

THE TENDENCY TO REDUCE AND ABOLISH THE DEATH PENALTY IN ASIAN COUNTRIES: A PERSPECTIVE OF HUMAN RIGHTS-BASED APPROACH

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Abstract

Protection of everyone's right to life and reduction and abolition of the death penalty has been receiving the attention of the whole world community. The human rights-based approach shows that the reduction and abolition of the death penalty becoming an inevitable tendency of contemporary society along with socio-economic development, legal improvement, and increasing efficiency of public administration, and raising the legal awareness of citizens. The reduction and abolition of the death penalty in Asian countries in law or practice are not out of this general trend. This tendency is carefully explained from the perspective of the human rights-based approach.

Keywords: Human rights-based approach; death sentence; Asia.

1. Introduction

Human Rights-Based Approach theory (HRBA) is one of the important theories in the contemporary theory system of human rights, in which this theory aims to protect, promote and develop human, thereby human and human rights are always at the center of policies and laws.

Currently, the death penalty is still a controversial issue in terms of politics, morals, and human rights. Apparently, at present, the concept of retaining or abolishing capital punishment still has not finished many debates because arguments given to retain or abolish the death penalty are also different. From the perspective of HRBA, human rights in general and everyone's right to life in particular need to be guaranteed in all aspects, all situations, even for extremely serious offenders. The gradual reduction in the abolition of the death penalty by replacing one with another (without depriving of the right to life) needs to be considered carefully and prudently in the process of economic - social development of each nation, but also cannot resist this trend, because of the HRBA theory, all the efforts of countries and the international community to ensure, promote and develop human, human rights (in which the right to life is the most important, sacred and precious) must be best guaranteed, no matter who is the offender or the victim.

Asia now is still the largest region that executes the death penalty in the world; however, governments in Asian countries gradually abolish or reduce the death penalty as the execution of capital punishment has been proven to be ineffective in reducing the number of criminals. Over the past decade, many countries in the region have abolished capital punishment for all crimes, namely, Nepal, Bhutan, Philippines, Cambodia, Mongolia, Timor-Leste, etc. does not apply any the death penalty; Laos, Myanmar, and Brunei, etc. retain the capital sentence but they have not executed for 10 years; Vietnam, China, etc. are countries reduce capital

punishment in their legal system and practice. The paper aims to explain the necessary trend of reduction and de facto abolition of the death penalty in Asian countries from the perspective of a human rights-based approach.

2. Human rights-based approach theory and the death penalty

2.1. Human rights-based approach theory

The human rights-based approach (HRBA) is a conceptual framework for the process of development of human being that is normatively based on international human rights standards and operationally directed in order to promote and protect human rights. It seeks to analyze inequalities that lie at the center of development problems and modify discriminatory practices and unjust distributions of power that impede development progress and often result in groups of people who are left behind¹.

Under the HRBA, the plans, policies, and processes of development are anchored in a system of rights and corresponding obligations established by international law, including all civil, cultural, economic, political, and social rights, and the right to development. According to HRBA, human rights principles (universality, indivisibility, equality and non-discrimination, participation, accountability) are used to guide United Nations development and cooperation and focus on developing the capacities of both ‘duty-bearers’ to meet their obligations, and ‘rights-holders’ to claim their rights². Therefore, HRBA is the approach to put human at the center to consider and resolve policy and legal issues³, in this theory has emphasized the moral obligation of the state in ensuring and promoting human rights⁴.

In terms of the Human Rights-based Approach (HRBA), everyone’s right to life is the most precious and sacred of human being, all actions (even of the state) to deprive any person of life (according to the statutory order) is also contrary to the natural origin of everyone’s right to life. Therefore, if the individual violates the law of the most serious offenses (such as drug offenses or murder, etc.- intentional crimes causing lethal or other serious consequences⁵), the harshest punishment is that isolating an individual from their community and taking educational and emotional measures to reimburse that individual, not depriving of his or her right to life; because they are a perpetrator (extremely serious offenses) or victims of that act, their right to life is equally sacred and precious. Thus, the execution of the death penalty for the offender cannot immediately restore the rights they have lost from that offense, as well as the legal order is improved better after that. For this reason, in many countries of the world, including Asian countries, the number of the death penalty in the total number of penalties in

¹ *Universal Values Principle One: Human Rights-Based Approach* <<https://unsdg.un.org/2030-agenda/universal-values/human-rights-based-approach>> accessed on 5 January 2021

² *Universal Values Principle One: Human Rights-Based Approach* <<https://unsdg.un.org/2030-agenda/universal-values/human-rights-based-approach>> accessed on 11 January 2021

³ Dau Cong Hiep, “Concept and connotation of the human rights-based approach”, in Vu Cong Giao, Ngo Minh Huong (Co-editor), *Human rights-based approach: Theory and practice* (Hanoi National University Press, 2016) p 18

⁴ OHCHR, *Frequently asked questions on a human rights-based approach to development cooperation* <<https://www.ohchr.org/documents/publications/faqn.pdf>> accessed on 3 January 2021 p 3-4.

⁵ Dao Tri Uc and Vu Cong Giao, “The right to life under international law and Vietnamese law”, in Dao Tri Uc, Vu Cong Giao and Truong Thi Hong Ha, *Right to life and the death penalty* (Vietnam National Political Publishing House, Hanoi 2015) p 22

law in these countries tends to decrease, countries abolishing the death penalty in law or practice continues to increase.

2.2. The death penalty

The death penalty is understood that deprives a person of life under a sentence issued by a lawfully established court to punish the person committing the most serious crime⁶. In history, the death penalty is widely used by countries around the world to maintain their dominant power over society. Each country, at each stage of development, will impose this penalty for different crimes. However, along with the development of mankind, the death penalty tends to decrease gradually⁷, and in 1982, the Office of the United Nations High Commissioner for Human Rights issued the 6th general comment on the right to life (provided in Article 6 of the 1966 International Covenant on Civil and Political Rights) that “States parties are not obliged to abolish the death penalty totally they are obliged to limit its use and, in particular, to abolish it for other than the “most serious crimes”. Accordingly, they ought to consider reviewing their criminal laws in this light and, in any event, are obliged to restrict the imposition of the death penalty to the “most serious crimes”⁸.

For this reason, the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty 1989 argued that “abolition of the death penalty contributes to the enhancement of human dignity and progressive development of human rights”⁹. Because everyone’s right to life is an inherent, sacred and inalienable right of human being, UN General Assembly resolution 32/61 of 8 December 1977 indicated “the main objective to be pursued in the field of capital punishment is that of progressively restricting the number of offenses for which the death penalty may be imposed with a view to the desirability of abolishing this punishment”¹⁰. Therefore, many countries in the world today gradually reduce the death penalty in order to (in the future) abolish capital punishment.

2.3. Explaining the problem of retaining or abolishing the death penalty from human rights-based approach theory

The issue of protecting everyone’s right to life has always been paid special attention by scholars, legal experts, and human rights activists because this is the original right, the most sacred and precious right of human being, although international human rights law does not consider the right to life that is an absolute right: in the 1948 Universal Declaration of Human Rights (UDHR) stipulated “Everyone has the right to life, liberty and security of person” (Article 3)¹¹ or International Covenant on Civil and Political Rights (ICCPR) stipulated “Every human being has the inherent right to life. This right shall be protected by law. No one shall be

⁶ Vietnam Lawyers Association, *The death penalty in international law* (Hong Duc Publishing House, Hanoi 2008) p 13

⁷ Vietnam Lawyers Association, *The death penalty in international law* (Hong Duc Publishing House, Hanoi 2008) p 22

⁸ OHCHR, *CCPR General Comment No. 6: Article 6 (Right to Life)* <<https://www.globalhealthrights.org/wp-content/uploads/2013/10/HRC-General-Comment-No.-6-Article-6-Right-to-Life.pdf>> para 6.

⁹ OHCHR, *Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty* <<https://www.ohchr.org/en/professionalinterest/pages/2ndopcpr.aspx>> accessed on 12 January 2021.

¹⁰ United Nation, *UN General Assembly resolution 32/61 of 8 December 1977* <<https://www.amnesty.org/download/Documents/156000/act500061997en.pdf>> accessed on 12 January 2021 p 28

¹¹ UN, *Universal Declaration of Human Rights* <<https://www.un.org/en/universal-declaration-human-rights/>> accessed on 25 January 2020

arbitrarily deprived of his life”(Clause 1 of Article 6)¹². With that provision, international human rights law still leaves open (open regulation) the application of legal measures to deprive people of the right to life according to strict medical order, procedures and legal procedures, in which includes the death penalty. Therefore, the retention or abolition of the death penalty in law or in practice in countries is still a heated debate, including a group of views in favor of abolishing the death penalty, a group of views in favor of keeping the death penalty and also a group supporting gradually reducing the death penalty according to practical conditions. This variety and complexity stem from the individual views, arguments or practices of these groups of views.

(1) The group of views supporting the abolition of the death penalty argues that the imposition of the death penalty seriously violates everyone’s right to life (as defined in ICCPR (Article 6)) and is a cruel, inhumane treatment for human beings (as defined in ICCPR (Article 7)); at the same time, supporters of this viewpoint that the imposition of the death penalty does not have a strong and convincing link to the reduction of the rate of extremely serious crime; moreover, mistakes in the condemnation and execution the death penalty will no longer have a chance to correct them like other penalties. Therefore, the retention of the death penalty contains more risks than the benefits its bringing in the protection and promotion of human rights.

(2) The group of views supporting the retention of the death penalty argues that international human rights law does not have any provisions to prohibit capital punishment; moreover, the retention of the death penalty (the most severe punishment) poses a certain threat to the prevention of dangerous offenses that are extremely dangerous to society and the right to life of others (such as drug crimes, intentional murder crimes, etc.). They took specific evidence in the pre and post periods stipulating the death penalty to justify the effect of this punishment on reducing these extremely dangerous offenses. For example, in the UK, the murder rate increased dramatically since the death penalty was abolished in the country (in 1964), specifically from 300 cases in 1964 to 565 cases in 1994 and 833 cases per year in 2004 (the rate of 0.68 cases / 100,000 people in 1964 increased to 1.42 cases / 100,000 people in 1994); in the United States, between 1993 and 1997, when the number of death penalties imposed for murder increased, the murder crime rate fell to 26%¹³. Additionally, advocates for the retention of the death penalty argue that the use of alternative punishments (such as life imprisonment without sentence reduction) will increase public expenditures, and that the imprisonment of prisoner whole life will cause their trauma, thus causing more suffering for offenders than they face the death penalty¹⁴. In addition, proponents of this penalty argue that the imposition of the death penalty for the most serious offenders (forced the imposition of the death penalty) is considered as one of adequate compensation to the victim and the victim's family, as well as a form of justice protection (appropriate punishment for offenses). Furthermore, if the humane treatment by not imposing the death penalty for this most serious

¹² OHCHR, *International Covenant on Civil and Political Rights* <<https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>> accessed on 25 January 2021

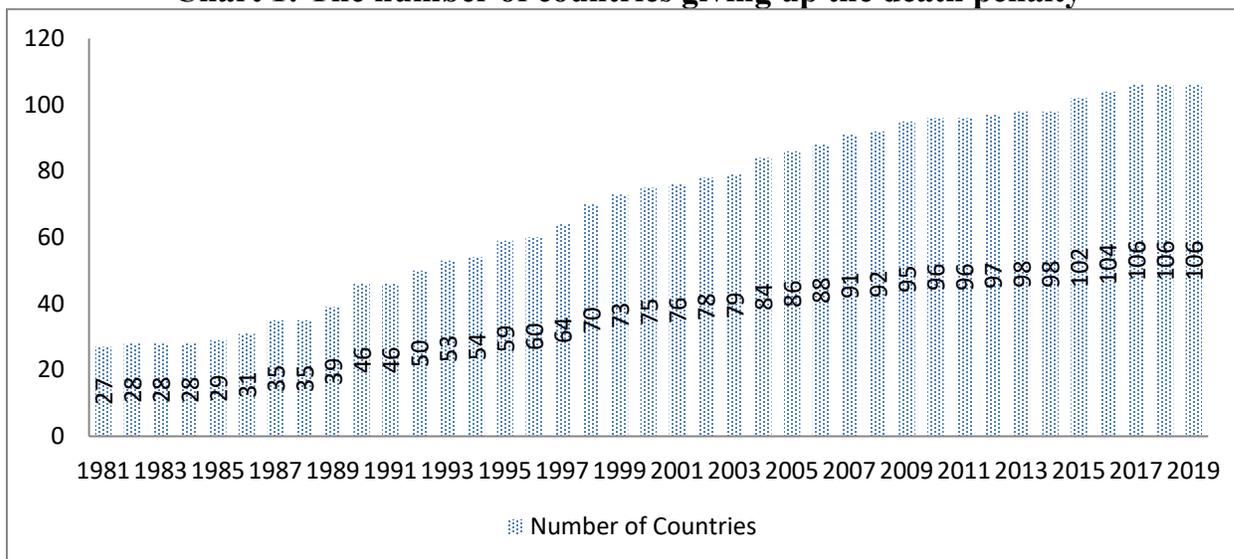
¹³ Wikipedia, *Death Penalty - Capital Punishment Debate*, followed the Vietnam Lawyers Association, *The death penalty in international law* (Hong Duc Publishing House, Hanoi 2008) p 22-23.

¹⁴ Vietnam Lawyers Association, *The death penalty in international law* (Hong Duc Publishing House, Hanoi 2008) p 32

offender seems an inhuman treatment of the victim, the protection of offender’s right to life (abolishing the death penalty) is considered to have been fostering and favoring the rights of people who commit serious abuse or pose a serious threat to the right to life of others; but rather, they are the central subjects who need to be protected the right to life better instead of paying too much attention to protecting the right to life for this prisoner.

Obviously, the absolute support for the abolition of the death penalty or the retention of the death penalty meets the objections of the other side, because the arguments and reasons of each side are not really convincing. In fact, in all measures applied by countries and states, the death penalty is the most severe and harshest punishment and demonstrating the strength of the state, which shows that whether to retain or reduce or abolish the punishment depends heavily on the state's capacity for managing and running the society, especially maintaining social order and safety and protecting human rights. But this capacity is regulated by the level of socio-economic development, the perfection of the legal system, measures to combat crimes, especially the most serious crimes and the harmonious relationship between national and international interests in ensuring and promoting the development of human rights.

Chart 1: The number of countries giving up the death penalty



Source: AI (2021)¹⁵ and Vietnam Lawyers Association (2008)¹⁶

Therefore, countries in the world have declared the abolition of the death penalty since the 1948 Universal Declaration of Human Rights was proclaimed (8 countries abolished the death penalty¹⁷); 50 years later in 1998, 70 countries in the world declared the abolition of

¹⁵ Amnesty International, *Death sentences and executions 2007-2019* <https://www.amnesty.org/en/what-we-do/death-penalty/?utm_source=google&utm_medium=cpc&gclid=Cj0KCQiA0-6ABhDMARIsAFVdQv99_Jn76ySIR0uFSzG6pD8xg8IdFVyWp0NdWi1LGCWbGMV8tnu90T0aArltEALw_wcB> accessed on 10 January 2021

¹⁶ Vietnam Lawyers Association, *The death penalty in international law* (Hong Duc Publishing House, Hanoi 2008) p. 107-108.

¹⁷ The first eight countries abolished the death penalty: Venezuela (in 1863), San Marino (in 1865), Costa Rica (in 1877), Panama (in 1903), Ecuador (in 1906), Uruguay (in 1907), Colombia (in 1910), Iceland (in 1928), Amnesty International, *Abolitionist and retentionist countries as of July 2018*, <<https://www.amnesty.org/download/Documents/ACT5066652017ENGLISH.pdf>> accessed on 21 January 2021

capital punishment; by the end of 2019, 106 countries (are members of the United Nations) in the world declared the abolition of the death penalty in law or in practice¹⁸. Within these countries, the number of Asian countries abolishing capital punishment in law or practice tends to increase. Although some Asian countries have not abolished the regulations on the death penalty, in the last 10 years, these countries have not imposed this penalty in practice, such as Brunei, South Korea, Laos, Mongolia, Myanmar, Sri Lanka, Maldives and Tajikistan¹⁹.

Table 1: Asian countries have abolished the death penalty in law or in practice

Abolishing the death penalty in law		Only imposing the death penalty for the most serious offense	Abolishing the death penalty in practice	
Year	Nation/Territory		Year	Nation/Territory
1989	Cambodia	Kazakhstan	1957	Brunei
1993	Hongkong		1997	Korea (South)
1997	Nepal		1989	Laos
1998	Azerbaijan		1954	Maldives
1999	Turkmenistan		1988	Myanmar
2002	Timor Leste		1976	Sri Lanka
2003	Armenia		2004	Tajikistan
2004	Butan, Turkey			
2006	Philippines			
2007	Kyrgyzstan			
2008	Uzbekistan			
2017	Mongolia			

Source: Death Penalty Information Center (2021)²⁰ and Amnesty International (2021)²¹

Currently, 63 countries still maintain and execute the death penalty²²; however, legal regulations in these countries stipulate that only impose the death penalty for the most serious crimes and do not impose the death penalty for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women. In which countries, in Asia, there are Vietnam, China and so on.

This fact shows that no matter what support or oppose the retention of capital punishment, the tendency of decreasing and abolishing this penalty will also increase along

¹⁸ Amnesty International, *Death sentences and executions 2007-2019* <https://www.amnesty.org/en/what-we-do/death-penalty/?utm_source=google&utm_medium=cpc&gclid=Cj0KCQiA0-6ABhDMARIsAFVdQv99_Jn76ySIR0uFSzG6pD8xg8IdFVYwP0NdWi1LGCWbGMV8tnu90T0aArltEALw_wcB> accessed on 10 January 2021

¹⁹ Death Penalty Information Center, *Abolitionist in Practice* <<https://deathpenaltyinfo.org/policy-issues/international/countries-that-have-abolished-the-death-penalty-since-1976>> accessed on 22 January 2021

²⁰ Death Penalty Information Center, *Countries That Have Abolished the Death Penalty Since 1976* <<https://deathpenaltyinfo.org/policy-issues/international/countries-that-have-abolished-the-death-penalty-since-1976>> accessed on 22 January 2021

²¹ Amnesty International, *Abolitionist and retentionist countries as of July 2018*, <<https://www.amnesty.org/download/Documents/ACT5066652017ENGLISH.pdf>> accessed on 22 January 2021

²² Amnesty International, *Death sentences and executions 2007-2019* <<https://www.amnesty.org/en/what-we-do/death-penalty>> accessed on 21 January 2021.

with the general development of mankind (*Chart 1, Table 1*). Mankind has spent thousands of years of history in order to have the legal system to protect human rights as well as today. In history, humanity has seen the imposition of the death penalty quite arbitrarily, not following the strict procedures of law, and the execution of this penalty was very cruel (beheading, braking, throwing oil in a pot of boiling oil, etc. .); up to now, in countries where capital punishment is still maintained, this punishment has been applied according to a strict process, and this form of execution has been much more humane than before. Along with the development of mankind, the treatment between man and man is more and more civilized, more humane, therefore, the forms of human treatment that are barbaric and inhumane are gradually eliminated or replaced by less barbaric and less inhumane measures.

Although the ICCPR does not have any articles prohibiting the imposition of the death penalty, it also recommends states to gradually reduce and abolish the death penalty: “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” (Clause 6 of Article 6)²³. It shows that International human rights law is very concerned with the everyone’s right to life, so the implementation of measures to replace the death penalty should be taken into account; because obviously, both the argument for the retention and abolition of capital punishment is not strong enough to offset the fact that in countries accelerating the use of the death penalty still does not reduce the number of crimes, the most serious offenses (such as drug convictions, murder sentences, etc.). Thus, it is not convincing enough to cite an inverse relationship between the retention and increase of the death penalty and the reduction of the most serious crimes. Research from the United Nations has shown that no scientific evidence shows that the execution of the death penalty is more effective in preventing crime than using life imprisonment²⁴, such as in Canada, the murder crime rate has decreased from 3.09 cases per 100,000 residents in 1975 (the year before the country abolished the death penalty for this crime) to 2.41 cases per 100,000 residents in 1980 and continued to decrease, by 2003, this case was 1.73 cases / 100,000 people, in 2005 it was 2 cases / 100,000 people, 33.3% lower than that in 1975; In the United States, murder rates are higher in 36 states that retain and execute the death penalty than in states where the penalty has been abolished or is still regulated in law but not infrequently impose in practice²⁵. Furthermore, it is illogical to invoke the imposition of the death penalty to protect the right to life for others or to adequately compensate the victim and the victim's family because depriving the offender of life cannot restore the victim's right to life and not completely overcome the victim's family of grief (in a deliberate murder case) but a person in society is deprived of the right to life. Thus, the abolition of the death penalty for the most serious offender does not mean the unfair and inhumane treatment for the victim and the victim's family because the offender will certainly receive punishment fitting their crime but this punishment is an alternative to the death penalty, such as life without parole.

²³ OHCHR, *International Covenant on Civil and Political Rights*, <<https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>> accessed on 25 January 2021.

²⁴ *Report of the Secretary-General of the United Nations on the imposition of penalties and the implementation of guarantees on the protection of human rights of people facing death penalty in the world, 2005*, followed Vietnam Lawyers Association, *Death Penalty in International Law* (Hong Duc Publishing House, Hanoi 2008) p 23

²⁵ Vietnam Lawyers Association, *Death Penalty in International Law* (Hong Duc Publishing House, Hanoi 2008) p 23 - 24

From the perspective of a human rights-based approach, the protection of everyone's right to life is a common duty of all states, nations and society. This theory aims to ensure, promote and develop human, and human rights being always guaranteed in all situations and at the center of all national and international policies and laws. Therefore, the reduction and the abolition of the death penalty becomes a common and inevitable tendency for the process of ensuring, promoting and developing human rights in practice. This theory does not advocate for the immediate abolition or retention of the death penalty, but aims to support nations in the process of planning, implementing public policies and perfecting the law in order to step by step reduce and eventually abolish capital punishment in the national legal system and in practice. The implementation according to the road map in order to completely abolish the death penalty in the national legal system and in practice is totally consistent in the socio-economic development process, the enhancement of national governance capacity, the increase in preventing and combating crime, and the maintenance social order and safety, the human rights protection by states, as well as the strenuous capacity to replace the death penalty by others in practice in different countries in terms of development level, culture, religion and the awareness of citizens to obey the law.

3. The tendency to reduce and abolish the death penalty in Asian countries

*** The Philippines**

The Philippines is one of the countries in Asia to abolish the laws that impose the death penalty for all criminal offenses in 2006. The 1987 Philippine Constitution stipulated: "Excessive fines shall not be imposed, nor cruel, degrading or inhuman punishment inflicted. Neither shall death penalty be imposed, unless, for compelling reasons involving heinous crimes, the Congress hereafter provides for it. Any death penalty already imposed shall be reduced to reclusion perpetua"²⁶, On July 24, 2006, the country passed the Republic Act No. 9346 (Republic Act (R.A.) No. 9346), which was regarded as the "law abolishing the death penalty in the Philippines"²⁷, subsequently, on November 20, 2007, the Philippines ratified the Second Optional Protocol of the International Covenant on Civil and Political Rights on the abolition of the death penalty in 1989. By all these moves, the Philippines has affirmed its commitment to completely, absolutely and permanently abolish the death penalty in its country.

But, with the above provisions of the 1987 Constitution, the Philippines is now looking to re-enable the death penalty to combat the most serious crimes such as treason, piracy, kidnapping, robbery with violence or intimidation, aggravated rape, arson, carjacking, drug trafficking, cultivation of narcotic plants, child trafficking, and the production of child pornography or child prostitution which rage in this country (in President Rodrigo Duterte's drug-crime sweeping campaign). Proposition No. 4727 proposes to re-impose the death penalty in the Philippines proposed by the House of Representatives in order to impose the death penalty for the above-mentioned most serious crimes, especially drug crimes which provokes heated debate in this country. Many people in this country objected because the re-regulation and the

²⁶ Philippines's Constitution of 1987 <constituteproject.org> accessed on 3 January 2021.

²⁷ Commission on Human Rights of the Philippines and Dr. Christopher Ward, SC, *In defense of the right to life: international law and the death penalty in the Philippines* <<http://regnet.anu.edu.au/sites/default/files/uploads/2017-03/In-Defense-of-the-Right-to-Life-IL-and-Death-Penalty-in-the-Philippines.pdf>> p 1 accessed on 3 January 2021.

imposition of the death penalty in the Philippines would go against the *pacta sunt servanda*²⁸ principle in the implementation of international commitments, including The Second Optional Protocol to the ICCPR in 1989 and the ICCPR was ratified by the Philippines. In particular, Article 6 (2) (6) of the ICCPR implies that "a member state that has just abolish the death penalty cannot re-enact it"²⁹.

However, according to international practice, the priority to apply international treaties and national laws on the same issue within a member state must first be the constitutional provisions of the country, then the international treaty that country has signed and the law of that country, of course such imposition is not contrary to the Charter of the United Nations. Therefore, the possibility of this country's Parliament passing Proposition No. 4727 is entirely possible and thus the possibility of the Philippines recovering the punishment for the above extremely serious crimes is entirely possible (especially for drug offenses).

*** Vietnam**

The Constitution of The Socialist Republic of Vietnam (2013) affirms: "Everyone has the right to live. Human life is protected by the law. No one shall be illegally deprived of his or her life" (Article 19), simultaneously, "any acts threatening the life or health of other people and the community are strictly prohibited" (Clause 2 of Article 38). This is the first time the Constitution prescribes the right to life, although in the past, this right was always guaranteed under any circumstances if the person did not commit a crime which judgment having legal effect of the court that he/she faced the death penalty and has not been pardoned by the President. The right to life is the natural, divine and supreme right of each human being. However, the right to life is not only understood in a narrow sense as the integrity of life but also includes spiritual freedom, ensuring human existence such as the fight against war, war crimes, and prevention and combating acts of harming human life, reducing maternal and infant mortality.

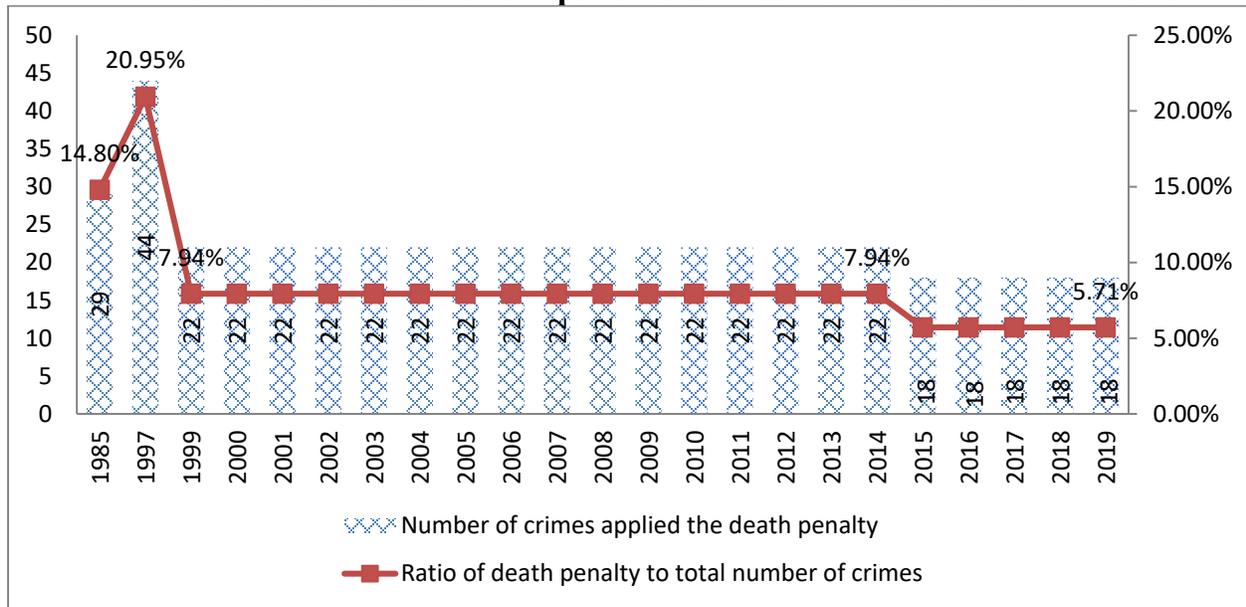
In addition, Vietnam still stipulates and retains the death penalty for those committing the most serious offenses, but the number of capital offenses has been significantly reduced along with the socio-economic development and building, perfecting the rule - of - law Socialist State. During the period from 1985 to 1999, the stricter approach was shown by increasing the death penalty in legal practice; if in the 1985 Criminal Code (Vietnam's First Criminal Code law) stipulated 29 capital offenses (accounting for 14.8% of the total number of criminal charges); after that, the Criminal Code was amended and supplemented four times (in 1989, 1991, 1992, 1997), the number of capital offenses increased to 44 offenses (accounting for nearly 21% of the total number of criminal counts). From 1999 up to now, the criminal policy in Vietnam has softened, by narrowing and clearly defining the scope and conditions for the imposition of the death penalty. The 1999 Criminal Code (amended and supplemented in 2009) stipulated that there were only 22 crimes charges which were punishable by the death penalty (accounting for nearly 8% of the total number of criminal offenses); up to the 2015 Criminal Code (amended

²⁸ *Pacta sunt servanda*: Every treaty in force is binding upon the parties to it and must be performed by them in good faith (Article 26), *Vienna Convention on the Law of Treaties 1969* <<https://legal.un.org>> accessed on 3 January 2021

²⁹ Gudmundur Alfredsson & Asj rn Eide, *The Universal Declaration of Human Rights: A Common Standard of Achievement* (Nguyen Dang Dung, Vu Cong Giao, La Khanh Tung translated) (Thanh Nien Publishing House, Hanoi 2017) p 114

and supplemented in 2017), the number of capital offense is only 18 (accounting for 5.7% of the total number of penalties).

Chart 2: The number of capital offenses in Vietnam from 1985 to 2019



Source: Authors aggregated from Vietnam Criminal Codes 1985, 1997, 1999, 2015, 2017

According to the Vietnam Criminal Code 2015 (amended and supplemented in 2017), “death sentence is a special sentence imposed for people committing the most serious crimes that infringe national security, human life, drug-related crimes, corruption-related crimes and some other extremely serious crimes defined by this Code”(Clause 1 of Article 40); in addition to gradually reducing the death penalty for a number of criminal charges, this Code also strictly prescribes procedural limitations and guarantees when imposing the death penalty as this penalty is only imposed for a person who commits the most serious crimes, except for offenses which are manufactures or deals in counterfeit medicines for treatment or prevention of diseases (Article 194), most of economic crimes do not carry capital punishment³⁰; The death penalty does not impose for “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

³⁰ The 2015 Criminal Code (amended supplemented in 2017) provides for 18 criminal offenses, including: (1) Crimes of infringing upon national security: Crime of betraying the Fatherland (Article 108), Crime of carrying out activities aimed at overthrowing the people's administration (Article 109), Crime of espionage (Article 110), Crime of riot (Article 112), Crime of terrorism against the people's administration (Article 113), Crime of sabotage material and technical foundations of the Socialist Republic of Vietnam (Article 114); (2) crimes infringing upon human life, health, dignity and honor: Murder (Article 123), Rape of persons under 16 years of age (Article 142); (3) crimes violating the economic management order: Crime of manufacturing and trading counterfeit products as medicine, preventive medicine (Article 194); (4) drug-related crimes: Crime of illegal production of narcotics (Article 248), Illegal possession of narcotics (Article 249), Crime of illegal trading in narcotics (Article 251); (5) crimes violating public safety and public order: Terrorism (Article 299); (6) crimes of office: embezzlement (Article 353), Crime of accepting bribes (Article 354); (7) crimes of undermining peace, against humanity and crime of war: Crime of destroying peace, causing war of aggression (Article 421), Crime against humanity (Article 422), Crime of war (Article 423), Vietnam National Assembly, Vietnam Criminal Code 2015, amended in 2017 <<https://m.thuvienphapluat.vn/van-ban/bo-may-hanh-chinh/Van-ban-hop-nhat-01-VBHN-VPQH-2017-Bo-luat-Hinh-su-363655.aspx>> accessed on 10 January 2021.

reparation in an effort to atone for the crime.”(Point c, Clause 3, Article 40); The death penalty does not impose for “offenders who are below than 18 years old at that time of the offense, and for women who are in a state of pregnancy or raise children under 36 months of age or people aged full 75 years or older at that time offense is committed, when the court is committed, when the sentence is imposed (Clauses 2 and 3, Article 40). The current Criminal Code also stipulates that a person sentenced to death can be granted a parole of life imprisonment if all the conditions are met as prescribed by law. In addition, the current Criminal Code also strictly stipulates the investigation, prosecution and adjudication of a criminal with the highest penalty of death having to have a lawyer to defend offender; if those do not have a lawyer, inviting a lawyer.

In addition, in order to ensure that the proceedings for cases that are the most serious, the 2015 Criminal Procedure Code strictly stipulates the procedures for investigation, prosecution, adjudication and judgment execution for those offenders who face the death penalty, such as: only the people's courts of the province or higher has the authority to hear at first instance cases of the death penalty (Article 268); in case of the arrestee, the accused is charged under the penalty frame with the highest rate of death, competent procedural shall appoint a lawyer to defend them if they or their family do not invite any lawyer; after the death sentence takes legal effect, the case file must be immediately submitted to the Chief Justice of the Supreme People's Court and the judgment must be immediately sent to the Chief Procurator of the Supreme People's Procuracy for round two months, these authorities must decide to appeal or not to appeal to cassation or retrial; within seven days after the judgment takes legal effect, the person sentenced to death has the right to file an application for pardon to the State President; The judgment shall be executed only if there is no appeal against cassation or retrial of the Chief Justice of the Supreme People's Court and the Chief Procurator of the Supreme People's Procuracy and the convicted person does not apply for parole to the President or have a parole application but the President rejected his application.

* **China**

In 1979, China enacted the first Criminal Code which stipulated 28 capital offenses; after that, China amended the Criminal Code in 1997, the number of capital crimes increased to 68 offenses³¹. By 2011, China amended a new Criminal Code, which abolished 13 capital offenses, the number of crimes imposed for the death penalty was 55 crimes (a decrease of 19,% of capital offenses) and made provisions not to impose the death penalty for people who are under 18 years old and aged full 75 and above³². In 2015, China amended the Criminal Code continuing to abolish 9 capital crimes³³; thus, so far China has only 46 capital offenses, compared with 1997, the number of death penalties stipulated in Chinese law has decreased significantly (down 32.35%). This fact shows that China is trying to reform its criminal policy towards for more human, and protecting, developing and promoting human rights getting better and better.

³¹ Roger Hood, “Abolition of the Death Penalty: China in World Perspective”, *City University of Hong Kong Law Review*, (2009), Volume 1:1, p 3

³² Zhenjie ZHOU, *The Death Penalty in China: Reforms and Its Future* <<https://core.ac.uk/reader/144456997>> accessed on 10 January 2021.

³³ Laney Zhang, *China: Death Penalty Crimes to Be Further Reduced* <<https://www.loc.gov/law/foreign-news/article/china-peoples-republic-of-death-penalty-crimes-to-be-further-reduced/>> accessed on 17 January 2021.

Practice in Asian countries shows more clearly the tendency of reducing and abolishing the death penalty in these countries, this process is associated with rapidly socio-economic development, legal system improvement building a rule-of-law state. Vietnam and China are clear examples of this reality. With the domestic and international, legal and ethical, economic and cultural, social impact in a multidimensional way, human rights have been respected and guaranteed better, clearly demonstrated in the numbers of criminal counts which are punishable by the death penalty in Asian countries tends to decrease significantly compared to the total number of criminal penalties imposed, especially many countries have declared the abolition of capital punishment in law. This result is the efforts of the Asian states and their common communities and communities around the world, aiming to put human being at the center, not let anyone be left behind, to protect, promote and develop human rights in practice by all efforts, especially everyone's right to life.

4. Conclusion

Recognizing the issue of the death penalty in different countries (some countries have abolished this penalty, these have retained or been gradually reducing to eventually abolish this penalty) under the perspective of human rights-based approach gives us a holistic, thorough, non-extreme viewpoint and does not create a conflict between an abolition advocate and a retention advocate because each side has its own reasons for consolidation their point of view. However, regardless of the point of view, ensuring, promoting and developing human rights in practice is always the main trend in contemporary society, so the tendency of reduction and abolition of capital punishment in Asian countries are inevitable when socio-economic level, law, culture, lifestyle, legal awareness in these countries are growing and gradually approaching the level of development of developed countries in the world./.

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