danger, infringement of national security, world peace effects, and drug crime, murder. The death penalty is an effective and irreplaceable

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<sup>1</sup> Effi M Zulkifli, 'The death penalty for drug offences in Indonesia' (2020) 140 *Advances in Economics, Business and Management Research* 74.

<sup>2</sup> Gregory Korte, 'Obama extends post-9/11 state of national emergency for 16th year' *US Today* (Washington D.C., 9 September 2016) <<https://www.usatoday.com/story/news/politics/2016/09/09/obama-extends-post-911-state-national-emergency-16th-year/90004960/>> accessed 28 December 2020.

<sup>3</sup> Ha Noi Moi, 'Jamaica ban bo tinh trang khan cap tai thu do [Jamaica declared a state of emergency in the capital] (24 May 2010) <<http://hanoimoi.com.vn/tin-tuc/The-gioi/331921/jamaica-ban-bo-tinh-trang-khan-cap-tai-thu-do>> accessed 28 December 2020.

<sup>4</sup> Nguyen Minh Hai, Nguyen Van Hoan and Nguyen Minh Khue, 'Khả năng Việt Nam gia nhập Nghị định thư tùy chọn thứ hai về bãi bỏ hình phạt tử hình theo Công ước quốc tế về các quyền dân sự và chính trị (ICCPR) [On the possibility of Viet Nam ratifying the Second Optional Protocol to the ICCPR aiming at the abolition of the death penalty]' (Research Report EU JULE 2019).

<sup>5</sup> Vu Cong Giao, 'Quyền sống và hình phạt tử hình trong pháp luật quốc tế và pháp luật Việt Nam [The right to live and the death penalty in international law and Vietnamese Law]' (Ensuring human rights in legal proceedings, Vinh City, December 2017).

deterrent to prevent particularly serious crimes such as murder, terrorism, drugs. The death penalty means killing a person to deter many people.<sup>4</sup>

The death penalty is an ancient punishment. Today, some scholars declare that the application of the death penalty is unnecessary, unfair or ineffective. Some argued that it is necessary to remove the death penalty from a democratic and civilized society to ensure the effective realization of human rights to life.<sup>1</sup> Recently, the number of countries abolishing the death penalty has increased. However, keeping or eliminating the death penalty depends a lot on the country's politic, cultural, social, economic and religious contexts.<sup>2</sup> As analyzed, the death penalty application provoked strong social outcry, leading to a state of state emergency. However, in some cases, certain crimes cause or threaten to cause a national emergency, and the death penalty applied is appropriate.

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<sup>1</sup> Nguyen Minh Hai, Nguyen Van Hoan and Nguyen Minh Khue, 'Khả năng Việt Nam gia nhập Nghị định thư tùy chọn thứ hai về bãi bỏ hình phạt tử hình theo Công ước quốc tế về các quyền dân sự và chính trị (ICCPR) [On the possibility of Viet Nam ratifying the Second Optional Protocol to the ICCPR aiming at the abolition of the death penalty]' (Research Report EU JULE 2019).

<sup>2</sup> Amnesty International, 'Death sentences and executions reports 2015' (Global report Amnesty International 2015) <[https://www.amnesty.org/en/what-we-do/death-penalty/?utm\\_source=google&utm\\_medium=cpc&gclid=CjwKCAiAuoqABhAsEiwAdSkVVC0qBDM4DrNxZ6ILWZNG-3\\_CvKH1OKsvTszExJ2FS-qqLEFxeA717xoCnmoQAvD\\_BwE](https://www.amnesty.org/en/what-we-do/death-penalty/?utm_source=google&utm_medium=cpc&gclid=CjwKCAiAuoqABhAsEiwAdSkVVC0qBDM4DrNxZ6ILWZNG-3_CvKH1OKsvTszExJ2FS-qqLEFxeA717xoCnmoQAvD_BwE)> accessed 28 December 2020.